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17 CFR Parts 229, 230, 232, et al.
Asset-Backed Securities Disclosure and Registration; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 232, 239, 240, 243, and 249

[Release Nos. 33–9638; 34–72982; File No. S7–08–10]

RIN 3235–AK37

Asset-Backed Securities Disclosure and Registration

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting significant revisions to Regulation AB and other rules governing the offering process, disclosure, and reporting for asset-backed securities (''ABS''). The final rules require that, with some exceptions, prospectuses for public offerings under the Securities Act of 1933 (''Securities Act'') and ongoing reports under the Securities Exchange Act of 1934 (''Exchange Act'') of asset-backed securities backed by real estate related assets, auto related assets, or backed by debt securities, including resecuritizations, contain specified asset-level information about each of the assets in the pool. The asset-level information is required to be provided according to specified standards and in a tagged data format using eXtensible Markup Language (''XML''). We also are adopting rules to revise filing deadlines for ABS offerings to provide investors with more time to consider transaction-specific information, including information about the pool assets. We are also adopting new registration forms tailored to ABS offerings. The final rules also repeal the credit ratings references in shelf eligibility criteria for ABS issuers and establish new shelf eligibility criteria.

DATES: *Effective Date:* November 24, 2014.

Compliance Dates:

Offerings on Forms SF–1 and SF–3: Registrants must comply with new rules, forms, and disclosures no later than November 23, 2015.

Asset level Disclosures: Offerings of asset-backed securities backed by residential mortgages, commercial mortgages, auto loans, auto leases, and debt securities (including resecuritizations) must comply with asset-level disclosure requirements no later than November 23, 2016.

Forms 10–D and 10–K: Any Form 10–D or Form 10–K that is filed after November 23, 2015 must comply with new rules and disclosures, except asset-level disclosures.

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SUPPLEMENTARY INFORMATION: We are adopting amendments to Items 512 [1] and 601 [2] of Regulation S–K; [3] Items 1100, 1101, 1102, 1103, 1104, 1105, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1119, 1121, and 1122 [4] of Regulation AB [5] (a subpart of Regulation S–K); Rules 139a, 167, 190, 193, 401, 405, 415, 424, 430B, 430C, 433, 456, and 457,[6] and Forms S–1 and S–3 [7] under the Securities Act of 1933 (Securities Act); [8] Rules 11, 101, 201, 202, and 305 [9] of Regulation S–T; [10] and Rules 3a68–1a, 3a68–1b, 15c2–8, 15d–22, 15Ga–1, and 17g–7 [11] and Forms 8–K, 10–K, and 10–D [12] under the Securities Exchange Act of 1934; [13] and Rule 103 [14] of Regulation FD.[15] We also are adding new Items 1124 and 1125 [16] to Regulation AB, and Rule 430D,[17] Form SF–1,[18] Form SF–3,[19] and Form ABS–EE [20] under the Securities Act.

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[1] 17 CFR 229.512.

[2] 17 CFR 229.601.

[3] 17 CFR 229.10 *et al.*

[4] 17 CFR 229.1100, 17 CFR 229.1101, 17 CFR 229.1102, 17 CFR 229.1103, 17 CFR 229.1104, 17 CFR 229.1105, 17 CFR 229.1108, 17 CFR 229.1109, 17 CFR 229.1110, 17 CFR 229.1111, 17 CFR 229.1112, 17 CFR 229.1113, 17 CFR 229.1114, 17 CFR 229.1119, 117 CFR 229.1121, and 17 CFR 229.1122.

[5] 17 CFR 229.1100 through 17 CFR 229.1124.

[6] 17 CFR 230.139a, 17 CFR 230.167, 17 CFR 230.190, 17 CFR 230.193, 17 CFR 230.401, 17 CFR 230.405, 17 CFR 230.415, 17 CFR 230.424, 17 CFR 230.430B, 17 CFR 230.430C, 17 CFR 230.433, 17 CFR 230.456, and 17 CFR 230.457.

[7] 17 CFR 239.11 and 17 CFR 239.13.

[8] 15 U.S.C. 77a *et seq.*

[9] 17 CFR 232.11, 17 CFR 232.101, 17 CFR 232.201, 17 CFR 232.202, and 17 CFR 232.305.

[10] 17 CFR 232.10 *et seq.*

[11] 17 CFR 240.3a68–1a, 17 CFR 240.3a68–1b, 17 CFR 240.15c2–8, 17 CFR 240.15d–22, 17 CFR 240.15Ga–1, and 17 CFR 240.17g–7.

[12] 17 CFR 249.308, 17 CFR 249.310, and 17 CFR 249.312.

[13] 15 U.S.C. 78a *et seq.*

[14] 17 CFR 243.103.

[15] 17 CFR 243.100 *et seq.*

[16] 17 CFR 229.1124 and 17 CFR 229.1125.

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I. Executive Summary

A. Background

The Commission addressed the registration, disclosure, and reporting requirements for asset-backed securities in 2004 when it adopted new rules and amendments under the Securities Act and the Exchange Act.[21] Among other changes, the 2004 rules updated and clarified the Securities Act registration requirements for asset-backed securities offerings and allowed modified Exchange Act reporting tailored to asset-backed securities offerings. In April 2010, we proposed revisions to the registration, disclosure, and reporting requirements for ABS offerings in an effort to improve investor protection and promote more efficient asset-backed markets.[22]

In the 2010 ABS Proposing Release we noted that the financial crisis highlighted that investors and other participants in the securitization market did not have the necessary information and time to be able to fully assess the risks underlying asset-backed securities and did not value asset-backed securities properly or accurately. This lack of understanding and the extent to which it impacted the U.S. and global economy prompted us to revisit several aspects of our regulation of asset-backed securities.[23] To address these issues, we proposed to require that, with some exceptions, prospectuses for public offerings of asset-backed securities and ongoing Exchange Act reports contain specified asset-level information about each of the assets in the pool in a standardized tagged data format. Further, we proposed a rule that asset-backed issuers provide investors with more time to consider transaction-specific information about the pool assets. We also proposed to require asset-backed issuers to file a computer program modeling the flow of funds, or waterfall, provisions of the transaction to help investors analyze the offering and monitor ongoing performance. For offerings of asset-backed securities that qualify for shelf registration, we proposed investor protection-focused shelf eligibility and offering requirements that would indicate which types of offerings qualify for delayed shelf eligibility and also proposed to remove the investment-grade ratings requirement.[24] Finally, we proposed to require disclosure provisions in unregistered ABS transaction agreements as a condition to certain safe harbors for exempt offerings and resales of ABS.

In July 2010, subsequent to the 2010 ABS Proposing Release, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''),[25] which directed the Commission to prescribe several ABS related rules, some of which were included in the 2010 ABS Proposals and others of which were not. Two of the proposed shelf eligibility requirements—risk retention and continued Exchange Act reporting—were addressed by provisions of the Dodd-Frank Act. After taking the Dodd-Frank requirements into account, and considering comments received in connection with the 2010 ABS Proposing Release, in 2011 we re-proposed some of the 2010 ABS Proposals, including the shelf eligibility requirements. In that same release, we also sought additional comment on asset-level disclosure, including comment on how best to implement Section 7(c) of the Securities Act, as added by Section 942(b) of the Dodd-Frank Act, which directed the Commission to adopt regulations to require asset-level information.[26]

In February 2014, the Commission re-opened the comment period[27] on the 2010 ABS Proposals and the 2011 ABS Re-Proposals to permit interested persons to comment on an approach for the dissemination of asset-level data, which is described in a staff memorandum, dated February 25, 2014, that was posted to the public comment file.[28]

B. Problems in the ABS Markets

The financial crisis highlighted a number of concerns about the operation of our rules in the securitization market.[29] The failures of credit ratings to accurately measure and account for the risks associated with certain asset-backed securities have been well documented by lawmakers, market observers, and academics.[30] The collapse of these ''investment-grade'' rated securities was a major contributor to the financial crisis, and demonstrated the risks to investors of unduly relying on these securities' credit ratings without engaging in independent due diligence.[31] Although academic

[21] *See Asset-Backed Securities,* Release No. 33–8518 (Jan. 7, 2005) [70 FR 1506] (the ''2004 ABS Adopting Release'').

[22] *See Asset-Backed Securities,* Release No. 33–9117 (Apr. 7, 2010) [75 FR 23328] (the ''2010 ABS Proposing Release'' or the ''2010 ABS Proposal'').

[23] *See* the 2010 ABS Proposing Release at 23329.

[24] In this Release, we also refer to such offerings as shelf offerings.

[25] Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[26] *See Re-Proposal of Shelf Eligibility Conditions for Asset-Backed Securities,* Release No. 33–9244 (July 26, 2011) [76 FR 47948] (the ''2011 ABS Re-Proposing Release'' or the ''2011 ABS Re-Proposal'').

[27] *See Re-Opening of Comment Period for Asset-Backed Securities,* Release No. 33–9552 (Feb. 25, 2014), [79 FR 11361] (''the 2014 Re-Opening Release'').

[28] *See* Memorandum from the Commission's Division of Corporation Finance (Feb. 25, 2014), *available at http://www.sec.gov/comments/s7-08-10/s70810.shtml* (the ''2014 Staff Memorandum'').

[29] For a more detailed discussion of the issues mentioned in this section and other economic problems that affected the ABS market, see Section II.B Economic Motivations below.

[30] *See, e.g.,* H.R. Rep. No. 4173 (2010) (Conf. Rep.) (Dodd-Frank Wall Street Reform and Consumer Protection Act—Conference Report) (noting that the performance of credit rating agencies, particularly their ratings of asset-backed securities, contributed significantly to the financial crisis); John Griffin & Dragon Tang, *Did Subjectivity Play a Role in CDO Credit Ratings?,* 67 J. Fin. 1293–1328 (2012) (discussing discretionary out-of-model adjustments to collateralized debt obligation (''CDO'') ratings made by one nationally recognized statistical rating organization); Adam Ashcraft, Paul Goldsmith-Pinkham & James Vickery, *MBS Ratings and the Mortgage Credit Boom* (2010 Working Paper Federal Reserve Bank of New York) (arguing, among other things, that MBS ratings did not fully reflect publicly available data).

[31] *See* the 2011 ABS Re-Proposal. *See also* Federal Reserve, Report to Congress on Risk Retention 49–66 (2010) (documenting the extent of the collapse of the investment-grade ABS market); Efraim Benmelech & Jennifer Dlugosz, *The Credit Rating Crisis,* in 24 NBER Macroeconomics Ann. 161–207 (Daron Acemoglu, Kenneth Rogoff & Michael Woodford, eds., Univ. of Chicago Press, Apr. 2010) (2009) (arguing that credit rating agency models did not adequately anticipate how poorly the assets underlying many structured finance products performed during economic downturns, that the ratings models failed to account for the correlation among underlying assets (e.g., residential home prices) at the national level, and that ''ratings shopping'' by issuers exacerbated the severity of the poor performance of structured finance products during the economic downturn); Patrick Bolton, Xavier Freixas & Joel Shapiro, *The Credit Ratings Game,* 67(1) J. Fin. 85–111 (2012) (arguing that credit rating agency competition can reduce the efficiency of credit ratings, as it facilitates ''ratings shopping,'' and that ratings are more likely to be inflated during economic booms and when investors are more trusting).

research suggests that some investors might have been able to price ABS credit risk beyond what the ratings implied, there is also evidence that investors in triple-A rated tranches were less informed than investors in lower tranches.[32]

In addition, investors have expressed concern about a lack of time to analyze securitization transactions and make informed investment decisions.[33] Time to analyze an offering is necessary if investors are being encouraged to perform their own diligence and to not over rely on credit ratings. While the Commission has not generally built waiting periods into its shelf offering registration process,[34] and instead has believed investors can take the time they believe is adequate to analyze securities (and refuse to invest if not provided sufficient time), investors have indicated that this is not generally possible in the ABS market, particularly in a heated market.[35]

Investors and others have also expressed concerns about other aspects of the securitization market, including concern about a lack of effective oversight by the principal officers of the ABS issuer.[36] In particular, investors have been concerned that these officers have not conducted sufficient due diligence when reviewing the pool assets and designing the securitization structure. Additionally, investors have noted that the mechanisms for enforcing the representations and warranties contained in the securitization transaction documents are weak, and thus they are not confident that even strong representations and warranties provide them with adequate protection.[37] They have also noted that difficulties in locating fellow ABS investors have prevented them from exercising rights under the transaction agreement, including requirements that an originator or sponsor repurchase an asset if it does not comply with the representations and warranties.[38]

Market participants have also expressed a desire for expanded disclosure about the assets underlying securitizations in order to conduct an analysis of the offering.[39] The financial crisis underscored that the information available to investors about ABS may not have provided them with all the information necessary to fully understand and correctly gauge the risks underlying the securities. As a result, investors may not have been able to accurately value those securities.[40]

C. Summary of Final Rules

We are adopting significant revisions to the rules governing disclosure, reporting, registration, and the offering process for asset-backed securities. The revised rules are designed to address the problems discussed above and to enhance investor protection in the ABS market.[41] In adopting these changes, we have taken into consideration the comments and recommendations made by commenters in connection with the 2010 ABS Proposing Release, the 2011 ABS Re-Proposing Release and the 2014 Re-Opening Release, which are reflected in the changes made in the final rules.[42] We received a total of 240 comment letters in connection with the 2010 ABS Proposals, 2011 ABS Re-Proposal and the 2014 Re-Opening Release.

The final rules are intended to provide investors with timely and sufficient information, reduce the likelihood of undue reliance on credit ratings, and provide mechanisms to help to enforce the representations and warranties made about the underlying assets. These revisions are comprehensive and although they will impose new burdens on issuers, we believe they will protect investors and promote efficient capital formation. The rules cover the following areas:

- Securities Act and Exchange Act disclosures, including new requirements for certain asset classes to disclose standardized asset-level information;
- Revisions to the shelf offering process, eligibility criteria, and prospectus delivery requirements; and
- Several changes to the Asset-Backed Issuer Distribution Report on Form 10–D, the Annual Report on Form 10–K, and the Current Report on Form 8–K.[43]

In addition, we are adopting clarifying, technical, and other changes to the current rules. Some of the rules we are adopting are designed to address and improve areas that we believe have the potential to raise issues similar to those highlighted in the financial crisis. Furthermore, some of the rules we are adopting respond to Sections 939A and 942(b) of the Dodd-Frank Act.

1. Asset-Level Disclosure

Investors, other market participants, academics, and policy makers have increasingly noted that asset-level information is essential to evaluating an asset-backed security.[44] We believe that

[32] *See* Manuel Adelino, *How Much Do Investors Rely on Ratings? The Case of Mortgage-Backed Securities,* (2009 Working Paper Dartmouth College) (suggesting that investors in certain RMBS triple-A rated tranches relied more on ratings because they were less informed about the quality of the underlying assets than investors in lower tranches based on a comparison between yield spreads at securitization and actual defaults). *But see* Jie Jack He, Jun QJ Qian & Philip E. Strahan, *Are All Ratings Created Equal? The Impact of Issuer Size on the Pricing of Mortgage-Backed Securities,* 67 J. Fin. 2097–2137 (2012) (suggesting that investors did not over rely on ratings by arguing that investors were able to price the risk of large RMBS issuers receiving more inflated ratings by comparing yields on RMBS sold by large issuers against the yields on RMBS sold by small issuers).

[33] *See* discussion in Section V.B.1.a) Rule 424(h) and Rule 430D below.

[34] *See, e.g.,* Section IV.A. of *Securities Offering Reform,* Release No. 33–8591 (July 19, 2005) [70 FR 44722] (the ''Securities Offering Reform Release'') (adopting significant revisions to registration, communications and offering process under the Securities Act and stating that Rule 159 would not result in a speed bump or otherwise slow down the offering process).

[35] *See* discussion in Section V.B.1.(a) Rule 424(h) and Rule 430D below.

[36] *See, e.g.,* letters from Better Markets dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''Better Markets''), CFA Institute dated Nov. 9, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''CFA II''), Securities Industry and Financial Markets Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''SIFMA I'') (expressed views of investors only), and Vanguard dated Aug. 27, 2010 submitted in response to the 2010 ABS Proposing Release (''Vanguard'').

[37] *See* letters from Metropolitan Life Insurance Company dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''Metlife II''), Prudential Investment Management, Inc. dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''Prudential II''), and Securities Industry and Financial Markets Association, Asset Management Group dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''SIFMA II-investors'') (stating that they do not believe the ABS market will recover without a mechanism to enforce breaches of representations and warranties). *See also* Section V.B.3.a)(2) Asset Review Provision below.

[38] *See* letters from CFA II and Investment Company Institute dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''ICI II'').

[39] *See* discussion in Section III.A.1 Background and Economic Baseline for the Asset-Level Disclosure Requirement below.

[40] *See* Sheila Bair, Bull by The Horns: Fighting to Save Main Street From Wall Street and Wall Street From Itself 52 (2012) (noting that, based on data analysis conducted by the FDIC, ABS investors did not look at the quality of the individual loans in the asset pools and lacked detailed loan-level information and adequate time to analyze the information before making an investment decision). *See also* footnote 882 and discussions in Section III.A.1 Background and Economic Baseline for the Asset-Level Disclosure Requirement and Section V.B.1.a) Rule 424(h) and Rule 430D below.

[41] The rules do not affect the applicability of the Investment Company Act (15 U.S.C. 80a–1 *et seq.*) to ABS issuers, including the availability of exclusions from such Act. *See, e.g.,* Section 3(c)(1) or Section 3(c)(7) (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)) (for unregistered transactions); Rule 3a–7 [17 CFR 270.3a–7] (for registered and unregistered transactions).

[42] The 2014 Re-Opening Release provided for a thirty-day comment period. In response to commenters' requests, on March 28, 2014, we extended the comment period until April 28, 2014.

[43] *See* Section I.C.5 Proposed Rules Not Being Adopted At This Time for a list of proposed rules that we are not adopting at this time.

[44] *See, e.g., The Private Mortgage Market Investment Act, Part I, Hearing on H.R. 3644 Before the Subcomm. on Capital Mkts. & Gov't Sponsored Enters. of the H. Comm. on Fin. Servs.,* 112th Cong.

Continued

all investors and market participants should have access to the information they need to assess the credit quality of the assets underlying a securitization at inception and over the life of a security. In 2010, we proposed to require standardized asset-level information in prospectuses and on an ongoing basis in periodic reports. The 2010 ABS Proposals called for ABS issuers to disclose standardized asset-level information for most asset classes.

We are adopting standardized asset-level disclosure requirements because we believe this information will allow an investor to better conduct his or her own evaluation of the ongoing credit quality of a particular asset, risk layering of assets, and overall risks in the pool underlying the ABS. In our discussion below, we refer to each individual asset-level disclosure requirement as an asset-level data point. The asset-level data will be provided at the time of the offering and on an ongoing basis. The disclosures are required to be provided in a standardized XML format, so that they are more useful to investors and markets. We have revised the required data points to address commenters' concerns about a variety of topics that we discuss further below, such as the availability of data, market practice, need for increased transparency and privacy concerns. While we are adopting asset-level disclosure requirements for ABS where the underlying assets consist of residential mortgages, commercial mortgages, auto loans, auto leases and resecuritizations of ABS that include these asset types, or of debt securities,[45] we are continuing to consider the best approach for requiring more information about underlying assets for the remaining asset classes covered by the 2010 ABS Proposal.[46]

We have modified some of the proposed data points in response to comments. The new disclosure requirements include the following standardized data points:

- Data points about the payment stream related to a particular asset, such as the contractual terms, scheduled payment amounts, basis for interest rate calculations and whether and how payment terms change over time;
- Data points that allow for an analysis of the collateral related to the asset, such as the geographic location of the property, property valuation data and loan-to-value (''LTV'') ratio;
- Data points about the performance of each asset over time, for example, data about whether an obligor is making payments as scheduled; and
- Data points about the loss mitigation efforts by the servicer to collect amounts past due and the losses that may pass on to the investors.

Other key data points we are adopting will provide data about the extent to which income and employment status have been verified, mortgage insurance coverage, and lien position.

We have also made modifications from the 2010 ABS Proposal in light of privacy concerns. As we discuss below, many commenters were concerned with the privacy implications of asset-level disclosure, particularly the risk that the information could be combined with other publicly available information to discover, or ''re-identify,'' the identities of the obligors in ABS pools, thereby revealing potentially sensitive personal and financial information about an obligor. In light of these concerns, we are omitting or modifying certain asset-level disclosures for RMBS and securities backed by auto loans and leases (collectively, ''Auto ABS'') to reduce the potential risk that the obligors could be re-identified. We refer to this risk throughout the release as ''re-identification risk''. Additionally, in response to commenters' suggestions, we have sought and obtained guidance from the Consumer Financial Protection Bureau (''CFPB'') on the application of the Fair Credit Reporting Act (''FCRA'')[47] to the required disclosures. We believe these steps implement the statutory mandate of Section 7(c) and will provide investors with the asset-level information they need while reducing concerns about the potential re-identification risk associated with disclosing consumers' personal and financial information.[48]

2. Other Disclosure Requirements

We are also adopting other amendments to the prospectus disclosure requirements, which will require:

- A summary of statistical information about the pool of underlying assets in the prospectus summary;
- A description of the provisions in the transaction agreements about modification of the terms of the underlying assets;
- More explanatory language about the static pool disclosures and standardized delinquency presentation and, for static pool filings on Form 8–K, a new separate Form 8–K item and exhibit number;
- Expanded disclosure about transaction parties; and
- Filing of the transaction documents, by the date of the final prospectus, which is a clarification of the current rules.

3. Securities Act Registration

ABS issuers have emphasized their desire to access the capital markets quickly through shelf registration. ABS shelf registration offers significant flexibility and timing benefits to issuers, but these interests must be balanced against investors' need for adequate information and time to make informed investment decisions. Investors have expressed concerns about not having adequate time to review the prospectus in order to make a well-informed investment decision, especially in an

3 (2011) (statement of Rep. Scott Garrett, Chairman, Subcomm. on Capital Mkts. & Gov't Sponsored Enters.) (stating ''in regards to transparency and disclosure, investors should be empowered, if you will, and enabled to do their own analysis of the assets underlying the securities that they are investing in. So by disclosing more detailed loan level data, while at the same time protecting the privacy of the borrowers, and by allowing more time for the investors to study that additional information, investors will be able to conduct more due diligence and lessen their reliance on rating agencies''); *Securitization of Assets: Problems & Solutions Hearing Before the Subcomm. on Secs., Ins., & Inv. of S. Comm. on Banking, Housing & Urban Affairs,* 111th Cong. 39 (2009) (statement of Patricia McCoy, law professor at the University of Connecticut School of Law) (recommending that ''[t]he SEC should require securitizers to provide investors with all of the loan-level data they need to assess the risks involved'' and ''should require securitizers and servicers to provide loan-level information on a monthly basis on the performance of each loan and the incidence of loan modifications and recourse''). *See also* letters from Moody's Investors Service dated Aug. 31, 2010 submitted in response to the 2010 ABS Proposing Release (''Moody's I'') (suggesting increased ABS data information will restore confidence in the structured finance market), Prudential Investment Management, Inc. dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Prudential I'') (supporting the SEC's proposal for investors to have access to asset-level data in order to provide investors with a better understanding of risk), and SIFMA I (suggesting that asset-level data is important to an investor's investment decision and is needed to restore investor confidence).

[45] Under the proposal, this asset class was titled ''corporate debt.'' However, we are using the term ''debt security ABS'' to provide clarification because, as we discuss below, the same set of requirements will also apply to resecuritizations.

[46] While the 2010 ABS Proposal applied across asset classes, we had also proposed specific requirements for equipment loans and leases, student loans, floorplan financings, and credit card receivables. As discussed below, Section 7(c) of the Securities Act [15 U.S.C. 77g(c)] also requires, in relevant part, that the Commission adopt regulations requiring an issuer of an asset-backed security to disclose, for each tranche or class of security, information about the assets backing that security, including asset-level or loan-level data, if such data is necessary for investors to independently perform due diligence.

[47] 15 U.S.C. 1681 et seq. FCRA generally regulates the use of ''consumer reports'' furnished by a ''consumer reporting agency,'' as those terms are defined in the statute. The CFPB has authority to interpret FCRA.

[48] 15 U.S.C. 77g(c).

active market.[49] This lack of time to adequately review the transaction contributed to investors placing undue reliance on the investment-grade ratings of these securities.[50] Consequently, we are adopting a requirement that ABS issuers using a shelf registration statement on new Form SF–3 file a preliminary prospectus under new Rule 424(h) containing transaction-specific information at least three business days in advance of the first sale of securities in the offering.[51] The preliminary prospectus will give investors additional time to analyze the specific structure, assets, and contractual rights regarding each transaction. We had originally proposed that any material change to the preliminary prospectus, other than offering price, would require the filing of a new preliminary prospectus and re-starting the waiting period. In response to commenters' concerns, we are requiring, instead, that issuers file material changes in a prospectus supplement that provides a clear description of how the information has changed at least 48 hours before the first sale.

As noted above, while we recognize that ABS issuers have expressed the desire to use shelf registration in order to access the capital markets quickly, we believe that the shelf eligibility requirements should be designed to help ensure a certain quality and character for asset-backed securities eligible for delayed shelf registrations given the speed of these offerings. Prior to today, one of the shelf eligibility requirements for offerings of asset-backed securities was that the securities were investment-grade securities—meaning that at least one of the nationally recognized statistical rating organizations (''NRSRO'') rated them in one of its generic rating categories that signifies investment grade and is typically one of the four highest categories. As noted above, the financial crisis revealed that credit rating agencies had generally not appropriately evaluated the credit risk of the securities and that some investors may have placed too much reliance on these ratings without conducting their own analysis.[52] We proposed to replace the investment-grade ratings requirement with alternative shelf eligibility criteria. These proposals were part of a broad ongoing effort to remove references to NRSRO credit ratings from our rules in order to reduce the risk of undue reliance on ratings and also to eliminate the appearance of an imprimatur that such references may create.[53] Additionally, Section 939A of the Dodd-Frank Act requires us to review and eliminate the use of credit ratings as an assessment of creditworthiness in our rules.[54] Consequently, we are adopting four transaction requirements for ABS shelf eligibility to indicate which types of offerings qualify for shelf registration, and we are removing the prior investment-grade ratings requirement. The four new transaction requirements are:

- A certification by the chief executive officer;
- An asset review provision requiring review of the assets for compliance with the representations and warranties upon the occurrence of certain trigger events;
- A dispute resolution provision; and
- Disclosure of investors' requests to communicate.

We believe that these new shelf eligibility and offering requirements will reduce undue reliance on credit ratings and also help to ensure that ABS issued in shelf offerings are designed and prepared with more oversight and care that make them appropriate to be issued off a shelf, which we define as being ''shelf appropriate'' securities.

(a) Certification

In the aftermath of the financial crisis, investors have expressed concern that ABS issuers were creating securitization transactions that could not support the scheduled payments due to investors.[55] We are concerned, in particular, that issuers were not adequately reviewing the disclosure provided in the prospectus, examining the assets included in the pool, and assessing the security structure and the expected pool-asset cash flows. To address this concern, we are adopting, as a shelf eligibility requirement, a certification by the chief executive officer of the depositor at the time of each takedown about the disclosures contained in the prospectus and the structure of the securitization. We believe that a certification should cause the chief executive officer to participate more extensively in the oversight of the transaction. The certification will also provide explicit evidence of the certifier's belief about the securitization at the time of the takedown.

We have made revisions to the certification in order to address commenters' concerns about the certification constituting a guarantee about future performance and possibly increased liability for certifiers. To address commenters' concerns about certifier liability, we have added a

[49] *See* the 2010 ABS Proposing Release at 23334, including footnote 80, and the 2011 ABS Re-Proposal at 47950, including footnote 19. *See also* the discussion in Section V.B.1.a)(1), below (discussing investors' concerns about the lack of adequate time).

[50] *See, e.g., Securitization of Assets: Problems & Solutions Hearing Before the Subcomm. on Sec., Ins., & Inv. of the S. Comm. on Banking, Housing & Urban Affairs,* 111th Cong. 71 (2009) (statement of William W. Irving, Portfolio Manager at Fidelity Investments) (noting ''high demand [for ABS] put investors in the position of competing with each other, making it difficult for any of them to demand better underwriting, more disclosure, simpler product structures, or other favorable terms'').

[51] We use the term ''preliminary prospectus'' to mean the Rule 424(h) preliminary prospectus; similarly we use the term ''final prospectus'' to mean the Rule 424(b)(2) or (5) prospectus.

[52] *See* footnote 31. *See also, e.g.,* Joshua D. Coval, Jakub W. Jurek & Erik Stafford, *Economic Catastrophe Bonds,* 99(3) Am. Econ. Rev. 628–66 (2009) (arguing that senior CDO tranches have significantly different risk exposures than their credit rating-matched single-name counterparts, and thus should command different risk premia, and that the information provided by the credit ratings agencies to their customers is inadequate for purposes of accurately pricing these risks); John Griffin & Dragon Tang, *Did Subjectivity Play a Role in CDO Credit Ratings?,* 67(4) J. Fin. 1293–1328 (2012) (analyzing 916 CDOs and finding that credit rating agencies frequently made favorable pro-issuer adjustments beyond what their own risk models suggested, thereby subjectively increasing the size of triple-A tranches in the CDOs, and, subsequently, the CDOs with larger subjective adjustments experienced more severe downgrades during the economic crisis).

[53] *See, e.g., Security Ratings,* Release No. 33–9245 (July 27, 2011) [76 FR 46606] (the ''Security Ratings Release'') (amending rules and forms under the Securities Act and the Securities Exchange Act); *Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934,* Release No. 34–64352 (Apr. 27, 2011) [76 FR 26550] (proposing amendments to rules and one form under the Securities Exchange Act).

[54] Section 939A of the Dodd-Frank Act requires that the Commission review any regulation issued by the Commission that requires the use of an assessment of the credit-worthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings. We completed this review and issued a report on July 21, 2011 (see *Report on Review of Reliance on Credit Ratings, available at http://www.sec.gov/news/studies/2011/939astudy.pdf*). We have removed references from a significant number of rules and forms both as a result of our broad ongoing effort to remove credit rating references from our rules as well as in light of the requirements in Section 939A of the Dodd-Frank Act. *See, e.g.,* Rules 15c3–1 [17 CFR 240.15c3–1], 15c3–3 [17 CFR 240.15c3–3], 10b–10 [17 CFR 240.10b–10] and 17i–8(a)(4) [17 CFR 240.17i–8(a)(4)] under the Exchange Act, Form X–17A–5, Part IIB [17 CFR 249.617] under the Exchange Act, Schedule 14A [17 CFR 240.14a–101] under the Exchange Act, Rule 100(b)(2) of Regulation FD [17 CFR 243.100(b)(2)], Rule 5b–3 [17 CFR 270.5b–3] under the Investment Company Act, Forms N–1A [17 CFR 274.11A], N–2 [17 CFR 274.11a–1] and N–3 [17 CFR 274.11b] under the Investment Company Act, Rules 134 [17 CFR 230.134], 138 [17 CFR 230.138], 139 [17 CFR 230.139] and 168 [17 CFR 230.168] under the Securities Act and Forms S–3 (non-ABS) [17 CFR 239.13], S–4 [17 CFR 239.25], F–3 [17 CFR 239.33], F–4 [17 CFR 239.34] and F–9 (rescinded) under the Securities Act.

[55] *See, e.g.,* letters from Better Markets and Prudential I (highlighting the problem with the ''originate-to-distribute'' model where the focus is on whether the asset can be sold into a securitization rather than on its likely long-term performance).

paragraph to clarify that the certifier has any and all defenses available under the securities laws.

(b) Asset Review Provision

We have noted investors' concerns about the effectiveness of contractual provisions related to the representations and warranties about the pool assets and the lack of responsiveness by sponsors and other parties to the transaction about potential breaches.[56] Commenters shared this concern [57] and, to address it, we are requiring, as proposed that the relevant transaction agreements include provisions providing for a review of the underlying assets for compliance with the representations and warranties upon the occurrence of certain post-securitization trigger events. The rule is designed to address comments received related to the triggers and potential costs, while at the same time balance the need for stronger mechanisms to enforce underlying contract terms. Under the final rule, the agreements must require a review, at a minimum, upon the occurrence of a two-pronged trigger. The first prong of the trigger is the occurrence of a specified percentage of delinquencies in the pool. If the delinquency trigger is met, the second prong of the trigger is the direction of investors by vote. The report of the reviewer's findings and conclusions for all assets reviewed will be required to be provided to the trustee in order for the trustee to determine whether a repurchase request would be appropriate under the terms of the transaction agreements, and a summary of the report must be included on the Form 10–D. We believe that this shelf requirement will address investors' concerns about the enforceability of the representations and warranties and also will incentivize the obligated parties to better consider the disclosure, characteristics, and quality of the assets in the pool.

(c) Dispute Resolution

As demonstrated by events surrounding the financial crisis, investors have not only lacked an effective mechanism to identify potential breaches of the representations and warranties, they have also lacked a mechanism to require sponsors to address their repurchase requests in a timely manner.[58] We are requiring that the underlying transaction agreements include a provision providing that, if an asset subject to a repurchase request is not repurchased by the end of a 180-day period beginning when notice is received, then the party submitting such repurchase request would have the right to refer the matter, at its discretion, to either mediation or third-party arbitration. Under the final rule, the dispute resolution provision is a separate and distinct shelf eligibility requirement; investors will be able to take advantage of the dispute resolution provision regardless of whether they had utilized the asset review process.

(d) Investor Communication

The aftermath of the financial crisis has demonstrated that investors have also encountered difficulty in locating other investors in order to enforce rights collectively under the terms of the ABS transaction, especially those related to repurchase demands due to breaches of the representations and warranties.[59] Without an effective means for investors to communicate with each other, investors have told us that they are unable to utilize the contractual rights provided in the underlying transaction agreements. To address this concern, we are requiring as proposed that the underlying transaction agreements must include a provision to require that a request by an investor to communicate with other investors be included in ongoing distribution reports filed on Form 10–D.

(e) Other Shelf Offering Provisions

We are also adopting various other changes to the procedures and forms related to shelf offerings substantially as proposed, with some changes in response to comments, including:

- Limiting registration of continuous ABS shelf offerings to ''all or none offerings.''
- Eliminating Rule 415(a)(1)(vii) that provided shelf eligibility to certain investment-grade mortgage related securities regardless of the registration statement form.
- Permitting a pay-as-you-go registration fee alternative, allowing ABS issuers to pay registration fees at the time of filing the preliminary prospectus, as opposed to paying all registration fees upfront at the time of filing the registration statement.
- Creating new Forms SF–1 and SF–3 for ABS issuers that will replace the usage of current Forms S–1 and S–3 in order to delineate between ABS filers and corporate filers and to tailor requirements for ABS offerings.
- Eliminating the ABS investment-grade exemptive provision in Rule 15c2–8(b) so that a broker or dealer will be required to deliver a preliminary prospectus at least 48 hours before sending a confirmation of sale.
- Revising the current practice of providing a base prospectus and prospectus supplement for ABS issuers and instead requiring that a single prospectus be filed for each takedown (except that it would be permissible to highlight material changes from the preliminary prospectus in a separate supplement to the preliminary prospectus).

4. Other Changes to ABS Rules

In addition to the prospectus disclosure changes and shelf requirements, we are also adopting other changes related to ABS. For example, we are adopting a revision to the prefunding exception provided in the definition of ABS, which will decrease the prefunding limit from 50% to 25% of the offering proceeds. Additionally, we are adopting several changes to Forms 10–D, 10–K and 8–K.

5. Proposed Rules Not Being Adopted At This Time

We are not adopting at this time, however, several rules that we proposed in the 2010 ABS Proposing Release or the 2011 ABS Re-Proposing Release. These proposals remain outstanding. They include:

- Requiring issuers to provide the same disclosure for Rule 144A offering as required for registered offerings;
- Making the general asset-level requirements applicable to all asset classes and asset-class specific requirements for equipment loans and leases, student loans, and floorplan financings;
- Requiring grouped-account disclosure for credit and charge card ABS;

[56] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* Release No. 33–9175 (Jan. 20, 2011) [76 FR 4489, 4490] (the ''Section 943 Adopting Release''). We also note, for example, that transaction agreements typically have not included specific mechanisms to identify possible breaches of representations and warranties or to resolve a question of whether a breach of the representations and warranties has occurred.

[57] *See* footnotes 1050 and 1051.

[58] *See* Alex Ulam, *Investors Try to Use Trustees as Wedge in Mortgage Put-Back Fight,* Am. Banker, June 24, 2011 (noting that many attempted put-backs have ''flamed out after investor coalitions failed to get the 25% bondholder votes that pooling and servicing agreements require for a trustee to be forced to take action against a mortgage servicer''). *See also* Tom Hals & Al Yoon, *Mortgage Investors Zeroing in on Subprime Lender*, Thomson Reuters, May 9, 2011 (noting that gathering the requisite number of investors needed to demand accountability for faulty loans pooled into investments is a ''laborious'' task).

[59] *See* Katy Burne, *Banker's Latest Bet: Teamwork on Bonds,* Wall St. J., Jan. 22, 2013 (illustrating the difficulty that investors encounter in attempting to communicate with one another and noting one investor's efforts to locate other RMBS investors by publishing advertisements in national newspapers).

- Filing of a waterfall computer program of the contractual cash flow provisions of the securities;
- Requiring the transaction documents, in substantially final form, be filed by the date the preliminary prospectus is required to be filed;
- Exempting ABS issuers from current requirements that the depositor's principal accounting officer or controller sign the registration statement and in lieu requiring an executive officer in charge of securitization sign the registration statement; and
- Revising when pool disclosure must be updated on Form 8–K.

II. Economic Overview

We are mindful of the economic consequences and effects, including costs and benefits, of our rules, and we discuss them throughout this release when we explain the new rules that we are adopting. Further, Section 2(b) of the Securities Act [60] and Section 3(f) of the Exchange Act [61] require the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a) of the Exchange Act requires the Commission, when making rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition.[62] Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[63]

To assess these economic consequences, we are using as our baseline the ABS market as it exists at the end of 2013, including applicable rules adopted by the Commission but excluding the rules adopted herein. Because activity in the ABS market has changed due to the financial crisis, we will refer to market statistics that encompass the pre-crisis period, the crisis period, and the current period as appropriate in order to provide a more comprehensive picture of the ABS market. To the extent that certain amendments are mandated by statute, the economic analysis considers the consequences and effects that stem from statutory mandates, as well as those that are affected by the discretion we exercise in implementing the mandates. We provide a qualitative, and whenever possible quantitative, discussion of the costs, benefits, and the effects on efficiency, competition, and capital formation of individual rule provisions in the corresponding sections of the release. We anticipate, however, that the elements of the rules will interact with each other and also with other regulations to generate combined economic effects. Thus, it is appropriate to expand the analysis to include disparate elements of the rule. While we make every reasonable attempt to quantify the economic impact of the rules that we are adopting, we are unable to do so for several components of the new rules due to the lack of available data.[64] We also recognize that several components of the new rules are designed to change existing market practices and as a result, existing data may not provide a basis to fully assess the rules' economic impact. Specifically, the rules' effects will depend on how issuers, their investors, and other parties to the transactions (e.g., trustees, underwriters, and other parties that facilitate transactions between issuers and investors) will adjust on a long-term basis to these new rules and the resulting evolving conditions. The ways in which these groups could adjust, and the associated effects, are complex and interrelated and thus we are unable to predict them with specificity nor are we able to quantify them at this time.

The new rules are designed to improve investor protections and promote a more efficient asset-backed market. The new transaction requirements for shelf eligibility should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care and should incentivize issuers to provide investors with accurate and complete information at the time of the offering. It is these transactions that are appropriate to be offered to the public off a shelf without prior staff review. The new requirements for more asset-level information and more time for investors to review this information will provide more disclosure and greater transparency about the underlying assets. The effect of the increased disclosure on competition, efficiency, and capital formation will depend, in part, on the level of granularity and standardization of information currently available and disclosed. The remaining changes to Regulation AB that we are adopting are refinements to existing Regulation AB. We recognize that these new and amended rules that we are adopting may impose costs on asset-backed issuers, investors, servicers, and other transaction participants and may affect competition, efficiency, and capital formation. The effect of the refinements to existing Regulation AB will depend, in part, on issuers' current methods to comply with the existing rules. While we cannot predict or quantify precisely all effects the new rules will have on competition, efficiency, and capital formation, we believe that the rules we are adopting will improve the asset-backed securities market.

A. Market Overview and Economic Baseline

For many asset classes, the ABS market before the 2007–2009 financial crisis differed significantly from the one immediately after the crisis, and even from our baseline, the market that exists today, as illustrated in Figure 1. Private-label (non-U.S. agency) ABS issuers held $2.6 trillion in assets in 2004, which grew to $4.5 trillion in 2007, and declined to $1.63 trillion in 2013.[65] This distinction is most stark in the case of private-label residential mortgage-backed securities (''RMBS''), including home equity lines of credit. In 2004, prior to the crisis, new issuances of registered private-label RMBS totaled $746 billion.[66] The overwhelming majority of private-label RMBS deals issued before the crisis were registered offerings. In 2008, registered private-label RMBS issuance drastically dropped to $12 billion. Today, the private-label RMBS market remains exceptionally weak overall and consists

[60] 15 U.S.C. 77b(b).

[61] 15 U.S.C. 78c(f).

[62] 15 U.S.C. 78w(a).

[63] 15 U.S.C. 78w(a)(2).

[64] We note the lack of quantitative analysis provided by commenters about the impact of the proposals on the market. Some commenters did, however, provide us with some limited qualitative descriptions of potential impacts, which we took into consideration in adopting the final rules.

[65] *See* Federal Reserve Board, Financial Accounts of the United States: Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts (published quarterly), *available at http://www.federalreserve.gov/releases/z1/.* Each report contains data for the previous five years; data for earlier years can be accessed through the Federal Reserve's Data Download Program, *available at http://www.federalreserve.gov/datadownload/Choose.aspx?rel=Z.1.* We use aggregate data for private mortgage pools, consumer credit, business loans, student loans, consumer leases, and trade credit securitization.

[66] The figure and statistics in this section are based on the issuance data from AB Alert and CM Alert databases. The deals are categorized by offering year, underlying asset type, and offering type (SEC registered, Rule 144A, or traditional private offerings). Private-label RMBS include residential, Alt-A, and subprime RMBS, and ABS backed by home equity loans and lines of credit. Only private-label (non-GSE) RMBS deals sold in the United States and sponsors of such deals are counted. Auto loan ABS include ABS backed by auto loans, both prime and subprime, motorcycle loans, truck loans, and RV loans.

almost exclusively of unregistered RMBS offerings.[67] For 2013, new issuances of registered private-label RMBS totaled $4 billion, which represents 0.54% of the issuance level in 2004. Similarly, a drop in issuance level was evident with registered commercial mortgage-backed securities (''CMBS''), which totaled $74 billion in 2004, declined to $11 billion in 2008, and totaled $53 billion in 2013. The consumer finance ABS market, including credit card and auto securitizations, also declined drastically both in terms of number of deals and issuance volume after the financial crisis. For example, $85 billion of Auto ABS were issued in 2005, but after the crisis, in 2008, issuance plummeted to $32 billion. Unlike RMBS, consumer finance ABS, especially Auto ABS, has since 2008 steadily increased to $42 billion of issuance in 2011 and to $62 billion in 2013. Almost all ABS markets experienced historic downturns following the crisis, and the recovery of these markets has not been uniform.

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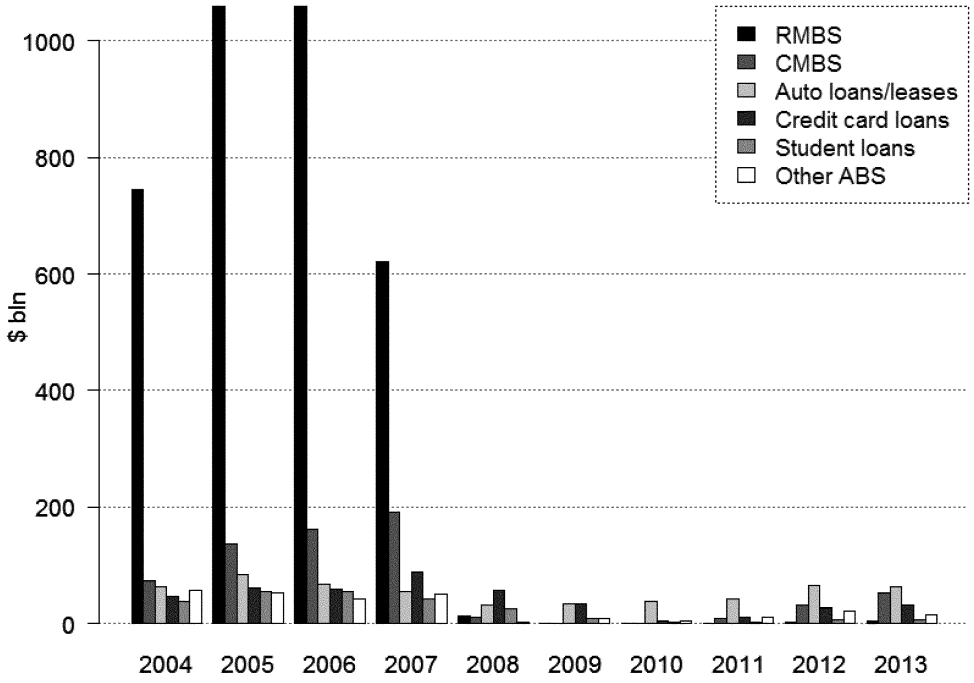
Figure 1. Issuance volume (in billions of dollars) of SEC-registered ABS deals in 2004-2013 by main asset classes. For a description of the data, see footnote 66.



The number of sponsors in the registered ABS markets has undergone changes similar to the issuance activity described above. In 2004 there were 131 sponsors of registered ABS, while currently there are 61 sponsors of registered ABS.[68] The decline in the number of sponsors is most dramatic in the RMBS segment where only a single sponsor of private-label RMBS was issuing registered securities as of the end of 2013—down from 52 sponsors in 2004. In the RMBS market, private-label RMBS issuers encounter competitive pressure from government-sponsored enterprises, whose mortgage-backed securities are guaranteed and exempt from registration and reporting requirements. As private-label issuance has declined, issuance of agency RMBS has increased. Issuances of Federal National Mortgage Association (''Fannie Mae''), Federal Home Loan Mortgage Corporation (''Freddie Mac''), and Government National Mortgage Association (''Ginnie Mae'') mortgage-related securities were $1.4 trillion in 2004, and grew to $1.9 trillion in 2013.[69]

Many factors contributed to the financial crisis, including some that involved mortgage-backed securities.[70] The low interest rate environment prior to the crisis drove investor demand for high-yield, high-credit rated products, including mortgage-backed securities.[71]

[67] As of December 2013, roughly 99% of new residential mortgage-related securitizations were government sponsored (market statistics from the Securities Industry and Financial Markets Association (SIFMA)). *See also* Tracy Alloway, ''Private-Label Mortgage Securities Take Root,'' Fin. Times (Feb. 22, 2013) (noting a recent spurt in private-label RMBS issuances but also indicating that the volume of private-label RMBS is likely to remain suppressed for some time). The outstanding private-label RMBS market fell to $1.1 trillion in the last quarter of 2013, down from $1.4 trillion in 2011 and $2.3 trillion in 2007. *See* also Diana Olick, ''Why Private Investors Are Staying Away From Mortgages,'' CNBC (Aug. 6, 2012) (citing lack of investor confidence in the quality and ratings of RMBS).

[68] For a description of the data, see footnote 66. The 2004 numbers in this release have been revised from those provided in the 2010 ABS Proposal to include CMBS sponsors from the CM Alert database.

[69] *See* SIFMA, U.S. Mortgage-Related Issuance, *available at http://www.sifma.org/research/statistics.aspx.*

[70] A report by the U.S. Government Accountability Office (''GAO'') noted that subprime and near-prime mortgages increased dramatically in popularity during the 2000's, accounting for nearly 40% of mortgage originations by 2006. The high foreclosure and default rates of these mortgages contributed precipitously to the financial crisis. *See* U.S. Government Accountability Office, *Mortgage Reform: Potential Impacts of Provisions in the Dodd-Frank Act on Homebuyers and the Mortgage Market* (July 2011) at 11.

[71] *See, e.g.,* Eamonn K. Moran, *Wall Street Meets Main Street: Understanding the Financial Crisis,* N.C. Banking Inst. 7, 14 & 35 (2009) (''Low interest rates set by the Federal Reserve, as a result, led to low returns on traditionally safe U.S. Treasury bonds. Therefore, securitized investments, which yielded a premium but many of which carried AAA-ratings even if the underlying mortgages were dubious, were quite attractive to domestic and foreign investors.'').

Among the many factors relating to mortgage-backed securities that contributed to the financial crisis, mortgage originators largely exhausted the supply of traditional quality mortgages, and to keep up with investor demand for mortgage-backed securities, subprime lending became increasingly popular.[72] During the crisis, as the default rate for subprime mortgages soared, such securities, including those with high credit ratings, lost value (up to 95% for triple-B rated and 70% for triple-A rated subprime RMBS issued in 2006), making investors reluctant to purchase these securities.[73] Some of the decline in the value began to reverse in 2010 as housing prices started to stabilize and investors gained a better understanding of the mortgage modification process. This reversal has been concentrated in the subprime RMBS tranches that were highly rated. As indicated above, activity in some parts of the ABS market continues to remain weak.

B. Economic Motivations

As described at the end of the previous section, during the financial crisis, many securitizations performed exceptionally poorly as investments. This has been attributed to the dual problems of moral hazard and asymmetric information.[74] In particular, many believe that originators and securitizers have more information about the credit quality and other relevant characteristics of the borrower than the ultimate investors; for example, they may have been aware that the underlying assets were of poor quality and, thus, presented greater risks. This leads to a potential moral hazard problem—the situation where one party (e.g., the loan originator or ABS sponsor) may have a tendency to incur risks because another party (e.g., investors) will bear the costs or burdens of these risks. Hence, when there are inadequate processes in place to encourage (or require) sufficient transparency to overcome concerns about informational differences, the securitization process could lead certain participants to maximize their own welfare and interests at the expense of other participants. Before and during the crisis, information regarding the quality of the underlying assets was not generally known by investors, and certain originators and sponsors were frequently able to transfer the financial consequences of poor origination decisions by packaging the assets in complex and often opaque securitization structures.[75] The incentives to maintain opacity were particularly acute for those securitizations where the originator and securitizer received full compensation for their services before investors could become informed about the loan quality of the underlying pool.[76]

At that time, many investors unduly relied upon the major credit rating agencies for credit analysis of these structures rather than conducting their own due diligence, and these agencies often failed to accurately evaluate and rate the securitization structures.[77] Many observers believe that inflated and inaccurate credit ratings contributed to the financial crisis in a significant way.[78] Investment in securitizations has diminished substantially since the financial crisis, in part, because investors have significantly less trust that incentives are properly aligned among originators, securitizers, independent evaluators (rating agencies), and investors.[79]

The rules we are adopting apply to private-label RMBS securitizations, and do not apply to Government Sponsored Entities (GSEs) such as Fannie Mae and Freddie Mac, whose principal and interest on issued securities is currently guaranteed, while the GSEs remain in conservatorship,[80] and otherwise may be perceived by market participants to carry an implicit guarantee.[81] Private-label RMBS securitizations are not guaranteed by the federal government and had a much higher serious delinquency rate than GSE-purchased

[72] *See id.* at 35 (noting ''voracious demand exhausted the supply of prime mortgage loan securitizations and investment bankers began seeking subprime mortgage loans to continue to generate mortgage-backed securities'').

[73] *See, e.g.,* Board of Governors of the Federal Reserve System, *Report to the Congress on Risk Retention,* (Oct. 2010) at 50–51 (discussing the dramatic drop in the triple-A and triple-B ABX.HE 2006–2 index).

[74] *See,* Adam B. Ashcraft & Til Schuermann, *Understanding the Securitization of Subprime Mortgage Credit* (Staff Report, Fed. Reserve Bank of N.Y., Working Paper No. 318, 2008) (identifying at least seven different frictions in the residential mortgage securitization chain that can cause agency and adverse selection problems in a securitization transaction and explaining that given that there are many different parties in a securitization, each with differing economic interests and incentives, the overarching friction that creates all other problems at every step in the securitization process is asymmetric information).

[75] *See, e.g.,* Chris Downing, Dwight Jaffee & Nancy Wallace, *Is the Market for Mortgage-Backed Securities a Market for Lemons?,* 22(7) Rev. Fin. Stud. 2457–94 (2009) (stating that the quality of the assets sold to investors through securitizations is lower than the quality of similar assets that are not sold to investors); Amiyatosh Purnanandam, *Originate-to-Distribute Model and the Subprime Mortgage Crisis,* 24(6) Rev. Fin. Stud. 1881–1915 (2011) (stating that banks with high involvement in the originate-to-distribute market originated excessively poor-quality mortgages and noting that this evidence is consistent with the view that the originating banks did not expend resources to adequately screen the quality of their borrowers).

[76] *See also* Section C.2.b. Broad Economic Considerations of the *Credit Risk Retention,* Release No. 34–70277 (Aug. 28, 2013) [78 FR 57928] (the ''2013 Risk Retention Re-Proposing Release'').

[77] *See* footnotes 30, 31 and 52.

[78] Observers identified several weaknesses in the credit rating process, which in many instances contributed to inaccurate ratings and were made apparent in the aftermath of the financial crisis. One of the weaknesses is the availability of ratings shopping, whereby issuers can request and privately observe multiple ratings and then choose to disclose publicly only the most favorable. Complex assets that are difficult to rate and that are likely to generate differences in ratings can create incentives for issuers to shop for ratings and disclose only those ratings that are high. Competition among credit rating agencies can exacerbate the problem, by providing rating agencies with incentive to compete for business through favorable ratings and providing issuers with options to choose among the rating agencies—commonly referred to as a race to the bottom. As a result of these weaknesses in the credit rating process, overreliance on credit ratings of complex or potentially opaque assets, such as in the case with asset-backed securities, can lead to excess investment with poor risk/return characteristics. *See, e.g.,* Nat'l Comm'n on the Causes of the Fin. and Econ. Crisis in the U.S., The Financial Crisis Inquiry Report xxv, 43–44 (2011) (''Participants in the securitization industry realized that they needed to secure favorable credit ratings in order to sell structured products to investors. Investment banks therefore paid handsome fees to the ratings agencies to obtain the desired ratings.''); Vasiliki Skreta & Laura Veldkamp, *Ratings Shopping and Asset Complexity: A Theory of Ratings Inflation,* 56 J. Monetary Econ. 678–95 (2009); Bo Becker & Todd Milbourn, *How Did Increased Competition Affect Credit Ratings?,* 101 J. Fin. Econ. 493–514 (2011); John Griffin & Dragon Tang, *Did Subjectivity Play a Role in CDO Credit Ratings?,* 67(4) J. Fin. 1293–1328 (2012).

[79] Adam B. Ashcraft & Til Schuermann, *Understanding the Securitization of Subprime Mortgage Credit* (Staff Report, Fed. Reserve Bank of N.Y., Working Paper No. 318, 2008) (discussing the ways that market participants work to minimize informational frictions that arise among and between the different participants in the securitization process and providing thoughts and evidence on how this process broke down during the financial crisis); Joshua Coval, Jakub Jurek & Erik Stafford, *The Economics of Structured Finance,* 23(1) J. Econ. Persp. 3–25 (2009) (providing a detailed assessment of the relative importance of rating agency errors, investor credulity, and perverse incentives and suspect behavior on the part of issuers, rating agencies, and borrowers).

[80] In September 2008, Fannie Mae and Freddie Mac agreed to be placed under direct government control, through conservatorship.

[81] N. Eric Weiss, Cong. Research Serv., R40800, GSEs and the Government's Role in Housing Finance: Issues for the 113th Congress (2013). For the estimates of the value of the implicit government guarantee, see Wayne Passmore, *The GSE Implicit Subsidy and the Value of Government Ambiguity,* 33(3) Real Est. Econ. 465–86 (2005) (finding that GSE shareholders benefit substantially from the ambiguous government relationship, largely due to the fact that purchasers of the GSEs' debt securities believe the debt is implicitly backed by the U.S. government (despite the lack of a legal basis for such a belief)); Deborah Lucas & Robert McDonald, Valuing Government Guarantees: Fannie and Freddie Revisited, in Measuring and Managing Federal Financial Risk 131–154 (Deborah Lucas, ed., Univ. of Chicago Press, Feb. 2010) (2010) (estimating the value of the implicit guarantee on GSEs' debt issues to be approximately $28 billion).

loans, even after accounting for different underlying loan characteristics.[82] This historical performance-based evidence suggests that GSE underwriting standards offset the incentive to incur excess risk because of their capital support, at least in relation to the private-label securitizers that did not have such capital support. In particular, GSE purchased loans were six times less likely to default than private-label loans with similar characteristics.[83] The focus of the final rules is on private-label securitizations, which is the segment of the market where investors are more likely to experience losses.

We note that the rules are intended to increase transparency about the potential risks in the ABS market through greater loan-level disclosure and to provide additional recourse for investors when issues arise, thus providing better tools for investors to evaluate their capital allocation decisions. These measures should lessen the risk of overreliance on credit ratings as investors will now be able to conduct their own due diligence using more transparent and fuller disclosures regarding the assets underlying a securitization. Disclosure of higher quality and more complete data regarding the loan characteristics of the underlying collateral should result in better capital allocation decisions, improved capital formation and, ultimately, lower capital costs by making the markets more informationally-efficient.

One key objective of the final rules is to eliminate the reliance on credit ratings in the determination of shelf eligibility of asset-backed securities. Replacing the investment-grade rating requirement for the purposes of shelf eligibility may result in securitizers finding it uneconomic or unnecessary to obtain credit ratings for their securitizations, thus lowering the demand for the services of third-party evaluators. The rules do not, however, preclude investors from utilizing credit ratings in their investment analysis and decision-making, and asset-backed securities issuers are not prohibited from having their offerings rated. Thus, if there is sufficient demand for ratings due to a perception of value in the ratings, then securitizers may continue to obtain ratings and credit rating agencies would suffer a relatively small decrease in the demand for their ratings services.

The rules we are adopting are designed to work with other regulations to provide additional disclosures, further align incentives in the securitization market, and restore confidence in the ABS market. Specifically, Section 941(b) of the Dodd-Frank Act requires regulations that mandate that certain securitizers have ''skin in the game'' through the retention of a meaningful risk exposure in securitizations (at least a 5% economic loss exposure).[84] The requirement that securitizers hold risk exposure is likely to affect their decisions regarding the quality of assets to include in such structures. While we expect that the risk retention rules required by the Dodd-Frank Act, when adopted, will result in better underwriting practices, we believe that further regulation is necessary to align incentives and facilitate credit evaluation in the securitization market.[85]

In summary, the amendments to our regulations and forms for asset-backed securities are designed to enhance investor protection by reducing the likelihood of overreliance on ratings and increasing transparency to market participants.

C. Potential Effects on the ABS Market

We believe that these amendments will work together to also improve investors' willingness to invest in asset-backed securities and to help the recovery in the ABS market with attendant positive effects on informational and allocative efficiency, competition, and the level of capital formation. Enhanced ABS disclosures and the potential for improved pricing accuracy of the ABS market should ultimately benefit issuers in the form of a lower cost of capital and increased investor participation. We expect that increased transparency in the market and more certainty about the quality of underlying assets should result in lower required yields, and a larger number of investors should be willing to participate in the market because of reduced uncertainty and risk. This, in turn, would allow originators to conserve costly capital and to diversify credit risks among many investors. Further, we believe that credit risk transfer will result in greater efficiency in the lending decisions of originators, the lowering of credit costs, and ultimately greater capital availability through higher loan levels.[86]

Asset-level disclosure requirements will provide information about underlying asset quality that was not consistently available to investors prior to these rules. The new rules also standardize the reporting of asset-level information, thus lowering the cost of acquiring information and search costs for investors. The disclosure and the reduction in search costs should directly increase the transparency of the market and, thus, the informational efficiency in pricing ABS, both in the primary and secondary markets. This should lead to increased investor participation and more efficient allocation of capital.

There are important benefits to issuers from heightened disclosures of a structured finance asset base. In the absence of adequate information about the quality of assets in the ABS structure, as was the case in the RMBS market leading up to the start of the financial crisis, the market for structured products may break down.[87] The continuing problems in the CMBS

[82] *See* Joshua White & Scott Bauguess, Qualified Residential Mortgage: Background Data Analysis on Credit Risk Retention, Division of Economic and Risk Analysis, U.S. Securities and Exchange Commission (Aug. 2013) (the ''White-Bauguess Study''), *available at http://www.sec.gov/divisions/riskfin/whitepapers/qrm-analysis-08-2013.pdf.*

[83] *Id.*

[84] *See* 15 U.S.C. 78o–11(b), (c)(1)(A) and (c)(1)(B)(ii). *See also Credit Risk Retention,* Release No. 34–64148 (Mar. 30, 2011) [76 FR 24090] (the ''2011 Risk Retention Proposing Release'') and the 2013 Risk Retention Re-Proposing Release (both proposed to implement the Dodd-Frank requirement).

[85] We also continue to separately consider the comments received in connection with the proposal to implement the prohibition under Section 621 of the Dodd-Frank Act on material conflicts of interest in connection with certain securitizations. *See Prohibition Against Conflicts of Interest in Certain Securitizations,* Release No. 65355 (Sept. 19, 2011) [76 FR 60320] (the ''ABS Conflicts Proposal'').

[86] *See, e.g.,* Darrell Duffie, *Innovations in Credit Risk Transfer: Implications for Financial Stability* (Bank for Int'l Settlements Working Paper No. 255, 2008), *available at http://www.bis.org/publ/work255.pdf* (stating that innovation in credit risk transfer through security design (such as ABS) increase the liquidity of credit markets, lowers credit risk premia, allows for the efficient distribution of risk among investors, and offers investors an improved menu and supply of assets and hedging opportunities); A. Sinan Cebenoyan & Philip E. Strahan, *Risk Management, Capital Structure and Lending at Banks,* 28(1) J. Banking & Fin. 19–43 (2004) (finding that increasingly sophisticated risk management practices (through activities such as loan sales) in banking are likely to improve the availability of bank credit, but are unlikely to reduce bank risk); Benedikt Goderis, Ian W. Marsh, Judit Vall Castello & Wolf Wagner, Bank Behavior with Access to Credit Risk Transfer Markets (Oct. 2006) (unpublished manuscript) (finding that banks that adopt advanced credit risk management techniques (measured in their study by the issuance of at least one collateralized loan obligation) experience a permanent increase in their target loan levels of around 50%, and interpreting their findings as a confirmation of the general efficiency enhancing implications of new risk management techniques).

[87] This is commonly referred to as the ''lemons problem.'' *See, e.g.,* George A. Akerlof, *The Market for ''Lemons'': Quality Uncertainty and the Market Mechanism,* 84 Q. J. Econ. 488–500 (1970) (discussing the difficulty of distinguishing good quality from bad quality in the business world and suggesting that many economic phenomena may be explained and understood as a response to the demand for the need to distinguish).

and RMBS markets may be an extended manifestation of this problem.[88] Investors that previously (and erroneously) relied on credit rating agencies to mitigate the informational asymmetry problem about asset quality can avail themselves of improved disclosures that allow them to conduct their own due diligence on an issuer's structured product. This will benefit issuers of high quality ABS because if investors are better able to independently verify the quality of and value underlying assets, they will be better able to distinguish high quality ABS issuers from other issuers, where otherwise the distinction between different types of issuers' disclosures would be obfuscated because the quality of the underlying ABS assets could not be verified. This differentiation between good and bad quality issuers would also lead to more efficient allocation of capital.

Another consequence of the final rules is the increase in availability of capital through the potential expansion of the set of ABS eligible for shelf registration. A larger set of ABS will be eligible for shelf registration if they meet the new shelf eligibility requirements, namely, non-investment grade ABS tranches that were not eligible before. This may result in greater credit availability to issuers of non-investment grade ABS that would have otherwise been difficult or more costly to obtain.

D. Potential Market Participants' Responses

We recognize that the final rules may have direct and indirect economic impacts on various market participants. Importantly, as noted above, the market practices of participants are likely to evolve in response to the final rules. While we lack the ability to predict those effects with certainty, we qualitatively consider some of the potential effects of these rules by discussing the trade-offs various market participants may face when complying with these rules.

