

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

Section 15E of the Securities Exchange Act of 1934 (“Exchange Act”),¹ added to the Exchange Act by the Credit Rating Agency Reform Act of 2006 (“Rating Agency Act”)² and amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act enacted in 2010,³ sets forth the regulatory framework applicable to credit rating agencies that register with the Securities and Exchange Commission (“Commission” or “SEC”) as nationally recognized statistical rating organizations or NRSROs. Section 15E(s) contains certain requirements with respect to due diligence services.⁴

Section 15E(s)(4)(B) of the Exchange Act requires that in any case in which third-party due diligence services with respect to an asset-backed security (“Exchange Act-ABS”)⁵ 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, a written certification in a format as provided in Exchange Act Section 15E(s)(4)(C).⁶ Section 15E(s)(4)(C) provides that the Commission shall establish the appropriate format and content for such written certification 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.⁷

Rule 17g-10 and Form ABS Due Diligence-15E implement Sections 15E(s)(4)(B) and (C) of the Exchange Act. Paragraph (a) of Rule 17g-10 requires the written certifications from

¹ 15 U.S.C. 78o-7.

² Pub. L. No. 109-291 (2006).

³ Pub. L. No. 111-203, 124 Stat. 1376, H.R. 4173 (2010).

⁴ See 15 U.S.C. 78o-7(s)(4).

⁵ 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.

⁶ See 15 U.S.C. 78o-7(s)(4)(B).

⁷ See 15 U.S.C. 78o-7(s)(4)(C).

providers of third-party due diligence services to be made on Form ABS Due Diligence-15E.⁸ Paragraph (b) requires such written certifications to be signed by an individual who is duly authorized by the provider of third-party due diligence services to make such a certification.⁹ Pursuant to paragraph (c), a provider of third-party due diligence services is deemed to have satisfied its obligations under Section 15E(s)(4)(B) if it promptly delivers an executed Form ABS Due Diligence-15E after completion of the due diligence services (i) to an NRSRO that provided a written request for the form stating that the services relate to a credit rating the NRSRO is producing or (ii) to the issuer or underwriter of the Exchange Act-ABS to which the due diligence services relate that maintains an internet website with respect to the security pursuant to Rule 17g-5(a)(3).

Form ABS Due Diligence-15E contains five line items identifying information that providers of third-party due diligence services must include, such as the scope and manner of the due diligence performed, as well as a description of findings and conclusions resulting from the due diligence review.¹⁰ The form also contains a signature line with a corresponding representation and elicits the identity and address of the provider of third-party due diligence services and the issuer, underwriter, or NRSRO that paid for such services.¹¹

Rule 17g-10 and Form ABS Due Diligence-15E contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).¹² The collection of information under Rule 17g-10 and Form ABS Due Diligence-15E is necessary to increase the information available about third-party due diligence reports prepared with respect to Exchange Act-ABS. The collection of information has been approved and extended by the Office of Management and Budget (“OMB”) under control number 3235-0694 (expiring August 31, 2024).

2. Purpose and Use of the Information Collection

The written certification on Form ABS Due Diligence-15E required by Rule 17g-10 allows NRSROs receiving the certification to evaluate the adequacy and level of review of assets underlying the Exchange Act-ABS.¹³ To this end, each Form ABS Due Diligence-15E is required to include details about the due diligence services, including a description of the scope and manner of the due diligence services and a summary of the findings and conclusions. The form must be signed by an individual who is duly authorized by the provider of the due diligence services to make such a certification, which promotes confidence in the accuracy of the content of the form.

⁸ See 17 CFR 240.17g-10(a).

⁹ See 17 CFR 240.17g-10(b).

¹⁰ See 17 CFR 249b.500 (Form ABS Due Diligence-15E).

¹¹ See 17 CFR 249b.500, Item 2.

¹² 44 U.S.C. 3501, *et seq.*

¹³ See Nationally Recognized Statistical Rating Organizations, 79 FR 55078, 55194 (Sept. 15, 2014).

