

SUPPORTING STATEMENT FOR  
THE PAPERWORK REDUCTION ACT INFORMATION COLLECTION  
SUBMISSION FOR REGULATION D (FORM D)

A. JUSTIFICATION

1. Circumstances Making the Collection of Information Necessary

The Securities Act of 1933 (the “Securities Act”) requires that a registration statement be filed with the Commission disclosing prescribed information before securities may be offered for sale to the public. The securities cannot be sold to the public until the registration statement becomes effective. In addition, prospective investors must be furnished a prospectus containing the most significant information in the registration statement. Congress, however, recognized that there are certain situations where there is no practical need for registration or where the public benefits derived from registration are too remote. Accordingly, a number of exemptions to the registration requirements are contained in the Securities Act. The exemptions that small businesses most typically rely on are those provided by Section 3(b) and 4(a)(2).

The Commission is authorized under Section 3(b) of the Securities Act to exempt securities from registration if it finds that registration for these securities is not necessary in the public interest or for the protection of investors because of the small amount involved or the limited character of the public offering. Section 4(a)(2) of the Securities Act exempts transactions by an issuer not involving any public offering. Pursuant to this authority, the Commission has adopted various rules (collectively “Regulation D”) establishing several small issues or limited offering exemptions from the registration requirements of Securities Act. The rules provide exemptions for offerings that are limited in the type and number of investors as well as for those limited in dollar amount. Specifically, Rules 504 and 506 provide exemptions for offerings that satisfy certain conditions, including a limitation on the aggregate dollar amount of securities that may be offered and sold in any twelve-month period, as well as the type and/or number of investors that may participate. Rule 504 of Regulation D provides an exemption to issuers for an aggregate offering amount up to \$10 million of their securities in any twelve-month period and disqualifies certain bad actors from participation in Rule 504 offerings. Rule 506 of Regulation D is a frequently used Securities Act exemption and also disqualifies certain bad actors from participation in Rule 506 offerings. Rule 506 has no limit on the aggregate dollar amount of securities that may be offered and sold in any twelve-month period.

For all offerings relying on Regulation D, a Form D must be filed with the Commission no later than 15 days after the first sale of securities in the offering. The Form D is a simple notice that provides certain information about the issuer and the offering.

Rule 506(e) and Rule 504(b)(3) require the issuer to furnish to each purchaser, a reasonable time prior to sale, a description in writing of any matters that would have triggered

disqualification under Rule 506(d)(1) but occurred before September 23, 2013, for purposes of Rule 506 and January 20, 2017, for purposes of Rule 504.

Pursuant to Rule 502(b), a reasonable time prior to any sale of securities in reliance on Rule 506(b) to a non-accredited investor, the issuer must deliver to the non-accredited investor financial and non-financial information about the issuer, as well as generic solicitation of interest materials used under the authorization of Rule 241.

We previously combined the existing collections of information for compliance with Regulation D into a new, collection of information for Regulation D to encompass all of these associated paperwork burdens for Regulation D under the Paperwork Reduction Act of 1995 (“PRA”), including, the collection of information pursuant to Rule 502(b), Rule 506(e) and Rule 504(b)(3), as well as Form D. Included in this Regulation D (Form D) collection of information is a burden for the financial statement and non-financial statement information and delivery requirements in Rule 502(b), however, we estimate this burden to be limited and is included in the additional one hour that is being added to the former four hour estimate for the Form D collection of information to account for the burdens from Rule 504(b)(3) and Rule 506(e). We believe the Rule 502(b) burden generally relates to the compiling and formatting of information already prepared and available to the issuer, such as providing additional copies of existing financial information in an issuer’s offering materials.

## 2. Purpose and Use of the Information Collection

An important purpose of the Form D notice is to collect empirical data, which provides a continuing basis for action by the Commission either in terms of amending existing rules and regulations or proposing new ones. Further, the Form D allows the Commission to elicit information necessary in assessing the effectiveness of Regulation D and Section 4(a)(5) as capital-raising devices for small businesses.

The written disclosure required by Rule 502(b), Rule 506(e) and Rule 504(b)(3) helps to provide investors in Regulation D offerings with the necessary information in order to make informed investment decisions.

## 3. Consideration Given to Information Technology

Form D is filed using the Commission’s electronic filing system. The disclosure required by Rule 502(b), Rule 506(e) and Rule 504(b)(3) is not filed with the Commission but delivered directly to the investor.

## 4. Duplication of Information

There is no public source for the information provided on Form D or written disclosure required by Regulation D.

5. Reducing the Burden on Small Entities

Regulation D is a comprehensive set of exemptions from registrations relating to small issues and small issuers. Regulation D was designed to simplify and clarify existing exemptions and to expand their availability to small issuers.

