

SUPPORTING STATEMENT
for the Paperwork Reduction Act Revised Information Collection Submission for
Rule 17g-1 and Form NRSRO

A. JUSTIFICATION

1. Necessity of Information Collection

The Credit Rating Agency Reform Act of 2006¹ (“Rating Agency Act”), enacted on September 29, 2006, defines the term “nationally recognized statistical rating organization,” or “NRSRO,” and provides authority for the Securities and Exchange Commission (“Commission”) to implement registration, recordkeeping, financial reporting, and oversight rules with respect to credit rating agencies registered with the Commission as NRSROs. The Rating Agency Act added new Section 15E, “Registration of Nationally Recognized Statistical Rating Organizations,”² to the Securities Exchange Act of 1934 (“Exchange Act”). In 2007, the Commission adopted rules to implement specific provisions of the Rating Agency Act, as well as other registration, recordkeeping, financial reporting and oversight rules.³

The Dodd-Frank Wall Street Reform and Consumer Protection Act⁴ (“Dodd-Frank Act”) was enacted on July 21, 2010. Title IX, Subtitle C of the Dodd-Frank Act, “Improvements to the Regulation of Credit Rating Agencies,” among other things, establishes new self-executing requirements applicable to NRSROs, requires certain studies,⁵ and requires that the Commission adopt rules applicable to NRSROs, providers of due diligence services, and issuers and underwriters of asset-backed securities in a number of areas.⁶ On August 27, 2014, the Commission adopted rules and rule amendments to implement certain of these provisions, including amendments to Rule 17g-1 and the instructions for Exhibit 1 of Form NRSRO, as discussed below.⁷ The 2014 amendments to Rule 17g-1 and Form NRSRO instructions required the Commission to update the collection of information burden estimates related to compliance with the amendments.

¹ Pub. L. No. 109-291 (2006).

² 15 U.S.C. 78o-7.

³ Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 55857 (June 5, 2007), 72 FR 33564 (June 18, 2007).

⁴ Pub. L. No. 111-203, 124 Stat. 1376, H.R. 4173 (2010).

⁵ See Pub. L. No. 111-203 §§ 939, 939D-939F.

⁶ See Pub. L. No. 111-203 §§ 931-939H; see also Pub. L. No. 111-203 § 943.

⁷ Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 72936 (August 27, 2014).

Rule 17g-1 (17 CFR 240.17g-1) and Form NRSRO (17 CFR 249b.300) contain recordkeeping and disclosure requirements.⁸ The collection of information obligation imposed by Rule 17g-1 and Form NRSRO is mandatory. Rule 17g-1 and Form NRSRO, however, apply only to credit rating agencies that are applying to register or are registered with the Commission as NRSROs, and registration is voluntary.

Rule 17g-1 requires a credit rating agency to furnish an initial application on Form NRSRO.⁹ The rule also provides that if the information contained in the application becomes materially inaccurate before the Commission has granted or denied the application, the credit rating agency must promptly notify the Commission and amend the application with accurate and complete information by submitting an amended initial application on Form NRSRO. Rule 17g-1 also provides that a credit rating agency could withdraw its application before the Commission takes final action on it by furnishing the Commission with a written notice of withdrawal executed by a duly authorized person. Once the application has been approved, section 15E(b)(1) of the Exchange Act requires an NRSRO to promptly amend the application if any information or document provided as part of the application becomes materially inaccurate.¹⁰ Rule 17g-1 provides that an NRSRO is required to furnish the amendment to the Commission on Form NRSRO.

A credit rating agency may apply to be registered for fewer than all five categories of credit ratings described in section 3(a)(62)(B) of the Exchange Act.¹¹ Rule 17g-1 provides that an NRSRO registered for fewer than the five categories may apply to be registered with respect to an additional category by furnishing an amended Form NRSRO and indicating where appropriate on the Form the additional category for which it is applying to be registered.

Section 15E(b)(2) of the Exchange Act requires an NRSRO to furnish the Commission with an amendment to its registration not later than 90 days after the end of each calendar year in a form prescribed by Commission rule (the “annual certification”).¹² This section further provides that the amendment must (1) certify that the information and documents provided in the application for registration (except the Qualified Institutional Buyer certifications) continue to be accurate and (2) list any material change to the information and documents that occurred during

⁸ The Office of Management and Budget (“OMB”) control number for Rule 17g-1 is 3235-0625.

⁹ This provision was implemented under the Commission’s authority in section 15E(a)(1)(A) of the Exchange Act to prescribe the form of the application (15 U.S.C. 78o-7(a)(1)(A)); see also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations, 72 FR 33564 (June 18, 2007).

¹⁰ 15 U.S.C. 78o-7(b)(1).

¹¹ Section 15E(a)(1)(B)(vii) of the Exchange Act (15 U.S.C. 78o-7(a)(1)(B)(vii)) provides that a credit rating agency must submit information with its application regarding the categories of credit ratings described in section 3(a)(62)(B) of the Exchange Act (15 U.S.C. 78c(a)(62)(B)) for which it “intends to apply for registration.”