Most of the direct costs of these rules fall onto the sponsors of ABS, since they will initially bear any increased costs of compliance and implementation of the new requirements; however, there is some uncertainty surrounding who will ultimately bear these direct compliance costs. Depending on market conditions, the degree of competition at different levels of the securitization chain, and the availability of other forms of credit, the sponsors may attempt to pass some or all of these costs on to other market participants.

One way in which the sponsors may elect to pass costs to market participants is through lower returns paid to investors in securitizations. Promised returns to investors will typically depend on the costs of creating and maintaining the securitized credit structure, including new costs associated with compliance. If investors are willing to absorb some or all of these costs and yet still expect to receive an acceptable risk-adjusted return on their investment, then investor returns could be lower on these investments than in the past. How much of the higher costs sponsors can realistically pass through to investors will depend on the risk and return opportunities available from other similar investments in the market.

We also recognize that some of the new asset-level disclosure and shelf registration costs may be passed down the chain of securitization and ultimately to borrowers. In particular, and in the short term when new reporting and data handling systems have to be developed, borrowers may ultimately bear higher credit costs to compensate sponsors for these increased compliance costs. The ability to pass costs on to borrowers will be constrained by competition from lenders that do not securitize in the registered market. If the costs of compliance are significant, the competitive position of firms that are subject to the requirements of the final rules and that rely on securitization in the public market for funding, in particular through shelf registrations, could weaken relative to other financial firms that are not subject to these requirements, or that have other sources of funding.

If asset-backed issuers are unable to pass along their shelf registration costs as described above, and thus bear all or most of these new costs, then they might choose to avoid the shelf registration process by registering their ABS on Form SF–1 or they might choose to bypass registration altogether and issue through unregistered offerings instead to avoid the new shelf registration costs. Similarly, if asset-backed issuers are unable to pass along the costs incurred to provide asset-level disclosure (for those asset classes subject to it), then they may issue through unregistered offerings. Such actions could have the effect of reducing efficiency and could impede capital formation; however, there are reasons to believe that some investors may support the market for registered ABS despite additional costs. First, because the prospectus disclosure requirements are the same for both types of registered offerings, a shift from shelf-registration to non-shelf-registration may occur only due to the new shelf registration costs, and the shift would be constrained by the speed and convenience of shelf takedowns. Moreover, the reallocation of newly issued registered ABS between shelf- and non-shelf registration should not have a substantial effect on capital formation as long as new and existing issuers of registered ABS choose to or continue to choose to issue registered ABS (and accordingly provide the same disclosures). Second, not all investors satisfy the criteria of qualified institutional buyers (''QIBs'') under Rule 144A,[89] and, although such investors might be interested in investing in Rule 144A ABS, they would not be able to do so due to inability to qualify to participate in that market. To the extent that this segment of the investor base is sufficiently large, ABS issuers might experience substantial demand for their securities from investors that are not qualified to invest in unregistered offerings. Such demand would reduce the cost of capital for public ABS issuers, creating incentives to issue through registered rather than unregistered offerings. Third, since the final rule applies to registered offerings of ABS, to the extent that there are investors willing to pay (in the form of a reduced yield) for the resolution of uncertainty regarding the asset pool quality and reduced risk of investments, there again may be a substantial enough demand to fund ABS in the registered market. Thus, we believe that the shift from the registered ABS segment to other market segments should not be substantial. The potential expansion of the registered ABS market and wider investor participation discussed previously in this section should allow ABS sponsors to recoup some of the costs introduced by these rules and, thus, should increase the attractiveness of issuing ABS through registered offerings as opposed to through unregistered offerings.

[88] *See* Figure 1 in Section II.A Market Overview and Economic Baseline and accompanying discussion (noting that the RMBS and CMBS markets have not recovered since the crisis, whereas the issuance of consumer finance ABS, especially Auto ABS, has steadily increased in the recent years and almost reached the pre-crisis levels).

[89] The term ''qualified institutional buyer'' is defined in Rule 144A(a)(1) [17 CFR 230.144A(a)(1)] and includes specified institutions that, in the aggregate, own and invest on a discretionary basis at least $100 million in securities of issuers that are not affiliated with such institutions. Banks and other specified financial institutions must also have a net worth of at least $25 million. A registered broker-dealer qualifies as a QIB if it, in the aggregate, owns and invests on a discretionary basis at least $10 million in securities of issuers that are not affiliated with the broker-dealer.

The enhancement of registered transactions could potentially reduce the degree to which credit is intermediated by banks.[90] In particular, greater availability of credit for borrowers through securitizations may result in less reliance on traditional bank loans and greater reliance on other financial intermediation mechanisms. This is especially likely to happen if and when the new capital and liquidity requirements (Basel III) result in an increase in the regulatory capital costs for financial institutions subject to regulatory capital and liquidity requirements.

One potential source of competition for private-label securitizers impacted by these rules is the GSEs in the mortgage market. As previously mentioned, the principal and interest on GSE-issued securities is currently guaranteed, while the GSEs are in conservatorship. Even upon resolution of their current status, their congressional charter and past government intervention will likely perpetuate a widely held view of an implicit federal guarantee of their securities.[91] This explicit or future implicit government support provides a competitive advantage over private-label securitizers through lower funding costs. In addition to this cost of capital advantage, GSEs will not be subject to these new rules and the costs associated with the enhanced disclosure rules,[92] which as we previously discussed are less relevant to investors of GSE securities because of the government support in the event of credit problems. Thus, to the extent that the adopted rules impose additional costs on securitizers, their offerings will either not be as competitive as those of the GSEs or potentially be crowded out of the market altogether.

The current federal guarantee of mortgage-backed securities issued by GSEs (and/or the market perception of an implicit guarantee) may explain why, among all the securitized asset categories impacted by the financial crisis, the private-label RMBS and CMBS have been the slowest to regain volume.[93] Thus, while the rules we are adopting are intended to create transparency in the market for private-label securitizations, the additional costs imposed on securitizers may be sufficiently large that, at least as long as the GSEs remain in federal government conservatorship, the cost differences between GSE and private-label securitizations may remain large enough to discourage substantial investment through the latter channel.[94] Longer-term, the competitiveness of private-label securitizations may depend as much on the ultimate fate of the GSEs as on the effectiveness of the rules we adopt.

III. Asset-Level Disclosure

We are adopting a requirement for standardized asset-level disclosures for ABS where the underlying assets consist of residential mortgages, commercial mortgages, auto loans, auto leases, and resecuritizations of ABS that include these asset types or of debt securities. The disclosure is required to be provided in a standardized tagged XML format. We are also adopting many of the proposed refinements to other disclosure requirements. At this time, we are not adopting our proposal for other asset classes.

A. Asset-Level Disclosure Requirement

1. Background and Economic Baseline for the Asset-Level Disclosure Requirement

Prior to these amendments, the Commission had not historically required the disclosure of asset-level data. Instead, issuers were only required to provide information about the composition and characteristics of the asset pool, tailored to the asset type and asset pool involved for the particular offering.[95] In the past, some transaction agreements for securitizations required issuers to provide investors with asset-level information, or information on each asset in the pool backing the securities, but generally there was no mandatory regulatory requirement that asset-level data be provided.[96] Furthermore, such information was generally not standardized or required to be standardized.

Many investors and other participants in the securitization market did not previously have sufficient time and information to be able to understand the risks underlying the ABS and were not able to value the ABS accordingly.[97] This lack of understanding and the extent to which it impacted the U.S. and global economies prompted us to revisit several aspects of our regulation of ABS, including the information available to investors. This review led us to determine that investors need access to more robust and standardized information about the assets underlying a particular ABS in order to allow them to make informed investment decisions. To accomplish this, we proposed in the 2010 ABS Proposing Release several changes to the disclosure requirements in Regulation AB including, subject to certain exceptions, a new requirement that issuers provide asset-level information about each asset in the pool backing the ABS. The asset-level data requirements were proposed to apply to all asset types, except ABS backed by credit cards, charge cards and stranded costs. For ABS backed by credit or charge card receivables, we proposed that issuers provide standardized grouped-account disclosures about the underlying asset pool instead of asset-level disclosures. Taken together, we believed these disclosures would provide robust data about each ABS, which would allow investors to analyze for each securitization transaction, at the time of inception and over the life of a security, the characteristics of each asset, including the collateral supporting each asset and the cash flows derived from each asset in the transaction.

Subsequent to the 2010 ABS Proposing Release, Congress passed the Dodd-Frank Act. Section 942(b) of the Dodd-Frank Act added Section 7(c) to the Securities Act, which requires, in relevant part, that the Commission adopt regulations requiring an issuer of

[90] *See* Darrell Duffie, *Innovations in Credit Risk Transfer: Implications for Financial Stability* (Bank for Int'l Settlements Working Paper No. 255, 2008), *available at http://www.bis.org/publ/work255.pdf* (observing that financial innovations, such as ABS, designed for more efficient credit risk transfer, have facilitated a reduction in the degree to which credit is intermediated by banks).

[91] *See* footnote 81.

[92] MBS issued by these GSE's and Ginnie Mae have been and continue to be exempt from registration under the Securities Act and most provisions of the federal securities laws. For example, Ginnie Mae guarantees are exempt securities under Section 3(a)(2) of the Securities Act (15 U.S.C. 77c(a)(2)) and Section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)). The chartering legislation for Fannie Mae and Freddie Mac contain exemptions with respect to those entities. See 12 U.S.C. 1723c and 12 U.S.C. 1455g.

[93] *See* Figure 1 in Section II.A Market Overview and Economic Baseline and accompanying discussion.

[94] Even though the GSEs currently collect and disseminate asset-level information to the public (as discussed in Section III.A.1 Background and Economic Baseline for the Asset-Level Disclosure Requirement), the disclosure regime for GSEs would not change as a result of adopting these rules. Accordingly, the costs that GSEs incur due to their current asset-level disclosures will not change, and the GSEs will likely benefit from the cost advantage over private-label ABS issuers introduced by the rules being adopted.

[95] *See* Item 1111 of Regulation AB [17 CFR 229.1111].

[96] Under Item 1111(b)(9) of Regulation AB [17 CFR 229.1111(b)(9)] as it existed prior to this adoption, if the asset pool included commercial mortgages, certain non-standardized asset-level information about the properties underlying the mortgage was required for all commercial mortgages to the extent material. Further, for each commercial mortgage that represented, by dollar value, 10% or more of the asset pool, as measured as of the cut-off date, additional non-standardized asset-level information about the properties was required.

[97] *See* footnotes 40 and 44.

an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security, including asset-level or loan-level data, if such data is necessary for investors to independently perform due diligence.[98] In July 2011, we re-proposed some of the rules proposed in the 2010 ABS Proposing Release in light of the provisions added by the Dodd-Frank Act and comments received on our 2010 ABS Proposals. In the 2011 ABS Re-Proposing Release, we requested comment on whether the asset-level disclosure requirements proposed in the 2010 ABS Proposals implemented Section 7(c) effectively and whether there were any changes or additions that would better implement Section 7(c). The Commission also requested comment on whether certain asset-level disclosures enumerated in Section 7(c) are necessary for investor due diligence.[99]

We received comments on the potential privacy implications of the proposed asset-level data requirements, including comments suggesting that the required asset-level information be provided by means other than public dissemination on the Commission's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR'').[100] In light of the privacy concerns about the proposed asset-level requirements, we re-opened the comment period on the 2010 ABS Proposals and the 2011 ABS Re-Proposals in February 2014 to permit interested persons to comment on an approach for the dissemination of asset-level data, which was described in the 2014 Staff Memorandum. The 2014 Staff Memorandum summarized the comments that had been received related to potential privacy concerns and outlined an approach that would require issuers to make asset-level information available to investors and potential investors through an issuer-sponsored Web site rather than having issuers file and make all of the information publicly available on EDGAR (the ''Web site approach''). The Web site approach noted various ways in which issuers could address potential privacy concerns associated with the disclosure of asset-level information, including through restricting Web site access to such information.

To assess the economic consequences of these asset-level disclosure requirements, we are using as our baseline the ABS market as it existed at the end of 2013. Today, we note that for some types of ABS, issuers have begun or have continued to provide asset-level data. For instance, some registered RMBS issuers before the financial crisis provided asset-level disclosures, although the disclosures were not standardized. Since then, there have been a limited number of registered RMBS transactions. Those transactions have provided asset-level disclosures pursuant to recently developed industry standards.[101] Further, sellers of mortgage loans to Fannie Mae and Freddie Mac are required to deliver certain asset-level data in a standardized electronic form.[102] In turn, Fannie Mae and Freddie Mac provide investors loan-level disclosures about the assets underlying their securitizations.[103] For CMBS, we note that issuers commonly provide investors with asset-level disclosures at the time of securitization and on an ongoing basis pursuant to industry developed standards.[104] For other asset classes, we remain unaware of any publicly available data standards or instances where issuers have provided asset-level data.

We also note that prudential regulators in other jurisdictions require asset-level data about certain ABS in certain instances. For instance, the European Central Bank requires asset-level information for ABS accepted as collateral in the Eurosystem credit operations.[105] Additionally, the Bank of England requires that asset-level information be provided for certain ABS submitted as collateral against transactions with the Bank of England.[106] Some asset-level data is available today through third-party data providers who collect asset-level information about agency and non-agency mortgage loans and provide, for a fee, access to the data.[107] In addition, many third-party data providers have

[98] *See* Section 7(c) of the Securities Act [15 U.S.C. 77g(c)]. Section 7(c) also requires, among other things, that we set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible facilitate the comparison of such data across securities in similar types of asset classes.

[99] In particular, the 2011 ABS Re-Proposing Release requested comment on whether asset-level disclosures of unique identifiers for loan brokers and originators, broker and originator compensation and the risk retention held by the originator and the sponsor are necessary for investor due diligence. As noted below, in general, most commenters did not believe those particular asset-level disclosures were necessary for investor due diligence.

[100] *See* letters from Ally Financial Inc., et al dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''VABSS I''), Ally Financial Inc. et al dated Oct. 13, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''VABSS III''), and Ally Financial Inc. et al dated Aug. 3, 2012 submitted in response to the 2011 ABS Re-Proposing Release (''VABSS IV'') (urging the Commission ''to consider whether loan-level data (or even grouped data) needs to be made publicly available or could be made available to investors and other legitimate users in a more limited manner, such as through a limited access Web site''). *See also* letters from Consumer Data Industry Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''CDIA'') (suggesting that the Commission require parties that want to access the data on EDGAR register to use the data, acknowledge the sensitive nature of the data and agree to maintain its confidentiality) and Epicurus Institute dated Aug. 1, 2010 submitted in response to the 2010 ABS Proposing Release (''Epicurus'') (stating that they believe ''that the prospectus should contain a hypertext link (with instructions for accessing a Web site to obtain the data) . . . [and only] prospective investors should have traceable access to the data, and that they never have the opportunity to download . . . raw data in any format'').

[101] Since 2010, only one sponsor has been publicly issuing private-label RMBS. This issuer has disclosed at the time of securitization asset-level data about the assets underlying the RMBS in a format developed by the American Securitization Forum (ASF). The ASF Project on Residential Securitization Transparency and Reporting (''Project RESTART'') published a disclosure and reporting package for residential mortgage-backed securities. *See* American Securitization Forum RMBS Disclosure and Reporting Package Final Release (July 15, 2009), *available at http://www.americansecuritization.com/*. ASF is a securitization trade association that represents issuers, investors, financial intermediaries, rating agencies, legal and accounting firms, trustees, servicers, guarantors, and other market participants.

[102] *See* Fannie Mae Uniform Loan Delivery Dataset *available at https://www.fanniemae.com/singlefamily/uniform-loan-delivery-dataset-uldd*. *See also* Freddie Mac Uniform Loan Delivery Dataset *available at http://www.freddiemac.com/singlefamily/sell/uniform_delivery.html*.

[103] *See* Section III.A.2.b)(1) Residential Mortgage-Backed Securities for a discussion of loan-level disclosures provided by Fannie Mae and Freddie Mac.

[104] The CRE Finance Council's Investor Reporting Package includes data points on loan, property and bond-level information for CMBS at issuance and while the securities are outstanding. Materials related to the CRE Finance Council Investor Reporting Package are available at *http://www.crefc.org/*. The CRE Finance Council is a trade organization for the commercial real estate finance industry.

[105] *See* details about the European Central Bank's loan-level for ABS accepted as collateral in Eurosystem credit operations *available at http://www.ecb.europa.eu/paym/coll/loanlevel/html/index.en.html*.

[106] See the market notices from the Bank of England discussing its eligibility requirements for RMBS and covered bonds backed by residential mortgages, CMBS, small-medium enterprise loan backed securities and asset-backed commercial paper, and asset-backed securities backed by consumer loans, auto loans, and leases that are delivered as collateral against transactions in the Bank's operations at: *http://www.bankofengland.co.uk/markets/Documents/marketnotice121002abs.pdf, http://www.bankofengland.co.uk/markets/Documents/marketnotice111220.pdf,* and *http://www.bankofengland.co.uk/markets/Documents/marketnotice121217.pdf*.

[107] *See, e.g.,* Blackbox Logic (providing RMBS loan-level data aggregation and processing services allowing clients to analyze both current and historical RMBS trends), *http://www.bbxlogic.com/*, Core Logic (providing data and analytic services), *http://www.corelogic.com/,* LPS McDash Online (providing access to loan-level data), *http://www.lpsvcs.com/Products/CapitalMarkets/LoanData/Products/Pages/McDashOnline.aspx* and Lewtan (providing data and analytic services), *http://www.lewtan.com/*.

developed products to analyze and model asset-level data.[108]

After considering the comments received, the ABS market and the availability and use of asset-level data regarding ABS as they exist today, we are adopting, with modifications, the proposed asset-level disclosure requirements for ABS where the underlying assets consist of residential mortgages, commercial mortgages, auto loans or auto leases, resecuritizations of ABS that include these asset types, or of debt securities.[109] We provide detail on the final rules below.

As noted above, the proposed asset-level data requirements were to apply to all asset types, except ABS backed by credit cards, charge cards and stranded costs. For ABS backed by credit or charge card receivables, we proposed that issuers provide standardized grouped-account disclosures about the underlying asset pool instead of asset-level disclosures.

Asset-level information should provide investors with information that allows them to independently perform due diligence and make informed investment decisions; however, each asset class presents its own unique considerations. The response to our proposal was mixed, with some commenters supporting asset-level disclosure across asset classes and some commenters suggesting that alternative forms of disclosure were more appropriate for certain asset classes. We believe that the mix of information needed for analysis varies from asset class to asset class, and as we discuss in greater detail below, we have tailored the requirements for each asset class. While we are adopting requirements for only certain asset classes, we continue to consider the appropriate disclosure requirements for other asset classes and those proposals remain unchanged and outstanding.[110]

(a) Proposed Rule

To augment our current principles-based, pool-level disclosure requirements, we proposed to require that issuers disclose standardized asset-level information about the assets underlying the ABS at the time of offering and on an ongoing basis in Exchange Act reports.[111] Proposed Item 1111(h) and Schedule L of Regulation AB enumerated all of the data points that were to be provided for each asset in the asset pool at the time of offering. Proposed Item 1121(d) and Schedule L–D enumerated all of the data points that were to be provided in periodic reports required under Sections 13 and 15(d) of the Exchange Act. These requirements contained data points requiring general information or item requirements applicable to all asset types underlying an ABS transaction and specialized item requirements applicable to only certain asset types. For instance, the proposal included specialized data points for ABS backed by the following: residential mortgages, commercial mortgages, auto loans, auto leases, equipment loans, equipment leases, student loans, floorplan financings, and debt securities and also for resecuritizations. Each proposed data point contained a title, definition, and a standardized response. The standardized response could be a date, number, text, or coded response.[112] Finally, in order to facilitate investors' use of the asset-level data, we proposed that the data be filed with the Commission on EDGAR in a standardized tagged data format using XML.

(b) Comments on Proposed Rule

Support for requiring asset-level disclosures varied across asset types, and in some cases, between issuers and investors. Some commenters, mainly investors, generally indicated broad support for asset-level disclosure across asset types.[113] In general, these commenters suggested that asset-level disclosures would lead to better informed investment decisions,[114] better evaluation of the risk profile of the securities,[115] better pricing,[116] more transparency with respect to loan servicing operations,[117] and a broader range of opinions and analysis available with respect to ABS.[118] Certain commenters noted that the disclosure of

[108] *See, e.g.,* Experian Credit Horizons (providing products to analyze consumer mortgage and non-mortgage assets), *https://www.experian.com/capital-markets/credithorizons-product.html* and Kroll Factual Data (providing data on credit, income collateral, employment, etc.), *http://www.krollfactualdata.com/Industry/Lending/Mortgage.*

[109] In the 2010 ABS Proposing Release, the debt security asset class was categorized as ''Corporate Debt.''

[110] *See* footnote 46 and accompanying text and Section I.C.5 Proposed Rules Not Being Adopted At This Time.

[111] *See* Section III of the 2010 ABS Proposing Release.

[112] If a data point required a ''coded response,'' we proposed a set of predefined responses that were coded with a number that an issuer could select in providing the information.

[113] *See, e.g.,* letters from Appraisal Institute dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''AI''), Association of Mortgage Investors dated July 31, 2010 submitted in response to the 2010 ABS Proposing Release (''AMI''), American Securitization Forum, Auto Issuer Subforum and Auto Investor Subcommittee dated Aug. 31, 2010 submitted in response to the 2010 ABS Proposing Release (''ASF II'') (expressed views of loan-level investors only), California Public Employees' Retirement System dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''CalPERS''), The Beached Consultancy dated July 8, 2010 submitted in response to the 2010 ABS Proposing Release (''Beached Consultancy''), Martha Coakley, Massachusetts Attorney General dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Mass. Atty. Gen.''), Metropolitan Life Insurance Company dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''MetLife I''), Prudential I, SIFMA I (expressed views of investors only), Vanguard, Americans for Financial Reform dated Apr. 21, 2014 submitted in response to the 2014 Re-Opening Release (''AFR'') (suggesting that asset-level disclosure should be required for all ABS ultimately backed by loans, including non-public ABS), Committee on Capital Markets Regulation dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (''CCMR''), Council of Institutional Investors dated Mar. 26, 2014 submitted in response to the 2014 Re-Opening Release (''CII''), CRE Finance Council dated Mar. 2, 2014 submitted in response to the 2014 Re-Opening Release (''CREFC III''), Lewtan dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release (''Lewtan''), Prudential Investment Management, Inc. dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (''Prudential III'') (noting that loan-level data (e.g., current asset balance, next interest rate, current delinquency status, remaining term to maturity) will allow investors to better estimate the timing of the principal and interest cash flows of the collateral pool, which will in turn allow investors to better estimate the cash flow of the securitization and be more confident in their risk/reward consideration of the security), Allison Schwartz dated May 21, 2014 submitted in response to the 2014 Re-Opening Release (''A. Schwartz''), Securities Industry and Financial Markets Association/Financial Services Roundtable dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release (''SIFMA/FSR I-dealers and sponsors''), Vantage Score Solutions LLC dated Apr. 17, 2014 submitted in response to the 2014 Re-Opening Release (''Vantage II'') (supporting industry efforts to align asset-level disclosure reporting for GSEs and private label securities), and Wells Fargo & Co. dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release (''Wells Fargo III''). *But see* letters from ASF II (indicating that, for ABS backed by automotive loans and leases, part of their investor membership supported loan-level and part of their investor membership supported grouped account data and for ABS backed by floorplan receivables their investor members supported grouped account data), and American Securitization Forum dated Nov. 2, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''ASF IV'') (indicating that for ABS backed by equipment loans and leases part of their investor membership supported loan-level, another portion supported grouped-account disclosures, and another portion supported additional pool-level disclosure).

[114] *See, e.g.,* letters from CDIA, Investment Company Institute dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''ICI I''), MetLife I, and MSCI Inc. dated July 27, 2010 submitted in response to the 2010 ABS Proposing Release (''MSCI'').

[115] *See* letter from AMI (stating that the disclosures described in Schedule L and L–D are essential for investors to properly evaluate the risk profile of securities offered for purchase).

[116] *See* letter from Vanguard.

[117] *See* letter from MetLife I (referring to the loan-level templates for RMBS).

[118] *See* letters from Moody's I and Moody's Investor Service dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (''Moody's II'').

asset-level data is an existing market practice,[119] and some commenters noted that asset-level disclosure requirements already exist in other jurisdictions.[120] Some commenters requested that the Commission require additional asset-level data fields,[121] and one commenter noted that asset-level data is necessary for implementation of the Commission's proposed waterfall computer program.[122] While most investors supported requiring asset-level disclosure across asset types,[123] some commenters, mainly issuers or entities representing issuers, generally limited their support for asset-level disclosures to RMBS and CMBS.[124] Some commenters expressed concern about whether the materiality of the information that was proposed to be required has been considered or shown to affect the performance of the securities or the pricing of securities.[125] Some commenters suggested that we address this concern by either adopting industry standards [126] or adopting a ''provide-or-explain'' type regime.[127]

In addition to comments indicating general support or opposition to the proposal, as discussed further below, we also received comments expressing more specific concerns about the proposal, such as the costs to provide the disclosures, the value of the disclosure to investors, the liability for errors in the data, individual privacy issues, the potential release of proprietary data, and whether asset-level disclosures were necessary to evaluate ABS involving certain asset classes.

Both investors and issuers noted that the disclosure requirements will impose costs and burdens on ABS issuers. Investors, however, also believed asset-level information is necessary to properly analyze ABS, and some investors believed that the concerns about the costs and burdens of providing such data may be exaggerated. For instance, the investor membership of one trade association acknowledged that requiring asset-level disclosures will impose costs and burdens on ABS issuers, but believed the information is a ''necessary and key element of restoring investor confidence in the ABS markets.'' [128] Another investor acknowledged that the proposed asset-level disclosures, among other proposed reforms, would increase costs, but the investor believed the reforms would ''instill stronger origination and servicing of securitized assets, allow for more complete investor reviews and foster a more stable securitization market, which is a benefit to all borrowers, lenders and investors.'' [129] One investor noted that the additional costs allegedly arising from some of the proposed reforms, including asset-level disclosures, may be ''greatly exaggerated.'' [130] This investor suggested that the deficiencies in ''governance and transparency have dramatically increased the costs of securitization in the current market.'' The investor also noted that asset-level disclosures are routinely provided in various global securitization sectors, such as U.S. CMBS and Australian CMBS, and these markets have not shut down.

Several commenters did not support asset-level requirements for certain asset classes, noting that the value of the disclosures to investors or market participants may not justify the potential costs and burdens derived from the disclosures.[131] Commenters

[119] *See* letters from Lewtan, R&R Consulting dated Mar. 25, 2014 submitted in response to the 2014 Re-Opening Release (''R&R''), A. Schwartz (noting Fannie Mae has disclosed asset-level data and stating that such data is available from many commercial vendors and has not compromised borrower privacy), and SIFMA/FSR I-dealers and sponsors (noting, however, that the proposed requirements represent a dramatic departure from the type and amount of asset-level information issuers provide to investors and others under past industry asset-level practices).

[120] *See, e.g.,* letters from American Bar Association dated May 6, 2014 submitted in response to the 2014 Re-Opening Release (''ABA III'') (noting that the Bank of England requires the disclosure of anonymized loan-level data and the European Securities and Market Authority (''ESMA'') recently published a consultation paper that included draft templates for asset-level disclosures for asset-backed securities), AFR (noting that other jurisdictions, such as the European Union and the United Kingdom, are already providing asset-level information to investors), and Global Financial Markets Association/Australian Securitisation Forum dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (''GFMA/AusSF'') (noting that the Bank of England, the European Central Bank, ESMA and the Reserve Bank of Australia already currently require, will soon require, or are in the process of developing templates to require asset-level disclosure at some point in the future).

[121] *See* letters from the Structured Finance Industry Group dated February 18, 2014 submitted in response to the 2011 ABS Re-Proposing Release (''SFIG I''), Jeremy Calva dated Mar. 21, 2014 submitted in response to the 2014 Re-Opening Release (''J. Calva'') (suggesting that certain asset-level data also be required in Form ABS–15G filings to identify repurchase request activity), CCMR (supporting additional disclosures, including more detailed information about obligors), and Vantage II (requesting updated credit scores and requesting that the rules not specifically refer to the FICO brand credit score or, in the alternative, refer to FICO and other credit score types, such as Vantage Score).

[122] *See* letter from A. Schwartz.

[123] *See* footnote 113.

[124] *See, e.g.,* letters from American Securitization Forum dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''ASF I'') (indicating support for asset-level disclosures for RMBS), Bank of America dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''BoA I''), Citigroup Global Markets dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Citi'') (supporting transparency and meaningful disclosure in connection with the issuance of ABS), J.P. Morgan Chase & Co. dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''J.P. Morgan I''), Wells Fargo & Co. dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Wells Fargo I''), Marc Joffe dated Mar. 27, 2014 submitted in response to the 2014 Re-Opening Release (''M. Joffe'') (suggesting asset-level requirements only for RMBS), and R&R (stating that asset-level information is necessary only for asset classes that are resecuritized, such as RMBS).

[125] *See, e.g.,* letters from BoA I (suggesting that while some investors may suspect that the asset-level information would be helpful, the ''lack of any historic reliance on some of this data suggests that it may be per se immaterial''), Citi, and SIFMA I (expressed views of dealer and sponsors only) (stating that while they support the disclosure of data that facilitates an informed investment decision, requiring information that is not material merely increases the costs to issuers of providing that information without a corresponding benefit).

[126] *See, e.g.,* letters from American Bar Association dated Aug. 17, 2010 submitted in response to the 2010 ABS Proposing Release (''ABA I''), BoA I, CMBS.Com dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''CMBS.com I''), CoStar Group dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''CoStar''), CRE Finance Council dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''CREFC I''), Mortgage Bankers Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''MBA I''), MERSCorp, Inc. dated July 30, 2010 submitted in response to the 2010 ABS Proposing Release (''MERS''), MetLife I (supporting the use of an existing CMBS industry standard), Mortgage Industry Standards Maintenance Organization dated July 30, 2010 submitted in response to the 2010 ABS Proposing Release (''MISMO''), Real Analytics dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release, Vanguard, and Wells Fargo I.

[127] *See* letters from BoA I, Citi, SIFMA I (expressed views of dealer and sponsors only), and Securities Industry and Financial Markets Association, Dealers and Sponsors dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''SIFMA III-dealers and sponsors''). These commenters suggested that under a provide-or-explain regime if an issuer omits any asset-level data point the issuer would be required to identify the omitted field and explain why the data was not disclosed. These commenters seemed to suggest that a provide-or-explain regime should apply to any asset type required to provide asset-level data.

[128] *See* letter from SIFMA I (expressed views of investors only).

[129] *See* letter from Prudential II.

[130] *See* letter from MetLife II.

[131] *See, e.g.,* letters from ABA I, ABA III, American Financial Services Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''AFSA I''), American Financial Services Association dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release (''AFSA II''), American Bankers Association/ABA Securities Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''ABAASA I''), Capital One Financial Corporation dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (''Capital One II''), J.P. Morgan I (stating that the asset-level and grouped-account disclosures will impose significant costs on issuers and may, for most asset classes other than

Continued

expressed these concerns with respect to specific asset types, such as Auto ABS,[132] student loan ABS,[133] equipment ABS [134] or credit card ABS.[135] One commenter stated that for Auto ABS the proposed disclosure requirements would require significant reprogramming and technological investment.[136] Another commenter noted that the proposal would require sponsors to gather and present data in ways that differ from the way sponsors currently maintain and evaluate data.[137] This commenter also believed the preparation of such information would likely impose burdens upon sponsors' systems, auditing costs and create management oversight burdens that it believed the Commission had significantly underestimated. This commenter, however, did not quantify the amount that the Commission had underestimated these costs and burdens or provide its own estimate of these costs.[138] Also without providing a cost estimate, another commenter suggested that the Commission had not evaluated the entire cost of ongoing reporting for RMBS.[139] Another commenter expressed concern that if the new standards are not well integrated with existing industry practices, the data may be less reliable because reformatting data leads to a greater possibility for errors in the data.[140] Some commenters advised that the costs to implement the changes necessary to comply with the requirements may drive certain issuers from the market.[141] A few commenters suggested, without referencing a particular asset type, that the proposed disclosures may overwhelm investors [142] and a few commenters raised a similar concern solely with respect to the disclosures applicable to Auto ABS.[143]

Commenters also raised concerns about liability for inaccuracies.[144] Some commenters expressed concern that there will inevitably be errors in documents including typographical errors, information entered incorrectly (or not at all) into the files and other errors.[145] One concern was that some data may be difficult to objectively verify,[146] which one commenter referred to as ''soft data.'' [147] This commenter defined soft data as data that ''is often self-reported by obligors, cannot be verified by issuers at a reasonable cost, cannot be confirmed by auditors, may not be consistent with (or comparable to) information obtained or presented by other issuers and may reflect subjective judgments.'' [148] A few commenters noted that some soft data is used to calculate the response to other item requirements [149] and one of these commenters suggested issuers should have the discretion to include or exclude soft data from their disclosures.[150] In general, these commenters suggested that the materiality of individual data points should be determined on an aggregate basis across the entire asset portfolio, rather than at the level of the individual loan. Further, these commenters stated that even if an inaccuracy is material to a particular loan, the inaccuracy should not subject the issuer to the potential remedy of rescission of the entire issuance. The commenters urged that liability be based on the aggregate materiality in the context of the entire asset pool, the full offering disclosures and whether the securitization structure and documentation provide adequate remedies. Another commenter echoed this point.[151]

As noted above, some commenters did not support requiring asset-level disclosures for certain asset types. For example, several commenters, mainly

RMBS and CMBS, only provide incremental value to investors relative to what is currently disclosed), SIFMA I (expressed views of dealers and sponsors only), Equipment Leasing and Finance Association, dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (''ELFA II''), IPFS Corporation dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release (''IPFS II''), Structured Finance Industry Group dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (''SFIG II''), and Wells Fargo III.

[132] *See, e.g.,* letters from AmeriCredit Corp. dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''AmeriCredit''), ASF II (expressed views of dealers and sponsors only), Capital One II, Financial Services Roundtable dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''FSR''), VABSS I, Vehicle ABS Sponsors dated Nov. 8, 2010 submitted in response to the 2010 ABS Proposing Release (''VABSS II''), VABSS III, and Wells Fargo I.

[133] *See* letter from Student Loan Servicing Alliance dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''SLSA'').

[134] *See, e.g.,* letters from Equipment Leasing and Finance Association dated July 22, 2010 submitted in response to the 2010 ABS Proposing Release (''ELFA I''), CNH Capital America LLC dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''CNH I''), Navistar Financial Corporation dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Navistar''), and Wells Fargo I.

[135] *See, e.g.,* letters from BoA I, Capital One Financial Corporation dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Capital One I''), Discover Financial Services dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Discover''), and J.P. Morgan I.

[136] *See* letter from BoA I.

[137] *See* letter from ABA I.

[138] *See* letter from ABA I (expressing concerns about the costs or even the ability to verify certain data, such as property appraisals, residual value estimates, status of occupancy of the property, the effect on competition from the public release of proprietary data, which, for some asset classes, may deter securitizations, restrict capital formation and eliminate market access for some issuers and affect the availability of consumer and business credit without providing additional benefits to investors).

[139] *See* letter from MBA I (suggesting that the Commission has not identified any costs associated with (1) initially establishing the new fields; (2) the cost of redefining many of the fields already in existence; (3) the labor cost of collecting and inputting significant new data elements into the servicing systems; (4) the costs to validate the new data on an ongoing and operational basis; (5) the cost for controls needed to ensure the data is accurate and complete; (6) the need for servicers and their data providers to build functionality within the project, to test and verify the new ongoing reporting; (7) introducing new elements not listed in proposed L–D, such as updated credit scores).

[140] *See* letter from eSignSystems dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''eSign''). *See also* letter from ABA I (stating that data point descriptions may not be entirely consistent with how information about obligors is captured or comparable to other similarly styled information and issuers should be able to provide narrative analysis of this data in order to ensure their disclosure is meaningful and not misleading).

[141] *See, e.g.,* letters from ABAASA I (noting, without further explanation, that the competitive impact on business models and potential legal risks in providing asset-level data may drive issuers from the market or make them pass these costs on to investors and borrowers) and BoA I. *See also* SIFMA I (expressed views of dealers and sponsors only) (expressing concern about the effect on small originators and that if small originators leave the securitization market, the value of portfolio of assets would drop due to lower liquidity).

[142] *See* letters from CFA Institute dated Aug. 20, 2010 submitted in response to the 2010 ABS Proposing Release (''CFA I'') and Epicurus.

[143] *See* letters from AmeriCredit and VABSS I.

[144] *See, e.g.,* letters from ASF I, ABA I, and ABAASA I.

[145] *See* letters from ABA I and ABAASA I.

[146] *See, e.g.,* letters from ABA I and ABAASA I. *See also* BoA I (noting that numerous disclosure items in proposed Schedule L relate to information that is obtained from borrowers and verified to the extent provided by an originator's underwriting policies and procedures in the application and underwriting process and such information is not subsequently updated or verified by originators or servicers in the normal course of business).

[147] *See* letter from ABA I (suggesting that the proposal contained some data points requiring empirically verifiable data, such as outstanding balances, scheduled payments, interest rates and pre-payment penalties, while other data points require data which may not be verifiable because they are ''factual representations'' or ''subjective judgments,'' such as property appraisals, residual value estimates, or status of occupancy of the property).

[148] *See* letter from ABA I.

[149] *See* letters from ABA I and ABAASA I.

[150] *See* letter from ABA I (suggesting that the Commission provide issuers the discretion to include or exclude soft data from their disclosures and, where such information is included, it should be described as information obtained from third parties and allow issuers to disclaim liability absent actual knowledge by the issuer that such information is materially incorrect). *See also* letter from ABAASA I (suggesting that the Commission clarify that for liability purposes soft data is not part of the prospectus or registration statement).

[151] *See* letter from ASF I (suggesting that the extent to which the data in any individual field or group of fields is material to a particular transaction should remain a factual matter, based on the facts and circumstances of the transaction, the underlying loans, the securities and the individual circumstances of the investor).

issuers of ABS backed by automobile loans or leases,[152] equipment loans or leases,[153] floorplan financings,[154] and student loans,[155] opposed asset-level disclosures requirements for these asset types because the disclosures would raise individual privacy concerns, result in the release of proprietary data, and the disclosures would be of limited value to investors. To alleviate these concerns, some of these commenters suggested grouped-account disclosure or a combination of grouped account and standardized pool-level disclosures.[156] For equipment ABS, some commenters suggested standardized pool-level data was sufficient.[157] As discussed below, individual privacy concerns were also raised with respect to the proposed asset level disclosures for RMBS [158] and with respect to the Web site approach described in the 2014 Staff Memorandum.[159]

(c) Final Rule and Economic Analysis of the Final Rule

As noted above, the public availability of asset-level information has historically been limited. In the past, some transaction agreements for securitizations required issuers to provide investors with asset-level information, or information on each asset in the pool backing the securities.[160] Such information is sometimes filed as part of the pooling and servicing agreement or as a free writing prospectus; however, the information provided varied from issuer to issuer and was not standardized.[161] We believe, however, that all investors and market participants should have access to information to analyze the risk and return characteristics of ABS offerings and that asset-level information about the assets underlying a securitization transaction at inception and over the life of a security provides a more complete picture of the composition and characteristics of the pool assets and the performance of those assets than pool-level information alone, and forms an integral part of ABS investment analysis.[162] Therefore, we are adopting, with modifications, a requirement that standardized asset-level data be provided, for certain asset types, in the prospectus and in Exchange Act reports. We are also adopting a requirement that the required asset-level disclosures be provided in XML, a machine-readable format.

At this time, we are adopting asset-level requirements for ABS where the underlying assets consist of residential mortgages, commercial mortgages, auto loans or leases, and resecuritizations of ABS, or of debt securities and we continue to consider whether asset-level disclosure would be useful to investors across other asset classes. Prior to the financial crisis, RMBS and CMBS had historically represented a large portion of the registered ABS market while Auto ABS represents a large portion of the current registered ABS market. Accordingly, these disclosures should benefit the largest number of investors, especially as greater numbers of RMBS and CMBS are issued. Although comments about the asset-level requirements for Auto ABS were mixed, with some opposing any asset-level requirements for Auto ABS, Auto ABS investors have indicated in comment letters that they believe that asset-level data will strengthen the Auto ABS market and make it more resilient over the long term.[163] We also note that the European Central Bank recently began requiring the disclosure of standardized asset-level data for all Auto ABS accepted as collateral in the Eurosystem credit operations.[164] For these reasons, we prioritized our efforts to develop asset-level requirements for these asset classes.

The asset-level disclosure requirements for debt security ABS are relatively limited in scope and primarily consist of information that should be readily available to issuers. These disclosures, while consisting of only the basic characteristics of the debt security, will provide useful information to investors, such as the cash flows associated with the debt security, and identifiers, such as the SEC file number of the debt security. Using the SEC file number of the debt security, investors will be able to access other disclosures filed with the Commission about the debt security. No commenters specifically opposed these requirements.

We are also adopting asset-level disclosure requirements for resecuritization ABS. In an ABS resecuritization, the asset pool is comprised of one or more ABS. The new rules require disclosures about the ABS in the pool and, if the ABS in the asset pool is an RMBS, CMBS or Auto ABS, issuers are also required to provide asset-level disclosures about the assets underlying the ABS. We are requiring disclosures about the ABS being resecuritized for the same reasons we are requiring disclosure for debt security ABS, which is to provide investors with information about the ultimate source of cash flows of assets underlying the resecuritization. As a result, we believe investors in resecuritization ABS should derive the same benefits as investors in other ABS.

Under current requirements the securities being resecuritized must be registered or exempt from registration

[152] *See, e.g.,* letters from ABA I, American Bar Association dated Nov. 16, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''ABA II''), AmeriCredit, ASF II (expressed views of a portion of their investor membership only), BoA I, Capital One I, VABSS I, and Wells Fargo I.

[153] *See, e.g.,* letters from CNH I, ELFA I, FSR, Navistar, and VABSS I.

[154] *See, e.g.,* letters from ABA I and ASF II. *See also* memorandum to comment file dated Mar. 8, 2011 regarding staff's telephone call with members of the Financial Services Roundtable with letter attached from the Captive Commercial Equipment ABS Issuers Group (''Captive Equipment Group''), and VABSS I.

[155] *See, e.g.,* letters from ABA I, Sallie Mae, Inc. dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Sallie Mae I''), and SLSA.

[156] *See, e.g.,* letters from ASF II, Navistar, Sallie Mae I, and VABSS I.

[157] *See, e.g.,* letters from Captive Equipment Group, CNH I, and ELFA I.

[158] *See, e.g.,* letters from ABA I, ASF I, Consumers Union dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''CU''), MBA I, and World Privacy Forum dated Aug. 2010 submitted in response to the 2010 ABS Proposing Release (''WPF I'').

[159] *See, e.g.,* letters from ABA III, CCMR, Mortgage Bankers Association dated Mar. 28, 2014 (''MBA IV''), SIFMA/FSR I-dealers and sponsors (noting that ''[t]his puts issuers in an untenable position—the more carefully an issuer protects customer data by restricting access to its Web site, the more risk it bears of an investor suit for failing to disclose all material information''), and SFIG II. *See also* Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

[160] This usually included, for example, information about the principal balance at the time of origination, the date of origination, the original interest rate, the type of loan (e.g., fixed, ARM, hybrid), the obligor's debt-to-income (''DTI'') ratio, the documentation level for origination of the loan, and the LTV ratio.

[161] Under our current requirements the servicing agreement should be filed as an exhibit to the registration statement. *See* Item 601 of Regulation S–K and Section III.B.3.c of the 2004 ABS Adopting Release. *See also* Item 1108(c)(1) of Regulation AB. We remind registrants that the pooling and servicing agreement that is filed must contain all parts of the pooling and servicing agreement, including, but not limited to, any schedules, exhibits, addendums or appendices, unless a request for confidential treatment was submitted and granted to allow for the redaction of such information. *See, e.g.,* Securities Act Rule 406 [17 CFR 230.406], Exchange Act Rule 24b–2 [17 CFR 240.24b–2], and Division of Corporation Finance Staff Legal Bulletins Nos. 1 (Feb. 28, 1997) and 1A (July 11, 2001).

[162] Others have noted the importance of loan-level data to investors. *See, e.g.,* footnote 44.

[163] *See* letters from ASF II (expressed views of loan-level investors only) and Prudential III.

[164] *See* details about the European Central Bank's Auto ABS loan-level requirements at *http://www.ecb.europa.eu/paym/coll/loanlevel/html/index.en.html.* We have sought to address cost concerns raised by Auto ABS issuers through our changes to the Auto ABS requirements, as discussed below.

under Section 3 of the Securities Act.[165] As a result, all disclosures for a registered offering are required. Therefore, requiring asset-level data for the assets underlying resecuritizations of RMBS, CMBS, Auto ABS or debt security ABS is consistent with our current disclosure requirements, which also prevents issuers from circumventing our asset-level requirements for these asset classes. We also note that over the past several years there have been no registered resecuritizations of RMBS, CMBS or Auto ABS. We recognize, however, that such a requirement could increase the disclosure costs of resecuritizations relative to disclosure costs of ABS backed by other assets should an issuer choose to do a resecuritization of RMBS, CMBS or Auto ABS in the future because sponsors may need to collect information about underlying assets from additional sources. We have made some revisions to the proposal to address some of those costs. To the extent that the pass-through of required asset level disclosures imposes costs above that required for the original securitization, this could limit the benefits of resecuritizations and potentially inhibit the issuance of resecuritizations.

We also believe the same benefits will accrue to investors in resecuritization ABS as to investors in RMBS, CMBS, Auto ABS or debt security ABS. Similar to a direct investment in an RMBS, CMBS, Auto ABS or debt security ABS, access to this information should provide further transparency about the assets underlying the security or securities underlying the resecuritization ABS. This additional information should allow investors to analyze the collateral supporting the security being resecuritized, the cash flows derived from each asset underlying the security being resecuritized, and the risk of each asset underlying the security being resecuritized.

We acknowledge commenters' concerns about other asset classes, which we think warrant further consideration. For instance, we continue to consider commenters' concerns about how asset-level disclosures should apply where there is lack of uniformity amongst the types of collateral or terms of the underlying contracts,[166] there is a large volume of assets in a pool,[167] and there are unique features to the ABS structure.[168] For those asset classes where we are deferring action, we will continue to consider the best approach for providing more information about underlying assets to investors, including possibly requiring asset-level data in the future.

We also believe that, for most investors, the usefulness of asset-level data is generally limited unless the asset-level data requirements, which include the following components, are standardized: The definitions of each data point, the format for providing the asset-level data (e.g., XML), and the scope of the information required, such as what data is required about each obligor, the related collateral, and the cash flows related to each asset. We believe that standardizing the asset-level disclosures facilitates the ability to compare and analyze the underlying asset-level data of a particular asset pool as well as compare that pool to other recent ABS offerings involving similar assets.[169] Over time, asset-level information about past ABS offerings, including asset-level information about the performance of those offerings, will be available to further facilitate the ability for issuers to assess expected performance of a new offering based on the performance of past offerings involving similar assets.

The asset-level data required will, in general, include information about the credit quality of the obligor, the collateral related to each asset, the cash flows related to a particular asset, such as the terms, expected payment amounts, indices and whether and how payment terms change over time and the performance of each asset over the life of a security. This information should allow investors to better understand, analyze, and track the performance of ABS. We believe the final requirements we are adopting for RMBS, CMBS, Auto ABS, debt security ABS and resecuritizations will implement the requirements of Section 7(c) for these asset classes.[170] Some commenters expressed concern that the proposed data points require more information than necessary for investor due diligence and could increase re-identification risk.[171] As discussed in further detail below, we have modified the proposed data set for RMBS and Auto ABS in response to these concerns. We believe these modifications will help to reduce re-identification risk without materially affecting investors' ability to evaluate ABS. We believe that the disclosure requirements that we are adopting will provide investors with information they need to independently perform due diligence and make informed investment decisions.

As noted above, we believe the usefulness of the asset-level information is further increased by our formatting requirements. We believe providing standardized data definitions and requiring the data to be in a machine-readable format will provide investors the ability to download the data into software tools that can promptly analyze the asset pool. While some investors may need to obtain the software or other tools needed to analyze the data, we believe such costs would be offset by a reduction or elimination of the costs investors would incur to convert non-machine-readable data into a format that makes analyzing it easier. As a result, this should reduce the time investors need to analyze the offering. We also believe requiring the data to be in a machine-readable format addresses concerns that investors will be overwhelmed by the granularity of the data, because investors can quickly extract the data most relevant to their analysis. Section 7(c) also requires that we set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate the comparison of such data across securities in similar types of asset classes.

The requirements of standardized asset-level information in a machine-readable format coupled with, as we discuss in Section V.B.1.a Rule 424(h) and Rule 430D, more time to consider transaction-specific information provided through the new preliminary prospectus and three-day offering

[165] *See* Securities Act Rule 190 [17 CFR 230.190]. An asset pool of an issuing entity includes all instruments which support the underlying assets of the pool. If those instruments are securities under the Securities Act, the offering must be registered or exempt from registration if the instruments are included in the asset pool as provided in Securities Act Rule 190, regardless of their concentration in the pool. *See* Securities Act Rule 190(a) and (b). *See also* Section III.A.6.a of the 2004 ABS Adopting Release.

[166] *See* letter from ELFA I.

[167] *See* letters from Sallie Mae I and ASF I.

[168] *See* letters from ABA I and ABA III.

[169] *See* Statement of Former Federal Reserve Governor Randall S. Kroszner at the Federal Reserve System Conference on Housing and Mortgage Markets, Washington, DC, Dec. 4, 2008 (stating that a necessary condition for the potential of private-label MBS to be realized going forward is for comprehensive and standardized loan-level data covering the entire pool of loans backing MBS be made available and easily accessible so that the underlying credit quality can be rigorously analyzed by market participants).

[170] *See* Section III.A.4 Requirements under Section 7(c) of the Securities Act for a discussion regarding Section 7(c) and the requirements applicable to RMBS, CMBS, debt security ABS and resecuritizations. *See* Section III.A.2.b)(3) Automobile Loan or Lease ABS for a discussion regarding Section 7(c) of the Securities Act and the requirements applicable to Auto ABS.

[171] *See* letters from ABA III and MBA IV (with respect to RMBS).

period rules that we are adopting [172] are aimed at addressing concerns, highlighted by the recent financial crisis, that investors and other participants in the securitization market may not have had the necessary time and information to be able to understand and analyze the risk underlying those securities and may not have valued those securities properly or accurately.[173] Taken together, standardized asset-level information in a machine-readable format and more time to consider the information should enable investors to analyze offerings more effectively and efficiently to better understand and gauge the risk underlying the securities. This, in turn should lead to better pricing, a reduced need to rely on credit ratings and a greater ability of investors to match their risk and return preferences with ABS issuances having the same risk and return profile. These benefits should improve allocative efficiency and facilitate capital formation.

Providing investors access to such information should reduce their cost of information gathering because they will not need to purchase the data from intermediaries or otherwise gather the information. Furthermore, requiring that a single entity, the issuer, provide the information rather than requiring each investor to collect it will reduce duplicative information-gathering efforts. Also, data accuracy may increase because issuers are incentivized to confirm the accuracy of the required asset-level disclosures provided in public filings.

Finally, we note that the public availability of standardized machine-readable data may encourage new entities to enter the ABS credit-analysis industry previously dominated by the top three largest NRSROs. This could increase competition in that industry and provide those investors who prefer not to analyze ABS themselves with more options when purchasing credit-risk assessments and reports from third parties. In addition, since asset-level information in standardized and machine-readable format will now be available, investors will have the ability to better assess the rating performance of NRSROs and other credit-analysis firms.

While we expect that the asset-level disclosure requirements we are adopting will generate the benefits described above, we also recognize that they will impose costs upon the issuers required to provide asset-level disclosures and on other market participants. We received only a few quantitative estimates of the potential costs to comply with the proposed asset-level disclosure requirements.[174] As discussed above, however, some commenters did express general concerns about the costs and burdens that would be imposed in order to comply with the requirements. After considering comments received, we acknowledge that, taken together, the asset-level disclosure requirements may result in the costs detailed immediately below.[175]

The asset-level disclosures, as commenters noted, will result in costs related to revising existing information systems to capture, store and report the data as required. These costs may be incurred by several parties along the securitization chain, including loan originators who pass the information to sponsors and ABS issuers who file the information with the Commission. As we describe later in the release, there could be significant start-up costs [176] to sponsors to comply with the asset level disclosures, but ongoing costs to sponsors likely will be significantly less than the initial costs. We recognize that our estimates may not reflect the actual costs sponsors will incur, particularly to the extent that there are differences in system implementation costs relative to our estimates. We also recognize that there are likely to be significant differences across sponsors in their current internal data collection practices and that implementation costs will depend on how the new requirements differ from the methods sponsors and ABS issuers currently use to maintain and transmit data. Additionally, we recognize that these costs will differ by asset class, depending on whether sponsors and ABS issuers within an asset class have a history of collecting and providing the asset-level information to investors. Further, in the last four years (2010–2013) only 296 registered RMBS, CMBS, Auto ABS, debt security ABS and resecuritization transactions took place. This limited issuance activity may discourage issuers and other market participants from investing in the new systems necessary to provide asset-level disclosures required by the final rules. As a result, several commenters stated that some entities may choose to exit the securitization market or not re-enter the market, which could decrease the availability of credit to consumers and increase the cost of available credit.[177] Furthermore, as we discussed earlier in this release, some sponsors may choose to issue through unregistered offerings where no asset-level disclosures are required.[178]

We also note that sponsors and ABS issuers may pass the costs they incur to comply with the requirements on to investors in the form of lower promised returns and/or originators may pass their costs on to borrowers in the form of higher interest rates or fees. We note, however, that some of these costs may be offset by a reduction in other expenses. For example, investors who previously paid data aggregators for access to relevant information may no longer be required to purchase this data and, to the extent that they do, lower data collection costs on the part of the data aggregators may flow through to investors. Many of the data gathering costs that previously were borne by several data aggregators and/or investors would be performed by the sponsor, eliminating the potential duplication of effort. Thus, the net effect of the new rules could be a reduction in the aggregate data collection costs imposed on the entire market through more efficient dissemination of relevant information. As a result, in the aggregate, the increase of the costs to investors in the form of lower returns

[172] *See* Section V.B.1a) Rule 424(h) and Rule 430D [17 CFR 230.430D].

[173] *See* footnote 40.

[174] *See, e.g.,* letter from VABSS IV (stating that several Auto ABS sponsors estimated the costs and employee hours necessary to reprogram systems and business procedures to capture, track, and report all of the proposed data points for auto loans to be approximately $2 million, and that the estimated number of employee hours needed to provide the required disclosures was approximately 12,000). *See also* letter from ELFA I (suggesting that one computer systems vendor estimated that the cost to implement a computer system to monitor and produce the required asset-level information for equipment ABS would be approximately $250,000 in direct programming costs plus the additional staff time devoted to preparing such reports and posting them).

[175] Costs related to concerns about re-identification risk are detailed separately in Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

[176] *See* footnote 748.

[177] *See* letters from ABAASA I (suggesting that if the costs of the disclosure, plus the competitive impact on business models and the potential legal risks outweigh the advantages of securitization, issuers may choose to leave the market or pass along increased costs to investors and borrowers, thereby reducing the amount of credit or increasing the cost of credit), BoA I (stating that the uncertain costs and burdens associated with building the infrastructure to capture the data needs to be ''rationalized'' given the fact that the non-agency securitization markets are not currently robust), and SIFMA I (expressed views of dealers and sponsors only) (suggesting the proposed asset-level requirements would most likely prevent some securitizers, in particular smaller originators, from accessing capital through the securitization markets because they may not be able to incur the costs of overhauling their current systems and practices, and that without these smaller originators the value of portfolio assets would likely be reduced due to lower liquidity). *See also* letter from SIFMA III-dealers and sponsors.

[178] *See* Section II.D Potential Market Participants' Responses.

may be offset by the reduction of the costs that are no longer paid to third-party data providers.

The 2010 ABS Proposing Release noted that the proposed standard definitions for asset-level information for RMBS and CMBS were similar to, and in part based on, other standards that have been developed by the industry, such as those developed under the American Securitization Forum's (ASF) Project on Residential Securitization Transparency and Reporting (''Project RESTART'') or those developed by CRE Finance Council (CREFC). We continue to acknowledge that to the extent that there are differences between standards for asset-level information, additional costs would be imposed on issuers and servicers to reconcile differences between standards. Further, servicers may incur some costs in monitoring their compliance with servicing criteria and requirements under the servicing agreement given that periodic reports will now include asset-level information. As we discuss in more depth below in the discussions about the requirements applicable to each asset type, we have attempted to reduce burden and cost concerns by further aligning the disclosure requirements with industry standards where feasible. Further, as discussed below, we are providing for an extended implementation timeframe, which we also believe will reduce the burden of implementing the requirements.[179] We discuss in greater detail below in Section III.A.2 Specific Asset-Level Data Points in Schedule AL the comments received with respect to RMBS, CMBS, Auto ABS, debt security ABS and resecuritizations and the changes to the final requirements to address these comments.

To further minimize implementation costs, we also removed the ''General'' category. We incorporated the data points proposed under this category into each of the asset class-specific requirements in order to tailor the requirements for each asset class.[180] We believe removing the General category and tailoring the disclosure requirements to each asset class minimizes implementation costs because issuers will not need to respond to generic disclosure requirements that may not be applicable to the particular asset class or that may not align with how the particular asset class captures and stores data.

We also understand the asset-level data requirements may also affect other market participants. For instance, some investors may have used the services of data providers to obtain the type of data that will now be mandatory under the requirements we are adopting. As a result, these data providers may experience reduced demand for their data aggregation business as investors may no longer seek such services since these requirements may provide them access to similar data. We believe, however, that this concern is mitigated as these entities will also be able to access the publicly available data. As a result, these data providers may not need to gather this asset-level data from other sources, thereby reducing their costs to obtain the data. Further, third-party data providers have developed products to analyze and model the asset-level data. Since the asset-level data will be standardized it may increase the utility of their current products or allow them to develop new products, thus increasing demand for their data analysis business.

We note that commenters raised other concerns regarding the asset-level reporting requirements beyond the cost to implement the requirements. One concern, as noted above, is that the proposed asset-level data may result in the release of an originator's proprietary data.[181] A commenter noted that if originators determine that asset-level disclosures reveal their proprietary business model to competitors they may refrain from securitizing assets.[182] We note, however, that one commenter believed that the proprietary concerns were unfounded.[183] While we acknowledge competitive concerns still may exist, we believe that information we are requiring about the underlying assets, including information about the obligors, will provide investors and potential investors with information they need to perform due diligence and make informed investment decisions and therefore should be disclosed. We also note that some of the asset-level data that we are requiring to be disclosed are available to the public, for a fee, through third-party data providers.[184]

Another concern that some commenters raised was the potential for securities law liability for inaccuracies in data points that require so-called ''soft data.'' [185] The commenters suggested that soft data includes data that may originate from representations provided by an obligor at origination or may represent a subjective judgment of a third party, such as property valuations of an appraiser. We note commenters' concerns about the potential cost to verify data of this type and whether such data can be verified objectively. We are not, however, persuaded by commenters' suggestions that we address these concerns by providing issuers with the discretion to include or exclude soft data from their disclosures. As noted below, we believe the discretion to determine what data would be included or excluded from their disclosures would reduce the comparability of asset pools. Further, we note that much of the required soft data includes data that is commonly part of the universe of data that originators use to make a credit decision, and we believe that investors should have access to similar data for each loan in order to evaluate the creditworthiness of the assets that they are dependent upon for payment of the securities. We note that some soft data, as defined by commenters, has been included in pool-level information provided in prior registered offerings and thus is already subject to potential securities law liability. In some instances the data will provide investors a baseline to compare how certain characteristics of the asset have changed over time. Finally, an investor's analysis can take into account the age of such disclosures.

In addition to concerns about the accuracy of data points requiring soft data, some commenters expressed concern about potential liability cost for errors or inaccuracies in the responses provided to other data points. Assessing materiality for purposes of securities law liability for an error or inaccuracy in an individual data point would depend on a traditional analysis of the particular facts and circumstances.[186]

[179] *See* Section IX.B Transition Period for Asset-Level Disclosure Requirements.

[180] Under the proposal, asset pools containing only residential mortgages would need to provide, as applicable, the asset-level disclosures for residential mortgages and also the general item requirements applicable to all ABS. Under the new rules, if, for example, the asset pool contains residential mortgages, then issuers only need to provide the asset-level disclosures applicable to residential mortgages. As noted above, proposed data points in the general category remain outstanding for asset classes other than the ones we are adopting today.

[181] *See, e.g.,* letters from ABA I, AmeriCredit, ABAASA I, ASF II (expressed views of issuers only), AFSA I, BoA I, FSR, J.P. Morgan I, SIFMA I, and VABSS I (noting that for Auto ABS a competitor could take data on values such as credit score, LTV, and payment-to-income and combine it with other information (e.g., make, model, interest rate, loan maturity) to ascertain proprietary scoring models, build their own models or greatly improve the performance of their existing models).

[182] *See, e.g.,* letter from ABA I.

[183] *See* letter from AMI.

[184] *See* footnote 107 and accompanying text.

[185] *See* letter from ABA I.

[186] Whether any particular statement or omission is material will depend on the particular facts and circumstances. Information is material if ''there is

We agree with commenters that suggested that issuers should be able to provide narrative analysis of data in order to make their disclosure not misleading. Such additional explanatory disclosure can and should be added to the prospectus or the Form 10–D as may be necessary to make the asset-level disclosures, in the light of the circumstances under which they are made, not misleading.[187] Also, issuers that wish to provide other explanatory disclosure about the asset-level disclosures can provide such disclosures in a separate exhibit.[188]

We considered several possible alternatives to the new asset-level requirements we are adopting. Some alternatives we considered to address various concerns, including re-identification risk, included: Requiring more pool-level data in lieu of asset-level data, grouped account data in lieu of asset-level data, allowing a ''provide-or-explain'' type regime, only defining the type of information to be provided and allowing the registrant or other market participants to define the asset-level information or the Web site approach.[189]

We are concerned that these alternatives would be of limited benefit to investors, since they will not go far enough in providing them with information best suited to assessing the risk and return tradeoff presented by RMBS, CMBS, Auto ABS, debt security ABS and resecuritizations and to independently perform due diligence. Pool-level and grouped account data does not provide investors with the opportunity to develop the same level of understanding, because when loans or assets are aggregated into groups of information, certain characteristics of individual assets are lost. For example, investors may know how many loans fall in a particular loan-to-value range but may not know whether most loans are at the top, middle or bottom of that range.[190] This cross-sectional distribution of loans within a given loan-to-value range may have important implications for the pool's expected losses. A grouped account data approach groups loans based on certain loan characteristics, which does not allow investors to analyze the asset pool based on the loan characteristics the investors deem most important to their analysis. As a commenter noted, however, asset-level data provides investors the opportunity to analyze a broad set of loan characteristics and to assess risks based on the characteristics investors believe are most predictive of expected losses.[191] With standardized asset-level data in a machine readable format provided at issuance and over the life of a security, the data can be run through a risk model at issuance and over the life of a security to assess the risk profile of the transaction at issuance and any changes to the risk profile of the asset pool over time.

As noted above, we also considered the alternative suggested by some commenters that we require asset-level disclosure generally but allow an issuer or an industry group to define the disclosures. We also considered a provide-or-explain type regime that would permit an issuer to omit any asset-level data point and provide an explanation as to why the data was not disclosed.[192] We believe such approaches may limit the value of such disclosures. As noted above, the usefulness of asset-level data is generally limited unless the individual data points are standardized in terms of the definitions, the scope of information to be disclosed, and the format of the data points. A provide-or-explain regime may result in differing levels of disclosure provided about similar asset pools, as some may provide the required asset-level disclosures and others may exclude certain data points and only provide an explanation of why the information was excluded. This would inhibit the comparability of disclosures across ABS. Similarly, setting general asset-level disclosure requirements and allowing the issuer to define the data to be included and how the information is presented may result in differing levels of disclosure or different presentations of the data. This may limit the ability to compare across asset pools within the same asset class, which may reduce the usefulness of the data. Standardizing the information facilitates the ability to analyze the underlying asset-level data of a particular asset pool and the ability to compare the assets in one pool to assets in other pools.[193] As we note elsewhere in this release, we believe standardized disclosure requirements and making the disclosures easily accessible may facilitate stronger independent evaluations of ABS by market participants.

In addition to considering the alternatives we discussed above, we also considered adopting industry developed asset-level disclosure standards already in existence for RMBS and CMBS. We discuss in Section III.A.2.b.1 Residential Mortgage-Backed Securities and Section III.A.2.b.2 Commercial Mortgage-Backed Securities our consideration of adopting industry developed asset-level disclosure standards for these asset types.

