

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 17g-10 - “Certification of providers of third-party due diligence services in
connection with asset-backed securities” and Form ABS Due Diligence-15E

A. Justification

1. Necessity of Information Collection

The Credit Rating Agency Reform Act of 2006¹ (“Rating Agency Act”), enacted on September 29, 2006, defined the term “nationally recognized statistical rating organization” (“NRSRO”) and provided 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, established new self-executing requirements applicable to NRSROs, required certain studies, and required 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.⁵ In May 2011, the Commission proposed new rules and rule amendments to implement certain of these provisions, including proposed new Rule 17g-10 and new Form ABS Due Diligence-15E.⁶

The Commission adopted Rule 17g-10 and Form ABS Due Diligence-15E on August 27, 2014.⁷ Rule 17g-10 and Form ABS Due Diligence-15E implement rulemaking mandated in

¹ Pub. L. No. 109-291 (Sept. 29, 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 (July 21, 2010).

⁵ See Pub. L. No. 111-203 §§ 931-939H; see also Pub. L. No. 111-203 § 943.

⁶ Proposed Rules for Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 64514 (May 18, 2011), 76 FR 33420 (June 8, 2011).

⁷ Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 72936 (August 27, 2014), 79 FR 55078 (Sept. 15, 2014).

Sections 15E(s)(4)(B) and (C) of the Exchange Act as added by the Dodd-Frank Act.⁸ Section 15E(s)(4)(B) requires that in any case in which third-party due diligence services are employed by an NRSRO, an issuer, or an underwriter, the person providing the due diligence services shall provide to any NRSRO that produces a rating to which such services relate, written certification in a format as provided in Exchange Act Section 15E(s)(4)(C) which, in turn, provides that the Commission shall establish the appropriate format and content for the written certifications required under Section 15E(s)(4)(B) to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for an NRSRO to provide an accurate rating.⁹

Paragraph (a) of Rule 17g-10 provides that the written certification providers of third-party due diligence services must provide to NRSROs pursuant to Section 15E(s)(4)(B) of the Exchange Act must be made on Form ABS Due Diligence-15E.¹⁰ Paragraph (b) of Rule 17g-10 provides that the written certification must be signed by an individual who is duly authorized by the person providing the third-party due diligence services to make such a certification.¹¹ Paragraph (c) of Rule 17g-10 provides a “safe harbor” for a provider of third-party due diligence services to meet its obligation under section 15E(s)(4)(B).¹² Paragraph (d) of Rule 17g-10 contains four definitions to be used for the purposes of section 15E(s)(4)(B) and Rule 17g-10; namely, definitions of due diligence services,¹³ issuer,¹⁴ originator,¹⁵ and securitizer.¹⁶

Form ABS Due Diligence-15E contains five line items identifying information the provider of third-party due diligence services must provide.¹⁷ The form also contains a signature line with a corresponding representation.¹⁸ Item 1 elicits the identity and address of the provider of third-party due diligence services.¹⁹ Item 2 elicits the identity and address of the issuer, underwriter, or NRSRO that paid the provider to provide the services.²⁰ Item 3 requires the

⁸ The Office of Management and Budget (“OMB”) Control Number for Rule 17g-10 is 3235-0694.

⁹ See 15 U.S.C. 78o-7(s)(4)(B) and (C).

¹⁰ See 17 CFR 240.17g-10(a).

¹¹ See 17 CFR 240.17g-10(b).

¹² See 17 CFR 240.17g-10(c).

¹³ See 17 CFR 240.17g-10(d)(1).

¹⁴ See 17 CFR 240.17g-10(d)(2).

¹⁵ See 17 CFR 240.17g-10(d)(3).

¹⁶ See 17 CFR 240.17g-10(d)(4).

¹⁷ See 17 CFR 249b.500 (Form ABS Due Diligence-15E).

¹⁸ See id.

¹⁹ See 17 CFR 249b.500, Item 1.