¹² 15 U.S.C. 78o-7(b)(2).

the previous calendar year. Rule 17g-1 implements these statutory provisions by requiring an NRSRO to furnish the annual certification on Form NRSRO.

Finally, section 15E(e)(1) of the Exchange Act provides that an NRSRO may withdraw from registration, subject to terms and conditions the Commission may establish as necessary in the public interest or for the protection of investors, by furnishing the Commission with a written notice of withdrawal.¹³ Rule 17g-1 provides that an NRSRO must furnish the Commission with a withdrawal of registration on Form NRSRO.

2. Purpose and Use of the Information Collection

Rule 17g-1, Form NRSRO, and the Instructions for Form NRSRO create a registration program for NRSROs. The collections of information in Rule 17g-1 and Form NRSRO are designed to allow the Commission to determine whether an entity should be registered as an NRSRO. Further, they assist the Commission in effectively monitoring, through its examination function, whether an NRSRO is conducting its activities in accordance with section 15E of the Exchange Act and Exchange Act rules.

Rule 17g-1, which, among other things, requires an NRSRO to use the Electronic Data Gathering, Analysis and Retrieval System (“EDGAR”) system to file Form NRSRO and Exhibits 1 through 9 and to make the form and exhibits freely available on an easily accessible portion of the NRSRO’s corporate Internet website, is designed to make the information disclosed in the form and exhibits more readily accessible to investors and other users of credit ratings. In addition, the filing of the Forms NRSRO and the exhibits on the EDGAR system will allow Commission examiners to more easily retrieve the submissions of a specific NRSRO to prepare for an examination. Furthermore, having the forms filed and stored through the EDGAR system will assist the Commission from a records management perspective by establishing a more automated storage process and creating efficiencies in terms of reducing the volume of paper filings that must be manually processed and stored.

These rules also are designed to assist users of credit ratings by requiring the disclosure of information with respect to an NRSRO that could be used to compare the credit ratings quality of different NRSROs. The information may include: methods for determining credit ratings; organizational structure; policies for managing material, non-public information; information regarding conflicts of interest; policies for managing conflicts of interest; credit analyst experience; and management experience. As noted in the Senate Report accompanying the Rating Agency Act, the information that NRSROs are required to make public “will facilitate informed decisions by giving investors the opportunity to compare ratings quality of different firms.”¹⁴

3. Consideration Given to Information Technology

¹³ 15 U.S.C. 78o-7(e)(1).

¹⁴ See Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 3850, Rating Agency Act, S. Report No. 109-326, 109th Cong., 2d Sess. (Sept. 6, 2006).

Form NRSRO is designed to be downloadable from the Commission website, and information could be entered on the Form and stored electronically. Rule 17g-1 requires an NRSRO to make Form NRSRO and Exhibits 1 through 9 freely available on an easily accessible portion of its corporate Internet website (and in writing when requested), and requires NRSROs to use the Commission's EDGAR system to electronically file Form NRSRO and Exhibits 1 through 9 as a PDF document in the format required by the EDGAR Filer Manual. Thus, this rule makes use of technology to facilitate access to and maintain information. With respect to the enhanced performance statistics required under Rule 17g-1, the relevant paragraphs in the instructions to Form NRSRO contain specific instructions with respect to, among other things, how required information should be presented in Exhibit 1 (including the order of presentation) and how transition and default rates should be produced using a single cohort approach. The Commission anticipates that information technology can be used to produce these enhanced performance statistics.

4. Duplication

The Commission has not identified any duplication with respect to the information required by Rule 17g-1 and Form NRSRO.

5. Effect on Small Entities

Small entities are affected by Rule 17g-1 and Form NRSRO because all applicants for registration and NRSROs, regardless of size, are required to submit Form NRSRO to the Commission. Currently, there are 10 NRSROs and, based on their most recently filed annual reports pursuant to Rule 17g-3, two NRSROs are small entities, as defined under Section 601(3) of the Regulatory Flexibility Act.¹⁵

6. Consequences of Not Conducting Collection or Conducting it Less Frequently

If the information collection were not conducted, or not conducted as frequently, the Commission would be unable to determine whether an entity should be registered or remain registered as an NRSRO under section 15E of the Exchange Act. Further, the Commission would be unable to effectively monitor whether NRSROs are conducting their activities in accordance with section 15E of the Exchange Act and Exchange Act rules. In addition, users of credit ratings would have less data available to evaluate the accuracy of credit ratings and compare the performance of credit ratings by different NRSROs.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

There are no special circumstances. This collection is consistent with the guidelines set forth in 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

¹⁵ Release No. 34-72936 (Aug. 27, 2014), 79 FR 55078, 55256 (Sept. 15, 2014).