6. Consequences of Not Conducting Collection

The purpose of Regulation D is to provide small businesses with an avenue to offer and sell securities without incurring the costs and burdens traditionally associated with full registration under the Securities Act. Form D serves as the official notice of an offering of securities made without registration under the Securities Act in reliance on an exemption provided by Regulation D.

7. Special Circumstances

No special circumstances at this time.

8. Consultations with Persons Outside the Agency

No comments were received during the 60-day comment period prior to OMB's review.

9. Payment or Gift to Respondents

No payment or gift to respondents.

10. Confidentiality

Form D submissions are available to the public. The disclosures required by Rule 502(b), Rule 506(e) and Rule 504(b)(3) are delivered by the issuer directly to the investor and are not publicly available.

11. Sensitive Questions

The information collection collects Personally Identifiable Information (PII) of certain individuals. 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 PIA, published on March 22, 2023, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>. The agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act as information is not retrieved by a personal identifier.

12. Estimate of Respondent Reporting Burden

**Estimated Paperwork Reporting Burden for Regulation D**

Information Collection Title	OMB Control Number	Number of Responses	Burden Hours
Regulation D (Form D)	3235-0076	38,735	48,419

We estimate that the new collection of information for Regulation D, including the estimated burden for compliance with Rule 502(b), Rule 506(e) and Rule 504(b)(3), as well as Form D, takes approximately 5 hours per response to comply with the collection of information requirements and is filed by 38,735 respondents. We derived our burden hour estimates by estimating the average number of hours it would take an issuer to compile the necessary information and data, prepare and review disclosure, file documents and retain records. In connection with rule amendments to the form, we occasionally receive PRA estimates from public commenters about incremental burdens that are used in our burden estimates. We believe that the actual burdens will likely vary among individual companies based on the size and complexity of their organization and the nature of their operations. We further estimate that 25% of the collection of information burden is prepared by issuers annually and that 75% of the burden is carried by outside professionals retain by the company. Based on our estimate, we calculated the total reporting burden to be 48,419 hours ((25% x 5.0 hours per response) x 38,735 responses). For administrative convenience, the presentation of the total related to the paperwork burden hours has been rounded to the nearest whole number. The burden hours estimate is made solely for the purpose of the Paperwork Reduction Act.

13. Estimate of Total Annualized Cost Burden

**Estimated Paperwork Reporting Cost Burden for Regulation D**

Information Collection Title	OMB Control Number	Number of Responses	Cost Burden (\$600)
Regulation D (Form D)	3235-0076	38,735	\$87,153,750

For purposes of the PRA, we estimate that 75% of the 5.0 hours per response (3.75 hours) is prepared by outside counsel. We estimate the outside professional cost to be \$600 per hour (\$600 per hour x 3.75 hours per response x 38,735 responses) for a total cost burden of \$87,153,750. We estimate an hourly cost of \$600 for outside legal and accounting services used in connection with public company reporting. This estimate is based on our consultations with registrants and professional firms who regularly assist registrants in preparing and filing disclosure documents with the Commission. Our estimates reflect average burden, and therefore, some companies may experience costs in excess of our estimate and some companies may experience costs that are lower than our estimate. For administrative convenience, the presentation of the paperwork cost burden total has been rounded to the nearest dollar. The cost estimate is made solely for the purpose of the Paperwork Reduction Act.

14. Costs to Federal Government

In general, the annual cost of reviewing and processing disclosure documents including registration statements, post-effective amendments, proxy statements, annual reports and other filings of operating companies amounted to approximately \$129,168,390 in fiscal year 2022, based on the Commission's computation of the value of staff time devoted to this activity and related overhead. However, as indicated above, Form D is a notice document and the disclosures required by Rule 502(b), Rule 506(e) and Rule 504(b)(3) are not filed with the Commission.

15. Reason for Change in Burden

**Change In Burden Hours and Cost Burden Adjustments**

Information Collection Title	OMB Control Number	Number of Responses Adjustment Increase	Burden Hours Adjustment Increase	Cost per Hour Increase	Cost Burden Adjustment Increase
Form D	3235-0076	15,164	18,955	\$600	\$51,797,250

The increase of 18,955 burden hours and the increase in cost burden of \$51,797,250 is due to two adjustments: the first is an increase of 15,164 in the number of respondents; and the second is the change in the hourly cost per respondent. Based on our estimate, we calculate the burden hours adjustment increase to be 18,955 (25% x 5.0 hours per response) x 15,164. Also, the Commission increased the cost burden per hour estimate from \$400 per hour to \$600 per hour for outside counselors.

16. Information Collection Planned for Statistical Purposes

The information collection is not planned 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. 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. The OMB control number will be displayed.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

There are no exceptions to certification for Paperwork Reduction Act submissions.

B. STATISTICAL METHODS

The information collection does not employ statistical methods.