²⁰ See 17 CFR 249b.500, Item 2.

provider of the due diligence services to identify each NRSRO whose published criteria for performing due diligence the third party intended to satisfy in performing the due diligence review.²¹ Item 4 requires the provider of third-party due diligence services to describe the scope and manner of the due diligence performed.²² Item 5 requires the provider of third-party due diligence services to describe the findings and conclusions resulting from the review.²³

2. Purpose and Use of the Information Collection

The purpose of Rule 17g-10 and Form ABS Due Diligence-15E is to achieve the objective stated in Section 15E(s)(4)(B) of the Exchange Act; namely, that a provider of third-party due diligence services conducts a thorough review of data, documentation, and other relevant information necessary for an NRSRO to provide an accurate credit rating. The disclosure of information about third-party due diligence services on Form ABS Due Diligence-15E pursuant to Rule 17g-10 will be used by NRSROs, investors, and other market participants to evaluate the adequacy and level of the reviews of the assets underlying an asset-backed security²⁴ (“Exchange Act-ABS”) performed by the third party.²⁵

3. Consideration Given to Information Technology

Rule 17g-10 requires a third-party due diligence provider to submit a written certification on Form ABS Due Diligence-15E signed by an individual who is duly authorized by the person providing the third-party due diligence services to make such a certification. The Commission anticipates, however, that much of the material required in Form ABS Due Diligence-15E could be drawn directly from the due diligence reports the Commission expects that providers of third-party due diligence services generate with respect to their performance of due diligence services. As such, the Commission anticipates that much of the work necessary to complete the proposed form could be performed electronically.

²¹ See 17 CFR 249b.500, Item 3.

²² See 17 CFR 249b.500, Item 4.

²³ See 17 CFR 249b.500, Item 5.

²⁴ The term “asset-backed security”, as defined in Section 3(a)(79) of the Exchange Act, (A) means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including (i) a collateralized mortgage obligation; (ii) a collateralized debt obligation; (iii) a collateralized bond obligation; (iv) a collateralized debt obligation of asset-backed securities; (v) a collateralized debt obligation of collateralized debt obligations; and (vi) a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and (B) does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company.

²⁵ See Nationally Recognized Statistical Rating Organizations, 79 FR at 55188, 55194 (providing a more detailed discussion of Rule 17g-10 and Form ABS Due Diligence-15E).

4. Duplication

The Commission has not identified any duplication with respect to the information required by Rule 17g-10 and Form ABS Due Diligence-15E.

5. Effect on Small Entities

Small entities will be affected by Rule 17g-10 and Form ABS Due Diligence-15E because all third-party due diligence providers, regardless of size, are required to comply with the rule. The Commission staff believes that there are currently 15 providers of third-party due diligence services subject to the rule and that all 15 are considered small entities.

The Commission modified proposed Rule 17g-10 and Form ABS Due Diligence-15E in ways that reduce the impact on small entities.²⁶ In particular, Rule 17g-10, established a “safe harbor” to provide certainty to providers of third-party due diligence services with respect to how they can meet their obligation under Section 15E(s)(4)(B) of the Exchange Act to provide Form ABS Due Diligence-15E to any NRSRO that produces a credit rating to which the due diligence services relate. Under the safe harbor, a provider of third-party due diligence services will be deemed to have satisfied its obligations under Section 15E(s)(4)(B) if the due diligence provider promptly delivers an executed Form ABS Due Diligence-15E after completion of the due diligence services to: (1) an NRSRO that provided a written request for the Form ABS Due Diligence-15E prior to the completion of the due diligence services stating that the services relate to a credit rating the NRSRO is producing; (2) an NRSRO that provides a written request for the Form ABS Due Diligence-15E after the completion of the due diligence services stating that the services relate to a credit rating the NRSRO is producing; and (3) the issuer or underwriter of the Exchange Act-ABS for which the due diligence services relate that maintains the Internet website with respect to the asset-backed security pursuant to Rule 17g-5(a)(3).²⁷ Consequently, small third-party due diligence providers will not be required to identify every NRSRO that is producing a credit rating.