Finally, as mentioned above, the final rules include several changes from the proposal. The changes are aimed at simplifying the requirements, addressing cost concerns and conforming our requirements, to the extent feasible, to other pre-existing asset-level disclosure templates. The discussions below address, for each asset type, the economic effects of the specific requirements, such as when the data is required and the types of

a substantial likelihood that a reasonable shareholder would consider it important'' in making an investment decision. The question of materiality is an objective one involving the significance of an omitted or misrepresented fact to a reasonable investor. *See TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438, 448–49 (1976) (stating that to fulfill the materiality requirement, there must be a substantial likelihood that the fact ''would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available''); *see also Basic* v. *Levinson,* 485 U.S. 224, 231–32 (1988).

Courts have analyzed materiality under Exchange Act Section 10(b) and Exchange Act Rule 10b-5, and Securities Act Sections 11 and 12(a)(2) in a similar fashion. *See, e.g., In re Donald J. Trump Casino Sec. Litig.,* 7 F.3d 357, 368 n.10 (3d Cir. 1993) (noting that while there are substantial differences in the elements that a plaintiff must establish under these provisions, they all have a materiality requirement and this element is analyzed the same under all of the provisions). *See also* Securities Act Sections 11, 12(a)(2) and 17(a), Securities Act Rule 408 [17 CFR 230.408]; Securities Act Sections 11 [15 U.S.C. 77k(a)], 12(a)(2) [15 U.S.C. 77l] and 17(a) [15 U.S.C. 17(a)]; Exchange Act Section 10(b) [15 U.S.C. 78j(b)); Exchange Act Rule 10b–5 [17 CFR 240.10b–5]; and Exchange Act Rule 12b–20 [17 CFR 240.12b–20].

[187] *See, e.g.,* Securities Act Rule 408 and Exchange Act Rule 12b–20 [17 CFR 229.408 and 17 CFR 240.12b–20].

[188] New Item 601(b)(103) Asset Related Documents of Regulation S–K is an exhibit that allows for explanatory disclosure regarding the asset-level data file(s) filed pursuant to Item 601(b)(102) Asset Data File. Item 601(b)(103) is required to be incorporated by reference into the prospectus. *See* Section III.B.5 New Form ABS–EE.

[189] *See* Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

[190] *See* letter from A. Schwartz (noting that ''[f]rom a statistical perspective, disclosing asset-level data to investors is materially superior to providing them with statistical summaries of the asset pool, because it conveys more information'').

[191] *See* letter from Prudential II.

[192] *See* letters from BoA I, Citi, and SIFMA I (expressed views of dealers and sponsors only). Some commenters also suggested that issuers should have the flexibility to modify the disclosures to address privacy concerns. *See, e.g.,* letters from ABA III and Securities Industry and Financial Markets Association and the Financial Services Roundtable dated Apr. 28, 2014 responding to the 2014 Re-Opening Release (''SIFMA/FSR II-dealers and sponsors'').

[193] *See* letters from MetLife I (stating that the Commission should require standardized disclosure templates with the relevant fields for each ABS sector with the key benefit of standard disclosure being a significantly enhanced ability for investors to compare and contrast different ABS transactions in connection with their investment decisions and ongoing portfolio management) and Prudential I (stating that if two sponsors within the same asset class can provide information on different standards, it will be impossible for investors to efficiently compare asset-level files).

disclosures required for each asset type. We also discuss the likely costs and benefits of the new rules and their effect on efficiency, competition and capital formation.

2. Specific Asset-Level Data Points in Schedule AL

This section is divided into several parts. Each part discusses the specific requirements we are adopting today for RMBS, CMBS, Auto ABS, debt security ABS and resecuritizations and highlights, for each asset class, the significant changes from the proposal.

(a) Disclosure Requirements for All Asset Classes and Economic Analysis of These Requirements

In the 2010 ABS Proposing Release, we proposed, between Schedule L and Schedule L–D, 74 general data points. We believed the proposed general item requirements captured basic characteristics of assets that would be useful to investors in ABS across asset types. As discussed below in Section III.B.2 The Scope of New Schedule AL, we have condensed the information previously proposed to be provided in either Schedule L or Schedule L–D into a single schedule, titled Schedule AL. Schedule AL enumerates all of the asset-level disclosures to be provided, if applicable, about the assets in the pool at securitization and on an ongoing basis.

We received a substantial number of comments directed at making technical changes to the data points and in some cases requesting we delete or add certain data points or that we change a data point to accommodate the characteristics of specified assets types.[194] Many commenters sought changes to the format of the information,[195] the range of possible responses for a particular data point, or the data point's title or definition in order to increase the usefulness of the information required, to address cost concerns or to align the data point with industry standards.[196]

To address comments that we revise data points to accommodate the characteristics of certain assets types, we integrated the proposed Item 1 General Requirements into the asset-specific requirements. This change permitted us to tailor the data points to each particular asset type and allowed us to further incorporate applicable industry standards. The data points we discuss below are incorporated into the rules for RMBS, CMBS, Auto ABS, debt security ABS and resecuritizations. In incorporating the proposed General Requirements into the requirements for each asset type, we are also making changes to the data points, based in large part on comments received, that we believe improve or clarify the disclosure, mitigate cost concerns and/or implement industry standards when we believe doing so would not materially diminish the value of the disclosures to investors.

Asset Number

We proposed that issuers provide a unique asset number for each asset that is applicable only to that asset and identify the source of the asset number.[197] We did not propose requiring that issuers use a specific naming or numbering convention. We asked for comment, however, about whether we should require or permit one type of asset number that is applicable to all asset types.[198] In response, several commenters urged that we recognize a specific type of asset numbering system currently in use within the industry for each asset type.[199] A few commenters were against a uniform number system that would apply across asset classes.[200] A few commenters, however, cautioned against requiring an asset number because privacy issues may arise if the asset number is associated with an individual.[201]

We are adopting, as proposed, that issuers provide for each asset in the pool a unique asset number applicable only to that asset and the source of the number.[202] We believe the use of an asset number is necessary and to the benefit of market participants, because it will allow them to follow the performance of an asset from securitization through ongoing periodic reporting. We remind issuers and underwriters that they should be mindful of the sensitive nature of the asset number and ensure that appropriate measures are taken to prevent the number from being associated with a particular person. While some commenters requested we adopt a specific type of identifier, we believe that identifiers for each asset may be generated in many ways and currently there is no single uniform asset identifier. These data points, as adopted, provide flexibility to issuers to use any numbering system, including those numbering systems that commenters recommended, and we believe this minimizes compliance costs. We are also adopting a data point, as proposed, that requires the identification of the source of the asset number. We recognize, however, that by not standardizing the numbering system, the usefulness of the data will be limited to the extent that investors intend to combine it with other data already incorporating a particular numbering system.

Underwriting Indicator

We proposed a data point that would disclose whether the loan or asset was an exception to defined or standardized underwriting criteria. The response to this data point was mixed. One commenter suggested that we correlate this data point with the then proposed Item 1111(a)(3) of Regulation AB that would have required disclosure on the underwriting of assets that deviate from the underwriting criteria disclosed in the prospectus.[203] Another commenter

[194] *See, e.g.,* letters from ASF I, ASF II, BoA I, CREFC I, Mass. Atty. Gen., MBA I, Mortgage Bankers Association dated Nov. 22, 2010 submitted in response to the 2010 ABS Proposing Release (''MBA II''), MetLife I, MISMO, SIFMA I, VABSS I, VABSS IV, Wells Fargo I and SFIG I.

[195] For example, proposed Item 1(a)(15) of Schedule L, ''Primary Servicer'' provided that the format of the response should be a ''text'' entry. Under this format the names of the servicers could be entered or some other identifier of services, such as the MERS organization identification number. One commenter suggested that the format of the response be a number entry and that we require the MERS ''Mortgage Identification Number'' or ''MIN.'' The MIN is an 18-digit number used to track a mortgage loan throughout its life, from origination to securitization to pay-off or foreclosure. We did not adopt this suggested change because there may be instances where a servicing organization may not have a MERS number. *See* letter from ASF I.

[196] For example, SIFMA I stated that the title of Item 1(a)(12) of Schedule L ''Amortization Type'' does not describe the two options, fixed or adjustable. They recommended changing the title to ''Interest rate type.'' We revised the data point title to ''Original interest rate type.'' SFIG I recommended that we add explanatory language for interest-only and balloon loans to the definition of proposed Item 1(a)(9) Original amortization term of Schedule L. *See* new Item 1(c)(5) of Schedule AL.

[197] *See* proposed Items 1(a)(1) and 1(a)(2) of Schedule L. If an issuer uses its own unique numbering system to track the asset throughout its life, disclosure of that number would satisfy this proposed item requirement.

[198] *See* the 2010 ABS Proposing Release at 23359.

[199] *See* letters from ASF I (supporting the use of CUSIP number in debt repackagings and resecuritizations and the ASF Loan Identification Number Code (''ASF LINC™'') for securitizations backed by assets other than securities), eSign, MERS, MISMO (eSign, MERS and MISMO each support the use of the MERS ''Mortgage Identification Number'' for real estate assets), and SIFMA I (supporting the use of CUSIP numbers in debt repackagings and resecuritizations).

[200] *See* letters from eSign and MISMO.

[201] *See* letters from CDIA and Epicurus (both suggesting that privacy issues could result if the asset number is published and then associated with asset records).

[202] Under this requirement each asset number should only be used to reference a single asset within the pool. If an asset in the pool is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

[203] *See* letter from ASF I. In the 2010 ABS Proposing Release we proposed to amend Item 1111(a)(3) of Regulation AB. At the time of the

suggested the data point be omitted because the time and resources to provide the disclosures were not necessary or desired.[204] This commenter also noted that if we adopt the disclosure, then we should more precisely define what is considered defined and/or standardized underwriting criteria to avoid confusion.[205] An Auto ABS commenter stated that the exception disclosure required by Item 1111(a)(8) is sufficient and therefore this data point should be eliminated, but if this data point is adopted, the Commission should instruct registrants to omit it if no exceptions to the underwriting guidelines are reported in the prospectus.[206] Another commenter stated underwriting standards often contain certain elements of discretionary authority for an underwriter to vary from the stated criteria and an exercise of this discretion does not constitute an exception.[207] This commenter also noted specific concerns about the application of this data point to CMBS. The commenter stated that underwriting criteria for commercial mortgage loans are generally not clearly prescribed and the judgment of the originator is commonly used rather than an objective test based on established mathematical or financial models. Therefore, we should only require disclosure of exceptions to underwriting criteria in cases where such criteria are well defined, are fundamental to the credit analysis and are consistently applied.[208]

In contrast, one commenter requested additional disclosure because some market participants use ''exception'' to refer to loans that are unacceptable under the underwriting guidelines (i.e. they do not comply with the underwriting guidelines and do not meet the ''compensating factor'' standard set out in the guidelines to otherwise allow the approval of such loans) and at other times market participants use the term ''exception'' to refer to loans that are acceptable under the underwriting guidelines because they demonstrated sufficient compensating factors. The commenter suggested we require disclosure on an asset-level basis of exceptions both with and without the presence of sufficient compensating factors, the compensating factors relied upon and the specific underwriting exception.[209] Another commenter noted that this data point is not provided in asset-level disclosures for offerings of CMBS based on market practice and this data point should only be required if underwriting criteria become defined or standardized for commercial or multi-family mortgages.[210]

The proposed amendments to Item 1111(a)(3) were incorporated into Item 1111(a)(8) of Regulation AB which was added to Item 1111 of Regulation AB in early 2011.[211] Item 1111(a)(8) requires issuers, in part, to disclose how the assets in the pool deviate from the disclosed underwriting criteria. Rule 193 implements Section 945 of the Dodd-Frank Act by requiring that any issuer registering the offer and sale of an ABS perform a review of the assets underlying the ABS.[212] This review provides a basis for the Item 1111(a)(8) disclosure discussed above. Under Rule 193, such review, at a minimum, must be designed and effected to provide reasonable assurance that the disclosure regarding the pool assets in the prospectus is accurate in all material respects. The release adopting Item 1111(a)(8) noted that where originators may approve loans at a variety of levels, and the loans underwritten at an incrementally higher level of approval may be evaluated based on judgmental underwriting decisions, the criteria for the first level of underwriting should be disclosed. In addition, Item 1111(a)(8) requires disclosure of the loans that are included in the pool despite not meeting the criteria for this first level of underwriting criteria.

In light of comments received and the subsequent adoption of Item 1111(a)(8), we are adopting this data point with modifications.[213] As we noted when adopting the changes to Item 1111(a)(8), originators may approve loans at a variety of levels, and the loans underwritten at an incrementally higher level of approval are evaluated based on judgmental underwriting decisions. Therefore, we believe it is appropriate to base the data point on the standards of Item 1111(a)(8) and, in particular, on whether the asset met the disclosed underwriting criteria or benchmark used to originate the asset. We revised this data point to state: ''indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.'' Since originators may approve loans at a variety of levels, and the loans underwritten at an incrementally higher level of approval may be evaluated based on judgmental underwriting decisions, the data point, as defined, will capture whether the loan or asset met the criteria for the first level of underwriting. We believe aligning this data point to Item 1111(a)(8) responds to comments, including the concerns raised by a commenter with respect to CMBS, and minimizes confusion because the data point does not rely on what constitutes an exception to a defined and/or standardized set of underwriting criteria and instead focuses on whether the loan or asset met the disclosed underwriting criteria. For the same reasons, we also believe it addresses concerns that underwriting standards often contain certain elements of discretionary authority for an underwriter to vary from the stated criteria without being considered an exception or that the disclosure may release proprietary underwriting standards.[214] We are not persuaded that disclosures, on an asset-level basis, of exceptions both with and without the presence of sufficient compensating factors, the compensating factors relied upon and the specific underwriting exception, are necessary. We believe such disclosure is unnecessary because this data point, as adopted, captures

proposal, we proposed to require a description of the solicitation credit-granting or underwriting criteria used to originate or purchase the pool assets, including any changes in such criteria and the extent to which such policies and criteria are or could be overridden. We proposed to revise the requirement to also require data to accompany this disclosure on the amount and characteristics of those assets that did not meet the disclosed standards. Further, if disclosure was provided regarding compensating or other factors, if any, that were used to determine that those assets should be included in the pool despite not having met the disclosed underwriting standards, then a description of those factors and data on the amount of assets in the pool that are represented as meeting those factors and the amount of assets that do not meet those factors would also be required. We discuss below that the proposed amendments to Item 1111(a)(3) were incorporated into Item 1111(a)(8) of Regulation AB.

[204] *See* letter from BoA I (without providing a costs estimate).

[205] *See* letter from BoA I (requesting confirmation that the proposed data point correlates to proposed Item 1111(a)(3)).

[206] *See* letter from VABSS IV.

[207] *See* letter from ABA I (suggesting that other than possibly in the context of RMBS, it would be preferable to permit textual disclosure of originators' trends in underwriting standards and risk-management activities because more specific disclosure may lead to the disclosure of proprietary underwriting standards, which may make the securitization markets unattractive and may also lead to less specific underwriting standards).

[208] *See* letter from ABA I.

[209] *See* letter from Mass. Atty. Gen.

[210] *See* letter from MBA II.

[211] *See Issuer Review of Assets in Offerings of Asset-Backed Securities,* Release No. 33–9176 (Jan. 20, 2011) [76 FR 4231] (the ''January 2011 ABS Issuer Review Release'').

[212] *See* Securities Act Rule 193 [17 CFR 230.193]. *See also* the January 2011 ABS Issuer Review Release.

[213] *See* new Items 1(c)(10), 2(c)(13), 3(c)(11), 4(c)(7), and 5(c)(12) of Schedule AL. Each of these items is titled underwriting indicator.

[214] *See* footnote 207.

whether an asset met the first applicable level of underwriting criteria.

We acknowledge a commenter's position, which was provided prior to the adoption of Rule 193, that a substantial expenditure of time and resources would be required to enable issuers to provide the proposed disclosures. We anticipate that in order to provide the new disclosure, an issuer could rely, in part, on the review that is already required in order for an issuer to comply with Rule 193. Since issuers can rely, in part, on the review that is required under Rule 193, issuers should incur less cost to provide this disclosure than if Rule 193 had not been implemented. We acknowledge that the information gained through a Rule 193 review may not provide all of the information needed to provide the disclosures.

Although issuers will incur potential costs to provide this disclosure, investors should benefit from the insight these disclosures will provide about the originator's underwriting of the pool assets and the originator's ongoing underwriting practices. For instance, the disclosures should provide investors the ability to identify the particular assets in the pool that did not meet the disclosed underwriting standards. Investors can then analyze whether these assets alter the risk profile of the asset pool and monitor the performance of these particular assets. In addition, we believe this information will allow investors to compare, over time, the performance of assets that met the disclosed underwriting criteria against those assets that did not meet the disclosed underwriting criteria used to originate the assets. This should allow investors to better evaluate an originator's underwriting practices.

Information About Repurchases

We proposed a data point to capture whether an asset had been repurchased from the pool.[215] If the asset had been repurchased, then the registrant would have to indicate through additional data points whether a notice of repurchase had been received,[216] the date the asset was repurchased,[217] the name of the repurchaser,[218] and the reason for the repurchase.[219]

One commenter suggested we clarify that the repurchase notice data point is intended to track whether a repurchase request has been made before the repurchase has been completed and add an option to indicate whether a repurchase request was made but the parties later agreed that a repurchase was not required.[220] Two commenters requested we delete the repurchase notice data point.[221]

The dealer and sponsor members of one commenter suggested we delete the data point identifying the name of the repurchaser because transaction documents will contain the name of the person obligated to make repurchases based on breaches of representations and warranties.[222] The investor members of the same commenter, however, suggested we retain the data point because multiple parties could be responsible for the repurchase of individual assets.[223]

We are adopting this group of data points with revisions in response to comments to align the data points with other disclosures about asset repurchases now required pursuant to the Dodd-Frank Act. As one commenter noted, Rule 15Ga-1 was adopted subsequent to the 2010 ABS Proposing Release.[224] Unlike the aggregated disclosures under Rule 15Ga-1, these data points provide transparency about fulfilled and unfulfilled demands for repurchase or replacement on an individual asset-level basis for investors in a particular transaction. We believe these data points provide investors with a more complete picture regarding the number of assets subject to a repurchase demand, including whether repurchases occur only after the receipt of a repurchase demand and the potential effects a repurchase may have on the cash flows generated by pool assets.

To address concerns about the costs to capture and report such data and to make the disclosure most useful and effective, we are aligning the data points to the type of demands that must be reported pursuant to Rule 15Ga-1. We believe this should minimize confusion, make the disclosures consistent with Rule 15Ga-1 disclosures, and help minimize costs because sponsors will already be required to capture such data to fulfill the disclosure requirements of Rule 15Ga-1. In particular, we are revising the titles and definitions of this group of data points in order to align them with the Rule 15Ga-1 disclosure requirements.[225] We expect that the information on the asset level should feed the aggregated disclosures already required pursuant to Rule 15Ga-1.[226]

We are also adding a data point to capture the status of an asset that is subject to a demand to repurchase or replace for breach of representations and warranties.[227] A commenter suggested that we should include an option to indicate assets subject to a repurchase or replacement demand, but where the relevant parties later agreed the repurchase or replacement was not required.[228] To address this concern, we based the coded responses for this data point on the requirements of Rule 15Ga-1. To this end, the data point captures whether the asset is pending repurchase or replacement (within the cure period); whether the asset was repurchased or replaced during the reporting period;[229] and whether the demand is in dispute, has been rejected or withdrawn. Finally, while not a requirement under Rule 15Ga-1, we are also adding ''98=Other'' to the list of coded responses. We believe adding ''98=Other'' accounts for dispositions of repurchase requests that

[215] *See* proposed Item 1(i) of Schedule L–D.

[216] *See* proposed Item 1(i)(1) of Schedule L–D.

[217] *See* proposed Item 1(i)(2) of Schedule L–D.

[218] *See* proposed Item 1(i)(3) of Schedule L–D.

[219] *See* proposed Item 1(i)(4) of Schedule L–D.

[220] *See* letter from SIFMA I.

[221] *See* letters from ASF I (requesting that we not adopt the repurchase notice data point because RMBS transactions do not typically require notices in connection with repurchases) and VABSS IV (noting that repurchase notices are rarely delivered in Auto ABS).

[222] *See* letter from SIFMA I (dealer and sponsors).

[223] *See* letter from SIFMA I (investors).

[224] *See* letter from VABSS IV (asserting that a repurchase data point should not be adopted because ''securitizers have been required to disclose repurchase demands pursuant to Rule 15Ga-1 of the Securities Exchange Act since February 14, 2012). *But see* letter from J. Calva (stating that investors need loan-level data in order to verify the accuracy of disclosures made under Rule 15Ga-1). Current Exchange Act Rule 15Ga-1 requires that any securitizer of an Exchange Act ABS provide tabular disclosure of fulfilled and unfulfilled demand requests aggregated across all of the securitizer's ABS that fall within the Exchange Act definition of ABS, whether or not these ABS are Securities Act registered transactions. *See* the Rule 15Ga-1 Adopting Release. With the passage of the Jumpstart Our Business Startups Act (Pub. L. 112–103, 126 Stat. 306 (2012)) (the ''JOBS Act'') the Exchange Act definition of ABS was redesignated from section 3(a)(77) to section 3(a)(79). As a result of these statutory changes, we are adopting with this release technical amendments throughout the CFR, including in Rule 15Ga-1, to reflect this redesignation.

[225] For example, new Item 1(i) Asset subject to demand of Schedule AL requires disclosure of whether during the reporting period the loan was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. New Item 1(i)(3) Demand resolution date of Schedule AL requires disclosure of the date the loan repurchase or replacement demand was resolved, rather than, as proposed, the date the notice was resolved. *See also* Items 2(g) and 2(g)(3), 3(h) and 3(h)(3), 4(h) and 4(h)(3), and 5(f) and (5)(f)(3) of Schedule AL.

[226] For instance, Rule 15Ga-1 requires disclosure of all demands; it is not limited to only those demands made pursuant to a transaction agreement. In cases where the underlying contracts do not require a repurchase notice to be made or where an investor makes a demand upon a trustee, consistent with Rule 15Ga-1, disclosure is required. *See* the Rule 15Ga-1 Adopting Release at 4498.

[227] *See* new Items 1(i)(1), 2(g)(1), 3(h)(1), 4(h)(1) and 5(f)(1) of Schedule AL.

[228] *See* letter from SIFMA I.

[229] If this response is provided it would indicate the asset is no longer in the pool.

may not fall into a category listed in the coded responses.

Two commenters suggested that we include a new data point to require issuers to provide the amount paid to repurchase the loan or lease from an Auto ABS transaction.[230] One of these commenters recommended that this new item replace the proposed repurchase indicator data point[231] because in Auto ABS there is not a lengthy period of time between an event requiring a repurchase and the actual repurchase as there may be in RMBS.[232] This commenter believed the repurchase amount would give timely indication that the loan has been repurchased. We believe that investors across asset classes would benefit from this data point and, therefore, we have added a repurchase amount data point to the final requirements for each asset class that is required to provide asset-level disclosures. The proposed repurchase indicator data point has been subsumed into another data point we are adopting, based on a comment received, titled ''zero balance code.''[233] The zero balance code requires the selection, from a coded list, of the reason that the loan's balance was reduced to zero. One option is to select, ''repurchased or replaced,'' which if selected would indicate the loan balance was reduced to zero because the loan was repurchased from the pool. In effect, this data point provides the same information as the repurchase indicator data point would have provided.

We also are adopting data points that capture the name of the repurchaser[234] and the reason for the repurchase or replacement.[235] Although the transaction documents will contain the identity of the party that is obligated to make repurchases based on breaches of representations and warranties, multiple parties could provide representations and warranties for a pool of assets and the party responsible for the repurchase of individual assets may differ.[236] We believe this data point will clarify that responsibility.

Reporting Period Beginning and End Dates

We proposed that the asset-level disclosures in a preliminary prospectus be provided, unless the data point specified otherwise, as of a recent practicable date, which we defined as the ''measurement date.''[237] We proposed that asset-level disclosures in a final prospectus be as of the ''cut-off'' date for the securitization, which would be the date specified in the instruments governing the transaction. This is the date on and after which collections on the pool assets accrue for the benefit of the asset-backed security holders. On an ongoing basis, the asset-level disclosures would be as of the end of the reporting period the Form 10–D covered.

A commenter believed that the proposed measurement dates were appropriate[238] and some commenters pointed out that the measurement date and cut-off date could be the same day.[239] We also received comments suggesting that some data points in proposed Schedule L were seeking data as of a date that was different than when the information was normally captured. For instance, some commenters noted that certain data points seek information as of the measurement date, but that the information is usually obtained during the underwriting process or at origination.[240] One of these commenters requested that we revise certain data points to clarify that the information was collected during the underwriting process or at origination.[241] Another commenter believed that the disclosure of data based on measurement dates and cut-off dates should be consistent with current industry practice regarding the frequency with which issuers can generate pool data.[242]

After considering comments received, we are adopting data points that require the disclosure of reporting period beginning and end dates in lieu of our proposal to require the measurement date and cut-off date.[243] We believe the date the asset-level information is provided in the prospectus should align with how information is normally captured and how it will be reported under the ongoing reporting requirements that will arise after issuance. Therefore, for a preliminary or final prospectus, the Schedule AL data is required to be provided as of the end of the most recent reporting period, unless otherwise specified in Schedule AL.[244] For periodic reports on Form 10–D, the Schedule AL data is required to be provided as of the end of the reporting period covered by the Form 10–D, unless otherwise specified in Schedule AL.

We recognize that this approach may reduce benefits to investors to the extent that some of the information disclosed may be stale. We believe, however, that this change should serve to address concerns that the proposal would require data to be captured at times different than when it is normally captured and thus result in undue issuer costs. To further address those concerns, we also revised some data points to clarify the ''as of'' date of the data required. If the data required is typically captured at a time other than the end of a reporting period, such as at origination, we revised the data point to clarify the ''as of'' date of the data required.[245] When making these changes, we either clarified the title, definition or both. These changes also help clarify whether we expect the response to a particular data point to remain static or be updated as new information becomes available. For instance, some data points request ''original'' or ''initial'' data or data as of ''origination.'' These data points require

[230] *See* letters from VABSS IV and Vanguard.

[231] *See* proposed Item 1(i) of Schedule L–D.

[232] *See* letter from VABSS IV.

[233] *See* letter from ASF I.

[234] *See* new Items 1(i)(4), 2(g)(4), 3(h)(4), 4(h)(4) and 5(f)(4) of Schedule AL.

[235] *See* new Items 1(i)(5), 2(g)(5), 3(h)(5), 4(h)(5) and 5(f)(5) of Schedule AL. We aligned the coded list to field 26 from the ASF Project RESTART RMBS Reporting Package. *See* letter from ASF I.

[236] *See* letter from SIFMA I. The dealer and sponsor members represented by this commenter suggested that we not adopt this data point because the transaction agreements would contain the identity of the party that is obligated to make repurchases based on breaches of representations and warranties, but the investor members represented by the same commenter suggested that we adopt this data point because multiple parties could provide representations and warranties for a pool of assets and the party responsible for the repurchase of an individual asset may differ.

[237] For example, proposed Item 1(a)(10) Original interest rate of Schedule L would require ''the rate of interest at the time of origination of the asset.''

[238] *See* letter from Prudential I.

[239] *See* letters from ABA I (stating that for RMBS the measurement date used for the preliminary prospectus will be the same date as the cut-off date used for the final prospectus), MBA I (noting consistency with standard CMBS industry practice as well as CMBS investor expectations), and SIFMA I.

[240] *See* letters from BoA I (noting that some disclosure items in proposed Schedule L relate to information obtained from borrowers and is verified to the extent provided by an originator's underwriting policies and procedures for the underwriting process) and Wells Fargo I (noting that some data is collected and possibly captured on an origination system).

[241] *See* letter from Wells Fargo I.

[242] *See* letter from ABA I (suggesting that it would be burdensome or impossible to provide intra-month updates because of system limitations that would prevent more frequent data collection and that data is only comparable if consistently collected at the same point in time).

[243] *See e.g.,* new Items 1(b)(1) and 1(b)(2), 2(b)(1) and 2(b)(2), 3(b)(1) and 3(b)(2), 4(b)(1) and 4(b)(2), and 5(b)(1) and 5(b)(2) of Schedule AL.

[244] Information should be provided through the close of business on the last day of the reporting period and not some earlier point in time on that day.

[245] *See, e.g.,* new Items 1(c)(6) Original interest rate; 1(c)(29)(xxi) HELOC draw period; 1(c)(30)(iii) Prepayment penalty total term; 1(c)(31)(ii) Initial negative amortization recast period; 1(c)(31)(viii) Initial minimum payment reset period; and 1(d)(2) Occupancy status of Schedule AL.

disclosure of data about the underlying loan at origination before any modifications.[246] The responses to these data points will be static and we do not expect updates to these responses over the life of the loan. The responses to these data points help to establish a baseline of the characteristics of each loan and will help investors monitor changes in the characteristics of an asset over the life of the loan. Therefore, unless the data point specifies a different ''as of'' date (e.g., asking for data created at origination or at some other time), the data should be as of the end of the reporting period.

Format of the Responses

We proposed that responses to the asset-level disclosure requirements be a date, number, text, or coded response. Consistent with the proposal, the final requirements we are adopting require responses as a date, a number, text, or a coded response. We received a number of comments that sought changes to the format of the information to be collected, the range of possible responses, or the data point's title or definition.[247] As noted elsewhere, we considered each of these comments and are making changes to mitigate cost and burden concerns and to implement industry standards when we believe doing so would not materially diminish the value of the disclosures to investors.

In the 2010 ABS Proposing Release, we also noted that situations may arise where an appropriate code for disclosure may not be currently available in the technical specifications. To accommodate those situations, the proposals provided a coded response for ''not applicable,'' ''unknown'' or ''other'' and many of the data points we are adopting include these potential responses. We noted in the proposing release that a response of ''not applicable,'' ''unknown'' or ''other'' would not be appropriate responses to a significant number of data points and that registrants should be mindful of their responsibilities to provide all of the disclosures required in the prospectus and other reports.[248] One commenter believed this language called into question the availability of Rule 409 under the Securities Act.[249] This commenter and another commenter requested that we clarify the circumstances under which issuers may rely on Rule 409 to omit responses to asset-level data points in a registered offering.[250] The rules we are adopting do not affect the availability of Rule 409 or Exchange Act Rule 12b–21. We remind issuers of the requirements of Rule 409 and, in particular, that if any required information is unknown and not reasonably available to the issuer, the issuer is to include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person who has the information and stating the result of a request made to such person for the information. Also, in situations where an issuer selects ''not applicable,'' ''unknown,'' or ''other,'' we encourage issuers to provide additional explanatory disclosure in an ''Asset Related Document'' [251] describing why such a response was appropriate along with any other relevant detail.[252]

(b) Asset Specific Disclosure Requirements and Economic Analysis of These Requirements

Each section below discusses, for each asset type for which asset-level disclosure is required, the proposal, comments and final requirements applicable to each asset class and the anticipated economic effects arising from the final requirements applicable to each asset class, including the likely costs and benefits of the requirements and their effect on efficiency, competition and capital formation. Each section also discusses changes made to each group of proposed data points, including the addition of data points to or deletion of data points from the proposed group of data points.

(1) Residential Mortgage-Backed Securities

The proposal for RMBS included a total of 362 total data points between the 74 proposed general item requirements and the 288 data points specific to RMBS in proposed Schedules L and L–D. Based on the changes described below, the final requirements for RMBS, which are set forth in Item 1 of Schedule AL, include 270 data points. As noted in the 2010 ABS Proposing Release, we took into consideration standards that have been developed for the collection and/or presentation of asset-level data about residential mortgages. For instance, ASF had published an investor disclosure and reporting package for residential mortgage-backed securities. The package is part of the group's Project RESTART. This disclosure and reporting package includes standardized definitions for loan or asset-level information and a format for the presentation of the data to investors.[253] We also noted that another organization, the Mortgage Industry Standard Maintenance Organization (''MISMO''), has been developing a data dictionary of standardized definitions of mortgage related terms and an XML format for presenting such data.[254] We also considered the data that Fannie Mae and Freddie Mac receive from sellers of mortgage loans. In addition, we considered the data that the Office of the Comptroller of the Currency and the Office of Thrift Supervision receive from banks.[255]

As stated in the 2010 ABS Proposing Release, in developing the proposal, the staff surveyed the definitions used for data collected by the organizations mentioned above, as well as other industry sources. The scope of the

[246] If a loan has been modified either prior to securitization or after securitization, responses to data points titled ''original'' or that are requiring data as of origination or underwriting should consist of data about the original loan prior to any loan modification.

[247] For instance, a commenter suggested that for numbers, the format should indicate whether the number should be displayed as an integer or as a decimal; for dates, the date field should specify whether the date should be displayed as a month-year (MM/YYYY) or month-day-year (MM/DD/YYYY); and for data points requiring a ''Yes'' or ''No,'' the response should be coded as ''1=Yes, 0=No'' rather than ''1=Yes, 2=No.'' *See* letter from ASF I.

[248] *See* Securities Act Rule 409 [17 CFR 230.409] and Exchange Act Rule 12b–21[17 CFR 240.12b-21].

[249] *See* letter from Citi.

[250] *See* letters from Citi and SIFMA I (expressed views of dealer and sponsors only). *See also* letters from ABA I (suggesting that the final rules should recognize that some information may not be available to the sponsor and, therefore, cannot be provided) and BoA I (suggesting that due to the significant quantity and detail of the proposed asset level data requirements that we adopt, consistent with Securities Act Rule 409, a ''comply-or-explain'' regime in which data would either be disclosed, or if not disclosed, the basis for refraining from providing the disclosure would be provided).

[251] *See* Item 1111(h)(5) of Regulation AB.

[252] For example, Item 1(c)(29)(i) Original ARM Index of Schedule AL requires the issuer to ''specify the code that describes the type and source of index to be used to determine the interest rate at each adjustment'' and one possible response is ''98=Other.'' If the issuer selects ''Other'' for this data point we encourage the issuer to provide detail about the index used to calculate the adjustable rate. The issuer could file the disclosure in an Asset Related Document filed as an exhibit to Form ABS–EE.

[253] *See* American Securitization Forum RMBS Disclosure and Reporting Package Final Release (July 15, 2009) *available at http://www.americansecuritization.com/search/issuesearch.aspx?q=disclosure%20and%20reporting%20package.*

[254] MISMO is a not-for-profit subsidiary of the Mortgage Bankers Association. The MISMO data dictionary is *available at http://www.mismo.org/Specifications/ResidentialSpecifications.htm.* MISMO standards are used to exchange standardized information about mortgages among mortgage lenders, investors in real estate and mortgages, servicers, industry vendors, borrowers and other parties.

[255] *See* ''OCC/OTS Mortgage Metrics Loan Level Data Collection: Field Definitions,'' Jan. 7, 2009, *available at http://www.occ.treas.gov/ftp/release/2009-9a.pdf.*

proposed requirements was based mainly on information required to be provided to Fannie Mae and Freddie Mac for each loan sold to them or contained in the disclosure and reporting package for residential mortgage-backed securities developed by ASF's Project RESTART. We did not, however, include every requirement included in these packages. The presentation of the asset-level information was based, in part, on how information was presented under Project RESTART because that reporting template was designed specifically for reporting asset-level data about RMBS transactions to investors.

In response to the proposal, issuers, trade associations, investors and others generally supported the Commission's effort to increase transparency in the RMBS market.[256] Commenters differed, however, on the approach to requiring standardized asset-level data. Some commenters, mainly investors, expressed their support for the proposed data points. One investor group stated the granularity of the proposed data points was necessary because the information is critical.[257] They noted that, unlike a corporate security, investors in structured finance can only look to the assets in the pool for their return and possibly to external credit enhancement if provided. Another investor stated that the proposal will enhance the ability of investors to evaluate the ongoing credit quality of mortgage loan pools and increase market efficiency.[258] This investor also noted that the disclosures will provide new transparency into loan servicing operations. Another commenter believed that granular asset-level data is essential to restoring investor confidence in the RMBS markets and a critical component in encouraging greater analysis by investors of RMBS transactions and reducing reliance on credit ratings.[259]

In addition to the concerns commenters raised with asset-level disclosure requirements that applied across asset classes, some commenters expressed concerns with certain proposed RMBS requirements. For instance, commenters were concerned with the granularity of some proposed data points,[260] with the potential for certain disclosure to compromise individual privacy,[261] and whether some of the disclosures were necessary or material to an investment decision.[262] Several commenters suggested we follow the MISMO data standards [263] and two commenters suggested we incorporate more of the reporting package developed under Project RESTART into the final requirements.[264]

After considering the comments received, we are adopting, as proposed, asset-level disclosures specific to RMBS, with some modification to individual data points, and the addition and deletion of some data points from the group of proposed data points, as described in more detail below. Under the final rules, issuers are required to disclose the information described in Item 1 of Schedule AL for each mortgage in the pool, as applicable.[265] These requirements include information about the property, mortgage, obligor's creditworthiness, original and current mortgage terms,[266] and loan performance information.[267]

We believe that the asset-level requirements we are adopting for RMBS will benefit investors and other market participants by providing them with a broader picture of the composition, characteristics and performance of pool assets, which we believe is critical to an investor's ability to make an informed investment decision about the securities. Further, while the requirements are granular, we believe the scope of the disclosures is consistent with the information that Fannie Mae and Freddie Mac require for each loan sold to them or that would likely be collected by participants in Project RESTART.[268] We believe the disclosures will facilitate investor due diligence regarding RMBS, allow investors to better understand, analyze and track the performance of RMBS, and will, in turn, allow for better pricing, reduce the need to rely on credit ratings and increase market efficiency.

The format of the final asset-level requirements remains based, at least in part, on how information was presented under Project RESTART. In developing the final requirements, we considered, however, the different formats currently available for the presentation of asset-level data about residential mortgages. For instance, we note that since the 2010 ABS Proposing Release, Fannie Mae and Freddie Mac have begun receiving asset-level data prepared in accordance with MISMO data standards for each loan they purchase.[269] As a result, we understand that a number of market participants, including mortgage

[256] *See, e.g.,* letters from the American Society of Appraisers dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''ASA''), Beached Consultancy, BoA I, Capital One I, Citi, Community Mortgage Banking Project dated July 30, 2010 submitted in response to the 2010 ABS Proposing Release (''CMBP''), and MetLife I.

[257] *See* letter from AMI.

[258] *See* letter from MetLife I.

[259] *See* letter from ASF I.

[260] *See* letter from CMBP (suggesting that the following data points proposed in Schedule L fell into the category of requiring excessive detail and, without explaining why, suggesting they would not be useful to investors: Items 2(a)(18)(xv) ARM round indicator; 2(a)(18)(xvi) ARM round percentage; 2(b)(6) Original property valuation type; (2)(b)(7) Original property valuation date; 2(b)(8) Original automated valuation model name; 2(b)(9) Original AVM confidence score; 2(b)(10) Most recent property value; 2(b)(11) Most recent property valuation type; 2(b)(12) Most recent property valuation date; 2(b)(13) Most recent AVM model name; 2(b)(14) Most recent AVM confidence score). We are adopting most of these data points as we believe they provide valuable information to investors with respect to property valuations and ARM loans. *See* new Items 1(c)(29)(xiv) ARM round indicator; 1(c)(29)(xvi) ARM round percentage; 1(d)(5) Most recent property value; 1(d)(6) Most recent property valuation type; 1(d)(7) Most recent property valuation date; 1(d)(8) Most recent AVM model name; and 1(d)(9) Most recent AVM confidence score. *But see* letter from AI (indicating support for the Commission's proposal to increase transparency and investor understanding of loan and property level information and the ''tremendous amount of information contained in real estate appraisals today that is underutilized by investors'').

[261] *See, e.g.,* letters from ASF I, CU, and WPF I. *See also* Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

[262] *See, e.g.,* letters from Citi (stating that many data points had ''not been weighed for materiality or shown to affect the performance of the securities or the pricing of securities''), MBA I (suggesting that we limit the amount of ongoing information to only those items that are critical to investors) and SIFMA/FSR I-dealers and sponsors (requesting clarity on whether any of the asset-level data may be considered ''material'' under the securities laws and whether disclosure of asset-level data as proposed complies with privacy laws).

[263] *See, e.g.,* letters from eSign, MBA I, MERS, and MISMO.

[264] *See* letters from ASF I and Wells Fargo I.

[265] Our reference to ''as applicable'' means that if a particular data point enumerated in the requirements does not apply to the assets underlying the security, then a response to that data point is not required. For example, if the asset pool of residential mortgages consists only of fixed-rate mortgages, responses to all of the data points related to adjustable rate mortgages need not be included in the data file.

[266] This includes, but is not limited to, information about loans with adjustable-rates, interest only, balloon payment and negative amortization features.

[267] This includes, but is not limited to, information about payments scheduled and received, loan modifications and other loss mitigation activities.

[268] We are not adopting certain proposed requirements that are not required by Fannie Mae and Freddie Mac or would not likely be collected by participants in Project RESTART because some of the information is too granular and some of the same activity is captured by other data points. For example, proposed Items 2(b)(19)(i) through 2(b)(19)(xiii) related to manufactured housing and proposed Items 1(l)(2)(i) through 1(l)(2)(ii) related to pledged prepayment penalties are being omitted from the final requirements.

[269] *See* Fannie Mae Loan Delivery Data requirements *available at https://www.fanniemae.com/singlefamily/uniform-loan-delivery-dataset-uldd. See also* Freddie Mac Product Delivery requirements *available at http://www.freddiemac.com/singlefamily/secmktg/uniform_delivery.html.*

originators and servicers, likely capture, store and communicate data in a MISMO format. Therefore, we considered whether the asset-level disclosures should be provided following the MISMO format.[270]

We are not persuaded, however, that our reporting requirements should follow the MISMO format. We believe that the format for the presentation of the asset-level data we are adopting is more investor-friendly, standardizes how the information is to be provided to investors and is easier to review. Also, the reporting package developed under ASF's Project RESTART was designed with the involvement of RMBS investors and issuers, which we believe provides some indication that issuers and investors support the disclosure and reporting of asset-level data about RMBS transactions based on that format. Furthermore, we note that since the Project RESTART standards were released, the few registered offerings of RMBS that have occurred have provided data based on the standards set under Project RESTART as part of their offering materials. We also believe this provides some indication that issuers and investors support this disclosure format. We also note that investors did not submit comment letters suggesting asset-level data for RMBS be presented in a MISMO format. Finally, we also considered that asset-level information being released by Fannie Mae and Freddie Mac does not appear to be presented in a MISMO format, although we note that the disclosures are likely compiled from asset-level information submitted to them that is in a MISMO format.[271]

While some data points we are adopting have minor differences to comparable data definitions contained in MISMO's data dictionary, we believe that most data points we are adopting are consistent with the information included in the MISMO data dictionary.[272] We believe that systems could be programmed, albeit at some cost, to combine data provided in response to multiple MISMO data definitions to one of our required data points.[273] Therefore, we believe that data originating in the MISMO data format could be compiled to comply with the new rules for reporting to RMBS investors so the costs of implementing the requirements may be limited to the extent that some MISMO data definitions overlap with data points we require.

We understand, however, that requiring data points that deviate from how issuers capture and store data may raise costs for both issuers and investors because issuers will need to create new systems or adjust their current systems to provide the data to satisfy our rules. In addition, investors will need to adjust their existing tools to read and analyze the newly required data. To further minimize the need to revise systems to provide the required data, we are revising data points to better align with MISMO data definitions. If a proposed data point and a MISMO data definition require the same or similar data and aligning to the MISMO data definition would not affect the value of the information or deviate from how information is reported under the requirements, we revised the proposed data point to better align with the MISMO data definition.[274] We believe these changes will help to minimize any burden or costs that may arise from the reporting of similar information under different standards.

We also acknowledge that some disclosures we are requiring are not part of the MISMO data dictionary or provided to Fannie Mae and Freddie Mac. Many of these disclosures relate to the ongoing performance of pool assets. We are requiring these disclosures so that an investor may conduct his or her own evaluation of the risk and return profile of the pool assets at issuance and throughout the life of the investment.

We also considered the alternative of requiring asset-level data generally and allowing the industry to develop the reporting requirement. While issuers in recent RMBS offerings have been providing asset-level disclosure in line with the disclosure templates developed by Project RESTART, providing such data to investors in this format is not mandatory. As noted above, we believe that, unless asset-level disclosures are standardized across all issuers, the benefits of asset-level data is generally limited. We believe that, without requiring and standardizing the asset-level requirements, issuers may choose to not provide asset-level data to investors, provide it inconsistently, or provide it under differing standards. These alternatives would limit the ability for investors and market participants to cost-effectively compare and analyze offerings of RMBS.

Finally, we also received many comments directed at individual data points, many of which were seeking changes to the format of the information, the range of possible responses for a particular data point, or the data point's title or definition. Other commenters made suggestions on how we could make the data points better align with an industry standard. We also received comments suggesting that certain data points should not be required if the data is derivable from other required data points.[275] We considered each of these comments, and we made changes that we believe improve or clarify the disclosure,[276]

[270] In considering this alternative, we noted that MISMO had developed a data dictionary of standardized definitions of mortgage related terms and an XML format for presenting such data. We also recognized that the MISMO package does not define what data should be provided in any particular circumstance, but instead is a dictionary of defined loan or asset-level terms that could be used in the development of a reporting standard. We also recognized that the definitions used in MISMO's data dictionary are defined for a general purpose and are not structured for a particular purpose, such as investor reporting.

[271] Currently, Fannie Mae and Freddie Mac provide on their Web sites a portion of the information they receive about the loans they purchase. At this time, Fannie Mae publicly discloses approximately 50 items of asset-level disclosure at issuance and on a monthly basis for their newly-issued single-family MBS. *See* Fannie Mae's Uniform Loan Delivery Dataset *available at https://www.fanniemae.com/singlefamily/uniform-loan-delivery-dataset-uldd.* Also, Freddie Mac currently publicly discloses approximately 85 items of asset-level disclosure at issuance and on a monthly basis for all newly issued fixed-rate and adjustable-rate mortgage participation certificate securities. *See* Freddie Mac's Loan-Level Delivery Dataset *available at http://www.freddiemac.com/singlefamily/sell/uniform_delivery.html.*

[272] *See* footnote 254. *See also* letter from MISMO (indicating that for RMBS the data points proposed in Item 1 General Requirements of Schedule L approximately 80% of the proposed data requested is a direct match to the MISMO standards, with 14% a close match and 6% with no match and that other tables applicable to RMBS had a similar pattern).

[273] For instance, we note that in many cases there is a direct match between a proposed data point and the MISMO data definition. Further, in many instances multiple fields in the MISMO data dictionary could be combined to respond to a data point. An example will best illustrate the differences between the asset-level requirements adopted today and how information would be reported under a MISMO format. For instance, we are adopting Item 1(c)(30)(iii) Prepayment penalty total term, which requires the total number of months after the origination of the loan that the prepayment penalty may be in effect. This single data point defines the information required (prepayment penalty period), how to report the information (in months) and the time frame the information represents (from origination). In contrast, we believe under MISMO, this data point would be provided through the responses to several MISMO data definitions. One MISMO data definition defines the form of count, such as the number of periods the prepayment penalty applies. A second MISMO data definition would define what constitutes a period (e.g., day, week, month, and year). A third MISMO data definition indicates, for a group of responses, whether the information was as of closing, the current reporting period, at modification or at some other time frame. This approach allows the entity reporting the information to define prepayment penalty period by day, week, month or year.

[274] *See, e.g.,* letters from eSign, MBA I, MERS, and MISMO (all suggesting that the final requirements follow the MISMO standards).

[275] *See* letters from ASF I and Wells Fargo I.

[276] For example, we proposed a data point that would require issuers to indicate the percentage of

mitigate cost and burden concerns and/or implement industry standards when doing so would not materially diminish the value of the disclosures to investors.

In addition to revising the data points to align with industry standards or to address comments received,[277] we omitted some data points that were proposed for other reasons, such as to address concerns about disclosure of sensitive information or reduce repetition. As discussed below, certain proposed data points would have required disclosure of sensitive information and could have increased the re-identification risk.[278] While the changes we are making should reduce the risk of re-identification and the related privacy concerns, we do not believe that the changes will limit investors' ability to conduct due diligence and make informed investment decisions.

As noted below, proposed Schedules L and L–D contained identical or substantially identical data points, so by aggregating the schedules we are able to omit one of the identical or nearly identical data points.[279] We also proposed data points that would have required information about ARM loans that were modified during a reporting period. This information would have included pre-modification and post-modification characteristics of the ARM loans. We are not adopting the pre-modification data points since investors will have access to pre-modification information through other asset-level data.[280] We also aggregated several data points into either one data point or fewer data points based on comments received.[281] We are omitting some proposed data points in favor of other data points that we are adding to the requirements to address comments received. For instance, as discussed further below, we replaced some data points that capture advances with data points that disclose different categories of advances and how those advances were reimbursed.[282] We are also omitting, based on comments received, data points that relate to the Home Affordable Modification Program, a temporary government program, over concerns about the value of these data points over other modification data points and about adopting data points for a temporary government program.[283] We also are not adopting a proposed data point that commenters suggested would provide limited value to investors.[284]

Some commenters, however, suggested we expand the asset-level disclosures to include more data points than proposed.[285] For instance, commenters suggested adding data points that would correlate to information captured in ASF's Project RESTART disclosure and reporting template,[286] that would capture information about government sponsored loan modification programs,[287] and debt-to-income (''DTI'') ratios or property valuations.[288] Another commenter suggested that we add data points that increase the granularity of certain obligor-related data.[289] A commenter also suggested adding data points that captured more information about the characteristics of modified loans.[290] We added those data points to the extent we believe the data point improves or clarifies the proposed requirements or aids an investor's ability to make an informed investment decision, monitor loan performance for ongoing investment decisions, or understand loss mitigation efforts without significantly increasing re-identification risk.[291] We also took into consideration whether issuers have ready access to the information and whether requiring the information in the format requested would place an undue burden on issuers or market participants. The final requirements do not include every data point that commenters recommended we add because we are concerned they could impose an undue burden and we are not persuaded that the data would aide an investor's ability to analyze or price the security or monitor its ongoing performance. We believe that, to the extent issuers want to provide additional asset-level disclosures in order to capture the unique attributes of a particular pool, issuers can provide the additional asset-level disclosures in an Asset Related Document.[292]

We discuss below the significant comments we received about individual data points along with the revisions we have made in response to those comments.

Information About Payment Status and Payment History

The proposal included a group of data points that would require disclosure of information about the status of required payments. These data points would capture, both at the time of the offering and on an ongoing basis, current

mortgage insurance coverage obtained. In response to comments, we revised the data point to confirm that the percentage disclosed should represent the total percentage of the original loan balance that is covered by insurance (e.g., 40% for an insurance policy that covers payment default only from 60% of the loan balance to 100% of the balance). *See* new Item 1(f)(2) of Schedule AL.

[277] As noted elsewhere, we made revisions to the title, definition or required response of some data points, in part, based on comments received. As noted in Section III.A.2.a) Disclosure Requirements for All Asset Classes and Economic Analysis of These Requirements, these changes include changes to the definition or title to clarify when the data should be captured. Other changes include, based on comments received, technical changes to clarify how the information should be reported. For instance, data points capturing ''Date'' were changed to ''YYYY/MM'' and data points requiring a ''%'' were changed to ''number.'' We also made revisions to make the terminology used throughout the template consistent. For example, in some instances, certain data points used the term ''note rate'' and others used ''interest rate.'' For consistency, we use ''interest rate'' throughout.

[278] *See* Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

[279] *See* Section III.B.2 The Scope of New Schedule AL.

[280] The following proposed data points were omitted from Schedule AL: Items 2(e)(4) Pre-modification interest (note) rate; 2(e)(7) Pre-modification P&I payment; 2(e)(10) Pre-modification initial interest rate decrease; 2(e)(12) Pre-modification subsequent interest rate increase; 2(e)(14) Pre-modification payment cap; 2(e)(17) Pre-modification maturity date: 2(e)(19) Pre-modification interest reset period (if changed); 2(e)(21) Pre-modification next interest rate change date; and 2(e)(26) Pre-modification interest only term.

[281] For instance, a data point was added to the final requirements to capture why a loan balance was reduced to zero. *See* new Item 1(32)(g)(ii) of Schedule AL. This data point includes a coded list of reasons why the loan balance was reduced to zero, such as the loan was liquidated, repurchased, or paid off. As a result, the following proposed data points contained in Schedule L–D were omitted from the final requirements: Items 1(i) Repurchase indicator; 1(l)(1) Paid-in-full indicator; 1(j) Liquidated indicator; 1(k) Charge-off indicator; 2(h) Deed-in-lieu date; and 2(l)(7) Actual REO sale closing date.

[282] See the discussion further below in this section titled Advances: Principal, Interest, Taxes and Insurance, and Corporate.

[283] *See* proposed Items 2(e)(47) through 2(e)(47)(x) of Schedule L–D.

[284] We proposed a data point that would have required issuers to provide the date on which the original LTV ratio was calculated. *See* proposed Item 2(b)(17) of Schedule L. Some commenters suggested we not adopt this data point as this date is immaterial because the date on which the value used in the calculation was determined is more important. *See* letters from ASF I and SIFMA I. We are not adopting this data point as we agree with commenters that this date is not necessary given that the date on which the value used in the calculation was determined is required to be provided.

[285] *See, e.g.,* letters from ASF I, CU, MSCI, Wells Fargo I and SFIG I.

[286] *See* letters from ASF I and Wells Fargo I. For example, ASF I suggested that, like in Project RESTART, we include a 4506–T indicator data point, a paid-in-full amount data point and master servicer, special servicer and subservicer data points. Because these data points are consistent with our other requirements and capture information that should be readily available to issuers, we have added them. *See* new Items 1(e)(8), 1(g)(30), 1(h)(3), 1(h)(4) and 1(h)(5) of Schedule AL.

[287] *See* letter from Wells Fargo I.

[288] *See* letter from Mass. Atty. Gen.

[289] *See* letter from SFIG II (also suggesting changes to clarify certain asset-level data points).

[290] *See* letter from Wells Fargo I.

[291] *See* Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

[292] *See* Section III.B.4 Asset Related Documents.

delinquency status,[293] the number of days a payment is past due,[294] and current payment status.[295] In addition, on an ongoing basis, a data point would capture the payment history over the past twelve months.[296]

One commenter suggested that we add, revise or delete data points in this group in order to align with servicing practices or to increase transparency.[297] In lieu of the proposed data points capturing current delinquency status, current payment status and the number of days a payment is past due, we are adopting, based on comments received, the following data points: Most recent 12-month pay history,[298] number of payments past due [299] and paid through date.[300] We discuss below the group of data points we are adopting. Taken together, we believe this group of data points should provide insight into the payment performance of each pool asset and allow investors to track delinquencies.

Paid Through Date

The proposed data point titled ''Number of days payment is past due'' would have required disclosure, at the time of the offering, of the number of days between the scheduled payment date and the cut-off date if the obligor did not make the full scheduled payment. The proposed ongoing disclosure requirements included a similar data point, but required the number of days between the scheduled payment date and the reporting period end date, instead of the cut-off date. A commenter indicated the final requirements should omit the proposed data point because servicers currently track delinquencies in 30-day intervals, measured on a monthly basis, rather than number of days past due at any given date, including the reporting date, and because the cost to capture the proposed information is not justifiable.[301] As an alternative, the commenter suggested the number of days past due could be derived from the interest paid through date reported in proposed Item 2(a)(14) of Schedule L and the measurement date.

We are not adopting, as a commenter suggested, the data point titled ''Number of days payment is past due'' because the proposed data point may have required data that differs from how data is captured.[302] We believe an alternative approach may provide investors similar information with lower costs to issuers. We believe investors can derive information about the number of days payment is past due from the date through which the loan is paid. Therefore, to address the commenter's concern and provide information in each report to derive the number of days a payment is past due, we are adopting a data point titled ''Paid through date'' which requires disclosure of the date the loan's scheduled principal and interest is paid through as of the end of the reporting period.[303] For each reporting period the response to this data point will disclose, regardless of when the last payment was made, the date the loan is paid through. The response to this data point will also indicate when a loan is paid several months in advance. We believe this approach addresses the commenter's cost concerns because the required information should be readily available.[304]

Most Recent 12-Month Pay History

The proposed data point titled ''Current delinquency status'' would have required that issuers disclose the number of days the obligor is delinquent at the time of the offering [305] and on an ongoing basis.[306] One commenter suggested that for RMBS we replace this data point with a data point contained in the Project RESTART disclosure package that required a string indicating the payment status per month over the most recent 12 months.[307] The commenter stated this string, with the addition of foreclosure and REO disclosures, would provide considerably more useful information than the proposed data point and would subsume the proposed data point instead of requiring the number of days an obligor is past due. We are persuaded that a payment history data point indicating the payment status per month over the most recent 12 months would provide more useful information than the number of days an obligor is past due. In addition, we believe, as a commenter suggested, that the payment history data point subsumes the proposed data point. Therefore, we are adopting a payment history data point and omitting the proposed current payment status data point.[308] Because this information should be readily available to issuers for the entire history of the loan, we believe any additional costs incurred from providing the disclosures in the format requested, to the extent that such format differs from how such information is collected and stored, will be limited.

Number of Payments Past Due

We also proposed a data point titled ''Current payment status'' that would capture the number of payments the obligor is past due.[309] We are revising the title to ''Number of payments past due'' to more accurately convey the information the data point requires.[310] A commenter requested we omit the proposed data point because it would be redundant with the proposed the ''Current delinquency status'' data point, which would have captured the number of days the obligor is delinquent.[311] There are many ways to present the status of payments, and the data point we are adopting will require disclosure of the number of payments an obligor is behind at any point in time. Therefore, we are not adopting the ''Current delinquency status'' data point

[293] *See* proposed Items 1(b)(5) of Schedule L and 1(f)(12) of Schedule L–D.

[294] *See* proposed Items 1(b)(6) of Schedule L and 1(f)(13) of Schedule L–D.

[295] *See* proposed Items 1(b)(7) of Schedule L and 1(f)(14) of Schedule L–D.

[296] *See* proposed Item 1(f)(15) of Schedule L–D.

[297] *See* letter from ASF I.

[298] *See* new Item 1(g)(33) of Schedule AL.

[299] *See* new Item 1(g)(34) of Schedule AL.

[300] *See* new Item 1(g)(28) of Schedule AL.

[301] *See* letter from ASF I.

[302] We do not agree, however, with the alternative the commenter suggested, that the number of days a payment is past due could be derived from the interest paid through date reported in proposed Item 2(a)(14) of Schedule L and the measurement date, because the interest paid through date is calculated on the payment due for that period. Therefore, in future periods where a payment is missed, the response to this data point would not provide the paid through date since no payment was made.

[303] *See* new Item 1(g)(28) of Schedule AL.

[304] We also note that this data has been provided in some RMBS offerings.

[305] *See* proposed Item 1(b)(5) of Schedule L.

[306] *See* proposed Item 1(f)(12) of Schedule L–D.

[307] *See* letter from ASF I (suggesting the adoption of field 97 of the ASF RMBS Disclosure Package—Most Recent 12-month Pay History). ASF provided this comment with respect to proposed Item 1(b)(5) Current Delinquency Status of Schedule L. They did not provide a similar comment with respect to proposed Item 1(f)(12) of Schedule L–D. We believe under the one schedule format that we are adopting the payment history string subsumes the data captured by this data point. Therefore, we are not adopting the proposed Current delinquency status data point.

[308] *See* new Item 1(g)(33) of Schedule AL. This data point requires an issuer to provide a string that indicates the payment status per month listed from oldest to most recent. The possible responses based on field 97 of ASF's RMBS Disclosure Package are: 0=Current; 1=30–59 days delinquent; 2=60–89 days delinquent; 3=90–119 days delinquent; 4=120+ days delinquent; 5=Foreclosure; 6=REO; 7=Loan did not exist in period; 99=Unknown. The value furthest to the left in the string would be the most recent month and the value furthest to the right would be the 12th month. For example, for a loan that was current in the most recent month, 30–59 days delinquent from months two to five and current from months six to twelve the string would be as follows: 011110000000.

[309] *See* proposed Items 1(b)(7) of Schedule L and 1(f)(14) of Schedule L–D.

[310] *See* new Item 1(g)(34) of Schedule AL.

[311] *See* proposed Items 1(b)(5) of Schedule L and 1(f)(12) of Schedule L–D.

which should eliminate any potential redundancy.

Information About Junior Liens and Senior Liens

We proposed data points that would require disclosure, at the time of the offering, about the junior liens and senior liens that existed at origination. For loans with subordinate liens at origination, the combined balances of all subordinate loans would be required.[312] For junior loans being securitized, the combined balances of all senior mortgages at the time the junior loan was originated would be required.[313] Where the associated most senior lien is a hybrid, the hybrid period of the most senior lien would be required.[314] Where the associated most senior lien features negative amortization, the negative amortization limit of the senior mortgage as a percentage of the senior lien's original unpaid principal balance would be required.[315] We did not propose a data point to capture the effort an originator or sponsor made to discover if the same property secures other loans, but we asked if this type of disclosure should be required.[316]

Comments on this group of data points varied. A few commenters requested that the data points capturing junior lien balances include an ''if known'' or similar qualifier to address concerns that originators may not always have knowledge of, or access to, balance information on loans not originated by them.[317] A few commenters also suggested that the combined senior loan and combined junior loan balances, if known, be captured on an ongoing basis.[318] Two commenters supported a data point capturing what effort an originator or sponsor made to discover if the same property secures other loans.[319] One of these commenters noted, however, that there may be difficulties providing this disclosure because the existence of a debt obligation may not be discovered before the required asset-level disclosures are provided.[320] The other commenter noted that the disclosure should be required because the failure to account for an additional loan will result in an inaccurately reported combined LTV ratio and, therefore, investors would want to know if the verification was made.[321]

We are adopting the group of data points described above, but with revisions to address comments received.[322] In response to comments that expressed concern that originators may not always have knowledge of, or access to, balance information on loans not originated by them, we revised this group of data points to require that the information be provided if the information was obtained or available to them. Regardless of whether the loan being securitized was originated by parties affiliated or unaffiliated to the issuer, we expect, however, that an issuer would make efforts to discern whether junior loans were originated concurrently to or immediately following the origination of the loan being securitized and the balances of those loans. We believe the review required under existing Rule 193 of the Securities Act, which requires a review of the pool assets underlying the asset-backed security may address concerns about verification. The review required under Rule 193 must be designed and effected to provide reasonable assurance that the disclosure regarding the pool assets in the prospectus, which includes the asset-level disclosures, is accurate in all material respects. We believe a Rule 193 review would necessarily include consideration of whether the disclosures about junior or senior liens are accurate in all material respects. We are not adopting a separate data point that would require disclosure of the effort an originator or sponsor made to discover if the same property secures other loans.[323] This data would be difficult to capture in a standardized way, and we are uncertain, at this time, whether this information is best captured within these particular asset-level requirements.

We believe investors will benefit from ongoing disclosure about the aggregate balances of all known senior and junior lien(s) and, therefore, we are revising the data points to capture the most recent senior lien(s) and junior lien(s) balances.[324] We understand, however, that obtaining updated balances on an ongoing basis may involve some burden and cost, particularly if the junior liens are originated by parties unaffiliated with the issuer. Therefore, to address burden concerns, these data points do not require that issuers obtain updated information each month. Instead, the definitions of these data points indicate that a response is required if the most recent junior or senior mortgage balances are obtained or available.[325]

Information About the Property

We proposed a group of data points that would capture information related to the property, such as the property type, occupancy status, geographic locations and valuations.[326] Taken together, these data points would provide insight into the physical asset underlying the mortgage. The response to this group of data points varied with some commenters suggesting the group of data points was too granular[327] and others suggesting we expand the information captured about valuations.[328] We discuss below the significant comments we received about this group of data points and the revisions we have made to data points within this group.

Property Location

We proposed to require that the location of the property by Metropolitan Statistical Area, Micropolitan Statistical Area or Metropolitan Division (collectively, ''MSA'') be provided in lieu of zip code due to privacy concerns arising from providing the property's zip code.[329] The response to this

[312] *See* proposed Item 2(a)(16) of Schedule L.

[313] *See* proposed Item 2(a)(17)(i) of Schedule L.

[314] *See* proposed Item 2(a)(17)(iii) of Schedule L.

[315] *See* proposed Item 2(a)(17)(iv) of Schedule L.