The required notice with a 60-day comment period soliciting comments on this collection of information was published in the Federal Register on June 2, 2017.¹⁶

The Commission received one comment letter in response to the notice. The commenter asserted, among other things, that the Commission underestimated the burden associated with Rule 17g-1 and Form NRSRO in that Form NRSRO preparation time does not necessarily decrease incrementally with each filing because of the information and data gathering and verification process required for each filing.¹⁷ The comment letter also noted that some NRSROs have elected to utilize the services of an external counsel and/or an external filing service(s) to assist with the Form NRSRO filing process and provided an estimate of the costs to an NRSRO for outsourcing such services. However, the commenter did not specify what portion of the estimated burden should be allocated to such external sources. In response to the comment, the Commission is increasing its estimated burden from 252.7 annual hours to 275 annual hours, for an ongoing industry burden of 2,750 annual hours.¹⁸

9. Payment or Gift

The Commission did not provide any payment or gift to respondents in connection with the proposed rulemaking.

10. Confidentiality

The confidentiality of the information submitted to the Commission in the reports required under the rule is protected only to the extent permitted by FOIA.

11. Sensitive Questions

No information of a sensitive nature, including social security numbers, will be required under this collection of information.

The information collection collects basic Personally Identifiable Information (PII) that may include name, job title, or work address. However, the agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier.

In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a Privacy Impact Assessment (PIA) of the EDGAR system, in connection with this collection of information. The EDGAR System PIA, published on January 29, 2016, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

¹⁶ See 82 FR 25648 (June 2, 2017).

¹⁷ See letter from Financial Information Services Association of Software & Information Industry Association dated Aug. 1, 2017. The comment letter also provided ideas for broader reform proposals that were not directly related to the Commission's burden estimates and went beyond the scope of this collection. Specifically, the commenter suggested the Commission consider a staggered approach to the timing of annual NRSRO examinations and that the Commission seek EDGAR filer feedback on the Form NRSRO filing experience.

¹⁸ 275 hours x 10 NRSRO = 2,750.

12. Burden of Information Collection

There are 10 credit rating agencies registered with the Commission as NRSROs. The Commission expects that these entities have already established the record keeping and disclosure policies and procedures required by Rule 17g-1 and Form NRSRO.

Based on staff experience, and in response to the comment received, the Commission estimates that NRSROs will spend approximately 275 annual hours to make and retain the appropriate records, resulting in an industry-wide ongoing burden of 2,750 annual hours. This estimate includes the annual hour burdens to submit Form NRSRO and the Rule 17g-3 annual reports to the Commission electronically on EDGAR as PDF documents.

13. Costs to Respondents

The Commission anticipates that an NRSRO likely will engage outside counsel to assist it in the process of completing and submitting an initial Form NRSRO. The amount of time an outside attorney will spend on this work will depend on the size and complexity of the NRSRO. The Commission previously estimated that, on average, an outside counsel will spend approximately 40 hours assisting an NRSRO in preparing its initial application for registration, for a one-time aggregate burden to the industry of 400 hours. The Commission further estimated that this work will be split between a partner and an associate, with an associate performing a majority of the work. The Commission estimates that the average hourly cost for an outside counsel will be approximately \$400 per hour. The Commission therefore estimates that the average one-time cost to an NRSRO will be \$16,000¹⁹ for an initial application.²⁰

In addition, the Commission previously estimated an ongoing industry wide annual cost of approximately \$4,000 to cover postage and handling fees for NRSROs responding to individuals that requested copies of Exhibit 1 of Form NRSRO.²¹ Based on staff experience, the Commission estimates an ongoing industry cost resulting from compliance with Rule 17g-1 of \$4,000 annually.

14. Costs to Federal Government

The Commission does not anticipate any additional costs to the Federal Government that would result from the rule.

15. Changes in Burden

The estimated burden on respondents is calculated based on the 10 credit rating agencies currently registered as NRSROs under Section 15E of the Exchange Act. In response to the comment received, the Commission has adjusted the total estimated industry-wide ongoing burden from 2,527 hours to 2,750 hours. The Commission expects that these 10 entities have

¹⁹ \$400 per hour x 40 hours = \$16,000.

²⁰ Release No. 34-55857 (June 5, 2007), 72 FR 33564 (June 18, 2007).

²¹ Release No. 34-72936 (Aug. 27, 2014), 79 FR 55078, 55235 (Sept. 15, 2014).

already established the recordkeeping and disclosure policies and procedures required by Rule 17g-1 and Form NRSRO. The one-time burden that is associated with the previous amendments to the rule were removed.

16. Information Collection Planned for Statistical Purposes

Not applicable. The information collection is not for statistical purposes.

17. Approval to Omit OMB Expiration Date

We request authorization to omit the expiration date on the electronic version of the form, although the OMB control number will be displayed. Including the expiration date on the electronic version of the form will result in increased costs, because the need to make changes to the form may not follow the application's scheduled version release dates.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

Not applicable because no exceptions to certification are contained in the rule.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods or analyze the information for the agency.