6. Consequences of Not Conducting Collection

If the information required under Rule 17g-10 and Form ABS Due Diligence-15E were not collected, the objectives of Section 15E(s)(4) of the Exchange Act would not be satisfied, the Commission would be less able to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for an NRSRO to provide an accurate rating and the public would have less information to determine the adequacy and level of due diligence services provided by a third party.

²⁶ See Nationally Recognized Statistical Rating Organizations, 79 FR at 55256.

²⁷ See 17 CFR 240.17g-10(c).

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

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

8. Consultations Outside the Agency

The required notice with a 60-day comment period soliciting comments on this collection of information was published in the Federal Register on February 5, 2018.²⁸ The Commission did not receive comments on its estimates of the paperwork burdens associated with Rule 17g-10 and Form ABS Due Diligence-15E.

9. Payment or Gift

The Commission did not provide any payment or gift to respondents in connection with Rule 17g-10 and Form ABS Due Diligence-15E.

10. Confidentiality

The information collections under Rule 17g-10 and Form ABS Due Diligence-15E will not be confidential.

11. Sensitive Questions

Not applicable. No inquiries of a sensitive nature are made. The information collection does not collect any personally identifiable information. The agency has determined that a system of records notice (SORN) and privacy impact assessment (PIA) are not required in connection with the collection of information.

12. Burden of Information Collection

Rule 17g-10 provides that the written certification a provider of third-party due diligence services must provide to an NRSRO must be made on Form ABS Due Diligence-15E.²⁹

With respect to the annual burden, the Commission has stated that the estimate should be based on the number of issuances per year of Exchange Act-ABS because the requirement to produce the certification and provide it to NRSROs and issuers or underwriters will be triggered when an issuer, underwriter, or NRSRO hires a provider of third-party due diligence services. The Commission estimated that a provider of third-party due diligence services would spend approximately twenty minutes to complete and transmit Form ABS Due Diligence-15E and that there would be an average of 715 Exchange Act-ABS offerings per year.³⁰ For these reasons, the

²⁸ See 83 FR 5156 (Feb. 5, 2018).

²⁹ See 17 CFR 240.17g-10(a).

³⁰ See Nationally Recognized Statistical Rating Organizations, 79 FR at 55088, Table 6.

Commission estimated that the industry-wide annual hour disclosure burden for providers of third-party due diligence services resulting from Rule 17g-10 and Form ABS Due Diligence-15E is approximately 238 hours.³¹

13. Costs to Respondents

The total industry-wide annual hour disclosure burden to provide the required information and submit the certifications is approximately 238 hours, and the total industry-wide annual costs for providers of third-party due diligence services to provide the required information and submit the certifications is approximately \$67,000.³²

14. Costs to Federal Government

Rule 17g-10 and Form ABS Due Diligence-15E will not result in any costs to the federal government beyond normal full-time employee labor costs, nor does the rule require the Commission to hire any new employees or reallocate existing employees to ensure compliance with the rule.

15. Changes in Burden

There are no changes in the burden for Rule 17g-10 and Form ABS Due Diligence-15E.

16. Information Collection Planned for Statistical Purposes

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

17. Approval to Omit OMB Expiration Date

The Commission is not requesting authorization to omit the OMB expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. Collection of Information Employing Statistical Methods

The collection of information does not employ statistical methods, or analyze the information for the Commission.

³¹ 715 Exchange Act-ABS offerings x 20 minutes = 238.33 hours, rounded to 238 hours.

³² 238 hours x \$283 per hour for a compliance manager = \$67,354, rounded to \$67,000. See Nationally Recognized Statistical Rating Organizations, 79 FR at 55245 (PRA analysis providing cost and hour burden estimates)