[316] *See* the 2010 ABS Proposing Release at 23363.

[317] *See* letters from ASF I and SIFMA I.

[318] *See* letters from ASF I and Wells Fargo I.

[319] *See* letters from Epicurus and Mass. Atty. Gen.

[320] *See* letter from Epicurus (suggesting that, to address the problem, the attorney or title company at closing should be required to certify that a title search was completed and whether that title search identified the existence of other debts, if any, held against the property).

[321] *See* letter from Mass. Atty. Gen.

[322] *See* new Items 1(c)(12)(i) Most recent junior loan balance; Item 1(c)(12)(ii) Date of most recent junior loan balance; 1(c)(13)(i) Most recent senior loan amount; 1 (c)(13)(ii) Date of most recent senior loan amount; 1(c)(13)(iii) Original loan type of most senior lien; 1(c)(13)(iv) Hybrid period of most senior lien; and 1(c)(13)(v) Negative amortization limit of most senior lien of Schedule AL.

[323] *See* the 2010 ABS Proposing Release at 23363.

[324] *See* new Items 1(c)(12)(i) Most recent junior loan balance and 1(c)(13)(i) Most recent senior loan amount of Schedule AL. We are also adopting data points that capture the dates of the most recent loan balances. *See* new Items 1(c)(12)(ii) Date of most recent junior loan balance and 1(c)(13)(ii) Date of most recent senior loan amount.

[325] For example, if the asset in an RMBS is a senior lien, and subsequent to the securitization, a junior lien is originated by an affiliate of the depositor, the information about the junior lien would be available to the issuer and should be reported to the investors in the RMBS in an ongoing report.

[326] *See* proposed Items 2(b)(2) through 2(b)(19) of Schedule L.

[327] *See, e.g.,* letter from CMBP.

[328] *See, e.g.,* letter from Mass. Atty. Gen.

[329] MSAs are geographic areas designated by a 5-digit number defined by the U.S. Office of Management and Budget (OMB) for use by Federal statistical agencies in collecting, tabulating and publishing Federal Statistics. A Metropolitan Statistical Area contains a core urban area of at least 10,000 (but less than 50,000) population. Each Metro or Micro area consists of one or more counties and includes the counties containing the core urban area, as well as any adjacent counties that have a high degree of social and economic integration (as measured by commuting to work) with the urban core. The OMB also further subdivides and designates New England City and

Continued

approach varied. On the one hand, we received some comments suggesting we not require zip code because it would make the ability to identify an obligor within a loan pool easier.[330] On the other hand, some commenters indicated that 5-digit zip codes or 3-digit zip codes should be provided instead of MSA because zip codes provide more information about the property.[331] For instance, one commenter was concerned that disclosing only the MSA would result in less information than is currently available.[332] As another commenter noted, the zip code provides information such as whether the property is in a flood plain or earthquake zone.[333] One commenter indicated that using MSA rather than zip codes would restrict the information available to investors and, as such, issuers expect to receive substantially lower pricing for new RMBS offerings resulting in substantially higher costs for consumers of residential mortgage loans.[334] Another commenter echoed this concern.[335] Another commenter suggested that the ''County Code,'' which is a federal information processing standard code, is an appropriate alternative to other geographic location identifiers.[336]

As discussed below in response to the 2014 Re-Opening Release, several commenters stressed the importance of geography in assessing re-identification risk and recommended requiring issuers to identify assets by a broader geographic area to reduce the ability to re-identify.[337] One commenter recommended that, instead of requiring MSA as proposed, we require geography by 2-digit zip code.[338] Based on the reasons discussed in Section III.A.3 Asset-Level Data and Individual Privacy Concerns, we are requiring disclosure of the 2-digit zip code, which will allow investors to assess market risk associated with a particular geographic location without resulting in unnecessary re-identification risk.

Property Valuations

We proposed a group of data points that would capture information about original property valuations.[339] The comments we received on this group of data points varied with some commenters seeking more granularity and others seeking less granularity. Commenters seeking more granularity suggested expanding this group of data points to require data about recent property sales, more detail about the characteristics of the property, such as the gross living area, room count, and construction style,[340] and the disclosure of appraiser credentials and prior complaints against them.[341] A commenter also recommended including valuations captured as part of a ''valuation diligence'' process, including recalculated loan-to-value ratios and combined loan-to-value ratios based on these valuations.[342] Another commenter said there is no uniformity in how values are determined because the proposal would allow issuers to select from a long menu of valuation methods, approaches and sources for establishing property values.[343] This flexibility would allow issuers to pick-and-choose which valuation method best serves their purposes, and the proposed rule would not establish any qualification requirements or standards of care and/or competency for valuations performed in connection with mortgage-backed securities.

One commenter stated that the data captured about property valuations was too granular and not relevant to an investor.[344] With respect to the data point capturing the valuation date, a commenter suggested the purpose of disclosing the valuation date is to ensure that the loan-to-value ratio used in the underwriting process was current enough to not overstate the collateral value of the mortgaged property, particularly during periods of declining home prices.[345] The commenter stated that the precise date of the valuation may be difficult for some originators to track. As an alternative, the commenter suggested that we permit issuers to either provide the valuation date or represent in the relevant transaction agreement that the valuation was conducted not more than a specified number of days prior to the original closing of the loan. According to the commenter, such a representation would ensure that the issuer or originator is allocated the risk of stale valuation. Further, to address any concern about the effectiveness of a representation in lieu of disclosure, the commenter's suggested alternative would only apply in a transaction in which the transaction agreements provide for a robust third-party mechanism for evaluating and resolving breaches of representations.

As discussed in Section III.A.3 Asset-Level Data and Individual Privacy Concerns below, we are concerned that providing data about original property valuations may increase re-identification risk; therefore, we are not adopting any of the proposed data points related to original property valuations. In particular, we are concerned that data about original property valuations could provide a close approximation of sales price, and thus raise the same re-identification concern as sales price. Although we are not adopting the proposed data points related to original property valuations, we are adopting other data points, such as Original loan amount and Original loan-to-value, which will provide investors with key information that they need to perform due diligence and make an informed investment decision.

We also proposed data points requiring disclosure about the most recent property value, if an additional property valuation was obtained after the original appraised property value.[346] One commenter indicated that these data points appeared to relate only to valuations obtained by the originator.[347] The commenter suggested that we require any sponsor who obtains an alternative property valuation as part of due diligence to disclose that value to the extent it is the most recent property value. The commenter also suggested that we consider disclosure of the lowest alternative property value in the last six months (in addition to the most recent property value) to prevent the sponsor from evading the requirements

Town Areas. The OMB may also combine two or more of the above designations and identify it as a Combined Statistical Area.

[330] *See* letters from CU and WPF.

[331] *See* letter from ASF I (expressed views of investors only). *See also* letter from Beached Consultancy (suggesting use of 3-digit zip codes).

[332] *See* letter from ASF I (expressed views of investors only).

[333] *See* letter from Epicurus.

[334] *See* letter from Wells Fargo I.

[335] *See* letter from ASF I (noting that not disclosing zip codes for the property would be a step backwards in disclosure practice).

[336] *See* letter from MERS.

[337] *See* letters from ABA III, ELFA II, Lewtan, SIFMA/FSR I-dealers and sponsors, SFIG II, the Treasurers of Royal Bank of Canada, Canadian Imperial Bank of Commerce, The Bank of Nova Scotia, The Toronto-Dominion Bank, Bank of Montreal and National Bank of Canada dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (''Treasurer Group''), and Wells Fargo III.

[338] *See* letter from ABA III.

[339] *See* proposed Items 2(b)(5), 2(b)(6), 2(b)(7), 2(b)(8), and 2(b)(9) of Schedule L.

[340] *See* letter from AI.

[341] *See* letter from Epicurus. *See also* letter from ASA (suggesting issuers of mortgage-backed securities (and those with ongoing Exchange Act reporting requirements relative to those securities) be required to use state certified and licensed professional real property appraisers and require adherence to the Uniform Standards of Professional Appraisal Practice to value loan-level real estate and real property collateral assets).

[342] *See* letter from the Mass. Atty. Gen.

[343] *See* letter from the ASA.

[344] *See* letter from CMBP.

[345] *See* letter from ASF I.

[346] *See* proposed Items 2(b)(10), 2(b)(11), 2(b)(12), 2(b)(13), and 2(b)(14) of Schedule L.

[347] *See* letter from Mass. Atty. Gen.

by getting alternate values only when the most recent value is lower than the sponsor would like. Another commenter also suggested that the ''Most recent property value'' data point should only require property values obtained by the securitization sponsor, although the investor members of this commenter recommended that this include affiliates of the securitization sponsor.[348]

We are adopting these data points, as proposed, with revisions to address comments received.[349] In particular, we revised the definitions to require disclosure of any valuation obtained by or for any transaction party or their affiliates.[350] This revision addresses comments that these data points appear to relate to valuations obtained only by the originator. The reference to ''obtained by or for any transaction party or its affiliates'' contained in each definition should be construed broadly and should include, but not be limited to, valuations obtained as part of any due diligence conducted by credit rating agencies, underwriters or other parties to the transaction. We also made conforming changes to the titles and definitions ''Most recent AVM model name'' and ''Most recent AVM confidence score'' because these disclosures are providing information about the most recent property value.

We also considered, as a commenter suggested, adopting data points to capture the lowest alternative property valuation obtained in the last six months by, in addition to the originator, the sponsor or its affiliates. We did not adopt these data points because we are not persuaded, at this time, that the potential benefits investors may receive from such information would justify the potential costs and burdens that may be associated with providing the data. If, however, alternative property valuations are obtained that reflect substantially lower valuations, an issuer should consider whether these valuations need to be disclosed or whether additional narrative disclosure is necessary so that the disclosure about property valuations is not misleading.[351] Originators, sponsors or other transaction parties are not required to obtain updated valuations in order to respond to the data points capturing information about recent valuations. Instead, this requirement is meant to capture valuations conducted subsequent to the original valuation for whatever reason, such as updated valuations obtained in the normal course of their business or because other facts or circumstances required an updated valuation.

Information About the Obligor(s)

We proposed a group of asset-level data points that would provide data about an obligor's credit quality.[352] This group of data points was intended to capture information about the obligor(s) income, debt, employment, credit score and DTI ratio. In light of privacy concerns, the proposal included ranges, or categories of coded responses, instead of requiring disclosure of an exact credit score, income or debt amount in order to prevent the identification of specific information about an individual. We discuss below the significant comments we received about this group of data points and the revisions we have made in response to those comments.

Use of Coded Ranges, Updated Information and Information About Co-Obligors

The comments we received on this group of data points varied. As discussed below, several commenters noted that some data points related to obligors may cause individual privacy concerns if linked to the obligor even if that information, like obligor credit score, was provided in ranges.[353] On the other hand, some commenters generally opposed coded ranges because they believe exact credit scores are necessary to evaluate risk, appropriately price the securities or verify issuer disclosures.[354]

With respect to whether updated obligor information should be required, one commenter believed that servicers should provide updated borrower information whenever such information is obtained by the servicer.[355] Other commenters, without providing a reason, also suggested updated credit score information should be provided.[356] Another commenter, however, suggested that updated credit scores are obtained infrequently, if at all, and the benefit investors may receive from updated monthly credit scores across all securitized loans would not justify the costs to provide such disclosures.[357] The commenter recommended requiring this information only if the servicer obtains the information. We also received a few comments suggesting that we eliminate the co-obligor categories for various reasons,[358] and received a comment suggesting that we provide obligor information for up to four different obligors.[359]

We are eliminating certain data about obligor income based on comments received and in light of the recent adoption by the CFPB of the ability-to-repay requirements under the Truth in Lending Act or Regulation Z, which includes minimum standards for creditors to consider in making an ability-to-pay determination when underwriting a mortgage loan.[360] We note that all originators will need to adhere to these requirements and, therefore, it is appropriate to align our disclosure requirements with how originators will be required to assess the obligor's income when considering their ability to repay a loan while not requiring the disclosure of a significant amount of potentially sensitive obligor information that could increase re-identification risk.[361] To achieve this, we omitted the data points capturing obligor and co-obligor wage income,[362] obligor and co-obligor other income,[363] all obligor wage income,[364] all obligor

[348] *See* letter from SIFMA I.

[349] *See* new Items 1(d)(5) Most recent property value; 1(d)(6) Most recent property valuation type; 1(d)(7) Most recent property valuation date; 1(d)(8) Most recent AVM model name; and 1(d)(9) Most recent AVM confidence score of Schedule AL.

[350] The final rules also require disclosure of the date on which the most recent property value was reported.

[351] *See* footnote 186 and accompanying text.

[352] *See* proposed Items 2(c)(1) through 2(c)(31) of Schedule L.

[353] *See, e.g.,* letters from ABA I, AFSA I, CDIA, CU, Epicurus, SIFMA I, TYI LLC dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''TYI''), and WPF I. *See also* Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

[354] *See* letters from ASF I (expressed views of investors only), Interactive Data Corporation dated August 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Interactive''), Prudential I, and Wells Fargo I.

[355] *See* letter from MetLife I (suggesting that certain obligor information be disclosed whenever a servicer obtains updated information).

[356] *See* letters from ASF I and Wells Fargo I.

[357] *See* letter from MBA I.

[358] *See* letters from BoA I (suggesting that for proposed Items 2(c)(1)–2(c)(12), 2(c)(23) and 2(c)(26)–2(c)(31), if there are multiple borrowers the data should be aggregated (e.g., income or assets) and if the data cannot be aggregated (e.g., DTI) the most conservative value should be used) and CMBP (suggesting that separate obligor and co-obligor categories are unnecessary because total obligor income to service the debt and the nature of that income is sufficient).

[359] *See* letter from SFIG I.

[360] 12 CFR 1026. *See also Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)* (Jan. 30, 2013) [78 FR 6407], as amended by *Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)* (June 12, 2013) [78 FR 35429] and *Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)* (July 24, 2013) [78 FR 44686].

[361] Accordingly, we are not requiring that obligor information such as credit score, credit score type, income verification, employment verification, asset verification and length of employment be provided for more than one obligor.

[362] *See* proposed Items 2(c)(26) and 2(c)(27) of Schedule L.

[363] *See* proposed Item 2(c)(28) and 2(c)(29) of Schedule L.

[364] *See* proposed Items 2(c)(30) of Schedule L.

total income,[365] and monthly debt.[366] A commenter suggested that we require monthly income used to calculate the DTI ratio.[367] However, as discussed below in Section III.A.3 Asset-Level Data and Individual Privacy Concerns, to help reduce re-identification risk, we are not adopting a number of data points that disclose potentially sensitive obligor information, such as debt or income.

We are also adopting data points capturing the obligor credit score, modified from the proposal.[368] The proposal would have required issuers to indicate the credit score type and score. If the score used was FICO, issuers would have been required to indicate the code that represented a range of FICO credit scores within which the score fell. The rules we are adopting require disclosure of the exact credit score used to evaluate the obligor during the origination process.[369] We are persuaded by commenters that exact credit scores are necessary to evaluate risk and to appropriately price securities.[370] We also added, in response to comments received, data points that capture the most recent credit score, credit score type and credit score date.[371] We are persuaded that updated scores should be provided, if obtained, since such information will provide investors with a picture of the obligor's ongoing ability to repay the loan. These data points do not require originators, sponsors or transaction parties to obtain updated information. Instead, this requirement is meant to capture credit scores obtained, for whatever reason, after the original score was obtained.

Length of Employment

We proposed data points requiring information about the length of time the obligor and co-obligor have been employed.[372] We received a comment that this level of detail about the obligor's length of employment is unnecessary.[373] As an alternative, the commenter stated that it would be sufficient to know if the obligor has been employed by his or her current employer for 24 months or less or more than 24 months because this is the standard demarcation in industry underwriting standards. In line with the commenter's suggestion, we revised the data point to require the issuer to indicate whether the obligor has been employed by his or her current employer for greater than 24 months as of the origination date. We believe this approach will mitigate the burden on issuers, but still provide investors with valuable information about the obligor's length of employment.

Months Bankruptcy and Months Foreclosure

We proposed a data point that would require disclosure of the number of months since any obligor was discharged from bankruptcy.[374] We also proposed a data point that would require disclosure, if the obligor has directly or indirectly been obligated on any loan that resulted in foreclosure, of the number of months since the foreclosure date.[375] We received a comment suggesting this information may be difficult or costly for many lenders to capture, and that a suitable substitute would consist of a representation designed to ensure that the obligor has not recently been discharged from bankruptcy and a representation designed to ensure that the obligor has not recently been obligated on a loan that resulted in a foreclosure sale.[376] The commenter suggested requiring representations in the relevant transaction agreements, in lieu of the disclosure of the number of months since the obligor was discharged from bankruptcy or the number of months since the foreclosure date, to the effect that at least a specified number of years have passed since any obligor was discharged from bankruptcy or was a direct or indirect obligor on a loan that resulted in a foreclosure sale.

Another commenter stated, with respect to the data point capturing the number of months since an obligor has directly or indirectly been obligated on any loan that resulted in foreclosure, that its dealer and sponsor members believe that this data point should be limited to direct obligations, whereas its investor members believed that guaranteed or co-signed obligations should be included.[377] Both groups agreed that this disclosure should be limited to obligations on residential property that resulted in foreclosure within the last seven years (so that such foreclosure would appear on a credit report).

In response to privacy concerns, we are not adopting either proposed data point. Section III.A.3 Asset-Level Data and Individual Privacy Concerns below provides a discussion of these and other related data points that we are not adopting due to the potential re-identification risk. As noted below, if an obligor had experienced a past bankruptcy or foreclosure, we would expect that those events would have been considered in generating a credit score. Because we are requiring disclosure of an exact credit score, investors will receive information they need about past payment behavior to perform due diligence.

Debt-to-Income

We proposed data points that would require at the time of securitization disclosure about the total DTI ratio used

[365] *See* proposed Item 2(c)(31) of Schedule L.

[366] *See* proposed Item 2(c)(15) of Schedule L.

[367] *See* letter from Mass. Atty. Gen.

[368] *See* new Items 1(e)(2) Original obligor credit score and 1(e)(3) Original obligor credit score type of Schedule AL.

[369] The 2010 ABS Proposal required a coded response representing ranges of FICO score, if FICO was used. If another type of credit score was used, an exact score would have been required.

[370] *See* letters from ASF I (requesting exact credit score be required because it has historically been provided on a loan-level basis and stating that investor members were concerned that moving from disclosing precise scores to score ranges ''would represent a significant step backwards in loan-level transparency''), ASF II (noting that actual FICO score has been provided for some time in the RMBS industry and that loan-level investors ''believe that it would be extremely useful in the auto space as well'') Capital One I (stating that current FICO scores would be very useful for an investor's credit analysis), Interactive (stating that providing FICO score ranges would reduce precision by assuming that all loans within a certain band will behave the same), MetLife I (requesting specific FICO score for each loan), Prudential I (stating that ranges of FICO scores or grouped data disclosure are not sufficient to appreciate the linkages between collateral characteristics), Prudential III (discussing the importance of certain data points, such as credit score, to an investor's credit risk analysis and asserting that predictive risk factors, such as FICO score must be evaluated in conjunction with other factors, as the combination of individual loan characteristics and economic environment can add or diminish the risk of a given loan), Vanguard (stating that providing investors with specific data, such as FICO scores, that is updated periodically should foster independent analysis in the ABS market and improve pricing), and Wells Fargo I (expressing its concern that by providing investors with ranges of credit scores, issuers would receive substantially lower pricing for new offerings, which would lead to substantially higher costs for consumers). In addition, Ginnie Mae, Fannie Mae and Freddie Mac all disclose exact credit scores. We understand that certain asset-level information about an obligor, including credit score, may be considered a ''consumer report'' subject to regulation under FCRA. As discussed below, the CFPB has provided guidance to the Commission stating that FCRA will not apply to asset-level disclosures where the Commission determines that disclosure of certain asset-level information is ''necessary for investors to independently perform due diligence,'' in accordance with the mandate of Securities Act Section 7(c). For a discussion of the importance of credit scores to predicting delinquency, see Section III.A.3 below.

[371] *See* new Items 1(e)(4) Most recent obligor credit score, 1(e)(5) Most recent obligor credit score type and 1(e)(6) Date of most recent obligor credit score of Schedule AL. *See* letters from ASF I, MetLife I, and Wells Fargo I.

[372] *See* proposed Items 2(c)(22) and 2(c)(23) of Schedule L.

[373] *See* letter from CMBP.

[374] *See* proposed Item 2(c)(24) of Schedule L.

[375] *See* proposed Item 2(c)(25) of Schedule L.

[376] *See* letter from ASF I.

[377] *See* letter from SIFMA I.

by the originator to qualify the loan.[378] In addition, at the time of securitization and on an ongoing basis the front-end and back-end DTI[379] ratios would be required for any modified loans.[380]

One commenter suggested DTI ratio disclosure provided at origination include both front-end and back-end DTI ratios.[381] The commenter also suggested we require the DTI ratio for an ARM loan to be recalculated using the fully indexed interest rate and that we require disclosure of any subsequent calculations.[382]

The data points we are adopting today require, as proposed and consistent with the comment received, front-end and back-end DTI ratios calculated during the loan origination process and at the time of any loan modification.[383] We believe both front-end and back-end DTI ratios provide important data about the total debt load of the obligor, which provides insight into the obligor's ability to repay the loan. We are not adopting, as one commenter recommended, data points capturing information about the DTI ratio recalculated using the fully indexed interest rate. We believe the DTI figures provided in response to this data point will be adequate for investors to use, in part, to assess a borrower's ability to repay. We also note that our approach is generally consistent with Regulation Z, which requires all loans covered by Regulation Z to consider DTI ratios calculated using the fully indexed interest rate.

Information About Servicer Advances

Servicer Advances

We made various changes to the group of data points capturing information about servicer advances. The proposal included information about the servicer's responsibility, if any, to advance principal or interest on a delinquent loan, the method of those advances, the outstanding cumulative balance advanced and how those advances were subsequently reimbursed. The requirements we are adopting today include the information proposed and described above, but also include the addition and deletion of some data points capturing advances to address comments received. We discuss immediately below the various changes to the group of data points capturing information about servicer advances.

Advancing Method

The final rule includes a data point suggested by a commenter titled ''Advancing method.''[384] The data point includes a coded list that indicates the servicer's responsibility for advancing principal or interest on delinquent loans. We believe that the response to this data point will help investors understand the servicer's responsibility with respect to advances for each particular loan and the pool as a whole.

Advances: Principal, Interest, Taxes and Insurance, and Corporate

We proposed a general disclosure data point that would require, if amounts were advanced by the servicer during the reporting period, the disclosure of the amount advanced.[385] One commenter[386] suggested that for RMBS, we split this information into three categories that would capture principal and interest advances,[387] tax and insurance advances,[388] and corporate advances because these categories of information are more useful.[389] In addition, the investor membership of another commenter requested disclosure about the servicer's methodologies regarding advances of interest and principal on delinquent loans, the reimbursement of those advances,[390] and, for modified loans, disclosure about non-capitalized and capitalized advances.[391] The commenter also suggested aggregating the data points capturing, for liquidated loans, the various advances the servicer had made to cover expenses incurred due to concerns that the information was too granular and the information is immaterial to investors.[392]

In light of these comments, we have split the final data points into the following four categories: Principal advances, interest advances, taxes and insurance advances, and corporate advances. While one commenter recommended aggregating the principal advances and interest advances into one data point, the final rule includes data points capturing interest and principal advances separately since that is consistent with how other information that relates to principal and interest is captured in Schedule AL.

We agree with commenters that requiring disclosures about advances made by the servicer, the outstanding cumulative balance advanced and how those advances were subsequently reimbursed or addressed will provide investors insight into the payment status of a particular asset within the pool and the potential losses that may pass on to the trust. Therefore, in order to capture how these advances were reimbursed, the final rule includes additional data points that capture for these same categories of advances, the cumulative outstanding advanced amount or, if these advances were subsequently reimbursed, how they were reimbursed or resolved, such as through the obligor becoming current on payments, or being reimbursed at the time the loan was liquidated. Since this information is likely readily available to issuers, we believe the cost to provide this data should be low.

We have omitted from the final requirements, as a commenter recommended, proposed data points that would have required the disclosure of the amount of various expenses advanced and reimbursed, such as property inspection expenses, insurance premiums, attorney fees and property taxes paid for liquidated loans. Since the asset-level reporting requirements do not require that advances be reported in this fashion at each reporting period, we are uncertain at this time whether this level of granularity about outstanding advances at loan liquidation would be beneficial to

[378] *See* proposed Item 2(c)(16) of Schedule L.

[379] The front-end DTI is calculated by dividing the obligor's total monthly housing expense by the obligor's total monthly income. The back-end DTI is calculated by dividing the obligor's total monthly debt expense, which includes expenses such as mortgage payments, car loan payments, child support and alimony payments, credit card payments, student loans payments and condominium fees, by the obligor's total monthly income.

[380] *See* proposed Items 2(a)(21)(iv)–(v) of Schedule L and Items 2(e)(23) and 2(e)(25) of Schedule L–D.

[381] *See* letter from Mass. Atty. Gen.

[382] *Id.* (also requesting other updated information be provided, for instance, any values that have been corrected as a result of due diligence process, such as monthly income and DTI, as well as any post-modification DTI ratios).

[383] *See* new Items 1(e)(9) Originator front-end DTI, 1(e)(10) Originator back-end DTI, 1(m)(12) Modification front-end DTI, and 1(m)(13) Modification back-end DTI of Schedule AL.

[384] *See* new Item 1(g)(5) Advancing method of Schedule AL. *See* letter from ASF I.

[385] *See* proposed Item 1(g)(4) of Schedule L–D.

[386] *See* letter from ASF I.

[387] *Id.* (noting that principal and interest advances consist of due but unpaid principal and/or interest on the loan for the period, as required by the methodology specified in the transaction agreements).

[388] *Id.* (stating that tax and insurance advances consist of due but unpaid escrow amounts for payment of property taxes and insurance payments with respect to the mortgaged property).

[389] *Id.* (defining corporate advances as consisting of property inspection and preservation expenses with respect to defaulted loans).

[390] *See* letter from SIFMA I (suggesting that we amend current pool-level disclosure requirements so that more disclosure is provided about a servicer's methodologies for advancement of principal and interest and the reimbursement of advances).

[391] *Id.* (referring to the disclosures required under proposed Items 2(e)(45) Reimbursable modification escrow and corporate advances (capitalized) and 2(e)(46) Reimbursable modification servicing fee advances (capitalized) of Schedule L–D).

[392] *See* proposed Items 2(m)(1)(iv) through 2(m)(1)(xii) of Schedule L–D.

investors. In general, we believe these expenses are captured by other data points that detail reimbursements at loan liquidation for advances of taxes and insurance and corporate expenses.[393]

Information About Modified Loans

We proposed a group of data points that would capture information about modified loans. The responses to this group of data points would provide data about whether a loan has been modified, the modification terms and the loan characteristics that were modified. We received comments suggesting we add[394] or delete[395] data points from this group of data points, and comments suggesting we revise certain data points within this group.[396] A commenter suggested adding a requirement for data that details the number of modification requests that are granted and denied and the average time that elapses between a borrower's request for a loan modification and a determination of that application.[397] The commenter also requested disclosure of the number and percentage of modified loans which have re-defaulted.

We are adopting most of this group of proposed data points,[398] as well as additional data points, mainly based on comments received to provide further transparency around modifications, including any change in loan characteristics or other loan features.[399] For instance, the final requirements include, in addition to the proposed data points, data points that capture information about step provisions,[400] the actual and scheduled ending balances of the total debt owed,[401] the date a trial modification was violated,[402] and the interest rate and amortization type after modification.[403] For loans that remain an adjustable rate mortgage after a modification, additional data points capture information, such as the index look-back, the post-modification initial interest rate, the maximum amount a rate can increase or decrease and information about negative amortization caps.[404] We did not add, as a commenter suggested, requirements about the number of modification requests received, the average time that elapses between a borrower's request for a loan modification and when a determination is made, or the number and percentage of modified loans which have re-defaulted.[405] We are not persuaded these disclosures would provide a clear benefit to investors, especially in light of the costs issuers would incur to provide such information.

Most Recent Loan Modification Event Type

We also proposed a data point as part of the ongoing disclosure requirements that would require the issuer to specify, if the loan has been modified, the code that describes the type of action that has modified the loan terms.[406] The proposed codes were: 1=capitalization-fees or interest have been capitalized into the unpaid principal balance; 2=change of payment frequency; 3=construction to permanent; and 4=other. One commenter requested we delete this data point because the coded list only describes a subset of possible loan modifications and the type of modification can be determined based on a comparison of pre-modification and post-modification characteristics.[407] Another commenter recommended we expand the coded list to add forgiveness of principal, rate reductions, maturity extensions and forgiveness of interest to the list of possible responses.[408]

We are adopting this data point because we believe this disclosure will allow investors to focus on what terms may have changed due to a modification, which should allow investors to quickly assess whether changes in the terms of an asset will affect future cash flows or the risk profile of the asset pool.[409] We added, as a commenter recommended, additional codes to the coded list.[410] We also note that a loan may go through several loan modifications. Therefore, we revised the data point to clarify that information about the most recent loan modification is required each time the disclosure is filed.[411]

Effective Date of the Most Recent Loan Modification

We proposed a data point titled ''Loan modification effective date,'' which is the date on which the most recent modification of the loan has gone into effect. A commenter suggested omitting this data point from the RMBS requirements because loan modifications are effective on the mortgage loan's next due date after entry.[412] While we acknowledge that may be current practice, we are adopting this data point as we are mindful that other practices regarding loan modifications may develop. Further, since responses to this data point will be provided on an ongoing basis after a loan is modified, we believe this date will provide a clear indication about the length of time that has passed since the loan was last modified. We are adopting this data point with a revision to clarify that only information about the most recent loan modification is required because, as noted above, a loan

[393] *See* new Items 1(t)(1)(iii) Servicer advanced amounts reimbursed—principal; 1(t)(1)(iv) Servicer advanced amounts reimbursed—interest; 1(t)(1)(v) Servicer advanced amount reimbursed—taxes and insurance; and 1(t)(1)(vi) Servicer advanced amount reimbursed—corporate of Schedule AL.

[394] *See* letters from ASF I and Wells Fargo I.

[395] *See* letter from ASF I.

[396] *See* letter from SIFMA I.

[397] *See* letter from CU.

[398] We are not adopting certain items related to a modification that would be captured elsewhere in the requirements, such as information on servicer advances. *See, e.g.,* proposed Items 2(e)(44) through 2(e)(46) of Schedule L–D.

[399] *See* letters from ASF I and Wells Fargo I.

[400] *See* new Items 1(m)(24)(i) Post-modification interest rate step indicator; 1(m)(24)(ii) Post-modification step interest rate; 1(m)(24)(iii) Post-modification step date; 1(m)(24)(iv) Post-modification—step principal and interest; and 1(m)(24)(v) Post-modification—number of steps of Schedule AL.

[401] *See* new Items 1(m)(19) Actual ending balance—total debt owed and 1(m)(20) Scheduled ending balance—total debt owed of Schedule AL.

[402] *See* new Item 1(n)(3) Most recent trial modification violated date of Schedule AL.

[403] *See* new Items 1(m)(4) Post-modification interest rate type and 1(m)(5) Post-modification amortization type of Schedule AL.

[404] *See, e.g.,* new Items 1(m)(21)(vi) Post-modification index look-back; 1(m)(21)(vii) Post-modification ARM round indicator; 1(m)(21)(viii) Post-modification ARM round percentage; 1(m)(21)(xi) Post-modification ARM payment recast frequency; 1(m)(21)(xx) Post-modification ARM interest rate teaser period; 1(m)(21)(xxiii) Post-modification ARM negative amortization cap; 1(m)(22)(ii) Post-modification interest only last payment date; 1(m)(24)(ii) Post-modification step interest rate and 1(m)(24)(iv) Post-modification—step principal and interest. The group of data points capturing data about modifications include some data points beyond those proposed or those that commenters suggested be added. These additional data points were added to make the required disclosure about modified ARM loans consistent with the required disclosure about original ARM loans. *See* new Items 1(m)(21)(ii) Post-modification ARM Index; 1(m)(21)(ix) Post-Modification initial minimum payment; 1(m)(21)(xiv) Post-modification initial interest rate increase; 1(m)(21)(xvii) Post-modification subsequent interest rate decrease; and 1(m)(21)(xix) Post-modification payment method after recast of Schedule AL.

[405] *See* letter from CU.

[406] *See* proposed Item 2(a)(21)(ii) of Schedule L.

[407] *See* letter from ASF I.

[408] *See* letter from SIFMA I.

[409] *See* new Item 1(m)(1) Most recent loan modification event type of Schedule AL.

[410] The coded list was revised to also include the following possible responses: 4=forgiveness of principal, 5=rate reductions, 6=maturity extensions and 7=forgiveness of interest. If, however, the type of action that has modified the loan terms is not identified in the list of possible responses, the issuer should select the code ''other'' and we encourage the issuer to provide explanatory language in an Asset Related Document. *See* Section III.B.4 Asset Related Documents for a discussion on providing additional explanatory disclosure about the asset-level disclosures.

[411] Because asset-level data will be provided monthly, investors will be able to track previous loan modifications.

[412] *See* letter from ASF I.

may go through several modifications.[413]

(2) Commercial Mortgage-Backed Securities

Between Schedule L and Schedule L–D, we proposed 108 data points that relate specifically to CMBS. The data points we proposed to require in Schedule L and Schedule L–D were primarily based on the data template included in the CREFC Investor Reporting Package (''CREFC IRP''), current Regulation AB requirements, and staff review of current disclosure. We did not propose, however, to include every piece of information exactly as specified in the CREFC IRP for two reasons. First, some of the disclosures required by the CREFC IRP would have already been captured by proposed data points in the Item 1 General Requirements, and we believed that those data points would apply to all types of ABS. Second, we did not believe the level of detail in the CREFC IRP was necessary for investor analysis because we believed that the most important data for CMBS is data that relates to the loan term and the property.

The response to the proposal indicated a general preference for CREFC IRP in lieu of the proposed requirements.[414] The preference applied to both information in the prospectus and ongoing reporting.[415] For asset-level reporting at the time of securitization, commenters seemed to favor initial reporting schedules commonly attached by issuers to the prospectus (typically referred to as Annex A) that frequently contain asset-level data based on the specific types of commercial mortgages in the transaction. Some of these commenters suggested that the proposed requirements would duplicate the data provided in the Annex A schedules provided with the prospectus[416] and the existence of duplicative data may confuse investors.[417] One commenter, who supported requiring Annex A in lieu of the proposed Schedule L disclosures, suggested that Schedule L does not reflect the practices that CMBS market participants have developed to provide ''CMBS investors with clear, timely and useful disclosure specifically tailored for use by those investors.''[418] Finally, one investor believed it is reasonable to require the disclosures because much of the same information is currently provided in Annex A of the offering documents.[419] The investor suggested, however, that additional disclosure items to improve current industry disclosure practices, such as requiring disclosure of actual versus underwritten property performance metrics, including disclosure of the same performance metrics for the preceding three years, complete tenant information versus top three tenant information, rent rolls, full indebtedness information for each property and standardized tenant and borrower information.

For ongoing reporting, commenters indicated a preference for previously established industry standards in lieu of the proposal for several reasons.[420] For instance, one commenter was concerned that requiring data points unrelated to CMBS, such as those found in the general requirements, would cause undue programming burdens without a material benefit to investors.[421] Another commenter stated that ''IRP guidelines identify which data points are restricted (i.e., only available to certain users), while the SEC data filings to be contained in Schedule L–D would be public information.''[422] The commenter then stated that publicly disclosing certain sensitive information could put the underlying properties at a competitive disadvantage, which could negatively influence the securities. Other commenters also believed that proprietary information should be considered sensitive information, and therefore CMBS issuers should not be required to publicly disclose such information on EDGAR.[423] Commenters also noted that based on current requirements, investors would receive CREFC IRP disclosures 15 days prior to the required filing date of the Schedule L–D disclosure.[424] One of these commenters also stated that CMBS transactions often involve multiple loans with different financial reporting dates, and the information has to be reviewed by the appropriate parties, and therefore, any particular reporting date may not reflect information for the current reporting period.[425] One investor suggested, in lieu of adopting our ongoing disclosure proposal, that we require disclosure of complete rent rolls at least once per year, the alternatives evaluated with respect to modifications, all terms related to a modification or assumption and that we require the format of the industry reporting standard to be in XML.[426]

After considering the comments we received, we are adopting a requirement that issuers of CMBS provide the disclosures contained under Item 2 of Schedule AL. We believe that investors and market participants should have access to information to assess the credit quality of the assets underlying a securitization transaction at inception and over the life of a security. While we recognize the current market practice is to include provisions in CMBS transactions that provide investors with asset-level data for each pool asset, we note that this market practice is not a mandatory requirement and is subject to change. As such, we believe the asset-level disclosure requirements that we are adopting will require a minimum level of standardized asset-level

[413] *See* new Item 1(m)(2) Effective date of the most recent loan modification of Schedule AL.

[414] *See, e.g.,* letters from ABA I (suggesting that we conform Schedule L data points to IRP standards and the Schedules L and L–D standards should be a ''guideline'' and that the ''traditional standards of materiality'' should be the overriding factor in determining the appropriateness of the disclosure in the offering document), BoA I (suggesting that we require asset-level disclosure generally, but allow the industry to set the requirements for disclosure in the prospectus because requiring a separate Schedule L would be repetitive of the relevant information already provided in CREFC's Annex A), CREFC I (suggesting that we conform proposed Schedule L asset-level data disclosure to the then-current ''Annex A'' data points formulated by the CREFC ''Annex A'' Committee and/or consider that the Schedule L filing requirement be satisfied if the issuer files a Schedule L with the data points identical to the then-current form of ''Annex A'' adopted by CREFC), CREFC III, MBA I (suggesting that to the extent we believe more standardized terminology and a defined core of shared data points for Schedule L would be benefit investors, that we adopt the core disclosures in the current industry Annex A schedules and leverage the definitions already provided in CREFC's IRP), MBA IV, and Wells Fargo I (suggesting that proposed Schedule L asset-level data disclosure conform to the then-current ''Annex A'' data points contained in CREFC's IRP).

[415] *See* letters from ABA I, BoA I, CMBS.com I (suggesting that we establish rules consistent with existing standards where possible to limit disruptions and costs), CoStar, CREFC I, CREFC III, MBA I, MBA IV, MetLife I, and Wells Fargo I.

[416] *See* letters from BoA I, MBA I, and MBA IV.

[417] *See* letter from MBA I (urging that we consider any increase in cost to be incurred by the issuer to provide the additional data and cautioning against including duplicative or extraneous data points at securitization that may hinder rather than enhance investor review of the loans in the pool).

[418] *See* letter from Wells Fargo I.

[419] *See* letter from MetLife I.

[420] *See* letters from CREFC I (suggesting that we tailor Schedule L–D to take into consideration the data already captured by the IRP), CREFC III, CoStar, MBA I, MBA IV, MetLife I, and Wells Fargo I (suggesting that all of the data captured by Schedule L–D is either captured by the IRP or is not applicable to CMBS with the exception of only two data points, which they indicated would be added to what is captured by the IRP).

[421] *See* letter from CREFC I.

[422] *See* letter from Wells Fargo I.

[423] *See* letters from CREFC III (stating that ''the CRE Finance Council's member constituencies, including investment-grade investors, believe that most—if not all—of the information on Schedule L and Schedule L–D should be considered sensitive, and therefore should continue to be hosted on the issuer's (or trustee's or third-party's) Web site''), MBA IV, and SFIG II.

[424] *See* letters from CREFC I, MetLife I, MBA IV, and Wells Fargo I.

[425] *See* letter from Wells Fargo I.

[426] *See* letter from MetLife I.

disclosures in the prospectus and over the life of a security regardless of market practices. We acknowledge commenters' concerns that requiring asset-level disclosures that deviate from the data template in the CREFC IRP may raise costs for both issuers and investors because users are accustomed to working with the CREFC IRP data templates. We also understand that investors are involved in the ongoing development of the CREFC IRP. For these reasons, we made efforts to align our requirements, as much as possible, with pre-established industry codes, titles and definitions to allow for the comparability of future offerings with past offerings and to minimize the burden and cost of reporting similar information in different formats.

The requirements that we are adopting contain several revisions from the proposal aimed at aligning our standards with the CREFC IRP. We reconsidered and are not adopting some data points that do not correspond to the CREFC IRP or are typically disclosed in Annex A because they are no longer necessary due to other changes we made, such as aggregating Schedules L and L–D, or because we are adding data points based on the CREFC IRP to capture the same or similar information.[427] Some data points that we are adopting, however, do not correspond exactly to data captured by the CREFC IRP, but we believe the responses to these data points will improve or clarify the requirements, or aid an investor's ability to make an investment decision.[428] We are also adding some data points that correspond to data captured by the CREFC IRP based on comments received, because the responses to these data points clarify other data points or they add more granularity to the data captured by other data points.[429] In total, the proposal for CMBS included a total of 182 data points between the proposed general item requirements of Schedules L and L–D and the data points specific to CMBS in proposed Schedules L and L–D. Based on the changes described above, the final requirements include 152 data points.

Finally, we are adjusting the codes, titles, and definitions of many of the data points to make them largely comparable to the data definitions set in the CREFC IRP.[430] We believe that through these changes and by making the asset-level data requirements for CMBS largely align with the CREFC IRP many of the disclosures provided under the CREFC IRP can be used to provide the required disclosures. As a result, we believe we have mitigated, to a great extent, cost and burden concerns expressed by commenters and the concern that CMBS investors will not be able to compare the data with the data from past deals.

We also considered concerns raised by commenters as well as alternatives to the final rules. For instance, one commenter suggested that the proposed ongoing reporting requirement would add no value to investors since the industry standard is to make ongoing asset-level disclosures available earlier than when the proposal would require them.[431] We are not persuaded by this comment. We believe that many transaction agreements, while they provide investors with access to asset-level disclosures on an ongoing basis, they do not guarantee that these disclosures will remain available or continue. We believe that requiring asset-level disclosures, which to a large extent aligns with how data is currently provided to investors, to be filed on EDGAR will preserve the information and result in greater transparency in the CMBS market.

We also considered the concerns raised by some commenters about requiring disclosure of proprietary information due to the sensitive nature of the entire data set.[432] While we acknowledge this concern, we believe that information about the underlying properties, including information about the borrowers, will provide CMBS investors and potential investors with information they need to perform due diligence and make informed investment decisions and therefore should be disclosed. We also note that some of the asset-level data that we are adopting is available to the public, for a fee, through third-party data providers.[433]

We considered, as an alternative to the final rules, that issuers provide standardized asset-level disclosures based solely on an industry standard, such as the CREFC IRP. We are not persuaded that this alternative is appropriate because as market practices evolve the consistency of the data provided by each transaction may differ since there is no mandatory requirement that all transactions provide the same type of data. Therefore, we believe adopting a standardized set of asset-level disclosures helps ensure that investors and other market participants will always have access to a minimum set of asset-level disclosures, both at the time of the offering and on an ongoing basis. While we have tailored the asset-level disclosure requirements for each asset class, we also understand from comments received that certain commercial mortgages in a pool may have unique features and that the standardized set of requirements may not capture all of the unique attributes of a particular asset or pool due to the various types of commercial properties.[434] Although we are not adopting all of the data points in the CREFC IRP, CMBS issuers may provide

[427] *See, e.g.,* proposed Items 1(a)(17) Servicing fee—flat dollar; 1(b)(5) Current delinquency status; 1(b)(6) Number of days payment is past due; 3(a)(9) Current hyper-amortizing date of Schedule L and 1(f)(3) Actual principal paid; 1(f)(4) Actual other amounts paid; 1(f)(14) Current payment status; 1(g)(5) Cumulative outstanding advanced amount; 1(g)(8) Other loan level servicing fee(s) retained by servicer; 1(g)(9) Other assess but uncollected servicer fees; 1(l)(2)(ii) Pledged prepayment penalty waived; 1(l)(2)(iii) Reason for not collecting pledged prepayment penalty; 3(a)(4)(i) Rate at next reset; and 3(a)(4)(iii) Payment at next reset of Schedule L–D.

[428] *See* new Items 2(a)(1) Asset number type; 2(b)(1) Reporting period begin date; 2(b)(2) Reporting period end date; 2(c)(1) Originator; 2(c)(2) Origination date; 2(c)(11) Original interest-only term; 2(c)(13) Underwriting indicator; 2(c)(25) Prepayment premium indicator; 2(d)(15) Valuation source at securitization; 2(e)(16)(i) Servicing advance methodology; 2(f)(1) Primary servicer; 2(g) Asset subject to demand; 2(g)(3) Demand resolution date; 2(g)(4) Repurchaser; 2(g)(5) Repurchase or replacement reason; 2(k)(5) Post-modification maturity date and 2(k)(6) Post-modification amortization period of Schedule AL.

[429] *See, e.g.,* new Items 2(c)(18) Scheduled principal balance at securitization; 2(d)(2) Property address; 2(d)(3) Property city; 2(d)(4) Property state; 2(d)(5) Property zip code; 2(d)(6) Property county; 2(d)(13) Year last renovated; 2(d)(28)(i) Date of financials as of securitization; 2(d)(28)(xiv) Most recent debt service amount; 2(d)(28)(xxi) Date of the most recent annual lease rollover review; 2(e)(3) Reporting period beginning scheduled loan balance; 2(e)(10) Unscheduled principal collections; 2(e)(14) Paid through date; 2(e)(16)(iv) Total taxes and insurance advances outstanding; 2(e)(16)(v) Other expenses advance outstanding; 2(e)(17) Payment status of loan; 2(e)(18)(i) ARM index rate; 2(f)(2) Most recent special servicer transfer date; 2(f)(3) Most recent master servicer return date; 2(h) Realized loss to trust; 2(i)(1) Liquidation/Prepayment code; 2(i)(2) Liquidation/Prepayment date; 2(k)(2) Modification code of Schedule AL. We are also adopting a few data points that do not correspond to data captured by the CREFC IRP because our data points clarify the requirements or we received comments requesting the data points be added and we believe the data points aid an investor's ability to make an informed investment decision. *See, e.g.,* new Items 2(d)(19) Most recent valuation source; 2(e)(1) Asset added indicator; 2(g)(1) Status of asset subject to demand; and 2(g)(2) Repurchase amount of Schedule AL.

[430] *See, e.g.,* new Items 2(c)(28)(xi) Rate of reset frequency; 2(d)(7) Property type; 2(d)(11) Number of units/beds/rooms at securitization; 2(d)(15) Valuation source at securitization; 2(d)(24) Defeasance status; 2(d)(28)(vii) Operating expenses; and 2(d)(28)(xii) Net operating income/net cash flow indicator at securitization.

[431] *See* letter from Wells Fargo I.

[432] *See* letters from CREFC III, MBA IV, SFIG II, and Wells Fargo I. Commenters did not identify specific data points that should be revised or eliminated to help address potential competitive harm.

[433] *See, e.g.,* Trepp (providing CMBS data and analytics services), *https://www.trepp.com/cmbs/.*

[434] *See* letter from CREFC I.

those data points as additional asset-level disclosures in an Asset Related Document, as appropriate.[435]

With respect to ongoing reporting, we are not adopting a commenter's suggestion that disclosures about alternatives evaluated related to a modification or disclosure of all terms related to a modification or assumption be provided. We believe this information would be difficult to capture in a standardized way, and we are uncertain, at this time, whether this information is best captured within these particular asset-level requirements. We are adopting as proposed, with revisions to address comments received, expanded disclosures about tenants. We discuss the comments received on tenant disclosures below. We are also requiring that asset-level disclosures be provided in XML. We discuss the requirement that asset-level disclosures be provided in XML in Section III.B.3 XML and the Asset Data File.

Tenant Disclosures

We proposed data points about the three largest tenants (based on square feet), including square feet leased by the tenant and lease expiration dates of the tenant. Several commenters suggested that we expand the scope of these disclosures.[436] For instance, one commenter, an investor, suggested the initial reporting requirements include a requirement to capture rent roll information (i.e., detailed schedules of lease payments for each tenant over time) and additional tenant and operating performance information, full indebtedness information and a way to identify borrowers and tenants.[437] This commenter also suggested that we require full rent rolls for every property in a transaction at least once per year. Other commenters also supported requiring full rent roll and tenant information.[438]

We are adopting as proposed data points about the three largest tenants (based on square feet), including square feet leased by the tenant and lease expiration dates of the tenant.[439] While some commenters requested several changes to the tenant disclosures for CMBS, the consensus among commenters was that rent roll information for each property supporting the mortgages underlying the CMBS was needed. We are not adopting a requirement within the asset-level requirements to require rent roll information at this time because it is not clear how to standardize detailed schedules of lease payments for each tenant over time on an asset-level basis, and we did not receive comment suggesting how this could be done.

Valuations

Proposed Schedule L and Schedule L–D both included data points aimed at capturing valuation information on the properties underlying the commercial mortgages.[440] The valuation data points contained in Schedule L would provide disclosure of the most recent property valuation as of the measurement date in the prospectus. The valuation data points contained in Schedule L–D would require the most recent property valuation available as of the reporting period that the Schedule L–D covered. One commenter suggested that the final rule should capture data on periodic updating and monitoring of commercial real estate assets because periodic (annual) appraisal and evaluation ''updates'' of commercial real estate are commonly performed.[441]

We are adopting, with some revisions, data points that capture the most recent appraisals or valuations available at the time of the securitization and on an ongoing basis.[442] While the information required by these data points is substantially similar to information captured by the CREFC IRP, the data points that we are adopting specifically require, in line with revisions made to RMBS property valuation data points, disclosure of any valuation ''obtained by or for any transaction party or its affiliates.'' The reference to ''obtained by or for any transaction party or its affiliates'' contained in each definition should be construed broadly to include, but not be limited to, valuations obtained as part of any due diligence conducted by credit rating agencies, underwriters or others parties to the transaction. We are also adopting data points that identify the source of the property valuation and the date of the valuation.[443] These data points do not require that originators, sponsors or transaction parties obtain updated valuations. Instead, this requirement is meant to capture valuations conducted subsequent to the original valuation for whatever reason, such as updated valuations obtained in the normal course of their business or because other circumstances require an updated valuation. We believe providing investors updated valuation information will allow them to understand changes in the value of collateral that is meant to protect against losses. Furthermore, since we are requiring issuers to disclose the information only if it is already available to them, we believe that the disclosures will not be unduly burdensome.

(3) Automobile Loan or Lease ABS

Between Schedule L and Schedule L–D, we proposed 110 data points that relate to ABS backed by auto loans and 116 data points that relate to ABS backed by auto leases. These proposed data points were comprised of a combination of data points, some of which were proposed to apply to all

[435] *See* Section III.B.4 Asset Related Documents for further discussion on how to provide such additional disclosures.

[436] *See* letters from CMBS.com I, CoStar, MetLife I, and Realpoint LLC dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Realpoint'').

[437] *See* letter from MetLife I (suggesting that we also require: (1) A minimum 3-year history of operating performance for each underwriting performance metric such as NOI, NCF, etc.; (2) complete tenant information versus providing information on just the top three tenants; (3) rent rolls for every property detailing lease terms for every tenant; (4) full indebtedness information for each property and terms for any other debt that is serviced with the cash flows from the property regardless of the ranking of such other debt in relation to the securitized debt and the conditions under which borrowers are permitted under the transactions documents to place additional debt on the same property in the future; and (5) a practical way to quickly identify borrowers and tenants, perhaps through a standardized convention to allow investors to more easily be able to identify their portfolio level exposures). *See also* letters from CMBS.com I and Realpoint (suggesting that we require similar information).

[438] *See* letters from CoStar (suggesting that we require disclosures of the full rent roll rather than just the largest three tenants and that these disclosures should include: (1) Tenant name (unless a residential property); (2) tenant business line; (3) lease start date; (4) lease amount including any concessions or associated expenses such as tenant improvements; (5) expense sharing arrangements; (6) co-tenancy clauses; and (7) lease renewal options), CMBS.com I, and Realpoint (suggesting that we require disclosure of either the entire rent roll, or at least the largest tenants and all other tenants with lease expiration dates that occur within five years of the cut-off date, and that these disclosures should include: (1) Base rent; (2) pass-through expense reimbursements (taxes, insurance, repairs, maintenance, utilities and other operating expenses); and (3) capital improvement reimbursements because these disclosures would permit them to conduct testing of gross rents, net operating income, net cash flow, debt service coverage ratio and other financial metrics).

[439] *See* new Items 2(d)(25)(i) Largest tenant; 2(d)(25)(ii) Square feet of largest tenant; 2(d)(25)(iii) Date of lease expiration of largest tenant; 2(d)(26)(i) Second largest tenant; 2(d)(26)(ii) Square feet of second largest tenant; 2(d)(26)(iii) Date of lease expiration of second largest tenant; 2(d)(27)(i) Third largest tenant; 2(d)(27)(ii) Square feet of third largest tenant and 2(d)(27)(iii) Date of lease expiration of third largest tenant of Schedule AL.

[440] *See* proposed Items 3(b)(7), 3(b)(8) and 3(b)(9) of Schedule L.

[441] *See* letter from AI.

[442] *See* Items 2(d)(14) Valuation amount at securitization and 2(d)(17) Most recent value of Schedule AL.

[443] *See* Items 2(d)(15) Valuation source at securitization, 2(d)(16) Valuation date at securitization, 2(d)(18) Most recent valuation date, and 2(d)(19) Most recent valuation source of Schedule AL.

asset types and others which were proposed to apply only to auto loans or auto leases. The proposed data points were derived from the aggregate pool-level disclosure that has been commonly provided in Auto ABS prospectuses. The proposal also included data points related to obligor and co-obligor income, assets, employment and credit scores.

For Auto ABS, support for the proposal varied between issuers and investors. Many investors supported the asset-level model with certain modifications from the proposal.[444] Investor commenters stated that ''the provision of loan-level data will strengthen the Auto ABS market and make it more resilient over the long term.'' [445] We note, however, that even the investors that support asset-level disclosure have suggested various modifications and limitations to address issues such as privacy and competitive concerns. One investor commenter acknowledged that the incremental benefit of some proposed fields may be difficult to justify as compared to the costs of providing such information.[446] In light of standard industry practices and issuer concerns about costs and the disclosure of proprietary information, investor commenters recommended adopting fewer data points than were originally proposed.[447]

Issuers typically commented that asset-level reporting was not necessary for Auto ABS because they claimed that the Auto ABS market continues to be robust and active despite no material changes to disclosure practices.[448] One group of issuers also raised concerns that asset-level data requirements would push certain investors [449] and issuers [450] out of the Auto ABS market. They were also concerned that the auto industry could be affected if Auto ABS sponsors have to pass increased costs to automobile purchasers because Auto ABS sponsors are unable to access more cost-effective financing through the Auto ABS market.[451] These issuer commenters noted that several Auto ABS sponsors estimated the costs and employee hours necessary to reprogram systems and business procedures to capture, track and report all of the items for auto loans currently set forth in the proposal. The average cost estimated by those sponsors was approximately $2 million, and the average number of employee hours was approximately 12,000.[452] This group of issuer commenters also argued that Congress never intended to require asset-level data for Auto ABS by pointing to a Senate report published three months prior to the adoption of the Dodd-Frank Act.[453] One trade association commented that such requirements were not necessary for Auto ABS because ''most investors have been able to adequately underwrite auto loan transactions—including during the economic downturn—on the basis of current disclosure, due to the conservative nature of the structure, the deleveraging and granularity of the underlying assets, and their understanding of the issuer's servicing capabilities.'' [454] One group of issuer commenters noted possible re-identification risks.[455] These same commenters also expressed concern about the potential release of proprietary information.[456]

Issuer commenters generally noted that, if any data reporting was to be required, alternative models such as grouped account data, more robust pool-level reporting or some combination of the two would be sufficient.[457] Several commenters argued that alternatives such as grouped account data or expanded pool stratification would provide additional meaningful information to investors while at the same time addressing individual privacy concerns and proprietary concerns.[458] One group of issuer commenters suggested we consider conditioning the provision of asset-level reporting to compliance with potential risk retention rules.[459] These commenters also stated that certain data points are often the same for all assets in an Auto ABS.[460] They suggested that, if we adopt asset-level reporting for Auto ABS such data points should not be required if (1) the responses would be identical for each asset in the pool [461] and (2) adequate pool-level disclosure is given in the prospectus. In response to the 2014 Re-Opening Release, some commenters expressed opposition to asset-level requirements for Auto ABS.[462]

[444] *See* letters from ASF II (expressed views of loan-level investors only), MetLife I, and Vanguard. There were, however, other investors who did not support the asset-level model. *See* letters from ASF II (expressed views of grouped-account investors only) (supporting a grouped account approach for Auto ABS) and Capital One II (noting that they invest in more senior tranches of Auto ABS and recommending that no additional asset-level disclosure be adopted for Auto ABS).

[445] *See* letter from ASF II (expressed views of loan-level investors only).

[446] *See* letter from MetLife I.

[447] *See* letters from ASF II (expressed views of loan-level investors only), MetLife I, and Vanguard.

[448] *See* letter from VABSS IV.

[449] *See* letter from VABSS IV (stating that they ''understand that some investors who do not have the internal resources to analyze data at the loan-level may choose not to invest in Auto ABS because they perceive that they would be at an informational and analytic disadvantage to other investors or because they believe they have a potential risk of liability to their own investors for not being able to utilize all the available data in their analysis'').

[450] *See* letter from VABSS IV (stating that they ''believe that loan-level disclosure requirements could act as a barrier to entry for smaller finance companies that may not have the necessary systems, personnel or resources to capture, track and report loan-level data, thus discouraging the entry of new issuers into the Auto ABS market . . . [and] that these sponsors that are unable to access the Auto ABS markets due to concerns about loan-level disclosure could be placed at a competitive disadvantage to banks and more highly-rated sponsors that are able to either comply with loan-level disclosure or access other less burdensome sources of funding (e.g., bank deposits)'').

[451] *See* letter from VABSS IV.

[452] *Id.*

[453] *See* letter from VABSS III (quoting a portion of the Committee on Banking, Housing, and Urban Affairs' discussion of Section 942 of the Dodd-Frank Act in Senate Report No. 111–176: ''The Committee does not expect that disclosure of data about individual borrowers would be required in cases such as securitizations of credit card or automobile loans or leases, where asset pools typically include many thousands of credit agreements, where individual loan data would not be useful to investors, and where disclosure might raise privacy concerns'').

[454] *See* letter from ASF II (expressed views of issuer members and grouped account investors only).

[455] *See* letter from VABSS IV.

[456] *See* letter from VABSS IV (noting that Auto ABS sponsors make ''considerable investments in technology and human capital to capture, maintain and analyze [the asset-level] data, and to build proprietary credit scoring models and models that predict residual value of leased vehicles'' and stating that making such data publicly available could harm them in the marketplace).

[457] *See, e.g.,* letters from ABA I, AmeriCredit, ASF II (expressed views of dealers and sponsors only), BoA I, Capital One I, VABSS I, and Wells Fargo I.

[458] *See* letters from ABA I and VABSS IV (in which the commenters also conceded that ''presenting grouped data is in many ways more difficult, as it required more time and resources to gather the loan-level data and then compile it for presentation as grouped data).

[459] *See* letter from VABSS IV (suggesting that we consider ''an outright exemption from all loan-level data requirements for any Auto ABS sponsor that satisfies the final risk retention requirements adopted by the Commission'' or, at the very least, ''an exemption for Auto ABS sponsors who retain a horizontal or first-loss position as required by the final risk retention requirements given the direct alignment of interests of sponsors, servicers and investors in Auto ABS and the absorption of all possible losses on these structures by the horizontal 'slice' retained by the sponsor'').

[460] *See* letter from VABSS IV.

[461] These commenters also suggested that a response to a data point may be omitted if no more than 1% of the securitized pool would have a different response. *See* letter from VABSS IV.

[462] *See, e.g.,* letters from AFSA II (opposing requirements for Auto ABS for several reasons including its belief that the Auto ABS market is liquid, many proposed data points would not apply to Auto ABS and for proprietary concerns), Capital One II (opposing requirements for Auto ABS by suggesting that asset-level data is not necessary for investor due diligence, and also noting that the benefits for Auto ABS do not outweigh the costs), SFIG II (noting auto loan ABS has not traditionally included asset-level disclosures), and Wells Fargo III (suggesting that asset-level data for Auto ABS

As we developed the standards we are adopting today, we took into consideration how the proposed data points relate to how information is collected, tracked and reported in the Auto ABS marketplace, as well as how auto loans and leases differ from RMBS and CMBS, and how those differences impact the type of information available for collection and the utility of such information to investors. We also considered potential impacts on the automobile industry if Auto ABS sponsors pass down higher financing costs to consumers. After considering the comments received, we are adopting, as proposed, with some modification to individual data points and some reduction in the amount of data required to be provided, asset-level disclosures specific to Auto ABS. We did consider, as an alternative, whether asset-level reporting should be required in Auto ABS at all. We considered the legislative history of Section 942 of the Dodd-Frank Act, which was cited by commenters.[463] We also considered whether an alternative reporting model, such as grouped account data, pool stratifications or some combination of the two, would provide adequate information to investors. In the end, we concluded that none of these alternatives provide the benefits that we believe investors should receive. We agreed with investors that ''[g]rouped data is preset, which prohibits a customizable analysis of pool information by an investor and presupposes that critical credit metrics and indicators do not change over time . . . [while] the transparency afforded by loan-level data will allow all investors to evaluate, in any market and on an independent basis, whether the pools and structures are robust and the ratings assigned are appropriate.'' [464] We also do not agree that Auto ABS sponsors should be exempt from providing asset-level data if that sponsor has retained a certain amount of risk. As stated in Section II.A Economic Motivations, while we expect risk retention rules will result in better underwriting practices, we believe that more is needed to fully restore incentive alignment and credit screening in the securitization market. If sponsors are exempt from asset-level disclosure based on compliance with risk retention requirements, investors and market participants would have fewer Auto ABS pools available for asset-level comparisons. Finally, we are not making any data points optional on the basis that such data point may be the same across an Auto ABS pool. While we understand that commenters intended to consolidate repetitive data points, we believe that the asset-level presentation of data in a standardized format is an important tool to investors who want to make asset-to-asset comparisons across different Auto ABS pools. If responses to certain data points are omitted, an investor wanting to make pool-to-pool comparisons would first have to locate the omitted information in one or more prospectuses and then recreate portions of the asset-level data files before accurate comparisons could be made.

We believe that the requirements we are adopting for Auto ABS will provide a better picture of the composition and characteristics of the pool assets, which is critical to an investor's ability to make an informed investment decision about the securities. We have considered commenters' concerns that Auto ABS is, in many ways, different from RMBS and CMBS, including that Auto ABS generally fared better during the recent financial crisis. We do not believe, however, that the grouped account data model proposed by commenters would provide information in sufficient detail for investors to compare and evaluate various Auto ABS pools and structures. With asset-level data, users would not have to rely on pre-determined groupings of information, and instead would be able to compare and evaluate the underlying assets using the individual pieces of information they consider to be material.[465]

While we are requiring that Auto ABS issuers provide asset-level data, we have significantly reduced the scope of the asset-level data required from the amount proposed. In doing so, we considered an estimate provided by several Auto ABS sponsors that, if we only adopted the data points proposed in their comment letter,[466] the average costs and employee hours necessary to reprogram systems and otherwise comply with the asset-level disclosures would be approximately $750,000 and 3,500, respectively.[467] In line with this suggestion, we have attempted to reduce burden and cost concerns by reducing the scope of the asset-level data required to align with the smaller scope of information that commenters, including investors, believed should be required for Auto ABS. While the final rules do not exactly mirror the scope of information the group of Auto ABS sponsors suggested be required, we believe that the significantly smaller scope of information we are requiring, coupled with revisions to align the data points with current industry standards should lead to substantially lower costs versus what was originally proposed. These substantially lower costs should also reduce any potential impact on the automobile industry. We also believe that the smaller scope of information and the revisions we made to the data points still provide investors with sufficient information to evaluate the security. Under the final requirements we are adopting, issuers are required to disclose the information described in Item 3, with respect to auto loans, and Item 4, with respect to auto leases, of Schedule AL for each auto loan or lease in the pool, as applicable. As noted above, we proposed 110 data points that relate to ABS backed by auto loans and 116 data points that relate to ABS backed by auto leases. In addition to the data points that were eliminated when Schedules L and L–D were condensed,[468] 40 of the proposed data points for auto loans are not being adopted and 57 of the proposed data points for auto leases are not being adopted. We are adopting 12 new data points for auto loans and 15 new data points for auto leases.[469] Accordingly, the final rules will require issuers to provide 72 data points for ABS backed by auto loans and 66 data points for ABS backed by auto leases. Fewer data points should reduce the cost of providing asset-level data for Auto ABS issuers and also should help to address

would provide little to no incremental value to investors).