Also, given that NRSROs are required to publish the Form ABS Due Diligence-15E when taking a rating action with respect to an Exchange Act-ABS to which the due diligence services relate pursuant to Rule 17g-7,¹⁴ users of credit ratings, investors, and market participants can obtain information concerning the due diligence services performed with respect to the Exchange Act-ABS and gain insight into the quality of the asset pool underlying the Exchange Act-ABS.¹⁵ This information may promote informed investment decisions, potentially improving individual portfolio efficiency as well as market efficiency, and may benefit capital formation by encouraging more participation in the Exchange Act-ABS market.¹⁶

3. Consideration Given to Information Technology

The written certification on Form ABS Due Diligence-15E required by Rule 17g-10 may be prepared by using information from the third-party due diligence report prepared by the provider of the due diligence services. This process may be automated electronically. In addition, the provider of third-party due diligence services may satisfy its obligation to deliver the Form ABS Due Diligence-15E to NRSROs rating the Exchange Act-ABS to which the provider's due diligence services relate by providing the certification to the issuer or underwriter of the Exchange Act-ABS that maintains a website under Rule 17g-5(a)(3) with respect to the security ("Rule 17g-5 website").¹⁷ NRSROs rating the Exchange Act-ABS, subject to specified conditions, may be able to access the Form ABS Due Diligence-15E on the issuer's or underwriter's website, relieving the third-party due diligence provider from having to identify and deliver the certification to each NRSRO rating the Exchange Act-ABS.

4. Duplication

Commission staff 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

Commission staff estimates that approximately 30 providers of third-party due diligence services¹⁸ are subject to the requirements under Rule 17g-10 and Form ABS Due Diligence-15E.

¹⁴ See 17 CFR 17g-7(a)(2) (implementing Section 15E(s)(4)(D) of the Exchange Act, which requires the Commission to adopt rules requiring NRSROs to disclose the written certification required by Section 15E(s)(4)(B) at the time the NRSRO produces a rating).

¹⁵ See 79 FR at 55200.

¹⁶ See *id.*

¹⁷ See 17 CFR 240.17g-10(c). See also 79 FR at 55189 (characterizing this method of delivery as a safe harbor for providers of third-party due diligence services).

¹⁸ When Rule 17g-10 was adopted in 2014, the number of third-party service providers was estimated at 15. Staff understands that the number has increased. Fitch Ratings recently reported that it designated 24 firms as "acceptable" third-party due diligence services providers for the review of residential mortgage-backed securities. See Fitch Ratings, Growth Continues for US RMBS Third Party Review Firms Growth (Jan. 27, 2023), <https://www.fitchratings.com/research/structured-finance/growth-continues-for-us-rmbs-third-party-review-firms-27-01-2023>. S&P Global Ratings also issued on September 13, 2023, a list of reviewed third-party due diligence service providers listing 32 providers. See Sutherland, S&P Global Ratings

The providers are believed to be small entities for purposes of the PRA and the collection of information analysis.¹⁹

Rule 17g-10 provides a mechanism for delivering the required written certification on Form ABS Due Diligence-15E, which may offer relief to small entities that provide third-party due diligence services. Specifically, under Rule 17g-10, a provider of third-party due diligence services may deliver the certification to NRSROs rating an Exchange Act-ABS to which the due diligence service relates by providing the certification to the issuer or underwriter of the Exchange Act-ABS that maintains a Rule 17g-5 website with respect to the security,²⁰ thus relieving the due diligence service provider from having to identify and deliver the certification to each NRSRO.

6. Consequences of Not Conducting Collection

If providers of third-party due diligence services were not required to provide the written certification on Form ABS Due Diligence-15E and thereby conduct the collection of information under Rule 17g-10, NRSROs may not be able to perform an adequate assessment of the Exchange Act-ABS to rate the security, frustrating the objectives of Section 15E(s) of the Exchange Act. In this regard, Section 15E(s)(4)(B) provides that the Commission shall establish the appropriate format and content for the written certification to “ensure that providers of due diligence services have conducted a thorough review of the data, documentation, and other relevant information necessary for a[n] [NRSRO] to provide an accurate rating.”²¹ Without the information in the certification, NRSROs and other market participants would not be able to evaluate the adequacy and level of due diligence performed by third-party providers nor determine the degree of reliance to place upon their assessments of due diligence.²² Additionally, the collection of information may incentivize providers of third-party due diligence services to perform reviews in a competent manner because they must certify that their work included a thorough review of the relevant information.²³

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

Publishes List Of Third-Party Due Diligence Firms Reviewed For U.S. RMBS (Sept. 21, 2023), <https://www.sutherlandglobal.com/about-us/latest-news/2023/09/20/16/04/sp-global-ratings-publishes-list-of-third-party-due-diligence-firms>. DBRS, Inc. (DBRS Morningstar) issued on January 20, 2023, a list of reviewed third-party due diligence service providers listing 43 providers. *See* DBRS Morningstar, DBRS Morningstar Acceptable Third-Party Due-Diligence Firms (Jan. 30, 2023), <https://dbrs.morningstar.com/research/408661/dbrs-morningstar-acceptable-third-party-due-diligence-firms>. Staff is using the reported numbers to estimate the number of current third-party due diligence service providers.