[463] We note that we first proposed asset-level disclosure requirements for Auto ABS prior to the enactment of the Dodd-Frank Act. While we believe the asset-level disclosure requirements being adopted today are consistent with the mandate in Section 7(c) of the Securities Act, as added by Section 942 of the Dodd-Frank Act, we do not view that mandate as limiting our long standing authority to prescribe disclosure standards, as necessary and appropriate, for purposes of federal securities laws.

[464] *See* letter from ASF II (expressed views of loan-level investors only).

[465] *Id. See also* letter from Prudential I.

[466] *See* letter from VABSS IV. For ABS backed by auto loans, these commenters proposed that 29 data points should be adopted unconditionally (i.e., for each asset regardless of the response or the structure of the transaction) and 28 data points be adopted conditionally (i.e., they may be omitted if certain conditions are met, such as homogenous responses). For ABS backed by auto leases, these commenters proposed that 30 data points should be adopted unconditionally and 26 data points be adopted conditionally.

[467] The estimate of $750,000 and 3,500 hours is in contrast to this commenter's estimate of $2 million and 12,000 hours for all of the Auto ABS data points as originally proposed.

[468] When the Schedules L and L–D were condensed (as discussed in Section III.B.2 The Scope of New Schedule AL), we eliminated 10 repetitive data points for ABS backed by auto loans and 8 repetitive data points for ABS backed by auto leases.

[469] Data points that have been added since the proposing release were either based on comments or added for purposes of clarity or consistency.

individual privacy concerns.[470] We also believe that this reduction in scope should help address competitive concerns that were raised by issuers. While we acknowledge that some competitive concerns may still exist, we believe that the information we are requiring about the underlying assets will provide Auto ABS investors and potential investors with information they need to perform due diligence and make informed investment decisions and therefore should be disclosed. We also note that some of the asset-level data that we are adopting is available to the public, for a fee, through third-party data providers.[471]

We are not adopting a significant number of data points where we agreed with commenters that the data point was not applicable to Auto ABS or where we are concerned that the benefits investors may receive from the disclosures may not justify the potential costs and burdens to issuers to provide the disclosures.[472] Solely with respect to ABS backed by auto leases, we are also not adopting several data points that were part of the general schedule of data points proposed for all asset classes because the information required to be provided in the items is not something that is relevant for auto leases (for example, items that require issuers to provide interest, principal or amortization information would not be relevant because auto leases do not have amortization, interest, interest rates or principal balances).[473]

As with RMBS and CMBS, we believe that, unless the individual data points are standardized across all issuers of Auto ABS, the utility of asset-level data is generally limited. While commenters have pointed out several areas where there is a difference between how we have proposed that data be presented and how information is generally collected in Auto ABS,[474] we are unaware of any publicly available investor reporting data standards for Auto ABS. We also received many comments directed at individual data points, many of which were seeking changes to the format of the information, the range of possible responses for a particular data point, or the data point's title or definition. Some commenters also made suggestions on how we could make the data point better align with common business practices. Accordingly, we considered each of these comments, and we made changes that we believe improve or clarify the disclosure, mitigate cost concerns, and/or implement industry standards when doing so would not materially diminish the value of the disclosures to investors. We discuss below the significant comments we received about individual data points along with the revisions we have made in response to those comments.

Information About the Obligors

We proposed a group of asset-level data points that would provide data about an obligor's credit quality.[475] This group of data points was intended to capture information about the obligor(s) income, debt, employment, credit score and assets. In light of privacy concerns, the proposal proposed ranges, or categories of coded responses instead of requiring disclosure of an exact credit score, income or amount of assets in order to prevent the identification of specific information about an individual. We discuss below the significant comments we received about this group of data points and the revisions we have made in response to those comments.

Obligor Income and Payment-to-Income Ratio

We proposed ten obligor income data points (five for auto loans and five for auto leases) that would require issuers to provide responses to various data points that relate to the obligor's income.[476] Several commenters suggested that these proposed obligor income data points be replaced with a new payment-to-income ratio data point, where the issuer would specify the code indicating the scheduled monthly payment amount as a percentage of the total monthly income of all obligors at the origination date while providing its methodology for determining monthly income in the prospectus.[477] We agree that the new payment-to-income ratio data point provides investors with sufficient information about the obligor's income, and accordingly, we are not adopting any of the ten proposed obligor income data points and instead are adopting the new payment-to-income ratio data point proposed by commenters.[478]

Obligor Income and Employment Verification

We proposed data points that would require issuers to indicate the codes describing the extent to which the obligor's income and employment have been verified.[479] One group of issuer commenters stated that it is standard industry practice for obligors to self-report income and employment on the credit application and this information is only verified for the riskiest customers, but then went on to say that Auto ABS sponsors do not systematically capture this information in their origination files, and if they do, they do not keep it for more than 90 days.[480] We cannot reconcile these two comments. If most income and employment information is self-reported on the credit application, then that information should be captured in the loan file. Furthermore, if it is standard industry practice to not verify the self-reported information except for the riskiest customers, we assume that such verification is part of the loan or lease approval process that goes to the creditworthiness of the obligor or lessee. These same commenters also argued that obligor income and employment verification data points would only provide marginal additional value if other data points, such as obligor FICO

[470] See Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

[471] *See* letter from VABSS II (stating that there are relatively inexpensive databases containing car owner information linked to vehicle make, model, year, and more). New and used vehicle values can also be obtained for free via publicly available sources. *See, e.g., www.kbb.com.*

[472] For all Auto ABS, these include the following Schedule L data points: Item 1(a)(3) Asset group number; Item 1(a)(9) Original amortization term; Item 1(b)(6) Number of days payment is past due; Item 1(b)(7) Current payment status; Items 4(b)(1) and 5(b)(1) Geographic location of dealer; Items 4(c)(13) and 5(c)(13)—Length of employment: obligor; and Items 4(c)(11) and 5(c)(11) Obligor asset verification. And the following Schedule L–D data points: Item 1(c) Asset group number; Item 1(f)(8) Current scheduled asset balance; Item 1(f)(13)—Number of days payment is past due; Item 1(f)(14) Current payment status; Item 1(f)(15) Pay history; Item 1(f)(16) Next due date; Item 1(g)(5) Cumulative outstanding advance amount; Item 1(g)(7) Stop principal and interest advance date; Item 1(j) Liquidated indicator; Item 1(k) Charge-off indicator; Item 1(k)(2) Charged-off interest amount; Item 1(l)(1) Paid-in-full indicator; Item 1(l)(2)(i) Pledged prepayment penalty paid; Item 1(l)(2)(ii) Pledged prepayment penalty waived; and Item 1(l)(2)(iii) Reason for not collecting pledge prepayment penalty.

[473] For ABS backed by auto leases, these include the following additional Schedule L data points: Item 1(a)(11) Interest type; Item 1(a)(12) Amortization type; Item 1(a)(13) Original interest only term; and Item 1(b)(3) Current interest rate. And the following Schedule L–D data points: Item 1(f)(2) Actual interest paid; Item 1(f)(3) Actual principal paid; Item 1(f)(4) Actual other amounts paid; Item 1(f)(17) Next interest rate; and Item 1(k)(1) Charged-off principal.

[474] *See* letter from VABSS IV.

[475] *See* proposed Items 4(c)(1) through 4(c)(21) and Items 5(c)(1) through 5(c)(21) of Schedule L.

[476] *See* proposed Items 4(c)(6), 4(c)(15), 4(c)(17), 4(c)(19) and 4(c)(20) of Schedule L–D for auto loans and proposed Items 5(c)(6), 5(c)(15), 5(c)(17), 5(c)(19) and 5(c)(20) of Schedule L–D for auto leases.

[477] *See* letters from ASF II (expressed views of loan-level investors only) and VABSS IV.

[478] *See* new Items 3 (e)(6) and 4 (e)(6) of Schedule AL.

[479] *See* proposed Items 4(c)(7) and 4(c)(9) of Schedule L–D for auto loans and proposed Items 5(c)(7) and 5(c)(9) of Schedule L–D for auto leases.

[480] *See* letter from VABSS IV.

score, payment-to-income ratio and LTV ratio, were provided. Investor commenters stated that obligor income and employment verification data points would provide valuable information.[481] Accordingly, we are adopting these data points substantially as proposed.[482]

Co-Obligor Items

We proposed a total of eighteen co-obligor data points (nine for auto loans and nine for auto leases) that would require issuers to provide information about co-obligors such as credit score data[483] and data about income, employment and assets used for qualification purposes.[484] Several commenters suggested that all eighteen of the proposed co-obligor data points be deleted as they are not particularly relevant to the analysis of Auto ABS[485] and that providing all of these co-obligor data points is not warranted given the additional time and expense associated with gathering the information.[486] These commenters suggested that the proposed co-obligor data points be replaced with a data point that would indicate whether the loan or lease has a co-obligor.[487] A group of commenters representing Auto ABS investors commented that it is sufficient to note the presence of a co-obligor, which would indicate that the primary obligor was not creditworthy enough to sustain the loan or lease on its own.[488] We agree, and we are not adopting any of the eighteen proposed co-obligor data points and instead are adopting only the co-obligor (or co-lessee, as applicable) present indicator data point suggested by commenters.[489]

Information About Terms of the Loan or Lease and Payment Activity

We proposed a group of data points that would capture information related to the terms of the loan or lease and payment activity, such as original and current loan or lease terms, interest rates, prepayments, interest paid-through dates and servicer advances. Taken together, the responses to these data points would provide insight into how the loan or lease has performed versus how it was intended to perform when originated. Commenters' response to this group of data points varied, with some commenters suggesting that some data points in this group were unnecessary or redundant and others advising that these data points provide valuable information about the loan or lease. We discuss below the significant comments we received about this group of data points and the revisions we have made to data points within this group.

Original and Current Terms and Initial Grace Periods

We proposed data points that would require issuers to indicate original and current loan terms in months.[490] One group of issuer commenters noted that, for marketing reasons, auto loans and leases are occasionally offered with first payment dates that are deferred for up to 90 days, during which time interest or financing fees accrue but no payments are due.[491] These commenters proposed that these items should be reported to reflect the number of scheduled payments due or remaining (converting non-monthly pay loans to monthly pay) to clearly indicate the payments on the loan in order to avoid odd month terms.[492] We believe it is important for investors to be provided the actual number of months in the term, even if such number includes a grace period where no payments are being made. We agree with commenters, however, that any grace period should be accounted for. Therefore, in addition to adopting the original and current term data points (with minor revisions for timing clarifications, as detailed in other sections of this release), we are also adopting a new initial grace period data point, which requires the issuer to indicate the number of months during which interest accrues but no payments are due from the obligor (or, for auto leases, the number of months during the term of the lease for which financing fees are calculated but no payments are due from the lessee).[493] If there is no initial grace period for an auto loan or lease, the response to this new data point would be zero.

Original Interest Rate

We proposed a data point that would require issuers to provide the rate of interest at the time of origination.[494] One group of issuer commenters believed that this item is generally not readily available or easily trackable by Auto ABS sponsors because it is industry practice to track only the current interest rate on auto loans.[495] Although we understand that there may be some costs to the sponsor or issuer associated with tracking the original interest rate, we believe it is important for investors to be able to compare the current interest rate to the original interest rate and we note that any costs associated with tracking the original interest rate would be one-time costs, as the response to this data point would be static. Therefore, we are adopting the original interest rate data point for ABS backed by auto loans substantially as proposed, with minor clarifying modifications as described elsewhere in this release.[496] Because auto leases do not have interest rates in the same manner as auto loans, we are not adopting this data point for ABS backed by auto leases.

Scheduled Payments and Actual Amounts Collected

We proposed data points that would require issuers to provide the principal and interest payments that were scheduled to be collected for the reporting period[497] and provide any unscheduled principal or interest adjustments during the reporting period.[498] We also proposed data points that would require issuers to indicate actual amounts collected during the reporting period.[499] As suggested by commenters, we are not adopting data points that separate interest and principal payment streams for ABS backed by auto leases.[500] Instead, for ABS backed by auto leases, we are adopting one data point that will capture the payment amount that was scheduled to be collected for the

[481] *See* letter from ASF II (expressed views of loan-level investors only) (''Verifying a borrower's income and employment can offset not having a top credit score. Conversely, not verifying these items can exacerbate an average or below average credit score.'').

[482] *See* new Items 3(e)(3), 3(e)(4), 4(e)(3), and 4(e)(4) of Schedule AL.

[483] *See* proposed Items 4(c)(4), 4(c)(5) and 4(c)(6) of Schedule L–D for auto loans and proposed Items 5(c)(4), 5(c)(5) and 5(c)(6) of Schedule L–D for auto leases.

[484] *See* proposed Item 4(c)(8), 4(c)(10), 4(c)(12), 4(c)(14), 4(c)(16) and 4(c)(18) of Schedule L–D for auto loans and proposed Item 5(c)(8), 5(c)(10), 5(c)(12), 5(c)(14), 5(c)(16) and 5(c)(18) of Schedule L–D for auto leases.

[485] *See* letter from VABSS IV.

[486] *See* letter from ASF II (expressed views of loan-level investors only).

[487] *See* letters from ASF II (expressed views of loan-level investors only) and VABSS IV.

[488] *See* letter from ASF II (expressed views of loan-level investors only).

[489] *See* new Items 3 (e)(5) and 4 (e)(5) of Schedule AL.

[490] *See* proposed Items 1(a)(7) and 1(a)(8) of Schedule L and Item 1(f)(18) of Schedule L–D.

[491] *See* letter from VABSS IV.

[492] *Id.*

[493] *See* new Items 3(c)(12) and 4(c)(8) of Schedule AL.

[494] *See* proposed Item 1(a)(10) of Schedule L.

[495] *See* letter from VABSS IV.

[496] *See* new Item 3(c)(5) of Schedule AL.

[497] *See* proposed Items 1(f)(10) and 1(f)(11) of Schedule L–D.

[498] *See* proposed Items 1(f)(5) and 1(f)(6) of Schedule L–D.

[499] *See* proposed Items 1(f)(2), 1(f)(3) and 1(f)(4) of Schedule L–D.

[500] *See* letter from VABSS IV.

reporting period and another requiring issuers to provide the total of any other amounts collected during the reporting period.[501] With respect to ABS backed by auto loans, a group of issuer commenters stated that the scheduled payment data points are not relevant because auto loans are simple interest loans which have no scheduled principal or interest payment amounts and are not subject to principal or interest adjustments.[502] These same commenters stated that data points relating to actual amounts collected should only be required to be disclosed if a transaction is structured with separate interest and principal waterfalls or separate allocations of other amounts paid to the investors.[503] One investor commenter asked that both the scheduled payment and actual amounts collected data points be included for ABS backed by auto loans.[504] We believe that the scheduled interest amount, scheduled principal amount and other principal adjustments data points provide valuable information about payments that are expected to be received, and we are adopting these data points as proposed. The scheduled interest amount and scheduled principal amount data points will require the issuer to provide the amount of interest and principal, respectively, that were due to be paid during the reporting period, which will show quantitatively how far in advance a loan was paid or how far behind the obligor is in making payments.[505] The other principal adjustments data point would show the amount of any adjustments that are made to the principal balance of the loan, including but not limited to prepayments.[506] We agree with the issuer commenters that the other interest adjustment data point is unnecessary as interest adjustments would be reflected between responses to the original interest rate data point and the current interest rate data point. Accordingly, we are not adopting the other interest adjustment data point. We also believe that the actual payments collected data points provide relevant information about how each asset is performing, regardless of whether the transaction is structured with separate principal and interest waterfalls or a single waterfall. Furthermore, only requiring that responses to these data points be provided for transactions that have separate principal and interest waterfalls runs counter to the goal of facilitating investors' ability to compare the underlying asset-level data of a particular asset pool with other pools. Therefore, we are adopting each of these proposed data points for ABS backed by auto loans.

Prepayment and Interest Paid Through Date

One commenter suggested we add a new ''voluntary prepayment'' data point.[507] We agree that an asset-level prepayment data point will provide valuable information to investors about how prepayments will alter the timing of expected cash flows. Accordingly, we have slightly modified this commenter's suggestion for clarification purposes and to better coordinate with other asset-level requirements. For ABS backed by auto loans, we are adopting an interest paid through date data point that requires issuers to provide the date through which interest is paid with the current payment, which is the effective date from which interest will be calculated for the application of the next payment.[508] For ABS backed by auto leases, we are adopting a similar data point which requires issuers to provide the date through which scheduled payments have been made, which is the effective date from which amounts due will be calculated for the application of the next payment.[509]

Servicer Advanced Amount

We proposed a data point that would require issuers to specify the amount advanced by the servicer during the reporting period (if any such amounts were advanced).[510] One group of issuer commenters stated that this information was already provided under the proposed current delinquency status data point.[511] We do not agree that the responses to these two data points provide the same information, as servicing advances can be made if payment on a loan or lease is less than 30 days late (depending on when payments to investors are due in relation to the due date of the loan or lease payment). The current delinquency status data point only provides information to investors after the loan or lease becomes more than 30 days delinquent. Therefore, we are adopting the servicer advanced amount data point as proposed.[512]

Modifications and Extensions

We proposed a data point that would require issuers to indicate whether an asset was modified from its original terms during the reporting period.[513] A group of investor commenters suggested that this data point be replaced with a new modification type data point.[514] As suggested by commenters, the modification type data point would require issuers to indicate the code that describes the reason for the modification and would only be required if the asset was modified.[515] A group of issuer commenters suggested that the modification indicator data point be replaced with a new payment extension data point.[516] The payment extension data point would require issuers to indicate the number of months the loan was extended during the reporting period and would only be required if the loan or lease was extended beyond its original terms during the applicable reporting period.[517] Investor commenters also suggested that we replace the proposed lease term extension indicator data point[518] with a lease extension data point that would require the issuer to indicate whether the lease has been extended and would capture any incremental lease payments to the trust.[519] We agree with the commenters that these new and modified items are both useful and applicable to Auto ABS. We believe that it is important to include the proposed modification indicator data point so that investors can easily confirm whether the loan was modified during the reporting period. We also believe that the suggested modification type data point provides valuable information to investors based on the concerns that were raised by issuer commenters. If, in fact, modifications other than payment and term extensions are rare and usually lead to a repurchase, investors should

[501] *See* new Items 4(f)(13) and 4(f)(15) of Schedule AL.

[502] *See* letter from VABSS IV.

[503] *Id.*

[504] *See* letter from Vanguard.

[505] *See* new Items 3(f)(13) and 3(f)(14) of Schedule AL.

[506] *See* new Item 3(f)(15) of Schedule AL.

[507] *See* letter from Vanguard.

[508] *See* new Item 3(f)(23) of Schedule AL.

[509] *See* new Item 4(f)(18) of Schedule AL.

[510] *See* proposed Item 1(g)(4) of Schedule L–D.

[511] *See* letter from VABSS IV.

[512] *See* new Items 3(f)(22) and 4(f)(17) of Schedule AL.

[513] *See* proposed Item 1(h) of Schedule L–D.

[514] *See* letter from ASF II (expressed view of loan-level investors only).

[515] *Id.*

[516] *See* letter from VABSS IV. This commenter opposed including the modification type data point suggested by loan-level investors, stating that ''[o]ther than payment extensions and term extensions, there simply are not a material number of credit-related modifications to auto loans [and leases] where the auto loan [or lease] is not required to be repurchased by the servicer and therefore remains in the Auto ABS transaction.''

[517] *Id.*

[518] *See* proposed Item 5(h) of Schedule L–D.

[519] *See* letter from ASF II (expressed views of loan-level investors only).

be alerted to loans or leases that have these rare modifications. Accordingly, we are adopting the proposed modification indicator data point for all Auto ABS, as well as the modification type data point and the payment extension data point for ABS backed by auto loans and the lease extension data point for ABS backed by auto leases (rather than adopting the lease term extension indicator data point as proposed).[520]

Lease-Specific Data Points

We proposed several data points that only apply to ABS backed by auto leases that relate to information such as residual values, termination, wear and tear, mileage, sale proceeds, and extensions.[521] Commenters also pointed out several proposed data points in the general item requirements that were not applicable to ABS backed by auto leases. For instance, a group of issuer commenters noted that the securitization value, which is widely used in the lease securitization industry, is the correct valuation of the size of the lease.[522] The same group of commenters also suggested that the proposed original asset amount data point[523] be revised to an acquisition cost data point that requires the issuer to provide the original acquisition cost of the lease.[524] We agree with both comments, so we are adopting the securitization value and securitization value discount rate data points,[525] rather than the asset balance data points,[526] and are adopting the acquisition cost data point[527] rather than the proposed original asset amount data point.

With respect to the residual value of the lease, we proposed several data points that require the issuer to provide the base and updated residual values of the vehicle and provide the source of such residual values.[528] Both issuer and investor commenters agreed that the base residual value data point should be adopted (although one group of issuer commenters suggested that the data point be amended to capture ''the securitized residual value of the leased vehicle, as determined by the sponsor and described in the prospectus'').[529] Investor commenters also stated that it is important for the issuer to disclose how the base residual value is calculated.[530] One group of issuer commenters stated that neither the updated residual value nor the source of the updated residual value data points should be adopted because the Auto ABS structure for leases is set up based on an original residual value that does not change, that it is enhanced to withstand residual losses and any gains just benefit investors while the costs and burdens to provide this information would be high.[531] While investor commenters did not specifically comment on either the updated residual value or the source of the updated residual value data points, they did request that we adopt a contractual residual value data point, as it would be valuable in determining the likelihood that the lessee will purchase the vehicle at the end of the lease or turn it back in.[532] Issuer commenters noted that the contractual residual value data point suggested by investor commenters is not as relevant as the base residual value or securitization residual value.[533] We agree with investors that the base residual value data point, the source of the base residual value data point and the contractual residual value data point each provide different and valuable information about a lease. Therefore, we are adopting the base residual value and source of base residual value data points as proposed as well as the new contractual residual value data point as suggested by investor commenters.[534] We are not adopting the proposed updated residual value data point or the source of updated residual value data point as these data points do not provide enough additional beneficial information to investors to justify the additional costs that would be imposed upon issuers.

(4) Debt Security ABS

We proposed that issuers of debt security ABS provide responses to the general data points enumerated in Item 1 of Schedule L and the nine data points specific to debt security ABS.[535] The comment we received on the proposal suggested that we require the disclosure of the CUSIP number, ISIN number, or other industry standard identifier of the debt security.[536]

As noted above, under the final rule we are integrating the general item requirements into the requirements for each asset type. Therefore, under the final rule, issuers of debt security ABS are only required to provide the asset-level disclosures required under new Item 5 Debt Securities. After integrating the proposed general data points, the final requirements for debt security ABS have been reduced from 83 possible proposed data points to 60 data points.

Also, in response to comments received, we have revised the asset number data point to require a standard industry identifier assigned to the security be provided for each security, if such number is available. Public access to the responses to these data points and to the responses to other data points that require disclosure of the SEC file number and Central Index Key (''CIK'') number for the debt security will provide investors, including secondary market investors, access to more information about each debt security in the pool. As proposed, the final rules will require that issuers provide more standardized information to investors about the debt securities underlying the ABS. The disclosures we are adopting today require the title of the underlying security, origination date, the minimum denomination of the underlying security, the currency of the underlying security, the trustee, whether the security is callable, the frequency of payments that will be made on the security and whether an underlying security or agreement is interest bearing along with other basic characteristics of the debt securities. At a minimum, these asset-level disclosures will provide investors with

[520] *See* new Items 3(f)(3), 3(j)(1), 3(j)(2), 4(f)(3), and 4(j)(2) of Schedule AL.

[521] *See* proposed Items 5(b)(9) through 5(b)(10) of Schedule L and Items 5(b) through 5(h) of Schedule L–D.

[522] *See* letter from VABSS IV.

[523] *See* proposed Item 1(a)(6) of Schedule L.

[524] *See* letter from VABSS IV.

[525] *See* new Items 4(f)(5) and 4(f)(6) of Schedule AL.

[526] *See* proposed Items 1(f)(7) and 1(f)(8).

[527] *See* new Item 4(c)(3) of Schedule AL.

[528] *See* proposed Items 5(b)(9) and 5(b)(10) of Schedule L and Items 5(b) and 5(c) of Schedule L–D.

[529] *See* letters from ASF II (expressed views of loan-level investors only) and VABSS IV.

[530] *See* letter from ASF II (expressed views of loan-level investors only).

[531] *See* letter from VABSS IV.

[532] *See* letter from ASF II (expressed views of loan-level investors only) (suggesting that under this contractual residual value data point, issuers would provide the stated amount that a lessee needs to pay to purchase the vehicle at the end of the lease term).

[533] *See* letter from VABSS IV.

[534] *See* new Items 4(d)(8), 4(d)(9), and 4 (d)(10) of Schedule AL.

[535] The asset-level requirements for debt security ABS were proposed under the title ''corporate debt.'' ABS backed by corporate debt securities are typically issued in smaller denominations than the underlying security and the ABS are typically registered under Section 12(b) of the Exchange Act for trading on an exchange. Additionally, a pool and servicing agreement may also permit a servicer or trustee to invest cash collection in corporate debt instruments which may be securities under the Securities Act. An asset pool of an issuing entity includes all other instruments provided as credit enhancement or which support the underlying assets of the pool. If those instruments are securities under the Securities Act, the offering must be registered or exempt from registration if the instruments are included in the asset pool as provided in Securities Act Rule 190, regardless of their concentration in the pool. *See* Securities Act Rule 190(a) and (b). *See also* Section III.A.6.a of the 2004 ABS Adopting Release.

[536] *See* letter from SIFMA I.

the basic characteristics of the underlying debt securities in a standardized format.

Public availability of all of the asset-level information we are requiring to be disclosed regarding debt security ABS should reduce the burden on investors, including secondary market investors, to obtain this information, which should reduce investors' costs of conducting their own independent analysis and, thereby, reduce their need to rely on credit ratings. In addition, we believe that having an issuer collect and report asset-level information will improve efficiency, since a single entity, as opposed to multiple investors, will incur the information gathering costs.

We recognize that although investors will benefit from receiving these asset-level disclosures, issuers will face an increase in information gathering and reporting costs, including costs related to system re-programming and technological investment. We recognize that the costs registrants may face will depend on the extent to which the information required to be disclosed is already available to issuers or will have to be newly collected, as well as the extent to which the information is already being disclosed to investors in some transactions. Although we are unable to estimate the magnitude of these costs with any precision, we believe the costs registrants will incur to provide the data should be nominal since the data that is required should already be readily available to registrants, especially since the asset-level disclosures required primarily relate to the performance of the security and the basic characteristics of the security, such as the title of the security, payment frequency, or whether it is callable. A description of each data point required for debt security ABS is provided in Item 5 of Schedule AL.

(5) Resecuritizations

In a resecuritization, the asset pool is comprised of one or more ABS. We proposed that issuers of a resecuritization provide, at the time of the offering and on an ongoing basis, asset-level data for each ABS in the pool and for each asset underlying each ABS in the pool. Under the proposal, resecuritizations would provide the same data as required for debt security ABS for each ABS in the asset pool. In addition, issuers would provide asset-level data for the assets underlying each ABS in the asset pool in accordance with the asset-level disclosure applicable to that particular asset class.

We received several comments that expressed concern about the proposal. Some commenters expressed concern over the cost and burden to provide the asset-level disclosures for the assets underlying the securities in comparison to what they believed to be a limited benefit.[537] One of these commenters was concerned about securities law liability for the asset-level disclosures of the assets underlying the securities.[538] Other commenters were concerned that asset-level data may not be available for the assets underlying an ABS that was originated prior to the compliance date of the rule.[539] Finally, to address some of these concerns, some commenters suggested exemptions from the asset-level disclosure requirements for some resecuritizations.[540]

After considering the comments received, we are adopting the proposal with revisions. For each registered resecuritization, issuers must provide, at the time of the offering and on an ongoing basis for each ABS in the asset pool, the same disclosures that are required for debt security ABS. Therefore, information about the security, such as the title of the security, payment frequency, whether it is callable, the name of the trustee and the underlying SEC file number and CIK number is required.[541] If a resecuritization consists of securities where we have adopted asset-level disclosure requirements (i.e., RMBS, CMBS, or Auto ABS), then a second tier of asset-level information is required. The second tier of asset-level disclosure is about the assets (such as each mortgage, loan or lease) underlying the ABS being resecuritized. For instance, in an offering where the asset pool includes RMBS, then the data points in Item 5 of Schedule AL would be required for every RMBS security in the asset pool, as well as the data points in Item 1 for each loan underlying each RMBS security. Accordingly, if asset-level disclosures are not required for a particular asset type, then an issuer is only required to provide the debt security ABS disclosures for each ABS in the underlying asset pool.

We are adopting an exemption from the new requirement to provide asset-level disclosure about the underlying ABS if the underlying ABS was issued prior to the compliance date for the asset-level disclosure requirements. We noted concerns about the cost to provide the disclosures, whether the information would be available, securities law liability for information provided by third parties and the other concerns raised by commenters. We acknowledge that investors will not have access to asset-level data for the resecuritized ABS for some period of time. We do not believe that providing this exemption would negatively affect investors because the resecuritization will still be subject to existing disclosure requirements, including pool-level disclosure requirements and the exemption will be limited over time by the underlying ABS becoming subject to the asset-level disclosure requirements. We also note that there have been no registered resecuritization offerings in the last few years. Further, as noted above, existing Securities Act Rule 190 requires that all information about the underlying ABS be disclosed in accordance with our registration rules and forms.[542] Therefore, if the underlying ABS was issued prior to the compliance date for the asset-level disclosure requirements, investors in a resecuritization will receive updated and current information about pool data, static pool, risk factors,

[537] *See, e.g.,* letters from MBA I (stating that asset-level data about the underlying ABS would not be useful because only certain classes of an ABS are resecuritized, and the loans backing a particular class are typically supported by the underlying loan pool and do not correlate to specific classes of ABS) and Wells Fargo I (suggesting that the asset-level data required for a resecuritization would be of little benefit to investors in cases where a resecuritization involved a mixture of bonds because investors would have to understand the payment structure of each underlying ABS and the effort involved in doing this would likely be prohibitive for most investors in such cases). *See also* SIFMA I (expressing concerns about the cost to provide the information without providing their own cost estimate).

[538] *See* letter from Wells Fargo I (suggesting that with respect to the proposed ongoing disclosure requirements that subjecting the issuer, underwriter or any other resecuritization transaction party to securities law liability for such information is not appropriate because (i) such information has already been filed, subject to securities law liability, with respect to the underlying transactions, and (ii) there is no practical way for the resecuritization parties to do the due diligence with respect to the underlying filings that would need to be done to accept securities law liability for them).

[539] *See, e.g.,* letters from ABA I, ASF I, BoA I, J.P. Morgan I, MBA I (with respect to RMBS), and SIFMA I. *See also* letter from Citi (indicating that issuers will often be unable to meet the disclosure requirements because they generally do not have access to the underlying asset-level files).

[540] *See* letters from SIFMA I (suggesting an exemption from the proposed asset-level disclosures requirements for (1) resecuritizations with ''seasoned'' pool assets or (2) resecuritizations where the underlying securities fall below some percentage of the asset pool (e.g., 10 percent as supported by the dealers and sponsor members or ''a substantially lower percentage'' as supported by the investor members)) and Wells Fargo I (suggesting an exemption from the proposed asset-level disclosures requirements for ''all bonds that are re-securitized that are from transactions which closed prior to the effective date of Regulation AB'' because a failure to do so ''would eliminate the availability of re-securitizations as an important tool for investors to prudently restructure or de-risk legacy positions'' and it ''could impair the value of such positions due to the resultant illiquidity'').

[541] *See* Section III.A.2.b)(4) Debt Security ABS.

[542] *See* Securities Act Rule 190. *See also* Section III.A.6.a of the 2004 ABS Adopting Release.

performance information, how the underlying securities were acquired, and whether and when the underlying securities experienced any trigger events or rating downgrades.

The final requirement to provide asset-level data in the prospectus and in periodic reports will require that issuers provide more information to investors about resecuritizations than previously required. The asset-level disclosures about the ABS in the asset pool will provide investors, at a minimum, with the basic characteristics of a resecuritization. Further, by requiring disclosure of the SEC file number and CIK number for ABS being resecuritized, it will be easier for investors to locate more information about each resecuritized ABS. Public access to such information, including, when applicable, access to information about the assets underlying the ABS being resecuritized, should reduce investors' burden to obtain this information, and reduce their need to rely on credit ratings because investors will have access to the information in order to conduct their own independent analysis. In turn, this will allow for a more effective and efficient analysis of the offering and should help foster more efficient capital formation.

We do not agree with a commenter's view that there is a limited correlation between loan performance and bond performance and, as a result, there is little benefit from investors receiving asset-level data about the assets underlying the ABS being resecuritized. Specifically, the commenter believed that the asset-level data about the underlying ABS would not be useful because only certain classes of an ABS are resecuritized, and the loans backing a particular class are typically supported by the entire underlying loan pool, and therefore do not correlate to any specific classes of ABS. We disagree and believe that to determine the performance of any particular resecuritization, an understanding of each loan in the underlying loan pool is necessary in order to analyze how the underlying loans impact the cash flows to the resecuritization.

In addition, with respect to the availability of information, Section 942(a) of the Dodd-Frank Act eliminated the automatic suspension of the duty to file under Section 15(d) of the Exchange Act for ABS issuers and granted the Commission the authority to issue rules providing for the suspension or termination of such duty.[543] As a result, ABS issuers with Exchange Act Section 15(d) reporting obligations will be required to report asset-level information, thereby easing concerns that the asset-level information for residential mortgages, commercial mortgages, auto loans, auto leases, or debt securities underlying the ABS in the resecuritization would not be available on an ongoing basis.

With respect to the cost and burden to provide the disclosures and concerns about securities law liability for information obtained from third parties, we believe the existing ability to reference third party information, in part, addresses these concerns. As is the case today, issuers may satisfy their disclosure requirements by referencing third-party reports if certain conditions are met.[544] New Forms SF–1 and SF–3 require that the asset-level information be filed on Form ABS–EE and incorporated into the prospectus.[545] Similarly, revised Form 10–D requires incorporation by reference to Form ABS–EE.[546] If the underlying ABS is of a third-party, we will permit issuers to reference the third-party's filings of asset-level data provided that they otherwise meet the existing third-party referencing conditions. Consequently, reports of all third parties, not only those that are significant obligors, may be referenced. Because issuers are not incorporating third-party filings by reference, but instead merely referencing these filings, we believe we have addressed concerns about issuers' filing burdens and securities law liability for asset-level information filed by third parties.

While some commenters raised concerns about the cost to implement such requirements, commenters did not provide any quantitative cost estimates to comply with this requirement. Implementation of this requirement, even if a registrant can reference third-party filings, will require system re-programming and technological investment. In addition, registrants will incur a nominal cost to provide data about the securities being resecuritized. In general, the data about the securities, which track the debt security ABS requirements, should include data already readily available to issuers, especially since the requirements primarily include basic characteristics of the security, such as the title of the security, payment frequency, and whether it is callable. Registrants will incur a nominal cost to provide this data in the format requested. If asset-level data is required for the assets underlying the securities being resecuritized, registrants will, to the extent they cannot otherwise incorporate by reference or reference third-party filings, incur costs to obtain the data required about the assets underlying the securities being resecuritized or to convert data available to them into the required format. These costs were discussed earlier in the release in the context of complying with asset-level disclosure for RMBS, CMBS and Auto ABS. We believe such costs are appropriate because investors should receive information about the securities that will allow them to conduct their own independent analysis. In addition to the items noted above that mitigate cost concerns, we also believe the extended timeframe for compliance of 24 months lowers the overall burden placed on registrants and market participants and should provide ample time for registrants and market participants to assess the availability of the asset-level information required for resecuritizations and to put the information in the format required.

3. Asset-Level Data and Individual Privacy Concerns

(a) Proposed Rule

As we noted in the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release and as the staff noted in the 2014 Staff Memorandum, we are sensitive to the possibility that certain asset-level disclosures may raise concerns about the underlying obligor's personal privacy. In particular, we noted that asset-level data points requiring disclosures about the geographic location of the obligor or the collateralized property, credit scores, income and debt may raise privacy concerns. We also noted, however, that information about credit scores, employment status and income would permit investors to perform better risk and return analysis of the underlying assets and therefore of the ABS.

In light of privacy concerns, we did not propose to require issuers to disclose an obligor's name, address or other identifying information, such as

[543] *See Suspension of the Duty to File Reports for Classes of Asset-Backed Securities Under Section 15(d) of the Securities Exchange Act of 1934,* Release No. 34–65148 (Aug. 17, 2011) [76 FR 52549].

[544] *See* Item 1100(c)(2) of Regulation AB [17 CFR 229.1100(c)(2)]. In many instances, the issuer of the ABS being resecuritized would be considered a significant obligor as defined in Item 1101(k) of Regulation AB. If so, issuers may reference information about the significant obligors located in third-party reports as set forth in Item 1100(c)(2).

[545] *See* Section III.B.5 New Form ABS–EE, General Instruction IV and Item 10 of Form SF–1 and General Instruction IV and Item 10 of Form SF–3.

[546] *See* Item 1A of Form 10–D.

the zip code of the property.[547] We also proposed ranges, or categories of coded responses, instead of requiring disclosure of an exact credit score [548] or income or debt amounts in order to prevent the identification of specific information about an individual.[549]

The 2014 Staff Memorandum summarized the comments received related to potential privacy concerns and outlined an approach to address these concerns that would require issuers to make asset-level information available to investors and potential investors through an issuer-sponsored Web site rather than having issuers file on EDGAR and make all of the information, including potentially sensitive information, publicly available. Under the Web site approach, issuers could take steps to address potential privacy concerns associated with asset-level disclosures, including through restricting Web site access to potentially sensitive information. The Web site approach also would require issuers to file a copy of the information disclosed on a Web site with the Commission in a non-public filing to preserve the information and to enable the Commission to have a record of all asset-level information provided to investors. The prospectus would need to disclose the Web site address for the information, and the issuer would have to incorporate the Web site information by reference into the prospectus. In addition, issuers would be required to file asset-level information that does not raise potential privacy concerns on EDGAR in order to provide the public with access to some asset-level information.

(b) Comments on Proposed Rule

In response to the 2010 ABS Proposal, several commenters noted that the asset-level requirements would raise privacy concerns.[550] These commenters suggested that, while the proposed asset-level disclosures would not include direct identifiers, if the responses to certain asset-level data requirements are combined with other publicly available sources of information about consumers it could permit the identity of obligors in ABS pools to be uncovered or ''re-identified.'' [551] A number of commenters noted that, if an obligor was identified through this process, then the obligor's personal financial status could be determined.[552] The commenters noted that if obligors are re-identified, then information about an obligor's credit score, monthly income and monthly debt would be available to the general public through the EDGAR filing. Commenters also noted that if personal information was linked to an individual through the asset-level disclosures this may conflict with [553] or undermine [554] the consumer privacy protections provided by federal and foreign laws restricting the release of individual information and increase the potential for identity theft and fraud.[555]

Most commenters did not support the use of coded ranges, noting it would not address privacy concerns [556] and would not further the Commission's objective of improving disclosure for ABS investors. Two commenters noted that using coded ranges would not mitigate privacy concerns because the ranges are so narrowly defined they would identify the actual score or dollar amount of income.[557] Other commenters believed that the use of ranges for disclosures, such as credit scores and income, or requiring a broader geographic identifier for the property, such as MSAs, would greatly reduce the utility of the information.[558] Commenters also noted that disclosure of data that relates to the credit risk of the obligor, such as an obligor's exact credit score, income, or employment history, would strengthen investors' risk analysis of ABS involving consumer assets.[559] Commenters also suggested that exact income and credit scores are necessary to appropriately price the securities [560] and verify issuer disclosures.[561]

We received few suggestions for alternative approaches to balancing individual privacy concerns and the needs of investors to have access to detailed financial information about obligors. Commenters suggested we work with other federal agencies to evaluate whether the proposed asset-level information was in fact anonymized [562] and to assess whether the required asset-level disclosures would subject issuers to liability under

[547] We proposed to require the broader geographic delineations of MSAs in lieu of the narrower geographic delineation of zip codes.

[548] For asset-level data points that require disclosure of obligor credit scores, we proposed coded responses that represent ranges of credit scores (e.g., 500–549, 550–599, etc.). The ranges were based on the ranges that some issuers used in pool-level disclosure.

[549] For monthly income and debt ranges, we developed the ranges based on a review of statistical reporting by other governmental agencies (e.g., $1,000–$1,499, $1500–$1,999, etc.). *See* the 2010 ABS Proposing Release at 23357.

[550] *See, e.g.,* letters from ABA I, CU, MBA I (suggesting that the use of Metropolitan Statistical Areas or Divisions in lieu of zip code would not mask the location of particular properties), VABSS I, and WPF I (also suggesting that the proposed asset-level disclosures would not mask the location of particular properties and additionally that they may provide information useful in the re-identification process). In general, these commenters were concerned that it may be possible to identify an individual obligor by matching asset-level data about the underlying property or asset with data available through other public or private sources about assets and their owners.

[551] *See, e.g.,* letter from WPF I (suggesting that attempts to mask the location of particular properties and the identity of borrowers are not workable because there is too much information about mortgages available that would allow the location of a particular property to be found).

[552] *See, e.g.,* letters from ABA I, AFSA I, American Resort Development Association dated July 22, 2010 submitted in response to the 2010 ABS Proposing Release, ASF II, CDIA, CNH I, CU, Anita B. Carr dated May 12, 2010 submitted in response to the 2010 ABS Proposing Release, Daniel Edstrom dated May 12, 2010 submitted in response to the 2010 ABS Proposing Release, Epicurus, ELFA I, FSR, MBA I, National Association of Federal Credit Unions dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release, Navistar, SIFMA I, SLSA, TYI, VABSS I, Vantage Score Solutions LLC dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Vantage I''), and WPF I.

[553] *See, e.g.,* letters from ABA I (stating that the asset-level disclosures would potentially result in release to the public of detailed non-public personal financial information (as defined in Title V of the Gramm-Leach-Bliley Act (''GLBA'')) as well as consumer report information (as defined in FCRA), CDIA (suggesting that certain data may fall under the protections of FCRA, GLBA, or both), Epicurus, TYI (suggesting that if the disclosures could be used to identify a borrower in a European-based ABS, this may violate European privacy laws), and WPF I.

[554] *See* letter from WPF I (suggesting that if data that may fall under the scope of FCRA is posted on EDGAR and subsequently linked to an individual, the data may become public and, therefore, the transfer of this information to others may contravene FCRA restrictions).

[555] *See* letters from CDIA, VABSS II, and WPF I (suggesting that the cost of identity theft would not only fall on borrowers, but also on asset holders and, therefore, investors would demand higher returns to protect against those losses).

[556] *But see* letters from CDIA (noting that the proposed ranges or categories may provide some privacy protection) and ASF II (expressed views of loan-level investors only) (suggesting the use of range-based reporting for certain credit sensitive fields may also provide a solution to privacy concerns).

[557] *See* letters from CDIA and MBA I.

[558] *See* letters from ASF I (expressed views of investors only), Beached Consultancy (suggesting that the metropolitan area is too broad to be useful, and, therefore, a ''3-digit zip code'' should be permitted), and Wells Fargo I.

[559] *See* letters from ASF I (requesting disclosure of exact credit score and noting that requiring ranges would be a step back in terms of transparency), Interactive (noting that asset-level granularity is essential for robust evaluation of loss, default and prepayment risk associated with RMBS), Prudential I (suggesting that ranges of FICO score bands are not sufficient to appreciate the linkages between collateral characteristics), and Wells Fargo I (expressing concern that restricting information available to investors could result in substantially lower pricing for new residential mortgage backed securities offerings). *See also* SIFMA I (expressed views of investors only) (recommending 25-point buckets for credits scores rather than the 50-point buckets as proposed).

[560] *See, e.g.,* letters from ASF I, Prudential I, and Wells Fargo I.

[561] *See* letter from ASF I (expressed views of investors only) (suggesting that exact income allows them to double check the issuer's DTI calculations).

[562] *See* letters from ABA I and ASF I.

the federal privacy laws.[563] Many commenters that supported grouped-account disclosures rather than asset-level disclosures indicated that grouped disclosures also could address privacy concerns with asset-level disclosures.[564] Other commenters suggested addressing privacy concerns by changing the disclosure format, such as by requiring that disclosure be presented in ratios rather than dollar amounts,[565] requiring a default propensity percentage in lieu of a credit score,[566] or only requiring narrative disclosure.[567]

We also received suggestions that we should restrict access to or impose conditions on the use of sensitive data. For instance, a commenter suggested that we establish a central ''registration system'' where access to sensitive data is only made to persons who have independently established their identities as investors, rating agencies, data providers, investment banks or other categories of users while forbidding others to use the data or include the data in commercially distributed databases.[568] Another commenter suggested that the Commission consider restricting access to registered users who acknowledge the potentially sensitive nature of the data and agree to maintain its confidentiality.[569] This commenter suggested that requiring users to identify themselves and accept appropriate terms of use would provide a deterrent to those who might attempt to abuse personal financial data and permit identification of such users should any abuse occur. Another commenter suggested establishing rules applicable to the posting, use and dissemination of potentially sensitive data disclosed on EDGAR, including penalties for violation of the rules.[570]

In light of the comments received raising individual privacy concerns and the requirements of new Section 7(c) of the Securities Act, we requested additional comment on privacy generally in the 2011 ABS Re-Proposing Release.[571] We received limited additional feedback on how to address the potential privacy issues surrounding the proposed asset-level disclosures. Commenters again stated that the asset-level requirements, as proposed, would raise privacy concerns.[572] One commenter suggested that the Commission could address privacy concerns by not requiring the disclosure of social security numbers, only requiring MSA information about the property instead of a property's full address, and replacing borrower name with an ID number.[573] Other commenters stated or reiterated that for some asset classes a grouped-account or pool-level disclosure format may mitigate privacy concerns.[574] One commenter repeated the suggestions that it provided in previous comment letters that the Commission could establish and manage (or have a third-party manage) a central ''registration system'' that could provide restricted access.[575]

On February 25, 2014, we re-opened the comment period to permit interested persons to comment on the Web site approach described in the 2014 Staff Memorandum. Only a few commenters indicated support for the Web site approach.[576] Most commenters generally opposed the Web site approach as a means to address privacy concerns,[577] and some commenters also noted that the Web site approach creates or shifts legal and reputational risks to issuers.[578] Commenters expressed concern about whether the Web site approach could result in issuer liability under applicable privacy laws.[579] Several commenters were specifically concerned that the Web site approach might create a risk that the issuer could be considered a ''consumer reporting agency'' under the FCRA and thus subject to its rules and regulations.[580] One commenter noted that the FCRA would not be relevant most of the time because the type of information contemplated by the Web site approach would be beyond the reach of the FCRA while also noting that privacy laws do not protect most consumer data, including the proposed asset-level data, regardless of how it may be disseminated.[581] A number of

[563] *See* letter from ABA I.

[564] *See, e.g.,* letters from ASF II (expressed views of issuers and a portion of investors only) and VABSS II.

[565] *See* letter from CU (suggesting that liquid cash reserves be expressed as a ratio relative to the borrower's debt).

[566] *See* letter from Vantage I (describing default propensity as the chance that a consumer will become 90 or more days late on a debt that he or she owes expressed as a percentage).

[567] *See* letter from ABAASA I.

[568] *See* letter from VABSS II.

[569] *See* letter from CDIA.

[570] *See* letter from Epicurus.

[571] For instance, we asked how asset-level data could be required, both initially and on an ongoing basis, to implement Section 7(c) effectively, while also addressing privacy concerns. We asked which particular data elements could be revised or eliminated for each particular asset class in a manner that would address privacy concerns, while still enabling an investor to independently perform due diligence. We also requested comment on whether it would be appropriate to require issuers to provide an obligor's credit score and income on a grouped basis in a format similar to the proposal for credit cards in the 2010 ABS Proposing Release.

[572] *See, e.g.,* letter from Mortgage Bankers Association dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''MBA III'') (reiterating that several of the data points proposed could allow someone to identify the obligor and that ''the income and credit score ranges do not mitigate privacy issues because the suggested ranges are so narrowly defined that they virtually identify the actual score or dollar amount of income'').

[573] *See* letter from MetLife II.

[574] *See* letters from Sallie Mae, Inc. (SLM Corporation) dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''Sallie Mae II'') (suggesting that ''data presented on a grouped basis should address all privacy concerns''), VABSS III (again suggesting that a grouped data approach minimizes, but does not eliminate, privacy concerns), and VABSS IV (stating that they believe a grouped data approach is the best way to provide additional information to investors while addressing obligor privacy and competitive concerns).

[575] *See* letters from VABSS III (suggesting that it would not be an ''overwhelming process to establish and maintain a restricted-access system'' and that Section 7(c) does not require that data that raises privacy concerns be made publicly available) and VABSS IV.

[576] *See* letters from AFR (noting the advantages of the Web site approach include the disclosure of more granular data and the ability to restrict the data to those who agree to accept legal liability for privacy violations), CII (stating, however, that the restrictions placed on accessing the Web site should not be any more restrictive than user accounts and confidentiality agreements and that issuers should provide, instead of coded ranges, specific credit scores, income, and debt), A. Schwartz (stating that the Web site approach places the liability for errors in the asset-level data on issuers and preserves the privacy interests of borrowers), and World Privacy Forum dated Apr. 18, 2014 submitted in response to the 2014 Re-Opening Release (''WPF II'') (suggesting, however, that the Commission rather than issuers be responsible for maintaining the data).

[577] *See, e.g.,* letters from ABA III, AFSA II, Capital One II, Deutsche Bank dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release (''Deutsche Bank''), MBA IV (with respect to RMBS), SIFMA/FSR I-dealers and sponsors, and Treasurer Group.

[578] *See, e.g.,* letters from AFSA II (also suggesting that the Web site approach did not conform to the White House's Consumer Privacy Bill of Rights because the Web site approach does not specify requirements to provide control or choice to consumers on the sharing of their data with others), Deutsche Bank, MBA IV (also stating that the Web site approach shifts operational risks to issuers), and SFIG II.

[579] *See, e.g.,* letters from AFSA II, CCMR, Deutsche Bank, Lewtan (suggesting that there is uncertainty surrounding FCRA liability for issuers, investors, and all deal parties who touch data originally obtained in the process of underwriting a loan to the consumer), MBA IV, SFIG II (also noting that issuers may be subject to restrictions under state laws), SIFMA/FSR I-dealers and sponsors, and Wells Fargo III. *See also* letters from ELFA II (noting that the dissemination of asset-level data under the Web site approach or through EDGAR would create legal and reputational risks), and Treasurer Group (noting the requirements of Canada's privacy laws).

[580] *See* letters from ABA III, CCMR, Lewtan, SIFMA/FSR I-dealers and sponsors, SFIG II, and Wells Fargo III (noting, for example, that if an issuer is considered a consumer reporting agency, among other things, it will have a duty to update and correct information about the consumer and failure to comply with these duties could subject the issuer to consumer actions and CFPB enforcement).

[581] *See* letter from WPF II.

commenters requested that the Commission obtain an authoritative interpretation or some other form of guidance from the CFPB to clarify issuer liability under the privacy laws when an issuer provides asset-level data before moving forward.[582] A few commenters suggested that under the Web site approach data could still be widely distributed,[583] and two commenters stated that taking steps to reduce the ability to re-identify a person would be more appropriate than limiting access to sensitive data.[584] Some other general concerns about the Web site approach included: the costs and burdens of the Web site approach;[585] the possibility of data breaches and the impacts from data breaches;[586] potential negative market impacts;[587] and the possibility that inconsistencies in technical standards between Web sites may make the Web sites difficult to use.[588]

Some commenters disagreed with the description in the 2014 Staff Memorandum of how issuer Web sites were being used at the time the 2014 Staff Memorandum was released.[589] For instance, one commenter noted that while Web sites were being used at that time to provide information to investors, the information is not the same as what the Commission had proposed to require and does not raise the same privacy concerns.[590] Another commenter noted that current disclosure of asset-level information through Web sites is available only to a limited number of known institutional investors.[591]

Several commenters stated that additional information was necessary to fully assess the potential implications of the Web site approach. For instance, commenters requested clarity on the scope of asset-level disclosures that the Commission is considering adopting, what data would be disclosed on EDGAR and on the Web site, what type of restrictions on access would be reasonable and what information is ''necessary'' for investor due diligence.[592] Another commenter sought information about whether the Commission is still considering asset-level disclosures for certain non-RMBS asset classes.[593] Five commenters urged the Commission to re-open the 2010 ABS Proposal and the 2011 ABS Re-Proposal, in general, to permit further consideration of the concerns surrounding asset-level disclosures.[594]

A number of commenters responded to the 2014 Re-Opening Release by commenting generally on privacy concerns. Several commenters reiterated the re-identification concerns that were raised in response to the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release.[595] Commenters again suggested that obligors may suffer harm if personal data is used to re-identify them.[596] Several commenters noted that the asset-level requirements, as proposed in 2010, contain a variety of highly sensitive personal information that consumers would not expect to be available to the general public, such as information about debt, income, bankruptcies, foreclosures, job losses, and even whether the consumer has experienced marital difficulties.[597] One commenter raised particular concern with disclosure of actual income as such data is highly desirable to the consumer data industry but hard to obtain.[598] One commenter requested that the Commission provide assurance that the data required to be filed on EDGAR could not be reasonably linked to an individual consumer.[599] Some commenters expressed concern that the proposed requirements could result in the disclosure of ''Personally Identifiable Information'' or ''PII,'' which could result in legal liability or reputational damage.[600] In addition, a few commenters identified various laws that may apply to the asset-level disclosures, including non-privacy related laws.[601] Another commenter noted, however, that the availability of potentially sensitive obligor data is not new to the market.[602] Another commenter believed criminal actors

[582] *See, e.g.,* letters from SIFMA/FSR II-dealers and sponsors, Wells Fargo III, MBA IV (with respect to RMBS), and SFIG II (noting concerns that the CFPB has not affirmed past FTC guidance on the transfer of information incident to the transfer of an asset in a securitization and stating that while it strongly believed that an issuer would not become a consumer reporting agency under FCRA by disclosing asset-level information, the CFPB needs to provide a rule or authoritative interpretation that the data posted in accordance with the Web site approach would not be a consumer report and that the issuer would not become a consumer reporting agency). *See also* letter from CCMR (requesting that the Commission, CFPB and Federal Trade Commission (FTC) provide assurance that misuse of disclosures made under the Web site approach would not render the issuer liable for privacy law violations).

[583] *See, e.g.,* letters from ABA III (stating that in the case of registered offerings ABS may be sold to any person, including individuals, without restriction, resulting in a potentially unlimited pool of investors and potential investors), Capital One II, and SFIG II.

[584] *See* letters from ABA III and Treasurer Group. These comments are discussed in more detail below.

[585] *See* letters from AFSA II, ELFA II, Lewtan, MBA IV (with respect to RMBS) (suggesting that the costs would include improving security protocols and designing controls to minimize sharing of the information once a party accesses the Web site), SFIG II, SIFMA/FSR I-dealers and sponsors (objecting to a requirement that issuers file non-sensitive data on EDGAR because it is redundant, imposes unnecessary costs and is incomplete since certain fields would be omitted), and Wells Fargo III.

[586] *See, e.g.,* letters from ABA III, AFSA II, ELFA II, Lewtan, MBA IV (with respect to RMBS), and Wells Fargo III.

[587] *See, e.g.,* letters from ELFA II (expressing concern that issuers may leave the ABS capital markets due to cost and liability concerns) and Lewtan (noting that issuers and investors may leave the market or move to the Rule 144A market because they cannot get comfortable with the risks associated with FCRA, while acknowledging that similar risks exist in the Rule 144A market).

[588] *See* letter from AFR.

[589] *See* letters from ABA III, AFSA II, and SFIG II.

[590] *See* letter from AFSA II. *See also* letter from ABA III (noting that the amount of information proposed for release under the Web site approach exceeds the amount of information typically made available through Web sites).

[591] *See* letter from SFIG II.

[592] *See, e.g.,* letters from ABA III, Deutsche Bank, Lewtan (noting that they did not comment on data point requirements due to the brief comment period and uncertainty about which aspects of the 2010 ABS Proposals remain under consideration), SIFMA/FSR I-dealers and sponsors (requesting clarity on whether any of the asset-level data may be considered ''material'' under the securities laws and whether disclosure of asset-level data as proposed complies with privacy laws), and Wells Fargo III (requesting clarification of which data points would require specific values in order to evaluate privacy issues).

[593] *See* letter from SIFMA/FSR I-dealers and sponsors.

[594] *See* letters from Capital One II, ELFA II (asking the Commission to reconsider requirements for equipment ABS), SFIG II (noting uncertainty as to whether ranges or specific values will be required for sensitive data points and whether the rules will apply to the Rule 144A market), SIFMA/FSR I-dealers and sponsors (suggesting that any re-proposal should include definitive, coordinated federal guidance about compliance with privacy laws, whether the disclosure requirements will apply to the Rule 144A market, which asset classes will be subject to the disclosure requirements and assurances about whether the data can be re-identified), and Wells Fargo III.

[595] *See, e.g.,* letters from ABA III, Capital One II, Deutsche Bank, SFIG II (noting that whether an obligor underlying a foreign loan can be re-identified through the proposed asset-level data will depend on the jurisdiction), SIFMA/FSR I-dealers and sponsors, Treasurer Group (suggesting that the final requirements not include geographic identifiers or other individual identifiers that can identify a borrower), and WPF II.

[596] *See, e.g.,* letters from ABA III, SFIG II, and SIFMA I (expressed view of issuers and sponsors only).

[597] *See, e.g.,* letters from Deutsche Bank, SIFMA/FSR I-dealers and sponsors, and Wells Fargo III.

[598] *See* letter from WPF II.

[599] *See* letter from SIFMA/FSR I-dealers and sponsors.

[600] *See* letter from SIFMA/FSR I-dealers and sponsors (questioning whether some or all of the asset-level information could be considered PII under federal and state laws). *See also* letters from ABA III and MBA IV (with respect to RMBS).

[601] *See* letters from ABA III (noting questions about the application of the GLBA, FCRA and Freedom of Information Act (''FOIA'')), and SIFMA/FSR-dealers and sponsors (noting questions about the application of GLBA and the Fair Debt Collections Practices Act, and whether the information would be subject to FOIA).

[602] *See* letter from Lewtan (noting that they collect and disseminate ABS-related data, including asset-level data).

would prefer to obtain access to other databases containing information more conducive to identity theft, such as social security numbers and date of birth, neither of which would be required by the Commission.[603]

Many commenters expressed particular concern with the disclosure of a property's geographic location because it, along with other data points, can be used with other public databases to match a property with a specific borrower.[604] Commenters' recommendations to revise the geographic data point varied. One commenter recommended that the Commission limit disclosure of the zip code to only the first two digits.[605] Another commenter, without providing a specific recommendation, believed that any geographic data point must be sufficiently broad to ensure that there is no risk of re-identification.[606] One commenter reiterated its support for aggregation of geographic location.[607] In contrast, another commenter noted its opposition to the 2010 ABS Proposal to require only MSA because it would compromise the utility of the data for investors.[608]

Several commenters suggested various alternatives and modifications to the Web site approach. Three commenters suggested aggregating the asset-level data.[609] These commenters, however, did not specify what they meant by ''aggregated.''[610] Another commenter suggested development of a system that permits investors to conduct analysis and produce models without providing access to asset-level information.[611] One commenter said the requirements should mirror the disclosures that the GSEs make with respect to RMBS and that issuers should have the discretion not to disclose sensitive information.[612] Others suggested that issuers should have the flexibility to modify the disclosures and decide the method of delivery to address privacy concerns.[613] Another commenter agreed that the better approach would be to modify the disclosure requirements such that the data increases transparency while still respecting the privacy of borrowers' information, but did not specify how those disclosures should be made available to investors.[614] Several commenters suggested that we adopt mechanisms or controls to restrict access to asset-level information filed with the Commission to investors and potential investors.[615]

Another commenter suggested a central repository or ''aggregated data warehouse'' to house the asset-level data because such an approach would simplify enforcement of access policies, ensure consistent data formats and lower incentives to exclude certain users.[616] Similarly, another commenter suggested that issuers disclose all asset-level data to a consumer reporting agency administered repository, along with a unique identification number for each asset, which would allow investors to access all the asset-level data for these assets.[617] Another commenter also suggested that credit bureaus, instead of issuers, should provide credit related information.[618] One commenter outlined revisions to the Web site approach that it believed are necessary if such an approach is adopted, including a data chain of custody, privacy and security rules and public disclosure of each issuer's privacy and security policies.[619]

(c) Final Rule and Economic Analysis of the Final Rule

After considering the comments received related to privacy concerns and on the Web site approach, and our obligations under Section 7(c) of the Securities Act,[620] we are adopting new rules to require that issuers file asset-level disclosures on EDGAR both at the time of the offering and on an ongoing basis in periodic reports. We are revising the required disclosures contained in the proposal to address the risk of parties being able to re-identify obligors and the associated privacy concerns. Specifically, as discussed below, we are modifying or omitting certain asset-level disclosures relating to RMBS and Auto ABS to reduce both the amount of potentially sensitive data about the underlying obligors and the potential risk that the obligors could be re-identified. In addition, in response to commenters' suggestions, we have sought and obtained guidance from the CFPB on the application of the FCRA to the required disclosures. As discussed

[603] *See* letter from AFR. Despite its belief that the Web site approach would not create a new target for criminal actors, AFR recommended that the Commission not adopt such an approach because: (i) Issuers could inappropriately discriminate in providing access to the restricted Web site; (ii) there is a potential that not all issuers would have the technical capacity to implement appropriate privacy controls; and (iii) if the design of the data is left to issuers, standardization of the data format would not be possible, making it more difficult to use.

[604] *See* letters from ABA III, ELFA II, Lewtan, SIFMA/FSR I-dealers and sponsors, SFIG II, Treasurer Group, and Wells Fargo III.

[605] *See* letter from ABA III (noting that the Department of Health and Human Services, as part of its efforts to keep consumers' health information anonymous, has limited disclosure of zip codes to the first three digits, and also noting that the European Securities and Market Authority has created draft templates for asset-level disclosure, including for RMBS, in which it requires only the first two or three digits of the postal code).

[606] *See* letter from Treasurer Group.

[607] *See* letter from CFA Institute dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release.

[608] *See* letter from AFR.

[609] *See* letters from ABA III, Lewtan (noting that aggregation would significantly reduce the risk of re-identification and data security breaches, but data security concerns related to internal operations would remain), and MBA IV (with respect to RMBS).

[610] For example, they did not specify whether they were referring to pool-level data, grouped-account data similar to the disclosures proposed for credit card ABS in the 2010 ABS Proposal, less granular loan-level information or some other form of data aggregation.

[611] *See* letter from Treasurer Group.

[612] *See* letter from MBA IV (with respect to RMBS).

[613] *See, e.g.,* letters from ABA III (suggesting that if the Commission adopts the Web site approach, then issuers should be able to aggregate, group or anonymize the data, as needed, to comply with the privacy laws or be allowed to omit data under Securities Act Rule 409, and also suggesting that issuers should have the flexibility to determine the method of delivery of the disclosure) and SIFMA/FSR II-dealers and sponsors (suggesting that issuers be allowed to withhold, aggregate, or otherwise modify the asset level disclosures in order to comply with legal and regulatory obligations, reduce re-identification risk or otherwise protect consumer privacy, or to limit disclosure of information that is not material to an investment decision).

[614] *See* letter from Capital One II.

[615] *See* letters from CDIA (suggesting that the Commission require parties that want to access the data on EDGAR register to use the data, acknowledge the sensitive nature of the data, and agree to maintain its confidentiality), Epicurus (suggesting that the Commission establish rules applicable to the posting, use and dissemination of potentially sensitive data disclosed on EDGAR, including penalties for violation of the rules), WPF I, and WPF II.

[616] *See* letter from AFR (suggesting either a single data warehouse managed by a federal agency (e.g., the Commission, the Federal Reserve (similar to the Bank of England model), or the Office of Financial Research) or a non-profit data warehouse owned and managed by private sector entities under Commission oversight (similar to the European Data Warehouse).

[617] *See* letter from SIFMA/FSR II-dealers and sponsors (noting that this approach would apply to all ABS asset classes and also noting certain developmental challenges, such as identifying a consumer reporting agency willing to act as a repository and application of FCRA). *See also* SFIG II (stating that issuers should have the option to use third party agents (which may be a consumer reporting agency or a central Web site data aggregator) to make the data available and control access, but also noting that such an approach still raises privacy law concerns and concerns about who pays for the third-party service).