¹⁹ *See* 17 CFR 240.0-10 [Small entities under the Securities Exchange Act for purposes of the Regulatory Flexibility Act] (defining “small business or small organization” as a person that, on the last day of its most recent fiscal year, had total assets of \$5 million or less).

²⁰ *See* 17 CFR 240.17g-10(c).

²¹ *See* 15 U.S.C. 78o-7(s)(4)(C).

²² *See* 79 FR at 55232.

²³ *See id.* at 55197.

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 March 15, 2024.²⁴ 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 collection under Rule 17g-10 and Form ABS Due Diligence-15E is not confidential. Also, the information collection does not collect any Personally Identifiable Information (PII). The Systems of Record Notice may be reviewed at <https://www.sec.gov/oit/system-records-notices>. The Privacy Impact Assessment document for Electronic Data Gathering Analysis and Retrieval may be reviewed at <https://www.sec.gov/about/privacy/pia/pia-edgar.pdf>.

11. Sensitive Questions

Not applicable.

12. Burden of Information Collection

For purposes of the Paperwork Reduction Act, Commission staff derives the hour burden estimates discussed below by estimating the average number of hours it would take a provider of third-party due diligence services to prepare the written certification that Rule 17g-10 requires to be provided to NRSROs on Form ABS Due Diligence-15E. Commission staff also estimates the number of issuances per year of Exchange Act-ABS because the requirement under Rule 17g-10 is triggered when an issuer, underwriter, or NRSRO hires a provider of third-party due diligence services with respect to an offering of Exchange Act-ABS.

As of the time of the renewal of the information collection, Commission staff estimates that a provider of third-party due diligence services would spend approximately 20 minutes to complete and transmit Form ABS Due Diligence-15E and that the average number of Exchange Act-ABS offerings per year is approximately 1,410,²⁵ resulting in a total annual aggregate hour

²⁴ See Proposed Collection; Comment Request, 89 FR 18981 (March 15, 2024).

²⁵ See Nationally Recognized Statistical Rating Organizations, 79 FR at 55088, Table 6 for methodology. Estimate of 1,410 offerings per year is based on updated data from 2021-2023 from the SEC's Division of Economic Risk Analysis.

burden of 470 hours.²⁶ Assuming an average cost per hour of \$372 for a compliance manager,²⁷ the total internal cost of compliance is estimated at \$175,000.²⁸

IC Title	Annual No. of Responses			Annual Time Burden (Hrs.)			Burden Cost Burden (\$)		
	Previously approved	Requested	Change	Previously approved	Requested	Change	Previously approved	Requested	Change
Form ABS Due Diligence disclosure burden	990	1,410	+420	330	470	+140	93,000	175,000	+82,000
Total for all ICs	990	1,410	+420	330	470	+140	93,000	175,000	+82,000

13. Costs to Respondents

Other than the costs associated with the burden of information collection discussed in Item 12 above, Rule 17g-10 and Form ABS Due Diligence-15E do not impose any additional costs on providers of third-party due diligence services.

14. Cost to Federal Government

Rule 17g-10 and Form ABS Due Diligence-15E do not result in any costs to the federal government beyond normal full-time employee labor costs.

²⁶ 1,410 Exchange Act-ABS offerings x 20 minutes = 470 hours.

²⁷ The \$372 figure is based on SIFMA's Management & Professional Earnings in the Securities Industry 2013 ("2013 SIFMA survey"). The 2013 SIFMA survey estimated the salary of a compensation manager at \$283 per hour, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. See Nationally Recognized Statistical Rating Organizations, 79 FR at 55245. The survey has not been updated since 2013. As such, the \$283 figure has been updated and adjusted to \$372 per hour to account for inflation using the Bureau of Labor Statistics CPI Inflation Calculator.

²⁸ 470 hours x \$372 per hour for a compliance manager = \$174,840, rounded to \$175,000.

15. Changes in Burden

The cost and hour burden for Rule 17g-10 and Form ABS Due Diligence-15E has increased to account for inflation and the estimated number of Exchange Act-ABS offerings per year.

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

Commission staff is not seeking approval to omit the expiration date.

18. Exceptions to Certifications for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. Collections of Information Employing Statistical Methods

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