[618] *See* letter from ABA III.

[619] *See* letter from WPF II. The commenter also outlined the elements of an appropriate data use agreement, such as disclosure restrictions, standards to qualify recipients, and providing consumers a private right of action for those who misuse the data.

[620] As noted above, Section 7(c) of the Securities Act requires that we adopt rules to require ABS issuers to disclose asset-level information if the data is necessary for investors to independently perform due diligence.

below, the CFPB has issued a letter[621] to the Commission stating that the FCRA will not apply to asset-level disclosures where the Commission determines that disclosure of certain asset-level information is ''necessary for investors to independently perform due diligence,'' in accordance with Section 7(c). We believe these steps implement the statutory mandate of Section 7(c) and will provide investors with the asset-level information they need while reducing concerns about potential re-identification risk associated with disclosing consumers' personal and financial information.

While we have considered the Web site approach described in the 2014 Staff Memorandum, as discussed below, we are not adopting this approach due to concerns about the practical difficulties and unintended consequences of limiting access to only investors and potential investors.[622] Commenters also indicated that the Web site approach could negatively affect the ability of investors and the broader ABS market to have adequate access to the data.[623]

We continue to believe that the disclosure of data that relates to the credit risk of the obligor, such as an obligor's credit score, income, or employment history, would strengthen investors' risk analysis of ABS involving consumer assets.[624] We believe these disclosures, combined with other asset-level disclosures, such as the terms and performance of the underlying loan and information about the property, will enable investors to conduct their own due diligence for ABS involving consumer assets, and thus facilitate capital formation in the ABS market. Consequently, it is critically important that the manner in which such information is disseminated enables all investors to receive access to the required asset-level disclosures. The ability of other market participants, such as analysts and academics, to access this information may also benefit the market by encouraging a broader range of commentary and analysis with respect to ABS.[625]

Although we did not propose to require that an obligor's name, address, or other identifying information be disclosed, we are sensitive to the possibility that an obligor in an asset pool could be identified (now or in the future) due to the availability of the required disclosures (coupled with the XML requirement), the amount of data about obligors that is publicly available through other sources, and information about real estate transactions and other types of transactions that is available or that may become available in the future. In the event the obligor was re-identified, the information that would have been required by the proposal, even in ranges, might reveal information about the obligor's financial condition.

This issue is especially pronounced for securitizations backed by residential mortgages, as an obligor could potentially be re-identified using a combination of asset-level disclosures and real estate transaction data that is routinely disclosed by certain local governments.[626] Commenters noted that property address, sales price, and closing date are typically disclosed by local governments and could be used to link the asset-level disclosures to an individual.[627] If a specific mortgage is re-identified, sensitive financial data about an obligor (e.g., credit score, DTI, and payment history) could potentially be connected to the obligor.

In light of this concern, we are revising the proposed data set for RMBS as follows.[628] First, we are modifying the required geographic identifier from MSA, as proposed, to a 2-digit zip code.[629] Several commenters emphasized the importance of geography in assessing the re-identification risk for RMBS asset-level disclosure.[630] We believe that, because publicly available information like property records is typically sorted and searchable by geography, requiring issuers to identify assets by a broader geographic area should decrease the ability to re-identify individual obligors. In considering how to broaden the geographic area, we considered both the specific recommendations of commenters as well as current disclosure practices, including those of the GSEs and Ginnie Mae.[631] As noted above, one commenter specifically recommended that we require disclosure of either a 2-digit or 3-digit zip code.[632] There are currently less than 99 distinct 2-digit zip codes and approximately 900 distinct 3-digit zip codes.[633] By contrast, our proposal would have required disclosure of MSA, which represents approximately 960 unique geographic areas. We understand that Ginnie Mae currently discloses state (60 distinct areas, including Washington, DC and U.S. territories and associated states).[634] Depending on the data set, Fannie Mae and Freddie Mac disclose MSA, 3-digit zip code or state.[635] After considering the various alternatives, we are adopting a 2-digit zip code. In reaching this conclusion, we considered that a 3-digit zip code would not significantly reduce the re-identification risk relative to the proposal's use of MSA and that use of state may be too broad of an area to be useful to RMBS investors.[636]

To further reduce the risk of re-identification, we are also omitting several data points that, while

[621] *See* letter from the Consumer Financial Protection Bureau dated August 26, 2014.

[622] *See, e.g.,* letters from ABA III (noting concern that without guidance as to who is a potential investor issuers may apply their own bias filters to public offerings, such as limiting public offerings to only institutional investors), AFR (expressing concern that if issuers are given the ability to limit access to asset-level data they may use this ability to discriminate between investors by, for example, giving investors with more market power preferential access to the data), CCMR, MBA IV, and SFIG II.

[623] *See, e.g.,* letters from ABA III, Moody's II, and R&R.

[624] *See* footnotes 559, 560 and 561 (discussing commenters' views on the importance of receiving granular data about obligors, such as exact income and credit scores).

[625] *See* letters from ABA III, Moody's I, Moody's II, M. Joffe, and R&R.

[626] These issues potentially exist but are less pronounced for Auto ABS. We are not aware of any public databases of auto loan and lease records made available by local governments. It is possible that these types of databases could be available from other sources for a fee. After the time of purchase, an obligor may move and register the automobile in a different state. In contrast, the property that is collateral for a mortgage is connected to a permanent address and therefore could be matched more easily with publicly available information from land records.

[627] *See, e.g.,* letters from ABA III, CU, SIFMA/FSR I-dealers and sponsors, SFIG II, and Treasurer Group.

[628] Although the changes discussed relate to RMBS data points, we also indicate, where relevant, corresponding changes we have made to the data points for Auto ABS that address privacy concerns.

[629] *See* new Item 1(d)(1) of Schedule AL. For Auto ABS, at the suggestion of commenters, we are modifying the geographic identifier of the obligor to state. *See* new Items 3(e)(7) and 4(e)(7). *See also* letters from ASF II (expressed views of loan-level investors only) and VABSS IV. We are not adopting proposed data points that would have disclosed the geographic location of the dealership. *See* proposed Items 4(b)(1) and 5(b)(1) of Schedule L.

[630] *See* letters from ABA III, ELFA II, Lewtan, SIFMA/FSR I-dealers and sponsors, SFIG II, Treasurer Group, and Wells Fargo III.

[631] *See* letter from MBA IV (with respect to RMBS).

[632] *See* letter from ABA III.

[633] *See* the U.S. Postal Service Web site for a list of 3-digit zip codes, *http://pe.usps.com/text/LabelingLists/L002.htm.*

[634] *See* Ginnie Mae's MBS Loan-Level Disclosure File *available at http://www.ginniemae.gov/doing_business_with_ginniemae/investor_resources/mbs_disclosure_data/Lists/LayoutsAndSamples/Attachments/105/mbsloanlevel_layout.pdf.*

[635] *See* Fannie Mae's Loan-Level Disclosure File *available at http://www.fanniemae.com/resources/file/mbs/pdf/filelayout-lld.pdf* and Loan Performance Data Disclosure File *available at https://loanperformancedata.fanniemae.com/lppub-docs/lppub_file_layout.pdf. See also* Freddie Mac's Loan-Level Disclosure requirements *available at http://www.freddiemac.com/mbs/docs/fs_lld.pdf* and Single Family Loan-Level Dataset General User Guide *available at http://www.freddiemac.com/news/finance/pdf/user_guide.pdf.*

[636] *See also* footnote 670 and accompanying text.

potentially useful to investors, could increase the ability to identify underlying obligors. Specifically, we are omitting the unique broker identifier data point[637] as well as the sales price,[638] origination date, and first payment date[639] data points. In addition, we are omitting some information about an obligor's bankruptcy and foreclosure history,[640] although, if an obligor had experienced a past bankruptcy or foreclosure, we would expect that those events would have been considered in generating a credit score. As noted above, the final rules require disclosure of an exact credit score.

Another step that we are taking to address commenters' concerns about re-identification risk is to omit the proposed income and debt data points. While we believe that income and debt information would strengthen an investor's risk analysis of ABS involving consumer assets,[641] we are not requiring them based on concerns about the sensitive nature of this information and increased re-identification risk posed by this information.[642] As discussed in Section III.A.2.b)(1) Residential Mortgage-Backed Securities, however, we are requiring DTI ratios.[643] These are key calculations used to assess an obligor's ability to repay the loan that, we believe, will permit investors to perform due diligence in the absence of specific debt and income data points.

We also are revising[644] or removing[645] certain other proposed data points to further mitigate re-identification risk concerns since the responses to these items will be made available to the public through EDGAR.[646] We do not believe these proposed requirements necessarily would have increased re-identification risk alone, but we have concluded that these data points, if adopted as proposed, could disclose sensitive obligor data without providing additional information necessary for investor due diligence.

Finally, in response to commenters' suggestions, we have obtained guidance from the CFPB on the application of the FCRA to the proposed disclosure requirements.[647] In a letter issued to the Commission dated August 26, 2014, the CFPB stated that the FCRA will not apply to asset-level disclosures that exclude direct identifiers where the Commission determines that disclosure of such information is ''necessary for investors to independently perform due diligence.''[648] Specifically, the CFPB letter confirms that (i) issuers and the Commission would not become consumer reporting agencies by obtaining and disseminating asset level information, and (ii) no violation of Section 604(f) of the FCRA[649] would occur if issuers or the Commission obtain or disseminate any information that is a consumer report (such as a credit score), in each case if the Commission determines that disclosure of the information is necessary for investors to independently perform due diligence and that the information should be filed with the Commission and disclosed on EDGAR to best fulfill a Congressional mandate. As noted above, we have revised or eliminated certain asset-level data points that implicate consumer privacy concerns where we determined that doing so would not compromise investors' ability to perform due diligence on the underlying assets. We believe the asset-level data points that we are requiring about underlying obligors for ABS involving consumers assets are necessary for investors to perform due diligence, as required by Section 7(c). After taking these steps and after careful consideration of alternative means of disseminating such information, we have determined that having the information filed with the Commission and disclosed on EDGAR is the most effective means of ensuring that investors have access to asset-level data.

As discussed above, we have taken significant steps to reduce the re-identification risk associated with providing certain asset-level data while adhering to the statutory mandate in Section 7(c) to require disclosure of such information to the extent necessary

[637] *See* proposed Item 2(a)(11) of Schedule L. For RMBS, we are adopting a data point that indicates whether or not a broker originated or was involved in the origination of the loan as well as a data point that discloses the National Mortgage License System registration number for the company that originated the loan. These data points will allow investors to compare loans by particular originators and across originators. Investors will also be able to compare loans where a broker was used. Together, these data points will provide investors with information they need to perform due diligence and make informed investment decisions. See new Items 1(c)(24) and 1(c)(26) of Schedule AL. These data points were not proposed and are not relevant for Auto ABS.

[638] *See* proposed Item 2(b)(3) of Schedule L. We are also omitting the original property valuation data points because we believe they could provide a close approximation of sales price, and thus could have raised the same re-identification concern as sales price. *See also* proposed Items 2(b)(5), 2(b)(6), 2(b)(7), 2(b)(8), and 2(b)(9) of Schedule L. For RMBS, we believe that certain other data points we are adopting, such as Original loan amount and Original loan-to-value, will provide investors with information they need to perform due diligence and make informed investment decisions. *See* new Items 1(c)(3) and 1(d)(11) of Schedule AL. For Auto ABS, we are adopting data points that capture the vehicle value, as these values are already made publicly available from sources such as the Kelly Blue Book. See new Items 3(d)(7), 3(d)(8), 4(d)(6) and 4(d)(7) of Schedule AL.

[639] *See* proposed Items 1(a)(5) and 1(a)(14)of Schedule L. *See also* letters from ABA III, Lewtan, MBA I, and SFIG II. We believe that certain other data points we are adopting, such as Original loan maturity date, Original amortization term and Remaining term to maturity, will provide investors with information they need to perform due diligence and make informed investment decisions. *See* new Items 1(c)(4), 1(c)(5) and 1(g)(2) of Schedule AL. Because the same publicly available property records are not available for auto loans and leases, we are adopting data points that capture the month and year of origination and the original first payment date for Auto ABS. *See* new Items 3(c)(2), 3(c)(10), 4(c)(2), and 4(c)(10) of Schedule AL.

[640] *See* proposed Items 2(c)(24) and 2(c)(25) of Schedule L and proposed Items 2(c)(1), 2(c)(2), 2(c)(3), 2(c)(4), 2(c)(5), 2(c)(6), 2(c)(7), 2(c)(8), 2(h), 2(k)(2), 2(k)(3), 2(k)(4), 2(k)(5), 2(k)(7), 2(k)(8), 2(k)(11), 2(k)(12), 2(k)(13), and 2(m)(3) of Schedule L–D. While commenters did not specifically note that these data points would pose re-identification risk, we received letters about the sensitivity of the data. *See, e.g.,* letters from Deutsche Bank, MBA IV, and SIFMA/FSR I-dealers and sponsors. RMBS issuers will, however, be required to provide information about an asset in the pool that is subject to a foreclosure, or if the reason for non-payment by an obligor is due to bankruptcy. *See* new Items 1(g)(33), 1(r)(1), 1(r)(2), 1(r)(3), 1(r)(4), 1(r)(5), 1(v)(1) and 1(v)(2) of Schedule AL. These data points were not proposed and are not relevant for Auto ABS.

[641] Investor members of one commenter noted that this information is useful for verifying DTI calculations. *See* letter from ASF I.

[642] *See* letters from VABSS IV, Wells Fargo III, and WPF II.

[643] *See* Section III.A.2.b)(3) Automobile Loan or Lease ABS above for a discussion of the payment-to-income ratio data points that are being adopted in lieu of proposed data points that would have collected obligor or lessee income information. There were no data points proposed for Auto ABS that would have collected obligor or lessee debt information.

[644] *See, e.g.,* proposed Item 2(l)(13) Eviction start date of Schedule L–D (revised to new Item 1(s)(8) Eviction indicator of Schedule AL). Similar data points were not proposed for Auto ABS.

[645] *See, e.g.,* proposed Items 2(c)(13) Liquid/cash reserves, 2(c)(14) Number of mortgages properties, 2(c)(18) Percentage of down payment from obligor own funds, 2(c)(20) Self-employment flag; 2(c)(21) Current other monthly payment, 2(d)(6) Mortgage insurance certificate number, 2(a)(1) Non-pay reason, and 2(l)(14) Eviction end date of Schedule L–D. Similar data points were not proposed for Auto ABS.

[646] These changes involved modifying the possible responses, such as removing certain responses from the coded list of possible responses. For example, in new Item 1(c)(1) Original loan purpose of Schedule AL, which was proposed as Item 2(a)(1) of Schedule L, we are removing certain possible responses from the enumerated list of codes due to privacy concerns.

[647] Commenters also raised concerns about the applicability of other federal and state privacy laws and analogous foreign laws. We do not believe the final rules are likely to implicate these other laws for a variety of reasons, including that they do not require disclosure of direct identifiers (PII) and because certain of these laws provide an exemption for the disclosure of information in order to comply with federal, state or local laws and other applicable legal requirements. More generally, we believe the changes we are adopting to help address privacy concerns should help to mitigate concerns about the applicability of other privacy laws.

[648] *See* Section 7(c) of the Securities Act [15 U.S.C. 77g(c)].

[649] 15 U.S.C. 1681b(f).

for investors to independently perform due diligence. We do recognize, however, that the final rules do not completely eliminate the risk of obligor re-identification [650] and there may be costs associated with providing certain sensitive information required by the final rules. These costs may include costs to issuers of consulting with privacy experts to understand the impact of providing these disclosures. We also recognize that some issuers and investors may move to unregistered offerings, which may affect capital formation.[651] Alternatively, the increased costs may be passed on to the underlying obligors in the form of a higher cost to borrowers (e.g., interest rates or fees).

Re-identification risk can also increase the cost of capital due to obligor preferences. If an obligor is particularly sensitive to the possibility of re-identification, the obligor may prefer to transact with originators that offer additional methods for preserving anonymity, which could increase that obligor's cost of or access to capital. For example, if a loan agreement gives an obligor the ability to opt out of disclosure, thereby prohibiting the ability to securitize the loan where asset-level information would be disclosed, originators may pass costs on to the obligor. Originators could also bear some increased costs if, as a result of being unable to securitize the loan or sell it to the GSEs, the originator would hold the asset on its balance sheet, thus limiting its ability to redeploy capital to more productive or efficient uses. In addition, the risk of re-identification could limit an obligor's access to capital if the obligor is unable to obtain assurances, even at a higher cost, that his or her loan would not be securitized in a way that gives rise to a potential risk of re-identification. Ultimately, an obligor's sensitivity to re-identification risk could lead to a reduction in the number of loans available for securitization. This could, in turn, lead to a reduction in liquidity of ABS markets and a corresponding increase in cost of capital even for those loans that are otherwise securitized through registered offerings.[652] In general, for these reasons, we believe that reducing the likelihood of obligor re-identification will reduce the impact of these potential costs of asset-level disclosure for the ABS market.

As discussed above, in considering how to modify the proposed disclosures to reduce the risk of re-identification, we considered the specific recommendations of commenters and current disclosure practices. Although we received various suggestions for reducing re-identification risk, commenters did not provide any data or analysis that quantified the likelihood of re-identification based on the proposed disclosures or their suggested approaches to addressing re-identification risk. Some commenters indicated that using less precise geographic identifiers would reduce the risk that an obligor could be re-identified.[653] Using less precise data points for sales price and origination date would also reduce the risk of re-identification.

To help confirm the effect of requiring less precise information, we performed an analysis of various modifications to the required data points. In particular, we have estimated the likelihood of isolating a unique mortgage in a sample pool of mortgage loans by considering different levels and combinations of precision for the geographic location of the property, sales price, and origination date. Our analysis examined mortgages collected from mortgage loan servicer providers and reported in the MBSData, LLC, dataset, which includes asset-level data for most of the mortgages securitized in the private-label RMBS market during the period from 2000 to 2012.[654] Categorizing loans according to their uniqueness is the first step someone could take to re-identify an obligor. Each of the 19.3 million mortgages reported during this period were sorted according to uniqueness of three loan characteristics—geographic location, sales price, and origination date—which could potentially link the mortgage to another publicly available dataset that contains obligors' identities.[655] We assume that loans that have unique values for these three variables, when compared to all other loans in the MBSData dataset, have an elevated potential for obligor re-identification. We note, however, that our analysis is not an actual measure of re-identification risk. Importantly, in order to actually re-identify an obligor, a unique mortgage must also be matched with publicly available data sources, such as from local government real estate transaction ledgers and tax records that contain information on property addresses, sales prices, and origination dates.[656] We have not attempted to quantify the likelihood that a unique mortgage, once isolated, can be matched with publicly available data sources. Instead, we have focused our analysis on this first step of the re-identification process, which is to isolate a unique mortgage.

To provide a basis for comparison, we first considered the likelihood of identifying a unique loan using a 5-digit zip code for the property location, the exact sales price and the exact origination date. Approximately 76% of the 19.3 million loans analyzed are unique when these three characteristics are compared across all mortgages in the database. That is, these loans could be distinguished from all other loans with respect to geography, imputed sales price, and origination date, and they were originated in states for which there

[650] In this regard we note that there is continuing debate about the ability to fully anonymize or ''de-identify'' a data set and whether it is possible to have any confidence that re-identification risk can be totally mitigated. *See, e.g.,* Paul Ohm, ''Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization,'' 57 UCLA L. Rev. 1701 (2010); Arvind Narayana and Vitaly Shmatikov, ''Myths and Fallacies of 'Personally Identifiable Information,''' 53 Comm. ACM 24, 26 n.7 (2010) (''The emergence of powerful reidentification algorithms demonstrates not just a flaw in a specific anonymization technique(s), but the fundamental inadequacy of the entire privacy protection paradigm based on 'de-identifying' the data.''). *But see* Jane Yakowitz, ''Tragedy of the Data Commons,'' 25 Harv. J.L. & Tech., 1 (2011) (expressing concern about the impact of reducing the availability of de-identified data for medical research purposes).

[651] *But see* letter from Lewtan (noting that this course is less likely, because although unregistered offerings may provide for more customized data delivery where an issuer has more direct control, the issues surrounding FCRA exposure are the same as if the securitization were made through a registered offering).

[652] *See* letter from SIFMA/FSR I-dealers and sponsors (noting that increased costs would ultimately be passed on to consumers, including an increase in financing costs and a decrease in credit availability).

[653] *See, e.g.,* letters from ABA III (recommending 2-digit zip code), CFA II (suggesting aggregation of geographic location), and Treasurer Group.

[654] Loan-level data is available on Fannie Mae and Freddie Mac Web sites; however, we did not incorporate this data into our analysis because we believe that historically the characteristics of loans purchased and securitized by GSEs have been somewhat different from the characteristics of loans securitized through private-label RMBS. We do not expect that incorporating the GSE data would significantly reduce the likelihood of finding records with unique characteristics among properties bought with mortgages securitized through private-label RMBS.

[655] Because the required asset-level disclosures do not include sales price, in our analysis, we have imputed it from the reported loan amount and LTV ratio and rounded to the nearest $100. Although the origination date is not required to be disclosed, it can be approximated in many cases using other required data points, such as Original loan maturity date, Original amortization term and Remaining term to maturity. *See* new Items 1(c)(4), 1(c)(5) and 1(g)(2).

[656] We have not analyzed re-identification techniques using commercially available datasets (e.g., datasets from consumer reporting agencies) because even though using such data may be more effective in re-identification, providers of such datasets usually charge a fee and impose restrictions on their usage, such as, access controls and user identity verification.

is no prohibition on public disclosure of the property sales price.[657]

We next considered the likelihood of identifying a unique loan using the required disclosures in the final rules. As discussed above, we are modifying the required geographic identifier from MSA, as proposed, to a 2-digit zip code and are requiring securitizers to report only the original amortization term, and remaining term to maturity, from which year and month of origination can be approximated, but not the precise origination or sales date.[658] Based on the historical data and the same method described above of determining uniqueness, we estimate that by requiring 2-digit zip code, imputed sales price, and the month and year of origination, less than 20% of mortgages in the sample pool could be unique in their characteristics. This is also significantly lower than the almost 30% likelihood of isolating a unique loan determined based on the required disclosure items in the 2010 ABS Proposal.[659]

These estimates, however, do not fully reflect the difficulty of actually re-identifying an underlying obligor.[660] As noted above, the loan would have to be matched to a record in the relevant public database of real estate transactions. As noted, some counties within states do not release property sale values. Even in those jurisdictions that do make property sale information publicly available, matching the loans to a particular property record might be challenging to do because the jurisdiction providing the information might not offer access in a way that would make the information easily accessible or in convenient format. For example, knowing the 5-digit zip code of the unique property would not necessarily be helpful in a jurisdiction that requires a street name in order to search and view records. Hence, in some cases it may be too burdensome to find the matching loan even if that information is publicly available, particularly if such search is part of a large scale matching effort (i.e., for commercial purposes). We also note that public property databases contain, in addition to property transactions with mortgages securitized through private-label RMBS, property transactions without using borrowed funds, property transactions with mortgages that are never securitized, or property transactions with mortgages that are securitized through GSEs. The addition of these other transactions only compounds the burden of matching a particular loan with a particular property record.

Although the approach that we are adopting does not eliminate the possibility of obligor re-identification, we believe it strikes the appropriate balance between privacy and transparency. Some obligors may still be particularly sensitive to the possibility of re-identification and may seek originators that offer additional methods of preserving their anonymity. We do not, however, anticipate that this will have an adverse effect on the functioning of the private-label RMBS market or the cost of capital to the originators of mortgages and their obligors because of the relatively low likelihood of re-identification associated with the revised data points. Moreover, as noted above, asset-level information has been provided by issuers and third-party data providers for private-label RMBS (although not standardized), as well as by the GSEs and Ginnie Mae,[661] and this availability has not led to market disruption or adverse effects on cost of capital for obligors. We believe that there will be significant benefits to RMBS investors by having access to obligor-specific financial information in their evaluation of the potential default risk of the securitized assets, thus improving their ability to price registered RMBS tranches. This information also will allow investors to better understand, analyze and track the performance of RMBS, and, in turn, will allow for more accurate ongoing pricing and increase market efficiency.[662]

We acknowledge that further modification of certain data points could further reduce the risk of obligor re-identification. For example, several commenters emphasized the importance of geographic location in potentially re-identifying an underlying obligor.[663] Based on our analysis, eliminating a geographic identifier reduces the likelihood of isolating a unique mortgage in the sample pool to less than 2%. We considered whether further modification to certain data points will reduce transparency of critical data points for ABS investors. As we discuss below, we believe that a geographic location identifier is critical to pricing RMBS and is therefore necessary for investors to perform due diligence.

To confirm our view, and the views of commenters,[664] that certain data points are critical for ABS investment decisions, we analyzed the potential pricing impact of various data points on RMBS transactions. Our analysis indicates that, for RMBS, certain characteristics and loan term features, such as geographic location, are key determinants of expected performance of underlying mortgage loans as measured by the historical rate of serious delinquency (''SDQ'').[665] We used a model to predict the presence or absence of SDQ within a historical dataset of private-label securitized loans.[666] We found that, by a wide margin, the following four data points make the largest contribution to explaining SDQ:[667] the year of

[657] Some states (or counties within states) consider the property sales value to be private and confidential information and therefore do not release these numbers publicly. These states include: Alaska, Idaho, Indiana, Kansas, Louisiana, Maine, Mississippi, Missouri, Montana, New Mexico, North Dakota, Texas, Utah and Wyoming. The analysis does not account for non-disclosure counties that lie within a state that allows for disclosure.

[658] As discussed below, this change should not materially impact an investor's ability to price RMBS tranches, but will significantly lower the probability that a mortgage is unique in its characteristics.

[659] As noted above, the proposal would have required a geographic identifier of MSA, exact sales price and the month and year of origination.

[660] This technique is based on historical data and may not necessarily reflect future re-identification likelihoods. Also, in the future, securitizers that are conscious of privacy implications may avoid securitizing loans that have high risk of being identified (i.e., loans that are unique in their characteristics).

[661] *See* Section III.A.1 Background and Economic Baseline for the Asset-Level Disclosure Requirement.

[662] This would also apply to other asset classes where obligor-specific financial information may be disclosed, such as Auto ABS.

[663] *See, e.g.,* letters from ABA III, SIFMA/FSR 2014 I-dealers and sponsors, SFIG II, and Treasurer Group.

[664] *See, e.g.,* letters from ABA III (recommending that the Commission consider using 2-digit zip code), ASF I (supporting exact credit score), and Mass. Atty. Gen. (noting that the DTI ratio and LTV are important metrics in an investor's assessment of risk of loss).

[665] SDQ is defined as a loan having ever been 90 days late, foreclosed, or real estate owned.

[666] We used a binomial logistic predictive model that is also referred to as a logit regression. Binomial logistic regression deals with situations in which the observed outcome for a dependent variable can have only two possible types (for purposes of this analysis—presence or absence of a serious delinquency). Logistic regression is used to predict the odds of being a case based on the value of the independent variables (i.e., the predictors). We estimate the regression model with commonly used predictive factors identified by the industry and the academic literature, such as combined LTV ratio, credit score, and DTI ratio and analyze the effects of various loan characteristics observable at origination on the ability of a researcher to forecast serious delinquency. For more details and references, see footnote 82, the White-Bauguess Study, Section V. Logit Regression Analysis (for the description of the model) and Appendix B (for variable definitions and references to studies supporting the variables choice). The analysis is based on a sample of 2,456,548 mortgages from 2000–2009 included in the MBSData dataset that have complete information for all variables of interest, in particular, DTI information.

[667] The model uses a goodness-of-fit measure (pseudo-R^2) to describe how well an SDQ can be modeled with given predictive variables. Higher R^2

Continued

origination, the LTV ratio, the geographic location of the property as measured by 2-digit zip code, and the obligor's credit score (FICO score was reported in the dataset). Our analysis shows that the year of origination provides the greatest contribution to the measure of how well these factors explain the likelihood of serious delinquency.[668] LTV, geographic location of the property and FICO score provide the next greatest contribution to explaining the likelihood of serious delinquency and have a similar magnitude in overall contribution.[669] Eliminating any of these three variables from the final disclosure requirements significantly and negatively affects the predictive ability of the model. On the other hand, in the instances we studied, providing a geographic location that represents a smaller area or the exact origination date only marginally improves the model's predictive ability,[670] but it could significantly increase the possibility of obligor re-identification.

Another approach we considered, although not specifically suggested by commenters, was an approach that rounds the loan amount, other loan balance-related data points, and monthly performance data points to further hinder potential obligor re-identification.[671] The rounding of loan amount would result in an imputed sales price that may be sufficiently different from the true sales price so as to lessen the possibility of a match to other publicly accessible real estate datasets. Rounding the loan balance to the nearest $1,000 results in the reduction of the likelihood of isolating a unique mortgage in the MBSData dataset to 11%. It would, however, come at a loss of precision in the cash flow variables that we believe is necessary for investors.[672] As noted above, such precision is key to investors' ability to analyze and track the performance of various parties involved in RMBS transactions.

We considered several alternative approaches to disseminating asset-level data as potential means to address privacy concerns, including the Web site approach.[673] Most commenters were generally opposed to the Web site approach as the appropriate means to address privacy concerns.[674] For example, commenters raised concerns about the difficulty in determining who would be a potential investor and thus should have access to asset-level data;[675] the liability for failing to disclose all material information to investors in the event a potential investor was denied access to asset-level data;[676] the need for guidance on what controls are necessary to address privacy;[677] and access to the data by other market participants.[678] Given these concerns and our belief that it is critically important that investors receive access to asset-level information, we are not adopting the Web site approach. We believe the final asset-level requirements, which have been modified from the proposal to address privacy concerns, provide investors with information they need to perform due diligence and make informed investment decisions, and therefore, we are requiring the asset-level information to be filed on EDGAR where it will be readily available to and accessible by investors. For similar reasons, we do not think it would be appropriate to restrict access to such information on EDGAR.

Commenters suggested a central repository or ''aggregated data warehouse'' to house the asset-level data because such an approach would simplify enforcement of access policies, ensure consistent data formats and lower incentives to exclude certain users.[679] Similarly, another commenter suggested that issuers disclose all asset-level data to a consumer reporting agency administered repository, along with a unique identification number for each asset, which would allow investors to access all the asset-level data for these assets.[680] Another commenter also

represents higher predictive ability of a model in forecasting SDQ of mortgages. We consequently eliminate each individual factor from predictive regression and record its impact on the reduction in the goodness-of-fit measure. Higher reduction represents higher contribution of a factor to predictive ability of the full model. The R^2 that we find here is in line with R^2 found in academic studies that perform similar analyses. *See id.*

[668] We believe this primarily is due to the fact that the year of loan origination served as a proxy for unobservable factors like the quality of underwriting standards during the years immediately preceding the financial crisis when serious delinquency rate was higher, and a large portion of the loans in the sample were originated during that time. The importance of the origination year is smaller for sub-samples that do not include loans originated in 2006–2007.

[669] Origination year contributed 5% to the goodness-of-fit measure. LTV, 2-digit zip code, and the obligor's credit score contributed about 1.5% each. All other 12 data points we considered made a comparatively smaller contribution to the predictive ability of the model (1.5% combined), but are still important in predicting SDQ. These 12 data points include: Interest rate on the loan, DTI, indicators whether a loan had full documentation, had prepayment penalty provisions, was interest-only, had a balloon payment, had negative amortization, was a first lien, was long term, had a teaser rate, had private mortgage insurance, and whether the property was owner-occupied.

[670] The analysis indicated that the goodness-of-fit of the complete model (i.e., the model that includes all predictive variables considered in this study) would increase from 15.5% to 15.7% if an MSA is used instead of a 2-digit zip code, and to 16.0% if a 3-digit zip code is used instead of a 2-digit zip code.

[671] To be effective in reducing the probability of isolating a loan that is unique with respect to location, imputed sales price, and origination date, rounding loan amount (and other loan balance related variables like most recent appraised value, sales price, paid-in-full amount, etc.) to the nearest $1,000 ($10,000) must be accompanied by rounding monthly payment performance related variables approximately to the nearest $10 ($100).

[672] *See* letter from Prudential III (noting that loan-level data (e.g., current asset balance, next interest rate, current delinquency status, remaining term to maturity) will allow investors to better estimate the timing of the principal and interest cash flows of the collateral pool, which will in turn allow investors to better estimate the cash flow of the securitization and be more confident in their risk/reward consideration of the security).

[673] *See* the 2014 Re-Opening Release and the 2014 Staff Memorandum.

[674] *See* letters from ABA III, AFSA II, Capital One II, Deutsche Bank, MBA IV (with respect to RMBS), SIFMA/FSR I-dealers and sponsors, and Treasurer Group.

[675] *See, e.g.,* letters from ABA III (noting concern that without guidance as to who is a potential investor, issuers may apply their own bias filters to public offerings, such as limiting public offerings to only institutional investors), CCMR, MBA IV, and SFIG II.

[676] For example, issuers have expressed concern about possible claims for failure to disclose material information by a potential investor who is denied access to the Web site or refuses to agree to the terms of access but nonetheless purchases the security. *See, e.g.,* letters from ABA III, CCMR, ELFA II, SIFMA/FSR II-dealers and sponsors, and SFIG II.

[677] Some commenters noted that in order to determine whether a user should be granted access it would need to screen parties, conduct reviews of these parties' data protection controls, and obtain appropriate disclosure agreements, among other controls. *See* letters from MBA IV (noting, for example, that issuers would be faced with the burden of determining how to control the spread of the information once a credentialed entity accesses the Web site), SIFMA/FSR I-dealers and sponsors (noting that issuers would generally not be equipped to verify any prospective user's identity or credentials or be able to enforce compliance with the terms of access), SFIG II (noting that investors do not want the liability risk that may be imposed with the access restrictions), and Wells Fargo III.

[678] *See, e.g.,* letters from ABA III, Moody's II, and R&R.

[679] *See* letters from AFR (suggesting either a single data warehouse managed by a federal agency (e.g., the Commission, the Federal Reserve (similar to the Bank of England model), or the Office of Financial Research) or a non-profit data warehouse owned and managed by private sector entities under Commission oversight (similar to the European Data Warehouse) and VABSS II (recommending, as one option to address privacy concerns, to establish a central ''registration system'' managed by the Commission or a third party that would permit access to sensitive asset-level data only to persons who had established their identities as investors, rating agencies, data providers, investment banks or other permitted categories of users).

[680] *See* letter from SIFMA/FSR II-dealers and sponsors (noting that this approach would apply to all ABS asset classes and also noting certain developmental challenges, such as identifying a consumer reporting agency willing to act as a repository, and application of FCRA). *See also* SFIG II (stating that issuers should have the option to use

suggested that credit bureaus, instead of issuers, should provide credit-related information.[681] While these suggestions have the potential to address privacy concerns, as noted by one commenter, they are not currently in use, would require further development, and would depend upon the willing participation of certain third parties in order to function as a viable means of disseminating asset-level data.[682]

4. Requirements Under Section 7(c) of the Securities Act

As we note elsewhere, subsequent to the 2010 ABS Proposing Release, Congress adopted the Dodd-Frank Act. Section 942(b) of the Dodd-Frank Act added Section 7(c) to the Securities Act which requires the Commission to adopt regulations requiring an issuer of ABS to disclose, for each tranche or class of security, information regarding the assets backing that security. It specifies, in part, that in adopting regulations, the Commission shall require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence including—data having unique identifiers relating to loan brokers or originators; the nature and extent of the compensation of the broker or originator of the assets backing the security; and the amount of risk retention by the originator and the securitizer of such assets.[683]

In the 2011 ABS Re-Proposing Release, we requested comment as to whether our 2010 ABS Proposals implemented Section 7(c) effectively and whether any changes or additions to the proposals would better implement Section 7(c). We discuss below the comments we received in response to the requests for comment regarding the requirements of Section 7(c).

(a) Section 7(c)(2)(B)—Data Necessary for Investor Due Diligence

Section 7(c)(2)(B) states, in part, that we require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary to independently perform due diligence. We requested comment in the 2011 ABS Re-Proposing Release whether the 2010 ABS Proposal implements Section 7(c) effectively. In response, two investors supported requiring asset-level disclosures for all asset types, except for credit cards.[684] The investor membership of one trade association suggested that the disclosure of relevant asset-level data is necessary for well-functioning markets[685] and another commenter suggested that the 2010 ABS proposals would successfully implement Section 7(c) of the Securities Act.[686] Two other commenters, however, questioned whether borrower data proposed in the 2010 ABS proposals was ''necessary'' for investors to perform their own due-diligence.[687] These commenters, however, did not specifically identify the asset-level disclosures that are necessary for investors to independently perform due diligence.

We are adopting asset-level requirements for RMBS, CMBS, Auto ABS, debt security ABS, and resecuritizations. We prioritized these asset classes for various reasons that we discuss above.[688] Our decision to adopt these requirements is based on our belief that investors should have access to robust information concerning the pool assets that provides them the ability to independently perform due diligence. We continue to consider the appropriate disclosures for other asset classes. We believe the data points we are adopting fulfill, for those asset types, the Section 7(c) requirement that we adopt asset-level disclosures that are necessary for investors to independently perform due diligence. To the extent issuers believe additional data is needed, we encourage them to provide such additional disclosures in an Asset Related Document.[689]

(b) Section 7(c)(2)(B)(i)—Unique Identifiers Relating to Loan Brokers and Originators

Section 7(c)(2)(B)(i) requires the Commission to require disclosure of asset-level or loan-level data, including, but not limited to, data having unique identifiers relating to loan brokers or originators if such data are necessary for investors to independently perform due diligence. In the 2010 ABS Proposing Release, we proposed to require issuers to provide the originator's name for all asset types and, if the asset is a residential mortgage, the MERS number[690] for the originator, if available. We also proposed requiring RMBS issuers to provide the National Mortgage License System registration number required by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, otherwise known as the NMLS number, for the loan originators and company that originated the loan.[691]

In the 2011 ABS Re-proposing Release, we stated our belief that the proposal to require NMLS numbers would implement the requirements of Section 7(c) with respect to mortgages by requiring a numerical identifier for a loan broker.[692] We requested comment on whether unique identifiers for loan brokers and/or originators were necessary to permit investors to independently perform due diligence for asset classes other than RMBS or CMBS and, if so, whether there is a unique system of identifiers for brokers and originators for other asset classes.[693] We did not receive any comments suggesting this requirement would not satisfy the requirements of Section 7(c), although one commenter opposed requiring an NMLS identifier (for RMBS) because disclosure should focus on the collateral and its performance and an NMLS identifier does not provide investors with information they can use to value the assets.[694]

For RMBS, we are adopting the requirement that issuers provide for ABS backed by residential mortgages the NMLS number of the loan originator company. As noted above, we are not adopting the requirement that issuers provide a unique broker identifier, (i.e., the NMLS number of the specific loan originator) because we are concerned this disclosure may increase re-identification risk.[695] Even though we

third party agents (which may be a consumer reporting agency or a central Web site data aggregator) to make the data available and control access, but also noting that such an approach still raises privacy law concerns and concerns about who pays for the third-party service).

[681] *See* letter from ABA III.

[682] *See* letter from SIFMA/FSR II-dealers and sponsors.

[683] *See* Section 7(c)(2) of the Securities Act, as added by Section 942(b) of the Dodd-Frank Act.

[684] *See* letters from MetLife II and Prudential II.

[685] *See* letter from SIFMA II-investors (stating that well-functioning markets require the disclosure of as much relevant asset-level data as is reasonably available).

[686] *See* letter from Chris Barnard dated Aug. 22, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''C. Barnard'').

[687] *See* letters from ABA III and MBA IV.

[688] *See* Section III.A.1 Background and Economic Baseline for the Asset-Level Disclosure Requirement.

[689] *See* Section III.B.4 Asset Related Documents for further discussion on how to provide such additional disclosures.

[690] MERS has developed a unique numbering system and reporting packages to capture and report data at different times during the life of the underlying residential or commercial loan.

[691] The NMLS numbers for the originator and the company refer to the individual and company taking the loan application, which would include loan brokers and the company that the broker works for. We noted in the 2011 ABS Re-Proposing Release that we were unaware of any other unique identifying systems used for the purpose of identifying brokers or originators of other asset types, across all asset types or within an asset type.

[692] *See* the 2011 ABS Re-Proposing Release at 47965–66.

[693] *See* the 2011 ABS Re-Proposing Release at 47966.

[694] *See* letter from MBA III.

[695] *See* Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

are not requiring disclosure of the NMLS loan originator number, we believe disclosure of the NMLS number of the loan originator company satisfies Section 7(c)(2)(B)(i) regarding the asset-level disclosure of unique identifiers for loan brokers or originators. We believe this disclosure should, over time, allow investors to compare loans originated by particular loan originator companies and determine whether there is any correlation to the performance of the loan. This should facilitate independent investor due diligence with respect to the loan pools underlying RMBS.

We are unaware of unique identifiers for loan originators and, if applicable, brokers within the commercial mortgage, auto loan and lease, and debt security markets. We note the ongoing development of certain identifiers, but we are uncertain, at this time, especially due to the lack of response to our request for comment, whether a unique identifier for loan originators for these asset classes is necessary for investor due diligence. Therefore, at this time, we are not adopting unique identifiers for loan originators or brokers within the CMBS, Auto ABS or debt security markets.

(c) Section 7(c)(2)(B)(ii)—Broker Compensations and Section 7(c)(2)(B)(iii)—Risk Retention by Originator and the Securitizer of the Assets

In the 2010 ABS Proposing Release, we did not propose requiring asset-level disclosures of broker compensation or risk retention held by loan originators or securitizers. Section 942(b) of the Dodd-Frank Act, however, amended Section 7(c) of the Securities Act to require disclosure on an asset-level or loan-level basis with respect to the nature and extent of the compensation of the broker or originator of the assets backing the security and the amount of risk retention by the originator and the sponsor of such assets if these disclosures are necessary for investor due diligence. In the 2011 ABS Re-Proposing Release, we requested comment on whether these disclosures were necessary for investor due diligence.

We received few comments on these portions of Section 7(c) in response to our requests for comments. One commenter stated that disclosure of broker compensation was appropriate to require because it ''is necessary for evaluating how the compensation structure associated with an asset—including possible conflicts of interest—might affect its quality.'' [696] The same commenter believed that asset-level or loan-level disclosure of risk retention held by an originator or sponsor ''would undoubtedly be of value to investors as they perform due diligence and assess the quality of the offering.'' [697] This commenter stated that we must require asset-level risk retention disclosure because of the ''many forms of risk retention that have been proposed in accordance with Section 941(b) of the Dodd-Frank Act, including vertical, horizontal, and other configurations'' and because ''[e]ach of those forms of risk retention presents a different risk profile, depending on the specific underlying assets that are subject to the risk retention.'' [698]

A CMBS issuer and a trade association did not believe that broker compensation disclosure in the prospectus would be useful to investors in performing due diligence on the assets in the pool.[699] The CMBS issuer stated that the general due diligence focus for CMBS was whether the income-producing potential of the underlying commercial property was sufficient to service the debt that it secures and broker compensation does not assist that analysis.[700] Another trade association stated that it did not support disclosure of asset-level risk retention disclosures because its ''members do not believe this would add any value in the CMBS industry.'' [701]

We did not receive any comments from investors suggesting that disclosure of broker compensation is necessary for their due diligence. While the disclosure of broker compensation on an asset-level basis may provide some value to investors in assessing possible conflicts of interest, we are not persuaded at this time that such information is necessary for investors to independently conduct due diligence.

With respect to asset-level risk retention, we are not persuaded at this time that additional requirements relating to risk retention, on an asset-level basis, are needed for investors to independently conduct due diligence. A sponsor, however, will be required to provide information, on an aggregate basis, about its retained interest in a securitization transaction. As explained below, we are adopting amendments to Items 1104, 1108, and 1110 of Regulation AB that will require disclosure regarding the sponsor's, a servicer's, or a 20% originator's interest retained in the transaction, including the amount and nature of that interest.[702] The disclosure would be required for both shelf and other offerings. We note the recent re-proposal of the credit risk retention rules, issued jointly by the Commission and other agencies, implementing Section 941 of the Dodd-Frank Act.[703] When adopted, we will review the final credit risk retention rules to determine whether additional asset-level or other disclosure requirements, if any, are appropriate. The asset-level requirements we are adopting should provide investors with transparency about the quality of the assets in a securitization.

B. Asset-Level Filing Requirements

1. The Timing of the Asset-Level Disclosure Requirements

This section, Section III.B.1, is divided into two parts covering when asset-level information must be provided. Section III.B.1.a discusses when asset-level disclosures are required at the time of the offering. Section III.B.1.b discusses the frequency with which the asset-level disclosures are required on an ongoing basis. Section III.B.2 discusses the scope of asset-level data required at the time of the offering and on an ongoing basis.

(a) Timing of Offering Disclosures

(1) Proposed Rule

In the 2010 ABS Proposing Release, we proposed to require asset-level information of asset pool characteristics at the following times during the offering process:

- At the time the preliminary prospectus is filed.
- At the time the final prospectus is filed.
- With an Item 6.05 Form 8–K if the requirements of Item 6.05 were triggered.[704]

[696] *See* letter from Better Markets.

[697] *Id.*

[698] *Id.*

[699] *See* letters from MBA III and Wells Fargo & Co. dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''Wells Fargo II'').

[700] *See* letter from Wells Fargo II.

[701] *See* letter from CRE Finance Council dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''CREFC II'').

[702] *See* Items 1104, 1108 and 1110 of Regulation AB [17 CFR 229.1104, 17 CFR 229.1108 and 17 CFR 229.1110].

[703] *See* the 2013 Risk Retention Re-Proposing Release.

[704] Under the existing Item 6.05 requirement, if any material pool characteristic of the actual asset pool at the time of issuance of the securities differs by five percent or more (other than as a result of the pool assets converting to cash in accordance with their terms) from the description of the asset pool in the prospectus filed for the offering pursuant to Securities Act Rule 424, the issuer must provide certain disclosures regarding the actual asset pool, such as that required by Items 1111 and 1112 of Regulation AB. Under a proposed revision to Item 6.05 of Form 8–K, we proposed that a new Schedule L be filed if assets are added to the pool during the reporting period, either through prefunding periods, revolving periods or substitution, and the triggers of Item 6.05 are met.

(2) Comments on Proposed Rule

Only one commenter responded to our proposal that the asset-level disclosures be required at the time of the offering. This commenter stated the proposal seemed to cover the period of offering sufficiently.[705]

(3) Final Rule and Economic Analysis of the Final Rule

Under the final rule, as proposed, those issuers that are required to provide asset-level data must provide all of the required asset-level disclosures in a preliminary prospectus and the final prospectus. Requiring that asset-level disclosures be filed by the same time a preliminary prospectus is filed will provide investors more time to analyze the asset-level data in advance of an investment decision. We acknowledge that every time asset-level disclosures are filed issuers likely will incur filings costs and costs to verify the data. We believe the costs incurred to provide this information are justified in order to provide investors access to relevant data about the assets underlying the particular ABS offering in advance of their investment decision. In addition, we believe providing investors time to analyze the asset-level data may result in better pricing and therefore may improve allocative efficiency and facilitate capital formation. Compliance costs are minimized, to some extent, because if there has been no change to the asset-level information provided with the preliminary prospectus, then under current requirements, this information can be incorporated by reference into the final prospectus. This eliminates the costs associated with re-filing the information.

Under the proposal, an issuer would have been required to provide updated asset-level disclosures about the pool composition, including characteristics of new assets added to the pool, if an Item 6.05 Form 8–K was triggered.[706] Under the final rules, asset-level information about the actual pool composition is required with each Form 10–D. Therefore, we do not believe that issuers should also incur the cost to provide asset-level information if an Item 6.05 is triggered.

(b) Timing of Periodic Disclosures

(1) Proposed Rule

We also proposed in the 2010 ABS Proposing Release to require ongoing asset-level disclosures. Under the proposal, asset-level disclosures would be required at the time of each Form 10–D, which under current requirements is within 15 days after each required distribution date on the ABS.

(2) Comments on Proposed Rule

With respect to when and how frequently the ongoing asset-level disclosures should be provided, comments varied. One commenter recommended that the required disclosures be provided on the distribution date rather than 15 days thereafter.[707] Some commenters noted that industry standards for CMBS make ongoing disclosures available earlier than when the proposal would require them.[708]

With respect to how frequently the ongoing asset-level disclosures should be provided, comments varied. For instance, a few commenters suggested we require disclosure on the day of an ''observable event,'' or promptly thereafter.[709] Alternatively, one commenter suggested requiring less asset-level data each month or allowing issuers to provide the data annually or quarterly.[710] Other commenters stated that the asset-level disclosures should not be required on a daily basis or on a timeframe that occurs less than monthly.[711] Relatedly, one commenter stated that the final rule should include an instruction clarifying that the ongoing asset-level information reported for any particular reporting period may be reporting information from a prior reporting period due to delays that can occur between the time when asset-level information is received and such information is ready to be reported.[712]

(3) Final Rule and Economic Analysis of the Final Rule

The final rule requires, as proposed, that issuers provide the asset-level disclosures at the time of each Form 10–D. As discussed, however, in Section III.B.2 the scope of information required with each Form 10–D has changed to also include the same set of data points that were required in the prospectus. We are not persuaded by commenters' suggestions that the ongoing asset-level disclosures be provided quarterly, annually or monthly, because reporting at these times may be outside the time when such disclosures are normally collected. The requirement to file a Form 10–D is tied to the distribution date on the ABS, as specified in the governing documents for the securities. In effect, tying the asset-level disclosures to each Form 10–D filing aligns the frequency of the disclosures to the payment cycle (when data about the collections and distributions is captured) which should minimize the burdens and costs to issuers of collecting such information. For investors, receiving asset-level data tied to the payment cycle should allow them to conduct their own valuation and risk analysis of each asset in the pool at periods close in time to when the data is captured and other distribution information is already being reported. This should allow investors to understand, on an ongoing basis for the life of the investment, how the performance of any particular asset is affecting pool performance.

We also believe that only requiring asset-level disclosures on a quarterly or monthly basis may not provide investors with timely access to data about the performance of pool assets because it ties the reporting of asset-level disclosures to a timeframe that may be outside the payment cycle when the data is normally captured, which may increase costs or inhibit investors' ability to make timely and informed ongoing investment decisions. For instance, if asset-level reporting was required monthly, but the payment cycle occurred every six months, then requiring a filing on a monthly basis

See footnote 235 of the 2010 ABS Proposing Release.

[705] *See* letter from MBA I (stating that if the Commission requires a Schedule L for CMBS, then they do not recommend the inclusion of Schedule L data at other times as the proposal seems to cover the period of offering sufficiently).

[706] *See* footnote 235 of the 2010 ABS Proposing Release.

[707] *See* letter from MetLife I.

[708] *See* letters from BoA I, MBA I, MBA IV, and Wells Fargo I (referring to the CREFC IRP making disclosures available 15 days earlier than what the proposal would require).

[709] *See* letters from TYI and CoStar (both defining ''observable events'' as any of the following: (1) Payment (and the amount thereof) by the obligor on such loan or receivable; (2) failure by the obligor to make payment in full on such loan or receivable on the due date for such payment; (3) amendment or other modification with respect to such loan or receivable; or (4) the billing and collecting party becomes aware that such obligor has become subject to a bankruptcy or insolvency proceeding).

[710] *See* letter from AFSA I (suggesting that monthly reports are cumbersome and the data does not change that often).

[711] *See* letters from ABA I (suggesting that it would be burdensome or impossible to provide intra-month updates because of system limitations that would prevent more frequent data collection and that data is only comparable if consistently collected at the same point in time) and Wells Fargo I (suggesting that, for RMBS and CMBS, requiring ongoing disclosures on a daily basis or less than monthly is inappropriate because the marginal benefit to investors would not justify the costs).

[712] *See* letter from Wells Fargo I (stating that CMBS transactions often involve multiple loans with different financial reporting dates, and the information has to be reviewed by the appropriate parties, including the servicer, and normalized before it is provided to the filer, which can result in substantial delays between the time information is received and is reported on Form 10–D).

may unnecessarily increase costs without a corresponding benefit. If reporting was required on a quarterly basis, but the payment cycle was monthly, then in instances where the performance of pool assets deteriorates or the pool assets change, investors would not receive timely updates about such events. This may impact their ability to spot developing trends, thus limiting their ability to make informed ongoing investment decisions with respect to the ABS.

We are also not persuaded that we should require reporting any time an ''observable event'' occurs with respect to a single asset because we do not believe that the benefits to investors of such a requirement would justify the costs to issuers of capturing and reporting data in a timeframe that falls outside when data is typically captured and reported. Reporting on an observable event basis could result in the issuer constantly updating the data. As noted above, we believe providing investors access to timely and relevant asset-level disclosures and minimizing costs to issuers is best achieved by requiring asset-level disclosures be provided with each Form 10–D, which means the disclosures will be provided in a timeframe that is in line with the payment cycle and when the data is typically captured.

The final rule also requires that the asset-level disclosures be provided for each asset that is in the pool at any point in time during the reporting period. Therefore, if a substitution occurred during the reporting period, then asset-level disclosures are required for both the loan added and the loan removed during the reporting period in which the change occurred. Providing investors with disclosure about assets that are added and removed will allow investors to understand the actual composition of the asset pool over the life of a security. This will benefit investors by allowing them to assess on an ongoing basis the current risk of the collateral pool and to compare the characteristics of the assets involved in a substitution. We recognize that this benefit to investors will result in increased reporting costs to sponsors and ABS issuers.

A commenter suggested the final rule include an instruction clarifying that the information reported for any particular reporting period may be information from a prior reporting period due to delays that can occur between the time when asset-level information is received and such information is ready to be reported.[713] We are not persuaded that this is a significant problem for issuers; therefore the final rule does not include such an instruction. The transaction agreements specify a distribution date to investors that is generally sometime after the end of a reporting period so that the amounts of a distribution may be calculated so that reports may be prepared. Consistent with current requirements, the Form 10–D is required to be filed 15 days after each required distribution date on the ABS and accordingly, because the asset-level disclosures are included in the Form 10–D disclosure requirements, they are due at the same time. Based on current market practice, the amount of time between the end of a reporting period and filing of a Form 10–D may be four weeks or more. Therefore, we believe aligning the timing of filing the asset-level disclosure with current Form 10–D reporting requirements will not be costly and will provide a sufficient period of time for the appropriate parties to review the information before filing.

2. The Scope of New Schedule AL

Section III.B.1 discussed when asset-level disclosures are required at the time of offering and on an ongoing basis. This section discusses the scope of those required asset-level disclosures required at the time of the offering and on an ongoing basis.

(a) Proposed Rule

(1) Offering Disclosures

As noted above, in the 2010 ABS Proposing Release, we proposed to add the prospectus disclosure requirements in new Item 1111(h) and new Schedule L to Regulation AB. We also proposed data points related to each asset. Proposed Schedule L focused, in general, on providing investors asset-level data about the credit quality of the obligor, the collateral related to each asset and the cash flows related to a particular asset, such as the terms, expected payment amounts, indices and whether and how payment terms change over time. Schedule L contained some data points capturing some loan performance data.[714] As noted above, proposed Schedule L would have been provided at the time of the preliminary prospectus. We also proposed that an updated Schedule L be provided with the final prospectus.[715] Finally, we proposed that, if issuers are required to report changes to the pool under Item 6.05 of Form 8–K, then an updated Schedule L would be required.[716] We also requested comment on whether Schedule L data should be required at any other time.[717]

Under our proposed revisions to Item 6.05 of Form 8–K, we proposed that a new Schedule L be filed if any material pool characteristic of the actual asset pool at the time of issuance of the asset-backed securities differs by 1% or more from the description of the asset pool in the prospectus.[718] Based on comments received, it seemed that it may not be clear that an Item 6.05 Form 8–K would be required when prefunding or revolving assets increased or changed the pool by 1% or more, although that was the intent of the proposal. Therefore, in the 2011 ABS Re-Proposing Release, we requested additional comment about whether we should clarify that a new Schedule L would be required with an Item 6.05 Form 8–K when assets are added to the pool after the issuance of the securities either through prefunding periods, revolving periods or substitution and the triggers in Item 6.05 are met.[719] The Schedule L provided with an Item 6.05 Form 8–K would provide investors with the current pool composition including data related to the cash flows related to a particular asset, data that allows for better prepayment analysis or credit analysis and data about the property. We also requested comment on whether the updated Schedule L should include all assets in the pool and whether the Schedule L should be an exhibit to a Form 8–K or to a Form 10–D.[720]

(2) Periodic Disclosures

In the 2010 ABS Proposing Release, we also proposed ongoing disclosure requirements in Item 1121(d) and Schedule L–D. Proposed Schedule L–D

[713] *See* letter from Wells Fargo I.

[714] *See, e.g.,* proposed Items 1(b)(5) and 1(b)(6) of Schedule L.

[715] *See* proposed Item 1125 of Regulation AB and the 2010 ABS Proposing Release at 23356.

[716] In footnote 235 of the 2010 ABS Proposing Release we stated that if a new asset is added to the pool during the reporting period, an issuer would be required to provide the asset-level information for each additional asset pursuant to proposed revisions to both Item 1111 of Regulation AB and Item 6.05 of Form 8–K. *See* the 2010 ABS Proposing Release at 23356.

[717] *See* the 2010 ABS Proposing Release at 23356.

[718] *See* the 2010 ABS Proposing Release at 23392. As proposed, if any material pool characteristic of the actual asset pool at the time of issuance of the asset-backed securities differs by 1% or more than the description of the asset pool in the prospectus filed for the offering pursuant to Securities Act Rule 424, an issuer would be required to file an Item 6.05 Form 8–K and provide the disclosures required under Item 1111 and Item 1112 of Regulation AB. Under proposed Item 1111(h) of Regulation AB issuers would be required to provide a Schedule L. In addition, the item, as proposed to be revised, also would require a description of the changes that were made to the asset pool, including the number of assets substituted or added to the asset pool.

[719] *See* the 2011 ABS Re-Proposing Release at 47970.

[720] *Id.*

would require, in general, disclosures corresponding to payments received during the payment cycle, as well as amounts past due and the servicer's efforts during the payment cycle to collect past due amounts. Proposed Item 1121(d) and Schedule L–D disclosure would be provided at the time of each Form 10–D. We also requested comment in the 2010 ABS Proposing Release about whether Schedule L–D data should be provided at other times.[721]

(b) Comments on Proposed Rule

We received limited response to the request for comment on whether Schedule L and Schedule L–D data should be provided at any other time. Commenters generally indicated that the disclosures enumerated in Schedule L and Schedule L–D may be appropriate at other times than proposed. For instance, one investor stated that the same disclosures for all ABS sectors (other than CMBS) should be required for offering documents and ongoing reports.[722] The investor recognized that certain data will be static, while other data will change from month to month. Another investor stated that for transactions involving a prefunding period or revolving period, a new Schedule L should be filed monthly when new collateral is added.[723]

In response to the questions asked in the 2011 ABS Re-Proposing Release about clarifying that a new Schedule L would be required with an Item 6.05 Form 8–K, an investor reiterated its earlier position that issuers should file a Schedule L at issuance and each month new assets are added to the collateral pool.[724] The investor added that this would allow investors to evaluate the changing nature of the risk layering introduced by the new assets and it would allow investors to confirm that the quality of the newly added collateral meets the expected origination practices of the issuer.[725]

One commenter noted that current rules require that updated information about the characteristics of the collateral in the pool be provided with the Form 10–D, rather than in a Form 8–K.[726] The commenter, however, also believed requiring an updated Schedule L for assets added after the measurement date for revolving asset master trusts is inappropriate because the asset composition of these trusts changes on a daily basis during its revolving period and, therefore, an issuer would be filing both a Schedule L and Schedule L–D each month.[727] Another commenter suggested that a new Schedule L should not be required when assets are added to the pool after issuance, either through prefunding periods, revolving periods or substitution unless the triggers under Item 6.05 of Form 8–K are met. If the 5% threshold under Item 6.05 was met, then the commenter asserted filing the Schedule L with the Form 10–D would be more efficient.[728]

(c) Final Rule and Economic Analysis of the Final Rule

After considering the comments received, we are adopting a rule, based on a commenter's suggestion that the same asset-level disclosures be provided, if applicable, at the time of the offering and on an ongoing basis. Therefore, we have condensed information previously proposed to be provided in either Schedule L or Schedule L–D into a single schedule, titled Schedule AL. Schedule AL in new Item 1125 of Regulation AB enumerates all of the asset-level disclosures to be provided, if applicable, about the assets in the pool at securitization and on an ongoing basis. The asset-level disclosures apply to each asset in the pool during the reporting period covered by Schedule AL.[729]

We believe aggregating Schedule L and Schedule L–D into one unified schedule simplifies the new rules to the benefit of both issuers and investors. For investors, we believe a unified schedule will make it easier to understand the actual pool composition and the performance of the asset pool both at issuance and on an ongoing basis. We recognize that, in certain circumstances, the pool composition may continue to change even after the final prospectus is filed. As a result, the asset-level information provided with the final prospectus may not reflect the pool composition at closing.[730] On an ongoing basis, the composition of the asset pool may change due to prefunding or revolving periods, or substitution. Under the proposal, if the assets in the pool changed after the filing of the final prospectus, then investors would have only received updated disclosures about the characteristics of the current asset pool, if an Item 6.05 of Form 8–K was triggered. Some assets could be added or removed from the pool without investors receiving updated disclosures about the changes to the composition and characteristics of the asset pool. As a result, the assets identified in the most recent Schedule L–D would not exactly match the assets identified in the last Schedule L that was filed.

Requiring that the asset-level information provided with the Form 10–D include information about the characteristics of each asset will make it easier to understand the actual pool composition at any point in time and, in particular, when the asset composition has changed through additions, substitutions or removal of assets.[731] This requirement will also make it easier to compare the characteristics of the current asset pool with the pool characteristics for a prior period or date. As a result, we believe investors will be able to better assess any potential risk layering introduced by changes to the composition of the asset pool and confirm that the quality of the newly added collateral meets expected origination practices.

Another benefit is that investors at the time of the offering will receive a more complete picture of any seasoned assets in the ABS pool, including the current performance of these assets. As we noted in the 2010 ABS Proposing Release, proposed Schedule L–D focused on whether an obligor is making payments as scheduled, the efforts by the servicer to collect amounts past due,

[721] *See* the 2010 ABS Proposing Release at 23368.

[722] *See* letter from MetLife I (suggesting that the same disclosure be required for offering documents and ongoing reports, but that for CMBS the loan originator and the loan servicer are not affiliated and therefore, the same requirement may be impractical for CMBS).

[723] *See* letter from Prudential I (opposing additions to the collateral pool after the filing of the final prospectus except for substitutions for defaulted assets after closing).

[724] *See* letter from Prudential II.

[725] *See* letter from Prudential II (also suggesting that the newly originated collateral should also appear on Schedule L–D, ''so investors can efficiently assess how the new assets influence the risk profile of the overall collateral pool'').

[726] *See* letter from VABSS II (noting that existing Item 1121(b) of Regulation AB requires disclosure for changes in pool composition during revolving periods and prefunding periods, and Item 1121(b) states that the information is to be provided in distribution reports on Form 10–D, rather than in a Form 8–K).

[727] *See* letter from VABSS III.

[728] *See* letter from Sallie Mae II.

[729] *See* Item 1111(h)(7) of Regulation AB [17 CFR 229.1111].

[730] The requirement to file Schedule AL data with the final prospectus does not impact the analysis regarding the timing and adequacy of information conveyed to the investor at the time the investment decision is made. Under Securities Act Rule 159, information conveyed after the time of the contract of sale (e.g., a final prospectus) is not taken into account in evaluating the adequacy of information conveyed to the investor at the time the investment decision was made. Therefore, registrants should be mindful of their obligations under Securities Act Rule 159.

[731] For instance, if a loan was added to an RMBS pool during a reporting period, the next Schedule AL that is filed will include all relevant disclosures about the asset, including all disclosures that would have been included if the loan was part of the pool at the time of securitization and all required ongoing asset-level disclosures about the asset. The final rules include a data point that captures whether an asset was added to the pool during the reporting period.

and the losses that may pass on to investors.[732] We believe these disclosures, if made at the time of the offering, will also assist an investor in its investment analysis, especially with respect to asset pools involving seasoned assets.

We recognize that the one schedule format may benefit issuers, but it may also result in some increased compliance costs. We believe that it may be easier to revise, amend and file one schedule than two separate schedules. Also, as discussed above, because we are not adopting the proposed requirement that an updated Schedule L be provided if an Item 6.05 is triggered, issuers will not need to bear the burden or cost of assessing whether an updated Schedule L is required if the requirements of Item 6.05 were triggered.[733]

We also recognize that aggregating the data points proposed in Schedules L and L–D into one schedule may increase the number of data points that an issuer will need to respond to at the time of the offering and on an ongoing basis. We do not believe that this change increases the data issuers must collect about the assets beyond what was proposed as the unified schedule primarily consists of information proposed to be provided under Schedule L and Schedule L–D. Under the rule we are adopting, the issuer will be required, at the time of the offering, to provide all the information relating to the underwriting of the asset (e.g., terms of the asset, obligor characteristics determined at origination) and any applicable performance related information for the most recent reporting period. On an ongoing basis, the issuer will be required to provide the relevant ongoing performance information for the most recent reporting period and the underwriting information previously provided about the asset. Issuers may incur some increased filing costs compared to what they would have incurred under the proposal because they will be verifying and filing more data at each filing. Although we cannot quantify the increase in filing costs that issuers may incur, our qualitative assessment is that the increase will not be significant over what was proposed.[734]

We considered, as an alternative, requiring information to be provided only about assets added to the pool during a reporting period. We believe asset-level information is most useful when it reflects all the assets actually in the pool. Therefore, we believe that current investors and potential secondary market investors should have access through the current Form 10–D to the asset-level information reflecting the assets in the pool at that time. Otherwise those parties may have to piece together various tables of information to construct the current pool. Piecing together various tables may lead to confusion and errors and, as a result, market participants may base their analysis on data that does not provide an accurate picture of the asset pool. Further, investors rather than issuers would bear the cost of piecing together the disclosures and having each investor doing so would create duplicative costs.

One investor commenter who supported the same asset-level disclosure in offering documents and in ongoing reports for most asset classes did not support this format for CMBS.[735] For CMBS, this commenter stated the loan originator and the loan servicer are not affiliated and, therefore, unifying items in Schedule L and Schedule L–D may be impractical for the CMBS sector. We considered this concern, but we believe the information is available to issuers, albeit perhaps at some cost. Thus, Schedule AL enumerates for issuances of CMBS all of the asset-level disclosures to be provided, if applicable, about the assets in the pool at securitization and on an ongoing basis.

In the end, we believe this approach is reasonable despite the increased compliance costs, because this approach provides investors with access, both at the time of the offering and on an ongoing basis, to more data about the characteristics and performance of the pool assets. As a result, investors can evaluate the characteristics of the pool with the benefit of a more complete picture of the pool assets' characteristics and performance.

3. XML and the Asset Data File

(a) Proposed Rule

In the 2010 ABS Proposing Release, we proposed requiring that asset-level information be provided in XML. We believed that requiring the asset-level data file in XML, a machine-readable language, would allow users to download the data directly into spreadsheets and databases, analyze it using commercial off-the-shelf software, or use it within their own models in other software formats.

(b) Comments on Proposed Rule

In response to the 2010 ABS Proposing Release, several commenters supported the use of XML to report loan-level data[736] and some commenters noted that the residential mortgage industry already uses XML to transmit data about loans.[737] For CMBS, some commenters suggested not requiring XML at this time.[738] A few commenters suggested that we not adopt the XML requirement for RMBS, but instead require the information in comma separated values (''CSV'').[739]

[732] *See* the 2010 ABS Proposing Release at 23367.

[733] The current disclosures required under existing Item 6.05 of Form 8–K are still required if the triggers of Item 6.05 are met. Item 6.05 is not limited to the reporting of differences in material pool characteristics that result only from changes in the pool composition and, in fact, it excludes only changes that occur as a result of the pool assets converting into cash in accordance with their terms. For example, absent a change in pool composition, if payment activity after the cut-off date would result in a change to the delinquency or payment statistics that were presented in the prospectus by more than 5% after the cut-off date, but prior to closing, then disclosure would be required under Item 6.05.

[734] By aggregating the schedules we are able to omit any duplicate data points found on both schedules. For instance, the following data points were in proposed Schedule L–D and were omitted from Schedule AL since they were similar or identical to other data points: Items 1(a) Asset number type; 1(b) Asset number; 1(c) Asset group number; 1(f)(7) Current asset balance; 1(f)(12) Current delinquency status; 1(f)(13) Number of days payment is past due; 1(f)(14) Current payment status; 1(f)(15) Pay history; 1(f)(18) Remaining term to maturity; 1(g)(6) Servicing advance methodology; 2(b)(2) Next interest rate change date; 2(b)(5) Option ARM indicator; 2(e)(1) Modification effective payment date; 2(e)(3) Total capitalized amount; 2(e)(29) Forgiven principal amount (cumulative); and 2(e)(30) Forgiven interest amount (cumulative). The following data points were in proposed Schedule L and were omitted from Schedule AL since they were similar or identical to other data points: Items 1(a)(15) Primary servicer; 2(a)(21)(iv) Updated DTI (front-end) and 2(a)(21)(iv) Updated DTI (back-end).

[735] *See* letter from MetLife I.

[736] *See, e.g.,* letters from ActiveState Software Inc. dated July 29, 2010 submitted in response to the 2010 ABS Proposing Release, Beached Consultancy, CMBS.Com I, CREFC I (recognizing the importance of XML format, but requesting we not adopt the requirement for CMBS until such time that CREFC IRP adopts a version of the CREFC IRP in XML), Interactive, MetLife I, Risk Management Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''RMA''), and Alberto Zonca dated July 26, 2010 submitted in response to the 2010 ABS Proposing Release (''A. Zonca'').

[737] *See* letters from eSign, MBA I, MERS, and MISMO (each supporting the use of XML, but suggesting the use of MISMO XML standards).

[738] *See* letters from CREFC I (indicating that requiring XML would be a significant burden on those institutions who largely work under an alternative platform to convert to XML and the conversion could create data quality issues), MBA I, and Wells Fargo I (each suggesting that the Commission wait until the CMBS industry develops the XML format).

[739] *See* letters from ASF I (suggesting requiring RMBS files be in text format with each value in the file separated by a comma because market participants should focus staff and information technology resources on efforts to standardize the data) and Wells Fargo I (suggesting the format of the data be in CSV format).

Other commenters also suggested the use of another standard, such as XBRL.[740]

As we note above, subsequent to the 2010 ABS Proposing Release, Congress adopted the Dodd-Frank Act. Section 942(b) of the Dodd-Frank Act added Section 7(c) to the Securities Act, which requires the Commission to set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate the comparison of such data across securities in similar types of asset classes. We requested comment in the 2011 ABS Re-Proposing Release as to whether the proposed XML format was an adequate standard for the format of data that facilitated the comparison. We did not receive any comments suggesting that requiring that asset-level data be provided in XML did not, as it relates to data standardization, implement Section 7(c) effectively.

Instead, comments on the 2011 Re-Proposing Release reiterated concerns raised in prior comment letters. For instance, some commenters reiterated their belief that XML should not be required for CMBS at this time[741] and one of these commenters said requiring XML should be tied to investor demand.[742] These commenters were concerned with the cost to implement the standard,[743] the cost of providing the data in duplicate formats,[744] data quality risks,[745] and the time needed to implement the standard.[746] On the other hand, one commenter believed that the current format of CMBS reports (CSV, Excel and even PDF) ''greatly limits the transparency of CMBS.'' [747]

(c) Final Rule and Economic Analysis of the Final Rule

After considering the comments received, we are adopting the proposed XML requirement. We believe requiring asset-level information in a standardized machine-readable format should lower the cost for investors of collecting data about ABS offerings and should allow data to be analyzed by investors and other end-users more quickly than if the data was provided in a non-machine readable format. For instance, if the asset-level data is made available to investors in a format that is not machine-readable, it would require the manual key-entry of the data into a format that allows statistical analysis and aggregation. Thus, investors seeking to gain a broad understanding of ABS offerings would either need to spend considerable time manually collecting the data and manually entering the data into a format that allows for analysis, thus increasing the time needed to analyze the data, or incur the cost of subscribing to a financial service provider that specializes in this data aggregation and comparison process. Further, manual entering of data can lead to errors, thereby reducing data accuracy and usefulness. Requiring companies to report asset-level data in a standardized machine-readable format, such as XML, should lower both the time and expense for each investor to access this data. Since asset-level disclosures will be tagged and can be immediately downloaded into a larger, more comprehensive database that may include data about other ABS offerings, investors will not need to manually enter the data or subscribe to a third-party data aggregator. With more information readily available in a usable format, investors may be able to better distinguish the merits of various investment choices, thereby allowing investors to better match their risk and return preferences with ABS issuances having the same risk and return profile. Thus, we expect that this reduction in the costs of accessing, collecting and analyzing information about the value of ABS will lead to better allocation of capital. We believe that the requirements we are adopting to require standardized asset-level disclosures in XML fulfill, for the asset types subject to these requirements, the requirement under the Dodd-Frank Act that we set a standard for the format of data that facilitates comparison across securities in similar types of assets.

We understand that some commenters expressed concerns regarding the burden and cost to implement the standard. We recognize that requiring asset-level disclosures in XML will result in substantial initial set-up costs to filers.[748] In a further attempt to mitigate costs to issuers, as we discuss below in Section IX.B, we are requiring that issuers comply with the asset-level disclosures no later than November 23, 2016, which we believe reduces the burden of implementation by providing time for market participants to reprogram their systems. With respect to the costs of implementation, we believe that the costs are justified because we believe investors need the asset-level disclosures in a standardized machine-readable format that makes the data transparent and comparable. We continue to believe that having the asset-level data in a standardized machine-readable format will enable investors to use commercial off-the-shelf software for analysis of underlying asset-level data, which will allow them to aggregate, compare and analyze the information.

We also considered, as several commenters suggested, alternative formats to XML, such as PDF, CSV and XBRL. We do not believe PDF format is a suitable alternative because it is not a convenient medium for tabular structured data and it is not designed to convey machine-readable data. As explained above, the ability of investors to easily utilize the asset-level data required of issuers is crucial to its usefulness. We believe that the CSV format is not suitable either, since any given dataset reported will require more than a single set of uniformly structured

[740] *See* letters from RMA (supporting the use of XML schemas specified either with the XSD language or the more specialized XBRL), UBMatrix, Inc. dated July 31, 2010 submitted in response to the 2010 ABS Proposing Release (recommending requiring XBRL), and XBRL.US dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (suggesting the use of XBRL because it is consistent with their recommended waterfall output format).

[741] *See* letters from CREFC II, MBA III, and Wells Fargo II.

[742] *See* letter from MBA III.

[743] *See* letter from CREFC II. This commenter did not provide a specific cost to implement XML.

[744] *See* letter from MBA III (stating that CMBS investors generally do not currently utilize XML formatting for reporting and even if XML is required, issuers will likely continue to provide investors the disclosures in the format they currently provide them and use XML format ''solely for filings with the Commission.'').

[745] *See* letters from CREFC II and Wells Fargo I.

[746] *See* letter from Wells Fargo I.

[747] *See* letter from CMBS.com and Commercial Mortgage Industry Standards Maintenance Organization dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release.

[748] We estimate the direct costs of converting data from internal formats to rule-compliant XML format the following way: We assume that a sponsor would work with all asset types and would need to convert the total of 680 distinct data columns, with 80% of them having direct mapping from internal data types (i.e., no additional conversion or modification would be necessary) and 20% being coded (i.e., column value be a combination or modification of existing data values) and requiring 3 times the effort for direct columns. One simple column would require 6 hours of work, with a total of 5,712 hours. The deployment (documentation, internal ''roll out'' with the first filing, etc.) would add another 10% to the costs, leading to the total 6,283 hours, or 3.5 full-time equivalents (Senior Database Administrator, Senior Business Analyst and one and a half Junior Business Analysts). Using salary data from SIFMA's *Management & Professional Earnings in the Securities Industry* 2013, modified by Commission staff to account for a 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, we estimate the initial costs would be about $1,445,000 per sponsor. The hardware cost increment would be de minimis and the maintenance in subsequent periods would be only 5% of build cost. For some sponsors that specialize on a limited number of asset types the costs could be significantly lower because they would need to transform fewer data points from their internal format to the rule-compliant XML format. After necessary adjustments have been made, we expect that the ongoing costs for providing the data in XML will be minimal.

rows and CSV format will not support the disclosure of such datasets easily. Finally, while XBRL allows issuers to capture the rich complexity of financial information presented in accordance with U.S. Generally Accepted Accounting Principles, we do not believe that it is appropriate for the asset-level disclosure requirements we are adopting.[749] The Asset Data File will present relatively simpler characteristics of the underlying loan, obligor, underwriting criteria, and collateral, among other items, that is better suited for XML. Further, the data extensions available in XBRL are not appropriate for this dataset where comparability of data is critical and the nature of the repetitive data lends itself to an XML format. In addition, the XML schema can be easily updated. [750]

4. Asset Related Documents

(a) Proposed Rule

We understand that a situation may arise where an issuer would need to disclose other asset-level data not already defined in Schedule AL. To address this situation, we proposed to include a limited number of ''blank'' data tags in our XML schema to provide issuers with the ability to present additional asset-level data not required under the proposal.[751] We also proposed an ''Asset Related Document'' that would allow registrants to disclose the definitions or formulas of any additional asset-level data or provide further explanatory disclosure regarding the Asset Data File.[752]

(b) Comments on Proposed Rule

We received some comments, which were mixed, on the blank tag proposal, but we did not receive any comments regarding the use of an Asset Related Document. With regard to the blank tag proposal, one commenter suggested that as long as the information in the blank data tag is clearly described, neither the number of blank data tags nor the information would add complexity to the requirements.[753] One commenter, however, did not see the benefit of the proposed blank tags because new data points can be added as business and reporting needs evolve.[754] Another commenter did not believe a blank tag was appropriate or consistent with ''good XML syntax.'' [755]

(c) Final Rule and Economic Analysis of the Final Rule

We continue to believe, given the possible variety of assets and structures for securitization and that business and reporting needs may evolve faster than changes can be made to the asset-level requirements, issuers should have the flexibility to provide asset-level data in addition to what is required by Schedule AL. For instance, we note that some commenters suggested we adopt data points that we had not proposed.[756] While we are adopting some of the data points commenters suggested, we are not adopting all the additional data points recommended for various reasons that we describe above. We encourage issuers to provide any additional asset-level data that may be appropriate. We believe the flexibility to provide additional data in a machine-readable format will provide benefits to investors and issuers at no significant cost.

Under the final requirements, issuers can provide additional asset-level disclosures in an Asset Related Document and such Asset Related Document(s) must then disclose the tags, definitions, and formulas for each additional asset-level disclosure.[757] As we stated in the 2004 ABS Adopting Release and 2010 ABS Proposing Release, issuers and underwriters should be mindful of any privacy, consumer protection or other regulatory requirements when providing additional loan-level information, especially given that the information would be publicly filed on EDGAR.[758] Finally, issuers may also provide other explanatory disclosure regarding the asset-level data in an Asset Related Document.[759] As with any information that is part of the prospectus or ongoing reports, all Asset Related Documents must be filed concurrently with the Schedule AL it supplements. We are not adopting the blank tag proposal as we are persuaded by comments that the blank tags are not appropriate, may provide limited benefits and may not be consistent with ''good XML syntax.''

5. New Form ABS–EE

(a) Proposed Rule

We proposed that the new Asset Data File be filed as an exhibit to certain filings. Therefore, we proposed changes to Item 601 of Regulation S–K, Rule 11 and 101 of Regulation S–T, and Form 8–K to accommodate the filing of Asset Data Files. We proposed to define the XML file required by Schedules L and L–D as an Asset Data File in Rule 11 to Regulation S–T and proposed corresponding changes to Rule 101 of Regulation S–T mandating electronic submission. For asset-level disclosures required at the time of the offering, we proposed, regardless of whether the issuer was registering the offering on Form SF–1 or SF–3, that the Asset Data File be filed as an exhibit to the appropriate Form 8–K (in the case of an offering) under proposed Item 6.06 of Form 8–K. Proposed Item 6.06 would have required that issuers file the Asset Data File as an exhibit to a Form 8–K on the same date a preliminary or final prospectus is filed or an Item 6.05 of Form 8–K is filed. The proposed requirement would have also required that any Asset Related Document be filed at the same time the Asset Data File is filed on EDGAR.

For ongoing reporting of asset-level disclosure, we proposed to require the Asset Data File and any Asset Related Document be filed with the appropriate Form 10–D. As noted above, we also proposed an additional exhibit, an Asset Related Document, for registrants to disclose the definitions or formulas of any additional asset-level data or to provide further explanatory disclosure regarding the Asset Data File.

(b) Comments on Proposed Rule

We did not receive any comments with respect to the requirement of filing the Asset Data Files or Asset Related Documents with the Form 8–K (in the case of an offering) or with the Form 10–D (in the case of a periodic distribution report).

(c) Final Rule and Economic Analysis of the Final Rule

We are adopting new Form ABS–EE to facilitate the filing of the new Asset Data Files [760] and Asset Related Documents.[761] The Asset Data Files and the Asset Related Documents are

[749] XBRL was derived from the XML standard. *See Interactive Data to Improve Financial Reporting Adopting,* Release No. 34–59324 (Jan. 30, 2009) [74 FR 6776].

[750] A schema is a set of custom tags and attributes that defines the tagging structure for an XML document. Extension data is not permitted in the asset-level data file because we believe it would defeat the purpose of standardizing data elements. Extension data allows issuers to add their own data elements to our defined data elements.

[751] *See* the 2010 ABS Proposing Release at 23375.

[752] *Id.*

[753] *See* letter from Prudential I.

[754] *See* letter from MISMO.

[755] *See* letter from MBA I.

[756] *See, e.g.,* letters from ASF I (suggesting additional RMBS data points), CU, and Wells Fargo I (suggesting additional RMBS data points as well as additional RMBS data points regarding government-sponsored assets).

[757] *See* Item 1111(h)(5) of Regulation AB.

[758] *See* Section III.C.1.c. of the 2004 ABS Adopting Release and Section III.A.(b)(i) of the 2010 ABS Proposing Release.

[759] *See* Item 1111(h)(4) of Regulation AB.

[760] *See* new Item 601(b)(102) of Regulation S–K [17 CFR 229.601(b)(102)].

[761] *See* new Item 601(b)(103) of Regulation S–K [17 CFR 229.601(b)(103)].

required to be filed as exhibits to new Form ABS–EE.[762]

We had proposed that the Asset Data Files and Asset Related Documents be filed with the Form 8–K because, in the case of a shelf offering, a Form 8–K is typically used to file other documents related to a registration statement. We had proposed filing the documents with Form 10–D to keep periodic disclosures on the same form. We believe, however, that requiring the information on a single Form ABS–EE will facilitate the filing of the Asset Data Files and Asset Related Documents because EDGAR programming for XML files can be specifically tailored for these types of documents, therefore simplifying filing obligations for issuers. Form ABS–EE will benefit investors by making it easier for users to run queries on EDGAR to locate these documents for download.

The fact that the disclosures are filed as exhibits does not impact the fact that the data contained in the Asset Data Files and the Asset Related Documents are disclosures that are part of a prospectus or a periodic report, as applicable.[763] As noted earlier, they are required to be incorporated by reference into the prospectus or the Form 10–D, as applicable. Accordingly, there is no change to the timing and frequency requirements for filing information to meet our offering and periodic disclosure rules and the corresponding Form ABS–EE, with the proper attachments, must be on file and be incorporated by reference into those filings by the time those filings are made or are required to be made.

6. Temporary Hardship Exemption

(a) Proposed Rule

We proposed to revise Rule 201 of Regulation S–T to include a self-executing temporary hardship exemption for filing the Asset Data File.[764] We also proposed to exclude Asset Data Files from the continuing hardship exemption under Rule 202 of Regulation S–T. Rule 202 generally allows an issuer to apply for a continuing hardship if it cannot file all or part of a filing without undue burden or expense. Under the proposed temporary hardship exemption, if the registrant experiences unanticipated technical difficulties preventing the timely preparation and submission of an Asset Data File, a registrant would still be considered timely if: The Asset Data File(s) containing the asset-level data is posted on a Web site on the same day it was due to be filed on EDGAR; an Asset Data File is filed on EDGAR that contains the Web site address, a legend is provided in the Asset Data File filed on EDGAR claiming the hardship exemption; and the Asset Data File(s) are filed on EDGAR within six business days.

(b) Comments on Proposed Rule

We did not receive any comments regarding our proposed self-executing temporary hardship exemption. We also did not receive any comments on the proposal to exclude Asset Data Files from the continuing hardship exemption under Rule 202 of Regulation S–T.

(c) Final Rule and Economic Analysis of the Final Rule

We are adopting, as proposed, a temporary hardship exemption. Under the requirement, if an issuer experiences unanticipated technical difficulties preventing the timely preparation and submission of an Asset Data File required to be filed on EDGAR, it may still be considered timely. For the Asset Data File, an issuer will still be considered timely if: The Asset Data File is posted on a Web site accessible to the public on the same day it was due to be filed on EDGAR; a Form ABS–EE is filed that identifies the Web site address where the file can be located; a legend is provided claiming the hardship exemption; and the Asset Data File is filed on EDGAR within six business days.[765] We believe that the hardship exemption will benefit both issuers and investors, because it will allow issuers to maintain compliance with our rules while providing investors with access to the information required to be disclosed without further delay.

We are also excluding the Asset Data File, as proposed, from the continuing hardship exemption under Rule 202 of Regulation S–T. We continue to believe that a continuing hardship exemption is not appropriate with respect to the Asset Data File because the Asset Data File is an integral part of the prospectus and periodic reports. We also believe that for ABS issuers the information in machine-readable format is generally already collected and stored on a servicer's systems. Therefore, we do not believe it would be appropriate for issuers to receive a continuing hardship exemption for the Asset Data File. We believe all investors will benefit from receiving the disclosures specified in Schedule AL in a format that will allow them to effectively utilize the information.

C. Foreign ABS

We requested comment on whether there are other privacy issues that arise for issuers of ABS backed by foreign assets.[766] The responses we received indicated concerns regarding foreign privacy laws,[767] as well as concerns related to variations in the characteristics of consumer receivables originated in different jurisdictions,[768] the inconsistencies between our proposal and other countries' disclosure and reporting standards,[769] and certain terms or structures used in the proposed rule that lack a direct European equivalent.[770] As an alternative to our proposal, some commenters requested that the disclosure standards for transactions involving assets located outside the United States be based on local requirements.[771] In response to the

[762] *See* Item 1111(h)(3) of Regulation AB [17 CFR 229.1111(h)(3)].

[763] Forms SF–1, SF–3, and 10–D each include an instruction requiring that any disclosures provided pursuant to Item 1111(h) of Regulation AB [17 CFR 229.1111(h)] filed as exhibits to Form ABS–EE in accordance with Items 601(b)(102) or 601(b)(103) [17 CFR 229.601(b)(102) and (b)(103)].

[764] [17 CFR 232.201]. Rule 201 of Regulation S–T generally provides for a temporary hardship exemption from the electronic submission of information, without staff or Commission action, when a filer experiences unanticipated technical difficulties that prevent timely preparation and submission of an electronic filing. The temporary hardship exemption permits the filer to initially submit the information in paper format but requires the filer to submit a confirming electronic copy of the information within six business days of filing the information in paper format.

[765] See Rule 201(d) and (e) of Regulation S–T [17 CFR 232.201].

[766] *See* Section III.A(b)(i) of the 2010 ABS Proposing Release. We asked: (1) Are there other privacy issues that arise for issuers of ABS backed by foreign assets? (2) How do the privacy laws of foreign jurisdictions differ from U.S. privacy laws? (3) If the privacy laws of foreign jurisdictions are more restrictive regarding the disclosure of information how should we accommodate issuers of ABS backed by foreign assets? (4) Is there substitute information that could be provided to investors?

[767] *See* letters from ABA I, Association for Financial Markets in Europe/European Securitisation Forum dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''AFME/ESF''), and Association for Financial Markets in Europe dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''AFME'').

[768] *See* letter from Australian Securitisation Forum dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''AusSF'').

[769] *See* letter from AFME/ESF.

[770] *Id.*

[771] *See* letters from AusSF (requesting that Australian issuers need only satisfy the Australian Securities and Investments Commission requirements and that differences between U.S. and Australian standards be disclosed in the offering documents), AFME/ESF (suggesting that the Commission permit the satisfaction of certain requirements by European issuers if they provide relevant information in compliance with any local or other relevant requirements and allow the adjustment of the requirements to reflect the information available outside of a U.S. context) and AFME (suggesting a similar regime, but stating that if compliance with local requirements was not

Continued

2014 Re-Opening Release, a few commenters raised cost and burden concerns about foreign ABS issuers' compliance with overlapping regulatory regimes.[772] A few commenters suggested flexible requirements for foreign ABS issuers to account for differences in the applicability and availability of information or a substitute compliance regime to account for differences between jurisdictions, including differences between the privacy laws of foreign jurisdictions.[773]

We have reviewed the requirements we are adopting against the requirements adopted by the European Central Bank[774] and the Bank of England.[775] We note several similarities and differences between our requirements and theirs, and we believe that perfect agreement between the Commission's requirements and the requirements of all foreign jurisdictions may not be achievable. We believe U.S. investors may expect data in a certain format and/or a certain level of disclosure that is not required under the requirements of other jurisdictions, some of which require the information for supervisory purposes and not specifically for the benefit of investors.[776] In addition, the underlying assets, the form of issuance, parties to the structures, terms and definitions and the structures themselves vary across jurisdictions. We also note that the privacy laws vary across jurisdictions, resulting in disclosure requirements of one jurisdiction that may conflict with the privacy laws in another jurisdiction.

We are not persuaded, however, that the Commission should implement a regime that would recognize the asset-level data requirements developed by foreign authorities, for example the European Central Bank and the Bank of England, that are tailored to assets originated outside of the U.S. or a ''provide-or-explain'' type regime that would permit selective disclosure based upon foreign laws. We continue to believe, as for U.S. originated assets, the usefulness of asset-level data is generally limited unless the data is standardized. We believe adopting another disclosure regime for foreign asset ABS would reduce standardization and, thereby, the comparability of ABS backed by assets originated outside of the U.S. and ABS backed by assets originated within the U.S. Further, a provide-or-explain regime lowers the comparability of ABS pools comprised of assets originated outside the U.S. against each other as the scope of disclosures provided by each issuer for each ABS may differ depending on the privacy laws of the home jurisdiction of the issuer. We acknowledge that compliance challenges and increased costs for foreign market participants may arise; however, we believe U.S. investors should receive the same data about ABS backed by assets originated outside the U.S. as ABS backed by assets originated within the U.S. This approach is consistent with our approach for corporate issuers, under which foreign private issuers generally provide comparable information to U.S. issuers.

IV. Other Prospectus Disclosure

A. Transaction Parties

1. Identification of the Originator

(a) Proposed Rule

In the 2010 ABS Proposing Release, we noted that Item 1110(a) of Regulation AB, prior to the adoption of today's amendments, required identification of originators apart from the sponsor or its affiliates only if the originator has originated, or expects to originate, 10% or more of the pool assets. We noted that in situations where many of the pool assets have been purchased from originators other than the sponsor and each of these originators originated less than 10% of the pool assets that the requirement requires very little, if any, information about the originators. Therefore, we proposed to amend the item to require that an originator originating less than 10% of the pool assets would be required to be identified if the cumulative amount of originated assets by parties other than the sponsor or its affiliates comprises more than 10% of the total pool assets.

(b) Comments on Proposed Rule

Comments on the proposal were focused on the scope of the requirement. Commenters argued that the rule should require disclosure identifying the originator of each asset without exception.[777] Another commenter recommended that the requirement be modified to include a low threshold (e.g., 2% of the original pool assets) under which identification of the non-affiliated originators would not be required.[778] In contrast, one commenter believed that the proposal was excessive with the costs outweighing the benefits and recommended keeping the current requirement and supplementing it with disclosure of ''additional originators to the extent necessary so that information about the originators of at least 85% of the pool assets has been included in the prospectus.''[779] Another commenter stated that disclosure of only third parties who originated more than 10% of the pool and all originators who provided 5% or more of the pool by dollar value would be more valuable to investors.[780]

(c) Final Rule

After considering the comments received, we are adopting the amendment to Item 1110(a) of Regulation AB, as proposed, with a slight modification to clarify the change that we are making to the existing requirement. Under the final rule that we are adopting, if the cumulative amount of originated assets by parties, other than the sponsor or its affiliates, comprises more than 10% of the total pool assets, then those originator(s) originating less than 10% of the pool assets will also be required to be identified in the prospectus. We continue to believe that where the sponsor securitizes assets of a group of originators that are not affiliated with the sponsor, more disclosure regarding the originators of the assets is needed. We believe investors will benefit from these disclosures because they will be

appropriate, then a ''provide-or-explain'' regime would be a helpful alternative).

[772] *See* letters from ABA III, GFMA/AusSF, SFIG II, SIFMA/FSR I-dealers and sponsors, and Treasurer Group.

[773] *See, e.g.,* letters from ABA III, GFMA/AusSF, and Treasurer Group (stating that substitute compliance is allowing the issuer to provide the disclosure required under a foreign jurisdiction).

[774] *See Data Templates,* European Central Bank (2013), *http://www.ecb.eu/mopo/assets/loanlevel/transmission/html/index.en.html.*

[775] *See Bank of England Loan Level Data: Reporting Template for Residential Mortgage Pools,* Bank of England (Nov. 2010), *http://www.bankofengland.co.uk/markets/Documents/money/documentation/RMloanleveldata-template.pdf.*

[776] *See, e.g.,* details about the European Central Bank's loan-level requirements for ABS accepted as collateral in Eurosystem credit operations *available at http://www.ecb.europa.eu/paym/coll/loanlevel/html/index.en.html. See also* the market notices from the Bank of England discussing their eligibility requirements for RMBS and covered bonds backed by residential mortgages; CMBS, small-medium enterprise loan backed securities and ABS backed by commercial paper; and ABS backed by consumer loans, auto loans, and leases that are delivered as collateral against transactions in the Bank's operations at *http://www.bankofengland.co.uk/markets/Documents/marketnotice121002abs.pdf, http://www.bankofengland.co.uk/markets/Documents/marketnotice111220.pdf, http://www.bankofengland.co.uk/markets/Documents/marketnotice121217.pdf.*

[777] *See, e.g.,* letters from Prudential I (suggesting that Schedule L should specify the originator of each asset, which will allow investors to identify and differentiate originators that are providing riskier collateral to structured product transactions) and Realpoint (recommending that for CMBS transactions every originator be identified).

[778] *See* letter from BoA I.

[779] *See* letter from VABSS I (without providing a cost estimate).

[780] *See* letter from CFA I (without describing why this disclosure would be more valuable to investors).

better able to assess pools comprising assets from these originators. We acknowledge that the revised rule will likely result in more originators having to be identified in the prospectus than is currently required; however, we do not think that it will result in significant costs to issuers since the information is readily available and the disclosure is limited only to identification of the originator. In addition, while we note that some commenters requested that we impose an additional minimum threshold before issuers would be required to identify unaffiliated originators,[781] we do not believe that such a distinction would be appropriate for the same reasons.

2. Financial Information Regarding a Party Obligated To Repurchase Assets

(a) Proposed Rule

In the 2010 ABS Proposing Release, we noted that in the events arising out of the financial crisis, the financial condition of the party obligated to repurchase assets pursuant to the transaction agreement governing an asset securitization became increasingly important as to whether repayments on asset-backed securities would be made.[782] We proposed to require disclosure of the financial condition of certain parties required to repurchase assets when there is a breach, pursuant to the transaction agreements, of a representation and warranty related to pool assets. Under the proposal, information regarding the financial condition of a 20% originator would be required if there is a material risk that the financial condition could have a material impact on the origination of the originator's assets in the pool or on its ability to comply with provisions relating to the repurchase obligations for those assets. Information about the sponsor's financial condition similarly would be required to the extent that there is a material risk that the financial condition could have a material impact on its ability to comply with the provisions relating to the repurchase obligations for those assets or otherwise materially impact the pool.

(b) Comments on Proposed Rule

The response to the proposal was mixed with some commenters supporting the proposal,[783] some commenters opposing the proposal,[784] and other commenters who did not express whether they supported or opposed the proposal, but suggested certain revisions.[785] One concern, raised by some commenters who opposed the proposal, was that investors may perceive the disclosure and the existence of representations and warranties as suggesting that the obligated parties are providing credit or liquidity support to the transaction.[786] Some commenters stated that the disclosure requirement may act as a barrier to entry for participation in the securitization markets, may potentially be misleading because it would likely be provided long before repurchase demands would be made, and in most instances disclosure would be required because an obligated party's financial condition would likely always impact a party's ability to perform its repurchase-related obligations.[787]

(c) Final Rule

After considering the comments received, we are adopting the amendments to Item 1104 and Item 1110, with some modification. We have revised the amendments so that the standard for when disclosure of financial information is required mirrors the existing standard for disclosures required about certain servicers.[788] Under the revised rules, the standard focuses on whether the sponsor or 20% originator's financial condition would have an effect on its ability to comply with any repurchase obligations in a manner that could have a material impact on pool performance or performance of the asset-backed securities.

We are adopting these amendments because we believe an investor's ABS investment decision includes consideration of obligations from certain parties to repurchase assets if there is a breach of the representations and warranties relating to those assets and the capacity of those parties to repurchase those assets. As evident from the crisis, the mere existence of a repurchase provision provides investors with little comfort as to the ability of the party obligated to repurchase assets for a breach of a representation or warranty.[789] The expanded disclosure

[781] *See* letters from BoA I, CFA I, and VABSS I.

[782] *See* the 2010 ABS Proposing Release at 23382. In the 2010 ABS Proposing Release, we also proposed to amend Item 1104 and Item 1110 of Regulation AB to require disclosure of the amount, if material, of publicly securitized assets originated or sold by the sponsor or an identified originator that were the subject of a demand to repurchase or replace any of the assets for breach of the representations and warranties concerning the pool assets in the last three years pursuant to the transaction agreements. This proposal and the comments on this proposal were considered in connection with the rules implementing Section 943 of the Dodd-Frank Act. *See* the Section 943 Adopting Release. Therefore, the proposal and related comments are not addressed in this release.

[783] *See* letters from ASF I (supporting the proposal, but suggesting that we revise the standard for when such disclosure is required to mirror the requirement regarding financial information of certain servicers included in Item 1108(b)(4) of Regulation AB, with a focus on whether the sponsor's or originator's financial condition would have an effect on origination of the pool assets or on its ability to comply with any repurchase obligations in a manner that could have a material impact on pool performance or performance of the asset-backed securities) and CFA I (stating that benefits to investors in the form of better knowledge about the source of pool assets outweighs the costs of compliance).

[784] *See* letters from BoA I, CMBP (disagreeing with the proposed disclosure requirement as it relates to a 20% originator) CREFC I, IPFS Corporation dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''IPFS I'') (responding with respect to private offerings of insurance premium finance loans), and MBA I.

[785] *See* letters from AusSF (stating that if we require financial statements that we should allow the submission of IFRS-compliant financial statements to satisfy the requirement) and KPMG LLP dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''KPMG'') (noting that the impact of the proposal will vary depending, in part, on whether the financial information must be audited and urging the Commission to weigh the cost of requiring audited financials against such benefit). *See also* letters from Center for Audit Quality dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release and Ernst & Young dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''E&Y'') (requesting other revisions). These commenters contended that the proposed amendments to Item 1104 and Item 1110(b) would require a subjective evaluation of the materiality of the risk and recommended, instead, to expand the scope of the definition of significant obligor in Item 1112 (i.e., to incorporate the obligated party that is required to repurchase assets for breach of a warranty or representation) or to expand the scope of Item 1114, the requirement relating to disclosure of significant credit enhancements, to include repurchase and replacement obligations—thereby providing an objective standard for determining when and how the requisite financial disclosure should be provided. Under this standard, the required financial information would be (1) the selected financial data specified by Item 301 of Regulation S–K when the obligation exceeds 10% of the asset pool, and (2) audited financial statements that comply with Regulation S–X when the obligation exceeds 20% of the asset pool.

[786] *See* letters from BoA I, CREFC I, and MBA I.

[787] *See* letters from CREFC I and MBA I. *See also* letter from CMBP (recommending instead to require sponsors to certify that: all the originators that have sold assets to the pool backing the ABS meet the sponsor's standards of creditworthiness, the sponsor's standards are customary and commercially reasonable, and based on the sponsor's assessment that each originator has the financial means to discharge their obligations under the representations and warranties regarding the pool assets).

[788] *See* Item 1108(b)(4) of Regulation AB (requiring information regarding the servicer's financial condition to the extent that there is a material risk that the effect on one or more aspects of servicing resulting from such financial condition could have a material impact on pool performance or performance of the asset-backed securities).

[789] *See Transparency in Accounting: Proposed Changes to Accounting for Off-Balance Sheet Entities Before the Subcomm. on Sec., Ins., & Inv. of the S. Comm. on Banking, Housing & Urban Affairs,* 110th Cong. 3 (2008) (statement of Joseph Mason, Professor at Louisiana State University) (stating that '' 'representations and warranties' have become a mechanism for subsidizing pool

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that we are requiring will provide investors insight into the capacity of the obligated parties to repurchase assets. We acknowledge that the financial condition of these parties may change between the time of the transaction, when the disclosure is provided, and when a repurchase is required. We believe that investors will nonetheless benefit from the required information because it will allow investors to assess, at the time of their investment decision, whether the representations and warranties provided regarding the pool assets are made by entities financially capable of fulfilling their obligations.

We also note the concerns that some of these parties are private companies who may choose to exit the securitization market rather than provide financial disclosures. While we acknowledge this possibility, we believe that this information is material for investors in order to make an informed investment decision. Furthermore, we believe this concern is minimized, to some extent, because the requirement does not necessarily require financial statements, but only information about their financial condition similar to the type of disclosure required under current rules regarding financial information of certain servicers, some of which may be private companies. Where disclosure is required, the type and extent of information regarding certain originators' and sponsors' financial condition would depend upon the particular facts. We note that sponsors will typically conduct due diligence regarding the pool assets when purchasing assets to include in the ABS pool, including assessing the financial condition of originators that are obligated to repurchase or replace any asset for breach of a representation and warranty pursuant to the transaction agreements. We believe that when the trigger for disclosure of the financial information of sponsors and 20% originators is met, as outlined in the rule, investors should have the same information. We are mindful, however, of the costs that originators and sponsors would incur if we required audited financial information, especially for those originators and sponsors that have not previously been subject to an audit; therefore, we are not requiring that financial information included be audited.

performance, so that no asset- or mortgage-backed security investor experiences losses—until the seller, itself, fails and is no longer able to support the pool'').

3. Economic Interest in the Transaction

(a) Proposed Rule

In the 2010 ABS Proposing Release, we noted that existing Item 1103(a)(3)(i) of Regulation AB required disclosure of the classes of securities offered by the prospectus and any class of securities issued in the same transaction or residual or equity interests in the transaction that are not being offered by the prospectus.[790] We also noted our belief that information regarding the sponsor's, a servicer's, or a 20% originator's continuing interest in the pool assets is important to an ABS investor and, therefore, we proposed to revise Items 1104, 1108, and 1110 to require disclosure regarding the sponsor's, a servicer's, or a 20% originator's interest retained in the transaction, including the amount and nature of that interest.[791] The disclosure would be required for both shelf and other offerings.[792]

(b) Comments on Proposed Rule

Several commenters supported the proposed rule but recommended certain revisions.[793] Some of these commenters suggested that the required disclosures include the effect of hedging.[794] For instance, one commenter stated that the rule should state that the disclosure should be net of hedging,[795] and the other commenter recommended requiring the sponsor to disclose ''any hedge (security specific or portfolio) that was entered into by the sponsor or, to the extent it has actual knowledge of such a hedge, an affiliate in an effort to offset any risk retention position held by the sponsor or an affiliate.'' [796]

Another commenter requested that we limit the retention disclosure requirements ''to those required in any risk retention construct that may be included in the final rules.'' [797] The commenter acknowledged that it ''is difficult for investors to ascertain how many securities cleared the market and how many were taken down by the issuer or sponsor,'' but that disclosure of any retention held above a required amount would be impractical and misleading because accurate information about retention interests may not be known until closing, which is after investors make their investment decision, and the retention interests often change during the period between the time of sale and closing.

(c) Final Rule

After considering the comments received, we are adopting the proposed revisions to Items 1104, 1108, and 1110 with some modifications.[798] As noted below, the requirements that we are adopting for shelf eligibility do not contain a requirement for risk retention in light of the risk retention proposals currently being considered by regulators under the Dodd-Frank Act.[799] Because commenters noted that disclosure about a sponsor's, a servicer's, or a 20% originator's continuing interest in the pool assets is an important factor that investors consider when analyzing the alignment of interests among various parties in the securitization chain, we are adopting this rule.[800] We are also persuaded by commenters that this disclosure should describe the effect of hedging because a hedge could effectively reduce the actual exposure that the party may face from its continuing interest in the pool assets.[801] We do not believe that providing disclosure of the interests retained by the sponsor, servicer, or 20% originator net of hedging alone, as suggested by one commenter, provides investors with

[790] 17 CFR 229.1103(a)(3)(i).

[791] For example, if the originator has retained a portion of each tranche of the securitization, then disclosure regarding each amount retained for each tranche would be required.

[792] We also proposed that if the offering was being registered on Form SF–1, the issuer would be required to provide clear disclosure that the sponsor is not required by law to retain any interest in the securities and may sell any interest initially retained at any time.

[793] *See* letters from ABA I (supporting this requirement in lieu of the proposed risk retention shelf eligibility requirement because this disclosure will ensure that investors are fully aware of the alignment of interests in each offering), ASF I (expressed views of investors only) (believing that if the sponsor of the securitization retains exposure to the risks of the assets, the sponsor will likely have greater incentives to include higher quality assets), Mass. Atty. Gen., and Prudential I.

[794] *See* letters from Mass. Atty. Gen. and Prudential I.

[795] *See* letter from Mass. Atty. Gen.

[796] *See* letter from Prudential I.

[797] *See* letter from CREFC I.

[798] For purposes of describing any interest that the sponsor, servicer, or 20% originator, retained in the transaction, such disclosure must also include any interest held by an affiliate of such entity, except as described below for certain hedges entered into by affiliates, disclosure is required to the extent known. We have made conforming changes to the final rule to clarify the treatment of affiliates. As discussed later in Section VIII.A.3 Changes in Sponsor's Interest in the Securities, we are also adopting a requirement that any material change in the sponsor's interest in the securities must be disclosed on Form 10–D.

[799] *See* the 2011 Risk Retention Proposing Release and the 2013 Risk Retention Re-Proposing Release.

[800] *See also* footnote 1320 (describing one commenter's views on the importance of requiring disclosure of any material change in the sponsor's interest in the transaction).

[801] We also note that Section 15G of the Exchange Act, as added by Section 941 of the Dodd-Frank Act, requires that the risk retention rules, to be finalized by regulators, must prohibit a securitizer from directly or indirectly hedging the credit risk required to be retained under the rules.

sufficient insight into the hedging activities used by these entities to minimize exposure to their interests. Therefore, we are adopting the rule that each of these parties disclose their continuing interest in the pool assets, including the amount and nature of that interest, and disclose any hedge (security specific or portfolio) materially related to the credit risk of the securities that was entered into by these parties or, if known, by any affiliate of these parties to offset any risk position held.[802] We believe this approach provides investors with appropriate information about these entities' continuing interest in the pool assets and how these parties may be managing those exposures.

We also acknowledge the concerns that the exact amount retained by these parties may not be known until closing and that these retention interests may and do often change during the period between the time of sale and closing.[803] To address these concerns, the parties will only need to describe in the preliminary prospectus the amount and nature of the interest that they intend to retain. The parties must, however, also disclose in the preliminary prospectus the amount and nature of risk retention that they have retained in order to comply with law (for example, to comply with the final risk retention rules once they are adopted).[804] In order to clarify the requirement, we have included an instruction specifying that the amount and nature of the interest or asset retained in compliance with law must be separately stated in the preliminary prospectus.[805] For purposes of the final prospectus, the parties must also disclose the actual amount and nature of the interest to be retained.

4. Economic Analysis Related to the Rules Regarding Transaction Parties

The rules discussed in this section seek to provide ABS investors with greater information about the transaction parties to a securitization, thereby allowing them to make more informed investment decisions. First, investors will now be able to identify a potentially larger number of the originators of pool assets, which will improve their ability to compare the loan performance across originators and assess the relative stringency of these originators' underwriting standards as well as their historical performance. Second, at the time of an ABS offering, investors will now be able to better assess the ability of parties obligated to repurchase assets to actually fulfill those obligations. This will allow investors to more accurately assess the representations and warranties in the transaction agreements, since the enforceability of these depends on the ability of the obligated party to repurchase breached assets. Third, investors will now have information about the sponsor's, servicer's, or a 20% originator's interest retained in the transaction net of hedging. Investors have indicated that this information will be beneficial to them because the information will allow them to consider the incentives of the various parties involved in the securitization chain.

The costs of the revised rule will be borne primarily by issuers, who will be required to provide additional disclosure about the transaction parties to a securitization. The magnitude of the costs will depend on the extent to which issuers already gather the required information. For instance, on the one hand, issuers likely already obtain the identities of originators; therefore, providing that information should not impose significant additional costs. On the other hand, issuers may need to gather some additional information from third parties regarding the financial condition of an originator who originated 20% or more of the pool assets and is obligated to repurchase assets under the transaction agreements. As a result, issuers may incur costs to gather the financial data and then prepare and provide the required disclosure. However, we believe that the revised rule strikes the appropriate balance between the benefit of providing investors with useful information about the originators and the burden of requiring the identification of all originators, regardless of the amount they contributed to the pool.

Some commenters were concerned that disclosing the financial condition of a party obligated to repurchase assets may impose an indirect cost on investors, if investors misinterpret this disclosure and the existence of representations and warranties as the obligated parties providing credit or liquidity support to the transaction. In light of our other rules on disclosure of credit and liquidity support, we believe investors will see a clear distinction between the representations and warranties and any credit or liquidity support provided. Similarly, some commenters were concerned that the disclosure may be misleading to investors because the financial condition of the party may have changed between the time of the transaction when the disclosure was provided and the repurchase demand. We believe that investors will still benefit from the required information since it will allow investors to assess at the time of making their investment decision whether the entities that provided representations and warranties regarding the pool assets are, at least as an initial matter, financially capable of fulfilling their obligations.

B. Prospectus Summary

1. Proposed Rule

In the 2010 ABS Proposing Release, we noted that a prospectus summary should briefly highlight the material terms of the transaction, including an overview of the material characteristics of the asset pool. We also noted our belief that the prospectus summaries provided in ABS prospectuses may not adequately highlight the material characteristics, including material risks, particular to the ABS being offered. Instead, these prospectus summaries often summarize types of information that are common to all securitizations of a particular asset class.[806] Accordingly, we proposed a new instruction to clarify the prospectus summary disclosure requirements.[807] Specifically, the proposed instruction noted that the prospectus summary disclosure may include, among other things, statistical information of: The types of underwriting or origination programs, exceptions to underwriting or origination criteria, and, if applicable, modifications made to the pool assets after origination.

2. Comments on Proposed Rule

Comments on the proposal were mixed.[808] One commenter, who was supportive of the proposal, stated that the instruction would help ''highlight potential risks relating to the underwriting of the underlying pool assets.'' [809] Another commenter, who opposed the proposed instruction, requested an exception for CMBS transactions stating that each commercial mortgage is unique and, as

[802] Because we believe that a security-specific hedge is more likely to be material to investors, we anticipate that issuers will need to provide more detailed disclosure about such hedge in order for investors to understand the impact such hedge may have on the ABS.

[803] *See* letter from CREFC I.

[804] *See* the 2013 Risk Retention Re-Proposing Release.

[805] *See* letter from CREFC I (noting that the nature and amount of retained interests held to fulfill risk retention requirements could be disclosed in the prospectus).

[806] *See* the 2010 ABS Proposing Release at 23383.

[807] 17 CFR 229.1103(a)(2).

[808] *See* letters from BoA I, CFA I, Prudential I, and Realpoint (all supporting the proposal). *But see* letters from ASF I (expressed views of dealers and sponsors only) and CREFC I (opposing the proposed rule).

[809] *See* letter from CFA I.

a result, the proposed disclosures would not enhance an investor's understanding of the risks and characteristics of a particular CMBS loan pool.[810] One commenter stated that the instruction runs counter to the Commission's plain English rules because it requires the repeating of disclosure in different sections of the document without enhancing the quality of the information.[811] This commenter also contended that the proposed instruction seems to encourage reliance on a summary of information that should be considered in the fuller context of the narrative in the body of the prospectus. The commenter suggested that we reconsider the proposal or, in the alternative, require only a cross-reference in the summary to the location of this information in the body of the prospectus.[812]

3. Final Rule and Economic Analysis of the Final Rule

After considering comments received, we are adopting the proposed instruction with revisions. From our experience, the prospectus summaries often summarize types of information that are common to all securitizations of a particular asset class rather than the material characteristics of the particular ABS, such as statistics regarding whether the loans in the asset pool were originated under various underwriting or origination programs, whether loans were underwritten as exceptions to the underwriting or originations programs, or whether the loans in the pool have been modified.[813] We believe that investors would benefit from a prospectus summary that summarizes the disclosures in the prospectus regarding this type of information because presenting this information in a summarized format may aid investors' understanding of material characteristics. In that regard, we also believe that the final instruction is less prescriptive than one commenter suggested since it does not require specific disclosure but rather indicates the types of information that may be summarized. We acknowledge that the prospectus summary should be brief and should not contain, and is not required to contain, all of the detailed information in the prospectus and, therefore, issuers should not simply repeat the disclosure found elsewhere in the prospectus in the prospectus summary. We also acknowledge that more fulsome narrative disclosures discussing these summary statistics may provide greater context about these disclosures; therefore, we added as part of the final instruction a requirement to include a cross-reference in the prospectus summary to the location of corresponding disclosure in the body of the prospectus.

The costs associated with this disclosure should be minimal as the issuer should already have this information, or be able to easily generate the information, in light of the more detailed disclosure required by other item requirements in Regulation AB. Furthermore, this is not a new requirement, but rather a clarification of our position on what should be provided in the prospectus summary. Finally, if this disclosure is not appropriate for a particular asset class, then existing Item 1103(a) addresses this concern by indicating that the disclosure is only required where applicable.[814]

C. Modification of Underlying Assets

1. Proposed Rule and Comments on Proposed Rule

In the 2010 ABS Proposing Release, we proposed to replace Item 1108(c)(6) of Regulation AB with a more detailed and specific disclosure requirement in Item 1111.[815] Item 1108(c)(6) requires disclosure to the extent material of any ability of the servicer to waive or modify any terms, fees, penalties, or payments on the assets and the effect of exercising such ability, if material, on the potential cash flows from the assets. The proposed requirement in Item 1111 would require a description of the provisions in the transaction agreements governing modification of the assets and disclosure regarding how modifications may affect cash flows from the assets or to the securities. We received only one comment on the proposal, which supported the proposed amendments.[816]

2. Final Rule and Economic Analysis of the Final Rule

We are adopting the final rule, as proposed. We continue to believe that the ability of the servicer to modify any terms, fees, and penalties and the effect of this ability on potential cash flows remains an important factor to investors. We believe that more granular data about this ability will enable investors to better assess the possibility of a potential change in the cash flows, which should, in turn, promote more efficient allocation of capital. To the extent issuers will be providing more detail than they previously provided, issuers' costs to provide the required disclosure will likely increase.

D. Disclosure of Fraud Representations

We also proposed to revise Item 1111(e) to require disclosure of whether a representation was included among the representations and warranties that no fraud has taken place in connection with the origination of the assets on the part of the originator or any party involved in the origination of the assets. In proposing this requirement, we believed that it was important that any fraud representation be highlighted to investors.

Several commenters were opposed to the proposed requirement.[817] One commenter noted that both its investor and issuer members agreed that the absence of fraud in the origination is an element of several representations and warranties concerning the pool assets, such as the representation and warranty stating that the pool assets were originated in compliance with the requirements of law and applicable underwriting standards, and that the pool assets are legal, valid, and binding payment obligations of the related obligors.[818] This commenter further noted that singling out a fraud representation in the disclosure was unnecessary and duplicative in light of our other proposal that would require issuers to provide disclosure on representations and warranties. Another commenter stated that the proposed requirement did not pass a reasonable

[810] *See* letter from CREFC I.

[811] *See* letter from ASF I (expressed views of dealers and sponsors only) ("find[ing] it unusual that the Commission is proposing such a specific disclosure requirement as an instruction to an Item requirement that is otherwise by design very general").

[812] *See* letter from ASF I (expressed views of dealers and sponsors only).

[813] For example, the prospectus summary should include summarized information about the disclosure required as part of the issuer review performed under Securities Act Rule 193. In particular, Item 1111 of Regulation AB requires an ABS issuer to disclose the nature of its review of the assets and the findings and conclusions of the issuer's review of the assets, which includes its conclusion that the review was designed and effected to provide reasonable assurance that the disclosure in the prospectus regarding the assets is accurate in all material respects.

[814] *See* Item 1103(a) of Regulation AB [17 CFR 229.1103(a)] (stating in providing the information required by Item 503(a) of Regulation S–K, provide the following information in the prospectus summary, as applicable).

[815] 17 CFR 229.1111. In the 2010 ABS Proposing Release, we proposed to amend Item 1111 to require disclosure regarding deviations to disclosed underwriting standards. The proposal would have also required disclosure of the steps taken by the originator to verify information received during the underwriting process. These proposals and the comments on the proposals were later considered and acted upon in connection with the rules implementing Section 945 of the Dodd-Frank Act. *See Issuer Review of Assets in Offerings of Asset-Backed Securities,* Release No. 33–9176 (Jan. 20, 2011).

[816] *See* letter from MBA I.

[817] *See* letters from ASF I, ELFA I, and MBA I.

[818] *See* letter from ASF I.

cost-benefit test and, without clarifying why, stated that the disclosure would not benefit investors.[819] This commenter suggested that we not adopt the proposed requirement and instead require a restatement or identification of the specific fraud representation, if any, included in the transaction ''rather than including a binary response to whether or not there is a fraud representation.''[820]

After considering the comments we received, we are not adopting the proposed revisions to Item 1111(e). As one commenter noted, the absence of fraud may be an element of several representations and warranties concerning the pool assets and therefore is already adequately disclosed under the current requirements of Item 1111(e).

E. Static Pool Disclosure

1. Disclosure Required

(a) Proposed Rule

In the 2010 ABS Proposing Release, we noted that since the adoption of Regulation AB we have observed that static pool information provided by asset-backed issuers may vary greatly within the same asset class. Variations exist not only with the type or category of information disclosed but also with the manner in which it is disclosed. As a result, static pool information between different sponsors has not necessarily been comparable, which reduces its value to investors.

To address this problem, we proposed revisions to Item 1105 of Regulation AB[821] to increase the clarity, transparency, and comparability of static pool information. Some of the proposed rules would apply to all issuers, and other proposed rules would apply only to amortizing asset pools and not to revolving asset master trusts. For all issuers, we proposed the following five requirements.[822] First, we proposed to require appropriate introductory and explanatory information to introduce the characteristics. Second, we proposed to require that issuers describe the methodology used in determining or calculating the characteristics and describe any terms or abbreviations used. Third, we proposed to require a description of how the assets in the static pool differ from the pool assets underlying the securities being offered. Fourth, we proposed to require additional disclosure if an issuer does not include static pool information or includes disclosure that is intended to serve as alternative static pool information. Finally, we proposed to require graphical presentation of the static pool information, if doing so would aid in understanding.

(b) Comments on Proposed Rule

Commenters were generally supportive of these proposed rules[823] and mostly requested that the Commission clarify certain aspects.[824] Some commenters were supportive of the proposal to provide narrative disclosure.[825] One commenter stated that the inclusion of explanatory information introducing the characteristics of the static pool would increase the clarity of the required static pool disclosure.[826] Other commenters requested greater clarification about the narrative disclosure requirements. For instance, one commenter believed that it was unclear whether ''narrative disclosure'' would permit presentation in tabular format.[827] Another commenter expressed concern with the RMBS example provided in the 2010 ABS Proposing Release and noted that one of the aspects we listed—the number of loans that were exceptions to standardized underwriting—is qualitatively different and more granular and detailed than the other aspects listed (i.e., number of assets and types of mortgages).[828]

One commenter, supportive of the proposal to require a description of the methodology used in determining or calculating the characteristics, urged the Commission to require that the methodologies used by issuers be standardized to facilitate comparison of securities within the same asset class.[829] This commenter also emphasized that key defined terms, such as ''delinquency'' and ''default'' must be standardized.

Several commenters provided differing views on whether the proposal to require a description of how the assets in the static pool differ from the pool assets underlying the securities being offered was necessary or helpful to investors. One commenter indicated that this disclosure is helpful in understanding ''pool construction risk.''[830] Another commenter, however, argued that it did not understand how this requirement adds anything to the proposed narrative disclosure.[831]

With respect to requiring an issuer to explain why it did not provide static pool information or provided alternative information, one commenter interpreted this proposal as capable of being satisfied through summary disclosure stating that either the data are not available or that static pool disclosure is immaterial.[832]

One commenter opposed requiring the graphical presentation of static pool information in addition to the proposed narrative description.[833] This commenter asserted its belief that graphical presentation is not market practice, has ''highly questionable utility'' and is possibly misleading. This commenter supported, however, graphical presentation of delinquency, loss, and prepayment information for amortizing pools.

(c) Final Rule and Economic Analysis of the Final Rule

After considering the comments provided, we are adopting the requirements as proposed.[834] First, we are amending Item 1105 to require narrative disclosure that provides introductory and explanatory information to introduce the static pool information presented. We continue to believe that a brief snapshot of the static pool information presented will benefit investors by providing them with context in which to evaluate the information, especially for those investors who lack sophisticated

[819] *See* letter from ELFA I (noting that a general ''fraud representation'' is difficult to make due to the potential chain of parties involved in a single lease/loan including the lessee, manufacturer, dealer, broker, lessor/lender and servicer).

[820] *See* letter from ELFA I.

[821] 17 CFR 229.1105.

[822] *See* the 2010 ABS Proposing Release at 23385.

[823] *See* letters from AMI, ASF I, BoA I, CFA I, MSCI, Prudential I, and Realpoint.

[824] *See* letters from ASF I and VABSS I.

[825] *See* letters from AMI and ASF I.

[826] *See* letter from ASF I.

[827] *See* letter from VABSS I.

[828] *See* letter from ASF I. *See also* the 2010 ABS Proposing Release at 23385. In the 2010 ABS Proposing Release, we illustrated the narrative disclosure that would be required using RMBS as an example. We noted that for a pool of RMBS the disclosure would include the number of assets, the types of mortgages, and the number of loans that were exceptions to the standardized underwriting criteria.

[829] *See* letter from AMI.

[830] *See* letter from Prudential I (recommending that ''[t]he prospectus should highlight the extent to which the current collateral pool was originated with the same or differing underwriting criteria, loan terms, and/or risk tolerances than the static pool data'').

[831] *See* letter from VABSS I (stating its hope that the Commission is not suggesting that, for each offering, registrants should include a description of how the securitized pool differs from each of the 3 to 25 static pools, as the commenter believes that such disclosure would simply compare the disclosed metrics for each pool and therefore would provide no incremental value to investors).

[832] *See* letter from BoA I (urging reconsideration of any standard that would require disclosure of a ''detailed analysis of materiality'' and stating that ''[a]n analysis of an issuer's methodology for making materiality determinations is not a proper subject of prospectus disclosure'').

[833] *See* letter from BoA I.

[834] *See* Item 1105 of Regulation AB [17 CFR 229.1105].

analytical tools.[835] We do not intend for the requirement to cause issuers to repeat the underlying static pool disclosure in the narrative; rather we intend for the requirement to serve as a clear and brief introduction of the static pool disclosure in order to provide context to investors. We do believe, however, that the type of narrative disclosure that we are requiring is best presented in paragraph format, and not in tabular format as one commenter recommended, in order for the narrative description to clearly convey to investors the differences in the assets being securitized in the deal and the assets comprising the static pools.[836]

To aid issuers in understanding what the narrative disclosure would typically include, and as commenters noted, we provided an example in the 2010 ABS Proposing Release, as we have done in other releases, to illustrate the disclosure principle.[837] In our example, for a pool of RMBS, the disclosure would typically include, among other things, the number of loans that were exceptions to the standardized underwriting criteria. As noted above, one commenter expressed concern and noted that the number of loans that were exceptions to the standardized underwriting criteria was qualitatively different and granular than the other two characteristics in the example and raised questions for issuers as how to apply the disclosure standard in a principled way to distinguish among various credit characteristics of the pool.[838] We believe that for RMBS, the number of exceptions to the standardized underwriting criteria is an important credit characteristic for issuers to highlight in the narrative disclosure. Inclusion of a significant number of mortgages that deviate from the underwriting standards could pose a risk to the performance of the RMBS. We believe disclosure of the number of loans that were exceptions to standardized underwriting criteria is likely to be important to highlight for other asset classes as well. Issuers should highlight those characteristics that would be most important for investors to be aware of before analyzing the actual static pool disclosure, which for some asset classes can be extensive.

Second, we are adopting, as proposed, an amendment to require issuers to describe the methodology used in determining or calculating the characteristics and also to describe any terms or abbreviations used.[839] We believe that this requirement will provide clarity and transparency to investors and assist them in determining whether the calculations or terms are comparable across issuers. This will benefit investors because it will facilitate their ability to make better informed investment decisions. One commenter urged the Commission to direct that the methodologies and key terms used by issuers be converged and standardized over time so that investors can compare securities within the same asset class.[840] Although we are not adopting standardized methodologies and terms for static pool disclosure, the proposal we are adopting requires asset-level disclosures for ABS backed by certain asset types.[841] As a result of the new asset-level requirements, the data used to produce the static pool information for these asset classes will be standardized.

Third, we are requiring a description of how the assets in the static pool differ from the pool assets underlying the securities being offered.[842] We continue to believe that this requirement benefits investors by providing them with context in which to evaluate the information without sophisticated data analysis tools and, as one commenter noted, to evaluate pool construction risk. If the pool in the offering is materially different from prior pools, then the issuer should describe the difference so that investors can factor in that difference when examining the static pool information. We agree with one commenter's statement that ''[t]he prospectus should highlight the extent to which the current collateral pool was originated with the same or differing underwriting criteria, loan terms and/or risk tolerances than the static pool data.'' [843] We also believe that in cases where the assets of the pool being securitized were underwritten through different origination channels (e.g., loans originated directly through an originator's retail channel or through unaffiliated mortgage brokers) compared to prior securitized pools, disclosure of the proportion of assets originated through each channel should be provided. To address commenters' concerns, we are clarifying that we are requiring ''a clear and concise description'' of the material differences, if any, from the pool being securitized, but not a detailed comparison.[844]

Fourth, as proposed, the final rule states that the static pool information should be presented graphically if doing so would aid in understanding.[845] As with the other requirements discussed above, we believe graphical presentations help investors to more easily evaluate material information, without the use of sophisticated analytical tools. One commenter stated that the graphical presentation has ''highly questionable utility'' and also may be misleading under many circumstances.[846] We are requiring the issuer to provide a graphical illustration only if it would be helpful; therefore, if an issuer believes that providing graphical presentation of the static pool information would not be useful for understanding the data or misleading, then the issuer would not be required to provide it. However, we generally believe that graphical presentation of information can be beneficial to investors by helping them to quickly spot trends, which may not be evident by looking at the numbers alone.

Finally, in addition to providing investors with a clear and brief introduction of the static pool data, we are also requiring issuers to provide disclosure in cases where an issuer does not include static pool information or includes disclosure that is intended to serve as alternative static pool information.[847] It is not always apparent why one issuer does not provide static pool information or provides alternative disclosure in lieu of such information, when other issuers within the same asset class provide the information. Therefore, we are requiring that issuers explain why they have not included static pool disclosure or why they have provided alternative information. One commenter interpreted this requirement as capable of being satisfied through summary disclosure, such as stating that the data is not available or not material.[848] While we are not requiring that the issuer provide an extensive explanation, the issuer should provide some explanation beyond a conclusory statement that the information is not

[835] *See* the 2010 ABS Proposing Release at 23385.

[836] *See* letter from VABSS I. Issuers can supplement the narrative disclosure that is required to be provided in paragraph format with graphical presentation if doing so would aid in understanding.

[837] *See* the 2010 ABS Proposing Release at 23385.

[838] *See* letter from ASF I. We discuss amendments to Item 1111 requiring specific data about the amount and characteristics of assets that deviate from the disclosed origination standards in Section III.A.2.a) Disclosure Requirements for All Asset Classes and Economic Analysis of These Requirements.

[839] *See* Item 1105 of Regulation AB [17 CFR 229.1105].

[840] *See* letter from AMI.

[841] *See also* Section III.A Asset-Level Disclosure Requirement.

[842] *See* Item 1105 of Regulation AB [17 CFR 229.1105].

[843] *See* letter from Prudential I.

[844] *See* letter from VABSS I.

[845] *See* Item 1105 of Regulation AB [17 CFR 229.1105].

[846] *See* letter from BoA I.

[847] *See* Item 1105 of Regulation AB [17 CFR 229.1105].

[848] *See* letter from BoA I.

available or not material. If the information is not included because it is not material, an issuer should explain why the data is immaterial, such as if the assets differ so significantly from the assets in the pool being offered.

We believe that taken together the static pool disclosure requirements adopted will benefit investors by providing them with more clearly explained and more consistently presented information about static pools, thereby facilitating their understanding of how the performance of the static pools may or may not be indicative of how the current pool may perform. This will help investors make better informed investment decisions and lead to more efficient allocation of capital. The requirements will be costly to issuers to the extent that they require reformatting information such as in graphical format. We expect that these costs will be minimal because issuers can use off-the-shelf software to create the graphs. Issuers will also incur costs for analyzing prior pools as compared to the current offering, but these costs should not be significant since they will have all the necessary information.

2. Amortizing Asset Pools

(a) Proposed Rule

We proposed to add an instruction to Item 1105(a)(3)(ii) of Regulation AB to require the static pool information related to delinquencies, losses, and prepayments be presented in accordance with the existing guidelines outlined in Item 1100(b) [849] for amortizing asset pools. Additionally, we proposed to amend Item 1105(a)(3)(iv) to require graphical presentation of delinquency, losses, and prepayments for amortizing asset pools.

(b) Comments on Proposed Rule

Comments received on the proposed changes for amortizing asset pools were mixed. With respect to requiring that delinquencies, losses, and prepayments be presented in accordance with Item 1100(b), several commenters supported the proposal,[850] and several other commenters opposed.[851] Those commenters opposing the requirement were most concerned about the one-size-fits-all approach to Item 1100(b)(1). They stated, for example, that reporting delinquencies, losses, and prepayments in 30- or 31-day increments through charge-off would be for a longer period of time than required under general principles of materiality.[852] In regard to the graphical presentation requirement, one commenter noted that graphical presentations provide immediate recognition of changes in asset performance.[853] Commenters that opposed the requirement argued that not all graphical presentations are useful or meaningful, especially for asset classes with extensive data.[854]

(c) Final Rule and Economic Analysis of the Final Rule

We are adopting the proposed rules for amortizing asset pools with modification in response to comments. We remain concerned that the inconsistent presentation of delinquencies, losses, and prepayments across issuers within the same asset class has resulted in a lack of clarity and comparability.[855] To address this concern, we are adding an instruction to Item 1105(a)(3)(ii) of Regulation AB to require for amortizing asset pools that the static pool information related to delinquencies, losses, and prepayments be presented in accordance with Item 1100(b) with respect to presenting such information in 30- or 31-day increments. In response to commenters' concerns with requiring such presentation through charge-off, the final instruction requires that delinquencies, losses, and prepayments be presented in 30- or 31-day increments through no less than 120 days.[856] We believe that this revised time period balances commenters' concerns with the cost and burden of having to track and report this information in a more granular manner for a longer period of time while still providing investors with a more comprehensive picture of the delinquencies, losses, and prepayments in a uniform manner across asset classes. We also note that this revised time period is consistent with the new asset-level data requirement for presentation of delinquencies and losses in RMBS.[857] While investors will not receive as granular a presentation as proposed (through charge-off), investors investing in asset classes required to provide asset-level disclosures will be receiving more detailed information about the payment status of each individual asset, such as the paid through date.[858] We recognize that to the extent that issuers will now be required to present delinquencies and losses for a longer period of time than previously provided in the distribution reports, such issuers will incur some costs. We believe, however, the benefits gained from standardized and comparable delinquency and loss disclosure justify the costs issuers may incur to provide the information.

In addition to requiring that delinquencies, losses, and prepayments be presented in accordance with Item 1100(b) through no less than 120 days, we are amending Item 1105(a)(3)(iv) to require the graphical presentation of this information for amortizing asset pools. We acknowledge commenters' concern that the substantial quantitative data associated with some prior securitized pools could make graphical presentation of the data ''unintelligible'' and that investors may prefer actual data over graphs because they cannot ascertain the data from the graphs and they can take the tabular data and create their own graphs.[859] We believe, however, that static pool data alone, depending on the volume and type of data, can be difficult to analyze without the use of sophisticated analytical tools. Requiring graphical presentation of this information will benefit investors by enabling them to analyze the information without such tools.[860] In addition, graphical presentation of the information highlights possible data segments that warrant further analysis and may therefore facilitate a more

[849] 17 CFR 229.1100(b). Item 1100(b) requires that information be presented in a certain manner. For example, it requires that information regarding delinquency be presented in 30-day increments through the point that assets are written off or charged off as uncollectable.

[850] *See* letters from BoA I and Realpoint.

[851] *See* letters from ASF I and VABSS I.

[852] *Id.* These commenters requested that the Commission tailor Item 1100(b) according to asset class. For instance, ASF requested that the Commission modify Item 1100(b)(1) for RMBS and CMBS as follows: Present delinquency information in 30- or 31-day increments through the point that the loans are 179 or 180 days delinquent, followed by an additional 180-day increment (i.e., through the point that the loans are 359 or 360 days delinquent), and a final increment of 359 or 360 days or more. For ABS supported, directly or indirectly, by motor vehicles, equipment and other similar physical assets with finite lives over which their value depreciates, ASF and VABSS requested that Item 1100(b)(1) be modified so that delinquency information is presented in 30- or 31-day increments through the point that the loans are 119 or 120 days delinquent, followed by a final increment of 119 or 120 days or more.

[853] *See* letter from CFA I. *See also* letters from AMI and BoA I (supporting the graphical requirement for amortizing asset pools).

[854] *See* letters from ASF I and VABSS I.

[855] *See* the 2010 ABS Proposing Release at 23385.

[856] *See* letters from ASF I and VABSS I.

[857] *See* new Item 1(g)(33) of Schedule AL.

[858] *See* new Item 1(g)(28) of Schedule AL. *See* Section III.A.2.b Asset Specific Disclosure Requirements and Economic Analysis of These Requirements. Due to the transition period for implementing the loan-level requirements, there will be a period of time during which investors will not have access to this more granular data about assets in prior securitized pools. *See* Section IX.B Transition Period for Asset-Level Disclosure Requirements.

[859] *See* letter from VABSS I.

[860] *See* letters from AMI, BoA I, and CFA I (noting that graphical representation of this information provides investors with an immediate recognition of changes in asset performance in successive pools and thus an indication of the underwriting standards of the issuers).

tailored and efficient in-depth analysis. We also note that the inherent function of static pool information (i.e., analyzing trends within a sponsor's program by comparing originations at similar points in the assets' lives) is well-suited for graphical presentation as it allows for better detection of patterns that may not necessarily be evident from overall portfolio numbers.

3. Filing Static Pool Data

(a) Proposed Rule

We proposed to permit issuers to file their static pool information required under Item 1105 of Regulation AB on EDGAR in Portable Document Format (''PDF'') as an official filing in lieu of, as currently required, including the information directly in the prospectus (or incorporating by reference) in ASCII or HTML format.[861]

As is the case today, however, issuers can incorporate static pool information filed on a Form 8–K or as an exhibit to a Form 8–K by reference into a prospectus.[862] We proposed that all static pool disclosure, if filed on a Form 8–K, be filed under a new item number so that investors could easily locate the information that is incorporated by reference into the prospectus. We also proposed to create a new exhibit number to Item 601 of Regulation S–K for static pool information filed as an exhibit to a Form 8–K or prospectus.

(b) Comments on Proposed Rule

Commenters were generally opposed to our PDF proposal, favoring data formats other than PDF for static pool information. One commenter stated that PDF makes detailed analysis ''difficult'' and ''time-consuming.'' [863] Another commenter preferred a format that is readily importable to Excel or a comparable database program.[864] One commenter stated its belief that EDGAR in its current form will not facilitate the usability of static pool information, such as allowing investors to download the data in a format that investors can use with their own analytical tools and applications.[865] With respect to our proposal to house all static pool information filed on Form 8–K under a new item number, commenters were supportive of the proposal.[866]

(c) Final Rule and the Economic Analysis of the Final Rule

Given commenters' concerns regarding the usability of static pool information in PDF, we are not adopting our proposal to permit issuers to file their static pool information in PDF as an official filing. This decision benefits investors because they will continue to receive static pool information in a more usable format compared to PDF. Issuers, however, will be precluded from taking advantage of any cost savings that could be achieved by filing the static pool information in PDF.

We are adopting the proposed rules to amend Form 8–K and Item 601 of Regulation S–K. We believe that these amendments will benefit investors in searching and locating the static pool information filed on EDGAR. Therefore, if the issuer wishes to incorporate static pool information by reference to a Form 8–K filing rather than to include it in the prospectus, then an issuer must file it under new Item 6.06 of Form 8–K. If the issuer files the static pool information as an exhibit to a Form 8–K to be incorporated into a prospectus, the issuer must file the static pool information as Exhibit 106. Under the final rule, issuers will be required to include a statement in the prospectus that the static pool information incorporated by reference is deemed to be a part of the prospectus and also identify the Form 8–K on which the static pool information was filed by including the CIK number, file number, exhibit number (if applicable) and the date on which the static pool information was filed. Investors will benefit by being able to more easily search and locate static pool information incorporated by reference into the prospectus, and the only cost issuers are likely to incur is to update their information systems to reflect the new Form 8–K item requirement and exhibit number, which we believe should be minimal.

We also proposed that the information should be filed with the Form 8–K on the same date that the preliminary prospectus is required to be filed.[867] We are adopting that proposal with one clarification. Consistent with current practices under existing requirements, issuers may incorporate by reference the same static pool information into the prospectus of one or more offerings of the same asset class as long as the information meets the requirements of Item 1105 of Regulation AB,[868] which states that the most recent periodic increment for the static pool data must be of a date no later than 135 days after the first use of the prospectus.[869] The amended requirement clarifies that issuers are required to provide information by the date that the prospectus is required to be filed rather than on the same date the prospectus is filed (i.e., permitting incorporation of a previously-filed Form 8–K), and thereby allows issuers to continue to have the flexibility to incorporate the static pool information by reference into prospectuses of multiple deals.

F. Other Disclosure Requirements That Rely on Credit Ratings

Items 1112 and 1114 of Regulation AB require the disclosure of certain financial information regarding significant obligors of an asset pool and significant credit enhancement providers relating to a class of asset-backed securities. An instruction to Item 1112(b) provides that no financial information regarding a significant obligor is required if the obligations of the significant obligor, as they relate to the pool assets, are backed by the full faith and credit of a foreign government and the pool assets are securities that

[861] Rule 312 of Regulation S–T permitted issuers for ABS filed on or before June 30, 2012, to post their static pool information on an Internet Web site under certain conditions in lieu of filing the static pool information on EDGAR. We are not removing Rule 312 of Regulation S–T in connection with this rulemaking since issuers that previously provided static pool information via a Web site are required to retain all versions of the information provided through the Web site for a period of not less than five years. Issuers are no longer able to use Rule 312 as a means to provide their static pool information. We are, however, removing Item 512(l) of Regulation S–K, the undertaking previously required for providing static pool information on a Web site under Rule 312 of Regulation S–T because this undertaking is no longer applicable. We are also removing paragraph (d)(6)(iii) of Securities Rule 433 which had permitted issuers to include a Web site address for static pool information in a free writing prospectus.

[862] *See* the 2004 Adopting Release at 1541.

[863] *See* letter from CFA I.

[864] *See* letter from Prudential I.

[865] *See* letter from ASF I. *See also* letter from American Securitization Forum regarding the filing of static pool information dated May 4, 2012 submitted in response to the 2010 ABS Proposing Release (''ASF V'') (noting that its investor members supported upgrading EDGAR to allow for a number of file types, including PDF and Excel, but did not specify whether PDF would in fact facilitate the usability of the static pool data).

[866] *See* letters from MBA I and Prudential I. Prudential suggested requiring the issuer to include a link in the prospectus to the relevant information in order to assist investors in locating the information. As is the case today, filers may reference a previously submitted filing in the prospectus; however, filers are generally not permitted to include external references. *See* EDGAR Manual (Volume II), Section 5, for additional information and instruction about acceptable external references.

[867] In the 2010 ABS Proposing Release, we proposed that ''[t]he static pool disclosure must be filed as an exhibit with this report by the time of effectiveness of a registration statement on Form SF–1, on the same date of the filing of a form of prospectus, as required by Rule 424(h) (17 CFR 230.424(h)) and a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)).''

[868] 17 CFR 229.1105(a)(3)(ii).

[869] We established a requirement regarding the age of the most recent periodic increment to ensure the currency of the data. *See* the 2004 Adopting Release at 1540.

are rated investment grade by an NRSRO.[870] Item 1114 of Regulation AB contains a similar instruction that relieves an issuer of the obligation to provide financial information when the obligations of the credit enhancement provider are backed by a foreign government and the credit enhancement provider has an investment-grade rating.[871] We proposed to revise Item 1112 and Item 1114 to eliminate the exceptions based on investment-grade ratings.

We received only one comment on this proposal, which supported the proposal.[872] We are adopting the amendments to Items 1112 and 1114 as proposed. We continue to believe that these changes are consistent with the requirements of Section 939A of the Dodd-Frank Act, which requires us to reduce regulatory reliance on credit ratings, and our revisions to eliminate ratings from the shelf eligibility criteria for asset-backed issuers. We believe that this will allow investors to directly consider the financial condition of significant obligors and credit enhancement providers rather than rely solely on the implication of these parties' credit ratings. Because the information now required to be disclosed is likely available to the issuer, the revisions to Item 1112 and Item 1114 will not impose substantial costs or burdens on an asset-backed issuer.

V. Securities Act Registration

A. Background and Economic Discussion

Securities Act shelf registration provides important timing and flexibility benefits to issuers. An issuer with an effective shelf registration statement can conduct delayed offerings ''off the shelf'' under Securities Act Rule 415 without staff action.[873] Asset-backed securities are often registered on a Form S–3 registration statement and later offered ''off the shelf'' if, in addition to meeting other specified criteria,[874] the securities are rated investment grade by an NRSRO. We continue to recognize that ABS issuers have expressed the desire to use shelf registration to access the capital markets quickly. ABS issuers' interest in shelf registration is also evidenced by the lack of ABS issuers using Form S–1.[875]

In the 2010 ABS Proposing Release, we proposed, among other things, new registration procedures, registration forms and shelf eligibility requirements for asset-backed security issuers. The 2010 ABS Proposals sought to address a number of concerns about the ABS offering process and ABS disclosures that were subsequently addressed in the Dodd-Frank Act, while others were not addressed by the Dodd-Frank Act. Two of the proposed shelf eligibility requirements—risk retention[876] and continued Exchange Act reporting[877]—were addressed by provisions of the Dodd-Frank Act. In July 2011, we re-proposed some of the 2010 ABS Proposals in light of the changes made by the Dodd-Frank Act and comments we received.

The 2011 ABS Re-Proposals for ABS shelf registration eligibility were also part of several rule revisions we are considering in connection with Section 939A of the Dodd-Frank Act. Section 939A of the Dodd-Frank Act requires

[870] Instruction 2 to Item 1112(b) of Regulation AB [17 CFR 229.1112(b)].

[871] Instruction 3 to Item 1114 [17 CFR 229.1114]. Under both Items 1112 and 1114, to the extent that pool assets are not investment-grade securities, information required by paragraph (5) of Schedule B of the Securities Act may be provided in lieu of the required financial information. Paragraph 5 of Schedule B requires disclosure of three years of the issuer's receipts and expenditures classified by purpose in such detail and form as the Commission prescribes.

[872] *See* letter from BoA I.

[873] As discussed in the 2010 ABS Proposing Release, contemporaneous with the enactment of the Secondary Mortgage Market Enhancement Act of 1984 (SMMEA), which added the definition of ''mortgage related security'' to the Exchange Act, we amended Securities Act Rule 415 to permit mortgage related securities to be offered on a delayed basis, regardless of which form is utilized for registration of the offering (Pub. L. No. 98–440, 98 Stat. 1689). SMMEA was enacted by Congress to increase the flow of funds to the housing market by removing regulatory impediments to the creation and sale of private mortgage-backed securities. An early version of the legislation contained a provision that specifically would have required the Commission to create a permanent procedure for shelf registration of mortgage related securities. The provision was removed from the final version of the legislation, however, as a result of the Commission's decision to adopt Rule 415, implementing a shelf registration procedure for mortgage related securities. *See* H.R. Rep. No. 994, 98th Cong., 2d Sess. 14, reprinted in 1984 U.S. Code Cong. & Admin. News 2827. *See also Shelf Registration,* Release No. 33–6499 (Nov. 17, 1983) [48 FR 52889] at footnote 30 (noting that mortgage related securities were the subject of pending legislation). In 1992, in order to facilitate registered offerings of asset-backed securities and eliminate differences in treatment under our registration rules between mortgage related asset-backed securities (which could be registered on a delayed basis) and other asset-backed securities of comparable character and quality (which could not), we expanded the ability to use ''shelf offerings'' to other asset-backed securities. *See Simplification of Registration Procedures for Primary Securities Offerings,* Release No. 33–6964 (Oct. 22, 1992) [57 FR 32461]. Under the 1992 amendments, offerings of asset-backed securities rated investment grade by an NRSRO (typically one of the four highest categories) could be shelf eligible and registered on Form S–3. The eligibility requirement's definition of ''investment grade'' was largely based on the definition in the existing eligibility requirement for non-convertible corporate debt securities.

[874] In addition to investment-grade rated securities, an ABS offering is shelf-eligible only if the following conditions are met: delinquent assets must not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date; and with respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date. To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor are or were at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on Form S–3 subject to the requirements of Section 12 or 15(d) of the Exchange Act (15 U.S.C. 78l or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to Section 13, 14 or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). Such material (except for certain enumerated items) must have been filed in a timely manner. We did not propose changes to these other eligibility conditions.

[875] According to EDGAR, since 2008, no ABS issuer has filed a registration statement on Form S–1 that went effective.

[876] In the 2010 ABS Proposing Release, we proposed to require that sponsors of ABS transactions retain a specified amount of each tranche of the securitization, net of hedging. Section 941 of the Dodd-Frank Act added new Section 15G of the Exchange Act. Section 15G generally requires the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Commission and in the case of the securitization of any ''residential mortgage asset,'' together with the Department of Housing and Urban Development and the Federal Housing Finance Agency, to jointly prescribe regulations relating to risk retention. In March 2011, the agencies proposed rules to implement Section 15G of the Exchange Act. In August 2013, the agencies re-proposed the rules. *See* the 2011 Risk Retention Proposing Release and the 2013 Risk Retention Re-Proposing Release.

[877] The Commission proposed in the 2010 ABS Proposals to require that an ABS issuer undertake to file Exchange Act reports with the Commission on an ongoing basis as a condition to shelf eligibility. The 2010 ABS Proposals also proposed to require an issuer to confirm, among other things, whether Exchange Act reports required pursuant to the undertaking were current as of the end of the quarter in order to be eligible to use the effective registration statement for takedowns. Section 942(a) of the Dodd-Frank Act eliminated the automatic suspension of the duty to file under Section 15(d) of the Exchange Act for ABS issuers, and granted authority to the Commission to issue rules providing for the suspension or termination of such duty. In the 2011 ABS Re-Proposing Release, we stated that due to the amendment to Section 15(d), the proposed shelf eligibility requirement to undertake to file Exchange Act reports is no longer necessary, including the quarterly evaluation by issuers of compliance with the undertaking. In August 2011, we adopted rules to provide for suspension of the reporting obligations for asset-backed securities issuers when there are no asset-backed securities of the class sold in a registered transaction held by non-affiliates of the depositor. *See* footnote 543.

that we review any regulation issued by us that requires the use of an assessment of the credit-worthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings. Once we have completed that review, the statute provides that we modify any regulations identified in our review to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as we determine to be appropriate. In that connection, we take into account the context and purposes of the affected rules.

B. New Registration Procedures and Forms for ABS

1. New Shelf Registration Procedures

Under existing rules, as with current offerings of other types of securities registered on Form S–3 and Form F–3, the shelf registration statement for an offering of ABS will often be effective weeks or months before a takedown is contemplated. The prospectus in an effective registration statement must describe, among other things, the type or category of assets to be securitized, the possible structural features of the transaction, and identification of the types or categories of securities that may be offered.[878] Pursuant to existing Securities Act Rules 409 and 430B,[879] the prospectus in the registration statement may omit the specific terms of a takedown if that information is unknown or not reasonably available to the issuer when the registration statement is made effective.[880] For ABS offerings off the shelf, because assets for a pool backing the securities will not be identified until the time of an offering, information regarding the actual assets in the pool and the material terms of the transaction are typically only included in a prospectus or prospectus supplement that is required to be filed with the Commission by the second business day after first use.[881] This information includes information about the structure of the cash flows, the pool, underwriting criteria for the assets and exceptions made to the underwriting criteria, identification of the originators of the assets and other information that is related to the identification of specific assets for the pool. We understand that the creation of an asset pool to support securitized products is a dynamic and ongoing process in which changes can take place up until pricing. As a result, the new rules we are adopting maintain the fundamental framework of shelf registration for delayed ABS offerings, but provide new important protections for investors who choose to commit capital to the ABS transactions.

We also recognize that it is important for investor protection that, in addition to receiving adequate information to make an investment decision, ABS investors also have adequate time to analyze the information and the potential investment. For the most part, each ABS offering off of a shelf registration statement involves securities backed by different assets, so that, in essence, from an investor point of view, each offering requires a new investment analysis. Information about the underlying assets is an important piece of information for analyzing the ability of those assets to generate sufficient funds to make payments on the securities. Furthermore, some have noted the lack of time to review transaction-specific information as hindering investors' ability to conduct adequate analysis of the securities.[882] We believe that a process for ABS offerings where investors and underwriters have additional time to conduct their review of offerings will result in improved investor protections and promote a more efficient asset-backed market, even if issuers may not always be able to complete their offering as swiftly as they could in the past. Therefore, we are adopting rules designed to increase the amount of time that investors have to review information about a particular shelf takedown, which we believe will allow for better analysis of ABS in lieu of undue reliance on security ratings.

a) Rule 424(h) and Rule 430D

(1) Proposed Rule

In the 2010 ABS Proposing Release, we proposed to require that an ABS issuer using a shelf registration statement on proposed Form SF–3 file a preliminary prospectus containing transaction-specific information at least five business days in advance of the first sale of securities in the offering. This requirement would allow investors additional time to analyze the specific structure, assets and contractual rights of each transaction. We proposed this requirement in response to investors' concerns that ABS issuers were not providing them enough time to review the transaction-specific information, which hindered their ability to conduct adequate analysis of the securities. We noted in the 2011 ABS Re-Proposal that the five business-day waiting period was also intended to reduce undue reliance on security ratings, thus part of our efforts to remove the prior investment-grade ratings requirement.[883] We believed that requiring such information to be filed at least five business days before the first sale of securities in the offering balances the interest of ABS issuers in quick access to the capital markets and the need of investors to have more time to consider transaction-specific information. In the 2010 ABS Proposing Release, we explained that we considered whether a longer minimum time period than five business days would be more appropriate.[884] We had proposed five business days because we believed that the companion proposals requiring the filing of standardized and tagged asset-level information and a computer program could reduce the amount of time required by investors to

[878] The form of prospectus in an effective registration statement should also include disclosure about the risks associated with changes in interest rates or prepayment levels as well as the various scenarios under which payments on the ABS could be impaired.

[879] 17 CFR 230.409 and 17 CFR 230.430B.

[880] The prospectus disclosure in the registration statement is often presented through a ''base'' or ''core'' prospectus and a prospectus supplement. We are eliminating this type of presentation for ABS issuers. *See* Section V.D.1 Presentation of Disclosure in Prospectuses.

[881] An instruction to Rule 424(b) [17 CFR 230.424(b)] requires that a form of prospectus or prospectus supplement relating to a delayed offering of mortgage-backed securities or an offering of asset-backed securities be filed no later than the second business day following the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

[882] *See, e.g.,* Section I.B. of CFA Institute Centre for Financial Market Integrity and Council of Institutional Investors, *U.S. Financial Regulatory Reform: The Investor's Perspective,* July 2009 (noting that securitized products are sold before investors have access to a comprehensive and accurate prospectus, noting that each ABS offering involves a new and unique security, and recommending that the Commission adopt rules to improve the timeliness of disclosures to investors); *Securitization of Assets: Problems & Solutions Hearing Before the Subcomm. on Sec., Ins., & Inv. of the S. Comm. on Banking, Housing & Urban Affairs,* 111th Cong. 11 (2009) (statement of William W. Irving) (recommending that there be ample time before a deal is priced for investors to review and analyze a full prospectus and not just a term sheet); *The State of Securitization Markets Hearing Before the Subcomm. on Sec., Ins., & Inv. of the S. Comm. on Banking, Housing & Urban Affairs,* 112th Cong. 9 (2011) (statement of Chris J. Katopis, Executive Director of the Association of Mortgage Investors) (recommending that there be a ''cooling off period'' when ABS are offered to provide investors with enough time to review and analyze prospectus information prior to making investment decisions). *See also* footnote 885 listing those commenters supporting the waiting period proposal.

[883] *See* the 2010 ABS Proposing Release at 23334, including footnote 80, and the 2011 ABS Re-Proposal at 47950, including footnote 19.

[884] Some have suggested that investors be provided with up to two weeks to analyze asset information. *See, e.g.,* Joshua Rosner, *Securitization: Taming the Wild West, in* Roosevelt Institute, Make Markets be Markets 73 (2010).

consider transaction specific information. The proposal also provided that a material change from the information provided in the preliminary prospectus, other than offering price, would require a new preliminary prospectus to be filed and therefore, a new five business-day waiting period.

(2) Comments on Proposed Rule

Comments received on this proposal were mixed. Several commenters supported the proposal that a preliminary prospectus be filed five business days in advance of the first sale.[885] Two commenters generally supported the proposed five business-day waiting period and also provided additional feedback on other time periods.[886] One of the commenters recommended that investors should have not less than three days to evaluate an ABS offering,[887] while the other stated that two business days for repeat issuers may be sufficient.[888]

Other commenters opposed the five business-day waiting period [889] and suggested shorter alternatives such as two business days prior to the first sale,[890] one business day,[891] or no waiting period.[892] One commenter suggested that the waiting period vary by asset class.[893] Another commenter recommended a one business-day waiting period for a category of ''well-known seasoned asset-backed sponsors'' that meet certain issuer classification (e.g., seasoned depositors and sponsors with established securitization programs that have issued more than a threshold aggregate amount and/or over a specified period of time), asset class classification (e.g., master trusts where the asset pool does not change materially from transaction to transaction and a specified dollar amount of transactions have been issued and supported by the pool), or transaction structure (e.g., transactions by the same depositor or sponsor, where issuances involve waterfall structures that do not change materially from transaction to transaction).[894] Along the same lines, another commenter suggested that certain types of ABS offerings do not warrant any mandatory waiting periods because of their frequency and nature (e.g., where a sponsor, its parent or a subsidiary has completed at least one public offering within the preceding two years of securities in the same asset class and where the cash flows and structure are substantially similar to a prior public offering).[895] Several commenters argued that a five business-day waiting period is more consistent with the time delays associated with an equity initial public offering (''IPO''), and noted that the proposed rule could lead to the ''perverse result'' that a well-known seasoned issuer can issue relatively risky forms of capital such as equity or unsecured debt without any required waiting period, but secured debt, generally regarded as less risky, would have a waiting period.[896]

While we did not specifically request further comment on this topic in the 2011 ABS Re-Proposing Release, several commenters offered comment on the proposal. For the most part, commenters reiterated their suggestions from their comment letters on the 2010 ABS Proposing Release. Several commenters agreed that a preliminary prospectus should be provided to investors in advance.[897] Some commenters noted concern if the proposed time period were to be shortened.[898] One commenter reiterated its suggestion for different filing requirements based on asset class.[899] Another commenter suggested a one business-day waiting period for ''widely followed, programmatic ABS issuers'' and a two business-day waiting period for all others.[900]

As noted above, the proposal provided that a material change from the information provided in a preliminary prospectus, other than offering price, would require a new preliminary prospectus and therefore, a new five business-day waiting period. Some investor commenters supported the proposal to require a new waiting period for any material changes.[901] However, several commenters recommended changes to this aspect of the proposal.

Some commenters, believing the five business-day waiting period after material changes was too long, suggested shorter periods.[902] Commenters recommending shorter periods generally argued that in most cases a material change can be easily identified and reviewed and will not

[885] *See* letters from AFL–CIO dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release, AMI, CalPERS, CFA I, CREFC I, Rylee Houseknecht dated Apr. 26, 2010 submitted in response to the 2010 ABS Proposing Release, ICI I, Jamie L. Larson dated Apr. 27, 2010 submitted in response to the 2010 ABS Proposing Release, MetLife I, MBA I, Prudential I, and Realpoint.

MBA also requested that issuers, particularly CMBS issuers, also have the ability to update without restarting the five business-day period. *See* letter from MBA I (noting that while a five business-day minimum waiting period prior to the first sale will occasionally impose an ''unwelcome timing constraint,'' the minimum waiting period is unlikely to make shelf registration sufficiently less attractive if the rule provides flexibility for issuers to provide updates with a shorter waiting period). Comments about the waiting period for updates are addressed below.

[886] *See* letters from ICI I (noting that if the Commission considers a shorter period, investors should be provided with no less than a three-day period) and CFA II (reiterating their support for the proposed five business-day waiting period).

[887] *See* letter from ICI I.

[888] *See* letter from CFA I.

[889] *See* letters from ABA I, ASF I, AmeriCredit, CNH I, SIFMA I, and Wells Fargo I.

[890] *See* letters from ABA I (suggesting two business days for all ABS transactions other than those by widely followed, well-known ABS issuers), ASF I, AmeriCredit, BoA I, CNH I, Vanguard, VABSS I (recommending no mandatory minimum waiting period, but suggesting two business days if a minimum is imposed), and Wells Fargo I.

[891] *See* letter from ABA I (one business day is appropriate for widely-followed, well-known ABS issuers, sponsors or asset classes or structures, similar to the well-known seasoned issuer concept).

[892] *See* letter from VABSS I.

[893] *See* letter from SIFMA I (suggesting a two business-day period for bank credit card or charge card receivables; three business days for private-label credit card or charge card receivables, motor vehicle loans/leases, student loans, or equipment loans or leases; and five business days for any other asset class, including RMBS and CMBS).

[894] *See* letter from ABA I (noting that some programmatic issuers have issued hundreds of billions of dollars of ABS over decades, using securitization programs that have consistent documentation from deal to deal, and are well-known to their investor base which, as a result, needs less time to absorb transaction details).

[895] *See* letter from VABSS I.

[896] *See* letters from AmeriCredit and VABSS I.

[897] *See* letters from ABA II, AFME, and CFA II.

[898] *See* letters from Better Markets and ICI II (also suggesting a time period of no less than three business days).

[899] *See* letter from SIFMA III-dealers and sponsors (stating that ''at least two business days before the date of the first sale in the offering, in the case of ABS backed by bank credit card or charge card receivables; at least three business days before the date of the first sale in the offering, in the case of ABS backed by private-label credit card or charge card receivables, motor vehicle loans or leases, student loans, or equipment loans or leases; and at least five business days before the date of the first sale in the offering, in the case of ABS backed by any other asset class, including residential or commercial mortgage loans'').

[900] *See* letter from ABA II.

[901] *See* letters from AMI, MetLife I, and Prudential I.

[902] *See* letters from ABA I, ASF I (expressed views of issuers and investors only) (supporting a one business-day minimum if a minimum period is imposed but noting that even a one business-day minimum period could be overly rigid and unnecessarily long in some cases), AmeriCredit, AMI, BoA I, CNH I, CREFC I (suggesting a waiting period up to five business days based upon the nature of the change and the length of time that would be needed for the market to digest that change in accordance with past experience, and that sponsors should be given the latitude to determine the appropriate length of review on a case-by-case basis based on their ''unique'' understanding of the CMBS market and experience with the investor community), MBA I, Prudential I, SIFMA I (expressed views of issuers and investors only), VABSS I, and Wells Fargo I (asserting that one business day should be sufficient where a material change was made during the first day of the initial waiting period, and two business days if made later in the initial period).

take investors the same amount of time to consider as compared to the first review of the entire preliminary prospectus.[903] Some investor commenters suggested that the waiting period should be shortened because investors will have the opportunity to become familiar with the transaction documents during the initial marketing period.[904] One commenter stated that a five business-day waiting period unnecessarily exposes well-established sponsors to market and execution risk without providing a meaningful benefit to investors and recommended both a shorter waiting period and a requirement that material changes be disclosed in a supplement to the preliminary prospectus to facilitate easy identification of such changes.[905]

Some commenters suggested that no additional waiting period after material changes may be necessary.[906] One investor commenter recommended a new filing and a new five business-day period only if a change to the transaction occurs that a reasonable investor would consider material to an investment decision, such as: Changes to more than 1% of the collateral pool, including changes at the property, tenant or borrower level; any changes to the priority of payment (i.e., waterfall); any changes of any service provider or party to the transaction; or any changes to the terms in the documents related to the transaction, including changes to any representations and warranties, covenants or indemnities originally contained in such documents.[907]

Commenters also requested that we provide additional clarity regarding the material changes to the preliminary prospectus that would trigger a new five business-day waiting period.[908] One of those commenters stated that changes in pool composition as a result of ordinary events, such as payments of interest or principal, should not require additional disclosure or a renewed waiting period unless such payments reflect another material change.[909] Several commenters recommended that the requirement should not focus so much on the materiality of the change in terms of its economic impact or importance, but rather on the likely extent of the effect of such a change on the disclosure itself and the need for more time to review.[910]

We also received comments on our proposal to permit omission of pricing information in the required preliminary prospectus. One commenter recommended that we define what is contemplated by the phrase ''information dependent on pricing'' and whether this would include only quantitative pricing terms, or whether it could also include other additional information that is typically determined at pricing (e.g., selection of a swap counterparty, weighted average life calculations, or, in the case of credit card master trusts, transaction size and minimum principal receivables balance requirements).[911] Along the same lines, several commenters suggested an accommodation for transactions involving derivative contracts.[912] Another commenter suggested that the preliminary prospectus should have a section that specifically discusses any aspect of the transaction that is ''to be determined'' at the time of the filing.[913]

We did not receive comments on our proposed conforming revisions to the undertakings that are required by Item 512 of Regulation S–K [914] in connection with a shelf registration statement for ABS. We also did not receive comments on our proposed addition to Item 512 to require an issuer to undertake to file the information required to be contained in a preliminary prospectus.

(3) Final Rule and Economic Analysis of the Final Rule

(a) Rule 424(h) Filing

Under the final rule, with respect to any takedown of securities in a shelf offering of asset-backed securities where information is omitted from an effective registration statement in reliance on new Rule 430D, as discussed below, a form of prospectus meeting certain requirements must be filed with the Commission in accordance with the new Rule 424(h) preliminary prospectus at least three business days prior to the first sale of securities in the offering.[915] After considering the various comments received on the initial five-business day waiting period, we have shortened the waiting period as proposed from five business days to three business days. We believe that three business days balances the benefit to investors of providing additional time to conduct an analysis of the offering—a longstanding concern of ABS investors [916]—and the concerns of issuers expressed in the comment letters. While the final rule imposes a minimum three-day waiting period, issuers may provide additional time to potential investors to consider the offering.

We recognize that the final rule will require issuers to provide information to investors earlier in the process than was often provided for ABS issued before the crisis. During the required waiting period, issuers may be exposed to the risk of changing market conditions because they may have to hold the underlying assets on their balance sheets (inventory risk), and the risk may have larger impact on small sponsors with smaller balance sheets. To assess the magnitude of this risk and the costs that it may impose on issuers, we

[903] *See* letters from BoA I and SIFMA I (expressed views of issuers and investors only). *See also* AmeriCredit (suggesting an additional waiting period should apply only in cases where the material changes significantly affect the asset pool, the cash flows or the transaction structure, otherwise no waiting period should be required, such as when ''upsizing'' a transaction due to strong investor demand), CREFC I (stating that a free writing prospectus that highlights a material change will expedite and improve the review of changes by the investor community rather than requiring review of an entirely new 424(h) filing), and MBA I (noting that investors in CMBS do not need five business days to understand all material changes, and that CMBS issuers commonly issue ''pre-pricing updates,'' often no more than one or two pages, to investors prior to pricing to convey any material changes since the preliminary prospectus and also suggesting that the period be shortened to one day or have the rule focus more on the length of time necessary for an investor to understand the change rather than the materiality of the change).

[904] *See* letters from AMI and Prudential I.

[905] *See* letter from ABA I.

[906] *See* letters from ASF I (expressed views of issuers and investors only) and BoA I. These commenters reasoned that existing Rule 159 provides adequate protections by promoting the delivery of updated information in a manner that provides investors with an opportunity to evaluate the disclosure prior to contract of sale.

[907] *See* letter from MetLife I.

[908] *See* letters from ABA I, BoA I, CREFC I, ICI I, and MBA I.

[909] *See* letter from ABA I.

[910] *See* letters from BoA I, CREFC I, and MBA I (noting that many material changes (e.g., a change in payment priority) that are important can nevertheless be easily described and quickly understood, particularly if one has already received a preliminary prospectus).

[911] *See* letter from ABA I.

[912] *See* letters from ASF I and BoA I (explaining that in these cases the preliminary prospectus could not include information relating to a specific swap counterparty or other information dependent on the pricing because the optimal pricing of the derivative and the counterparty with the most competitive bid cannot be determined by the issuer until the time of pricing for the offered securities).

[913] *See* letter from Prudential I.

[914] 17 CFR 229.512.

[915] Sale includes ''contract of sale.'' *See* footnote 391 and accompanying text of the Securities Offering Reform Release. We are clarifying the final rule to note that the preliminary prospectus must be filed two business days after first use but no later than three business days before first sale. *See also* letter from SIFMA I (noting that the Commission should make clear that a preliminary prospectus must be filed not later than the earlier of (i) the applicable number of business days before the date of the first sale, or (ii) or the second business day after fist use).

[916] *See* the 2004 ABS Adopting Release at 1527. Although the investment analysis does not have to be completely done anew for master trust transactions since the asset pools do not necessarily change with each takedown, we believe that the three business-day waiting period is still important for investors in such transactions as investors are not only reviewing the assets but also any changes to the structure to ensure that it will produce the expected cash flows, which can be intricate and complex for master trusts.

analyzed time series changes in the price of the Bank of America Merrill Lynch U.S. Fixed Rate Asset Backed Securities Index (R0A0).[917] Average index returns for the pre-crisis, crisis, and post-crisis periods are presented in Table 1. To assess the cost of the three business-day waiting period that we are adopting against the cost of reasonable alternatives, we calculated index returns over one, three, five and ten days. Outside of the volatile 2008–2009 crisis period, the average change in ABS market conditions as measured by index returns is below 1.5 basis points (bps) for all horizons (1, 3, 5, and 10 days) with the standard deviation below 15bp for three-day returns. These results suggest that the economic exposure of issuers to market conditions (opportunity cost) is relatively small for all waiting period lengths in the range from 1 day to 10 days, but increases with the horizon. Further, reducing the waiting period from 5 days to 3 days lowers the riskiness of returns by more than 15% (the standard deviation drops from 17bps to 14bps). To put these numbers in perspective, for a $100 million ABS issuance that is similar to the above-mentioned R0A0 ABS index, a three business-day waiting period during the analyzed period would result in an expected change of less than $10,000 and a 10% likelihood of a more than $230,000 increase or decrease in the value of the issuance. Additionally, exposure to several sources of risk, for example, the three-day interest rate risk or credit spread risk, can be hedged with forward contracts, further reducing potential exposure to losses due to a three-day delay in offering.[918]

TABLE 1—INDEX RETURNS ARE CALCULATED USING THE PRICE OF BANK OF AMERICA MERRILL LYNCH U.S. FIXED RATE ASSET BACKED SECURITIES INDEX FOR THE 5/6/2004 TO 12/31/2013 PERIOD. THREE, FIVE, AND TEN DAY RETURNS ARE OVERLAPPING.

Time period	Number of daily observations	1-day		3-day		5-day		10-day	
		Average	Standard deviation	Average	Standard deviation	Average	Standard deviation	Average	Standard deviation
5/6/2004–12/31/2007	954	0.0000	0.0011	−0.0001	0.0017	−0.0002	0.0020	−0.0003	0.0025
1/1/2008–12/31/2009	524	−0.0001	0.0021	−0.0003	0.0037	−0.0005	0.0050	−0.0009	0.0077
1/1/2010–12/31/2013	1046	0.0000	0.0006	0.0000	0.0011	0.0000	0.0014	0.0000	0.0020
2004–2013 excl. 2008–2009	2000	0.0000	0.0009	0.0000	0.0014	−0.0001	0.0017	−0.0001	0.0022

As noted above, comments received on the waiting period were mixed on the appropriate length of time for the initial waiting period before first sale with mostly investors supporting[919] an initial waiting period of five business days and issuers mostly opposing[920] such a requirement. Commenters opposing five business days provided various suggested alternatives to the proposal—ranging from two business days prior to first sale to no waiting period at all.[921] Some of these commenters recommended that the length of the waiting period be determined based on asset class or whether the issuer is a repeat issuer.[922] Because we believe that, regardless of the asset class or whether the issuer is well-known, investors should have more time to conduct their analysis before making an investment decision than was provided previously, we are not adopting such distinctions based on asset class or type of issuer. We also believe that given the complexity of ABS transactions that two-business days, and especially one-business day, would not provide investors with enough time to conduct their due diligence.[923] As a result, we believe that a minimum of three business days strikes the appropriate balance of providing investors with more time to analyze the information related to the transaction while also minimizing issuers' exposure to changing market conditions and giving them flexibility in timing of ABS issuance.

Finally, while we have observed that post-crisis ABS issuers have provided investors with additional time, we are concerned that market practice could change in a heated market with many issuers possibly reverting to the practice of providing investors with insufficient time and causing investors to place undue reliance on ratings. Because of this concern and our belief that investors should conduct their own due diligence rather than unduly rely on ratings, we are mandating a waiting period of at least three-business days as part of our rules.[924] We are persuaded by commenters that neither a new preliminary prospectus nor a restart of the waiting period is necessary for material changes because, in most cases, a material change can be easily identified and reviewed and therefore may not take an investor as long to review compared to the first review of the preliminary prospectus.[925] The final rule will require that the issuer disclose any material changes in a supplement to the preliminary prospectus that must be filed with the Commission at least 48 hours before the date and time of the first sale.[926] The supplement must

[917] The Bank of America Merrill Lynch U.S. Fixed Rate Asset Backed Securities Index (the ''Index'') tracks the performance of U.S. dollar denominated investment-grade fixed rate asset-backed securities issued in the U.S. domestic market. Qualifying securities must have an investment-grade rating (based on an average of Moody's, S&P, and Fitch ratings). In addition, qualifying securities must have the following: (1) A fixed rate coupon (including callable fixed-to-floating rate securities); (2) at least one year remaining term to final stated maturity; (3) at least one month to the last expected cash flow; (4) an original deal size for the collateral group of at least $250 million; (5) a current outstanding deal size for the collateral group greater than or equal to 10% of the original deal size; and (6) a minimum outstanding tranche size of $50 million for senior tranches and $10 million for mezzanine and subordinated tranches. Floating rate, inverse floating rate, interest only, and principal only tranches of qualifying deals are excluded from the Index as are all tranches of re-securitized and agency deals. Securities to be sold in reliance on Securities Act Rule 144A qualify for inclusion in the Index.

[918] The inventory risk can also be transferred to underwriters that would commit to buy the issue from securitizers.

[919] *See* footnote 885.

[920] *See* footnote 889.

[921] *See* footnotes 890, 891, and 892.

[922] *See* footnote 893.

[923] Even though most ABS offerings are structured as shelf offerings, each takedown off a shelf registration statement is more akin to an IPO given that each ABS offering consists of new assets and a new structure, which requires investors to conduct their investment analysis anew to make an informed investment decision.

[924] *See* letter from ICI I (noting that although they support an initial five-business day waiting period, should the Commission decide to reduce the waiting period, that investors should have not less than three business days to evaluate an ABS shelf offering).

[925] *See, e.g.,* letters from ABA I, AmeriCredit, ASF I (issuers and investors), SIFMA I, VABSS I, and Wells Fargo I.

[926] The changes must be filed in a supplement in accordance with Rule 424(h)(2); provided that if the material change relates to the assets within the pool also provide the information required by Item 1125. Whether a change is material for purposes of the requirement will depend on the facts and

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provide a description of how the information in the initial preliminary prospectus has changed so that the changes are apparent to investors.

This revision will help to address cost and other concerns expressed by issuers and others about the proposed amount of waiting time after a material change and the concerns about filing an entirely new preliminary prospectus. It should reduce some commenters' concerns regarding exposure to market risk and unnecessary delay. We are concerned, however, that extensive material changes, even after an initial waiting period for the preliminary prospectus, could be difficult for investors to review in this shortened timeframe; therefore, we are requiring issuers to clearly delineate in a prospectus supplement what material information has changed and how the information has changed from the initial preliminary prospectus. We expect that the asset-level disclosure requirements that we are adopting, which will provide investors with standardized machine-readable data about the pool assets, will facilitate investors' ability to update their investment analysis quickly. As a result, we do not believe that investors will need as much time to review the supplement as they will need for their initial review of the preliminary prospectus.

(b) New Rule 430D

Prior to the rules we are adopting, the framework for ABS shelf offerings, along with shelf offerings for other securities, was outlined in Rule 430B of the Securities Act. Rule 430B describes the type of information that primary shelf-eligible and automatic shelf issuers may omit from a base prospectus in a Rule 415 offering and include instead in a prospectus supplement, Exchange Act reports incorporated by reference, or a post-effective amendment, and addresses both the treatment of prospectuses filed pursuant to Rule 424(b) and effective date triggers for securities sold off the shelf registration statement.[927] As discussed above, we are adopting new Rule 430D to provide the framework for shelf offerings of asset-backed securities pursuant to revised Rule 415(a)(1)(vii) or (xii); therefore, ABS issuers eligible to conduct shelf offerings are no longer eligible to use Rule 430B. By removing ABS shelf offerings from existing Rule 430B and creating new Rule 430D, we are providing a shelf offering framework that is appropriately tailored to ABS shelf offerings and that incorporates the new preliminary prospectus requirement.[928]

New Rule 430D requires that, with respect to each offering, all the information previously omitted from the prospectus filed as part of an effective registration statement must be filed at least three business days in advance of the first sale of securities in the offering in accordance with new Rule 424(h), except for the omission of information with respect to the offering price, underwriting syndicate (including any material relationships between the registrant and underwriters not named therein), underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent upon the offering price to the extent such information is unknown or not reasonably available to the issuer pursuant to Rule 409. The information required to be filed pursuant to Rule 424(h) includes, among other things, information about the specific asset pool that is backing the securities in the takedown and the structure of the transaction. As summarized above, commenters requested that we clarify what we mean by information with respect to the offering price. We note that new Rule 430D largely conforms to existing Rule 430B but is tailored to ABS shelf offerings; therefore, the type of information permitted to be omitted from a preliminary prospectus is the same as the information that Rule 430B permitted to be omitted from the base prospectus in a shelf offering prior to this rulemaking.

As we stated in the 2010 ABS Proposing Release, so long as a form of prospectus has been filed in accordance with Rule 430D,[929] asset-backed issuers can continue to utilize a free writing prospectus or ABS informational and computational materials in accordance with existing rules.[930] Because we believe that investors should have access to a comprehensive prospectus that contains all of the required information, a free writing prospectus or ABS informational and computational materials could not be used for the purpose of meeting the requirements of new Rule 424(h). As proposed, the Rule 424(h) preliminary prospectus filing will be deemed part of the registration statement on the earlier of the date such form of prospectus is filed with the Commission or, if used earlier, the date of first use.[931] A final prospectus for ABS shelf offerings should continue to be filed pursuant to Rule 424(b). Consistent with Rule 430B for shelf offerings of corporate issuers, under new Rule 430D, the filing of the final prospectus under Rule 424(b) will trigger a new effective date for the registration statement relating to the securities to which such form of prospectus relates for purposes of liability.

To reflect the requirements under new Rule 424(h) and new Rule 430D, we are also adopting, as proposed, conforming revisions to the undertakings that are required by Item 512 of Regulation S–K[932] in connection with a shelf registration statement. For the most part, ABS issuers will continue to provide the same undertakings that have been required of ABS issuers conducting delayed shelf offerings. In light of adopting the new Rule 424(h) preliminary prospectus, we are adopting conforming revisions to the undertakings relating to the determination of liability under the Securities Act as to any purchaser in the offering. In particular, the issuer must undertake that information that was omitted from an effective registration statement and then later included in a Rule 424(h) preliminary prospectus shall be deemed part of and included in the registration statement on the earlier of the date the Rule 424(h) preliminary prospectus was filed with the Commission, or if used earlier, the date it was first used after effectiveness. Also, in light of the new Rule 424(h) preliminary prospectus, under our revisions to Item 512 of Regulation S–K, an issuer is required to undertake to file the information required to be contained in a Rule 424(h) filing with respect to any offering of securities.

2. Forms SF–1 and SF–3

(a) Proposed Rule

In order to delineate between ABS filers and corporate filers and, more importantly, to tailor requirements for ABS offerings, we proposed to add new

circumstances. *See* TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 448–49 (1976). *See also* Basic v. Levinson, 485 U.S. 224, 231 (1988).

[927] *See* Section V.B.1.b of the Securities Offering Reform Release.

[928] For offerings of ABS on Form SF–1, existing Securities Act Rule 430A would apply.

[929] Rule 430D(c) provides that a form of prospectus that omits information as provided in the rule will be a permitted prospectus. Thus, after a registration statement is filed, offering participants can use a form of prospectus that omits information in accordance with the rule.

[930] ABS informational and computational materials, as defined in Item 1101 of Regulation AB [17 CFR 229.1101], may be used in accordance with Securities Act Rules 167 and 426 [17 CFR 230.167 and 17 CFR 230.426]. Materials that constitute a free writing prospectus, as defined in Securities Act Rule 405 [17 CFR 230.405] may be used in accordance with Securities Act Rules 164 and 433 [17 CFR 230.164 and 17 CFR 230.433].

[931] This is consistent with the existing provisions for other preliminary prospectuses. *See* Rule 430B(e).

[932] 17 CFR 229.512.

registration forms that would be used for any sales of a security that is an asset-backed security, as defined in Item 1101 of Regulation AB.[933] New forms named Form SF–1 and Form SF–3 would require all the items applicable to ABS offerings that are currently required in Form S–1 and Form S–3 as modified by the proposals in the 2010 ABS Proposing Release and the 2011 ABS Re-Proposal. Under the proposal, ABS offerings that qualify for shelf registration would be registered on proposed Form SF–3, and all other ABS offerings would be registered on Form SF–1.[934]

(b) Comments on Proposed Rule

Several commenters specifically supported adopting new Forms SF–1 and SF–3 and none opposed.[935]

(c) Final Rule and Economic Analysis of the Final Rule

We are adopting new Forms SF–1 and SF–3 for ABS offerings, which are largely based on existing Forms S–1 and S–3. ABS offerings that qualify for shelf registration will be registered on Form SF–3, and all other ABS offerings will be registered on Form SF–1. These new registration forms are tailored to ABS offerings and incorporate the offering and disclosure changes that we are adopting. The new forms will help in providing organizational clarity to our registration forms and their requirements.[936] In addition to providing organizational clarity to our forms, the new forms will facilitate easy identification of registered ABS offerings. We acknowledge, however, that ABS issuers may incur some costs in revising their information systems to reflect the new forms, but we believe that such one-time costs will be justified by the benefits of tailoring the registration system for ABS offerings.[937]

3. Shelf Eligibility for ABS Offerings

In the 2010 ABS Proposing Release, we proposed revisions to both the registrant and the transaction shelf eligibility requirements for ABS issuers.[938] In particular, ABS issuers would no longer establish shelf eligibility through an investment-grade credit rating. The proposals were part of a broad ongoing effort to remove references to NRSRO credit ratings from our rules in order to reduce the risk of undue ratings reliance and eliminate the appearance of an imprimatur that such references may create.[939] In place of credit ratings, we had proposed to establish four shelf eligibility criteria that would apply to mortgage-related securities and other asset-backed securities alike.[940] Similar to the existing requirement that the securities must be investment grade, the 2010 ABS Proposal for registrant and transaction requirements were designed to provide that asset-backed securities that are eligible for delayed shelf registrations are shelf appropriate. As noted above, the 2011 ABS Re-Proposal for registrant and transaction requirements for shelf did not contain a requirement for risk retention or a requirement to include an undertaking to provide Exchange Act reports in light of the changes mandated by the Dodd-Frank Act.[941]

We believe the new transaction and registrant shelf eligibility requirements being adopted will continue to allow ABS issuers to access the market quickly by conducting delayed shelf offerings (rather than registering each offering on Form SF–1), while imposing conditions that we think are appropriate in light of the compressed timing and lack of staff review inherent in the shelf offering process. These new shelf eligibility conditions should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care and, along with providing investors stronger enforcement mechanisms in the transaction agreements, should incentivize issuers to provide investors with accurate and complete information at the time of the offering. We believe that such transactions are appropriate for public offerings off a shelf without prior staff review.

(a) Shelf Eligibility—Transaction Requirements

The new transaction requirements for shelf offerings include:

- A certification filed at the time of each offering from a shelf registration statement, or takedown, by the chief executive officer of the depositor concerning the disclosure contained in the prospectus and the structure of the securitization;
- A provision in the underlying transaction agreements requiring review of the assets for compliance with the representations and warranties following a specific level of defaults and security holder action;
- A provision in the underlying transaction agreements requiring repurchase request dispute resolution; and
- A provision in the underlying transaction agreements to include in ongoing distribution reports on Form 10–D a request by an investor to communicate with other investors.

In both the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release, we did not propose to change the other current ABS shelf offering transaction requirements related to the amount of delinquent assets in the asset pool and the residual values of leases.[942] Therefore, those transaction requirements remain unchanged and have been moved to new Form SF–3.

(1) Certification

(a) Proposed Rule

As part of the 2010 ABS Proposing Release, we proposed to require a certification by the depositor's chief executive officer as a criterion for shelf eligibility.[943] After considering the

[933] 17 CFR 229.1101(c).

[934] We also proposed to make conforming changes throughout our rules to refer to the new forms. *See, e.g.,* proposed revisions to Securities Act Rules 167 and 190(b)(1) and the exhibit table in Item 601 of Regulation S–K.

[935] *See* letters from ABA I and MBA I.

[936] For example, prior to the adoption of these new registration forms for ABS, ABS form requirements were included with some other form requirements that were not applicable to ABS offerings. New Form SF–1, as proposed, does not include the instructions as to summary prospectuses. We also note that we are adopting, as proposed, some disclosure requirements that were previously located in Form S–3 that are now in Form SF–3, such as transaction requirements from Form S–3 relating to delinquent assets and residual value for certain securities. *See* General Instruction I.B.1(e)–(f) of Form SF–3. We are also retaining the existing registrant requirement in Form S–3 relating to delinquent filings of the depositor or an affiliate of the depositor for purposes of new Form SF–3.

[937] Economic analysis of the new disclosure requirements required by the new forms, such as asset-level data, and the new shelf eligibility requirements are discussed in the sections describing those changes.

[938] *See* the 2010 ABS Proposing Release at 23338.

[939] *See* the Security Ratings Release.

[940] The four proposed shelf criteria from the 2010 ABS Proposing Release included: (1) A certification filed at the time of each offering off of a shelf registration statement, or takedown, by the chief executive officer of the depositor that the assets in the pool have characteristics that provide a reasonable basis to believe that they will produce, taking into account internal credit enhancements, cash flows to service any payments on the securities as described in the prospectus; (2) Retention by the sponsor of a specified amount of each tranche of the securitization, net of the sponsor's hedging (also known as ''risk retention'' or ''skin-in-the-game''); (3) A provision in the pooling and servicing agreement that requires the party obligated to repurchase the assets for breach of representations and warranties to periodically furnish an opinion of an independent third party regarding whether the obligated party acted consistently with the terms of the pooling and servicing agreement with respect to any loans that the trustee put back to the obligated party for violation of representations and warranties and which were not repurchased; and (4) An undertaking by the issuer to file Exchange Act reports so long as non-affiliates of the depositor hold any securities that were sold in registered transactions backed by the same pool of assets. *See* the 2010 ABS Proposing Release at 23338–48.

[941] *See* footnotes 876 and 877.

[942] *See* footnote 874.

[943] In the 2010 ABS Proposing Release, we proposed that the depositor's chief executive officer certify that to his or her knowledge, the assets have characteristics that provide a reasonable basis to

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comments received on the proposed certification in the 2010 ABS Proposing Release, we re-proposed the requirement in the 2011 ABS Re-Proposing Release. The re-proposed requirement would require the CEO or the executive officer in charge of securitization for the depositor to certify that:

- The executive officer has reviewed the prospectus and is familiar with the structure of the securitization, including without limitation the characteristics of the securitized assets underlying the offering, the terms of any internal credit enhancements, and the material terms of all contracts and other arrangements entered into to effect the securitization;
- Based on the executive officer's knowledge, the prospectus does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;
- Based on the executive officer's knowledge, the prospectus and other information included in the registration statement of which it is a part, fairly present in all material respects the characteristics of the securitized assets underlying the offering described therein and the risks of ownership of the asset-backed securities described therein, including all credit enhancements and all risk factors relating to the securitized assets underlying the offering that would affect the cash flows sufficient to service payments on the asset-backed securities as described in the prospectus; and
- Based on the executive officer's knowledge, taking into account the characteristics of the securitized assets underlying the offering, the structure of the securitization, including internal credit enhancements, and any other material features of the transaction, in each instance, as described in the prospectus, the securitization is designed to produce, but is not guaranteed by the certification to produce, cash flows at times and in amounts sufficient to service expected payments on the asset-backed securities offered and sold pursuant to the registration statement.

In the 2011 ABS Re-Proposal, we stated, as we did when we proposed the certification for Exchange Act periodic reports, that a certification may cause these officials to review more carefully the disclosure, and in this case, the transaction, and to participate more extensively in the oversight of the transaction, which is intended to result in shelf-eligible ABS being of a higher quality than ABS structured without such oversight.[944]

(b) Comments on Proposed Rule

Comments on the certification requirement in the 2010 ABS Proposing Release were mixed. Some commenters supported our proposed certification by noting, among other things, that the certification would create accountability at the highest levels of an issuer's organization and more careful issuer review of the securitization.[945] Other commenters generally opposed the proposed certification in the 2010 ABS Proposing Release for various reasons, including that the certification would constitute a guarantee or would cause undue reliance on the certification.[946]

In response to comments on the proposed certification, in the 2011 ABS Re-Proposing Release, we re-proposed the certification taking into account commenters' concerns and recommendations. Comments received on the re-proposed certification requirement were mixed. Several commenters generally supported the re-proposed certification for similar reasons as articulated in comments on the 2010 proposed certification.[947] For example, one commenter agreed with our view that the certification may result in a more careful review of the disclosure and transaction by the issuer, and ultimately in higher-quality ABS eligible for shelf.[948] Other commenters generally opposed the re-proposed certification shelf requirement.[949] Although the investors of a trade association applauded the intention behind the proposed certification requirement and concurred with us that executive oversight of a securitization transaction is important, they also expressed concern about the certification imposing a barrier to new ABS issuance.[950] Some of these commenters contended that the proposed certification would not provide any additional benefits by noting the existing regulatory framework for accountability and their trust in the market's determination of the issuer's soundness.[951]

Commenters provided differing views on the scope of the certification. Some commenters believed the certification should encompass both the structure of the transaction and the prospectus disclosure, as proposed.[952] One commenter, supportive of the re-proposed certification, emphasized that the quality of an ABS offering is fundamentally a function of whether the assets and structure are capable of producing sufficient cash flows to service payments.[953] On the other hand, several commenters believed that the certification should focus only on the disclosure in the prospectus and not on the performance of the assets for various reasons, including the role of the executive officers and their limited credit analysis expertise.[954]

Many commenters also offered alternative language or specific changes

believe they will produce, taking into account internal credit enhancements, cash flows at times and in amounts necessary to service payments on the securities as described in the prospectus. Under the 2010 ABS Proposal, the chief executive officer would also certify that he or she has reviewed the prospectus and the necessary documents for this certification.

[944] *See* the 2011 ABS Re-Proposal at 47951–52 and the 2010 ABS Proposal at 23345. *See also Certification of Disclosure in Companies' Quarterly and Annual Reports,* Release No. 34–46079 (June 14, 2002) and *Concerning Implementation of the Sarbanes-Oxley Act of 2002: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs,* 108th Cong. (2003) (statement of William H. Donaldson, Chairman of the U.S. Securities and Exchange Commission) (noting that a consequence of ''the combination of the certification requirements and the requirement to establish and maintain disclosure controls and procedures has been to focus appropriate increased senior executive attention on disclosure responsibilities and has had a very significant impact to date in improving financial reporting and other disclosure'').

[945] *See* letters from CalPERS, CFA I, Mass. Atty. Gen., SIFMA I (expressed views of investors only), and Vanguard.

[946] *See* letters from ABA I, ABAASA I, ASF I, BoA I, CNH I, CREFC I, FSR, J.P. Morgan I, MetLife I, MBA I, Sallie Mae I, SIFMA I (expressed views of dealers and sponsors only), and Wells Fargo I.

[947] *See* letters from Better Markets, CFA II, and ICI II.

[948] *See* letter from CFA II (also noting support for the proposed requirement that an officer sign the certification, as opposed to engaging ''an independent evaluator'').

[949] *See* letters from ABA II, Bank of America Corp. dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''BoA II''), CREFC II, Kutak Rock, LLP dated Sept. 27, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''Kutak''), MBA III, SIFMA II-investors, SIFMA III-dealers and sponsors, and Wells Fargo II.

[950] *See* letter from SIFMA II-investors (noting that, as investors, they would like nothing more than to have individual officers stand firmly behind the product of their employers; however, also noting that the certification requirements, as proposed, were broad and executives would fear litigation if, in fact, the securities failed to perform as expected).

[951] *See* letters from BoA II, CREFC II, Kutak, and Sallie Mae II.

[952] *See* letters from Better Markets (specifically stating that the certification must cover expected cash flows from the offering) and ICI II.

[953] *See* letter from Better Markets.

[954] *See* letters from ABA II, American Bankers Association/ABA Securities Association dated Nov. 10, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''ABAASA II''), AFME, American Securitization Forum dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''ASF III''), CREFC II, Kutak, SIFMA II-investors, SIFMA III-dealers and sponsors, and Wells Fargo II (suggesting that the certification should consist only of paragraph 2).

to the text of the certification to address their concerns. The specific changes included: Using defined terms, adding materiality to certain parts of the certification, replacing the term ''fairly presented,'' and permitting the certifier to take into consideration external credit enhancement. We considered these specific changes and made revisions to the certification, which are reflected in the final version of the certification that we are adopting. Below we discuss these recommendations and the revisions made to each paragraph of the certification in order to highlight how we have addressed commenters' concerns.

(c) Final Rule and Economic Analysis of the Shelf Certification Requirement

After taking into consideration the comments we received and alternatives to the re-proposed certification, we are adopting as one of the transaction requirements for shelf eligibility that a certification about the disclosures contained in the prospectus and the structure of the securitization be provided by the chief executive officer of the depositor at the time of each takedown. We believe, as discussed more fully below, that requiring the chief executive officer to sign a certification at the time of each takedown will help to ensure that he or she is actively involved in the oversight of the transaction when the actual structuring occurs. We have made significant changes to the language of the certification to address commenters' concerns, which are described below.

The financial crisis revealed several failures of the ABS market. Some issuers of asset-backed securities were creating securitization transactions without considering whether the assets or the structuring of cash flows could support the scheduled distributions due to investors.[955] In addition, it has been difficult to hold senior officers of ABS issuers accountable for the failure to provide accurate information.

At the time of filing a shelf registration statement, the chief executive officer of the depositor, as well as the depositor's other principal officers, are required to sign the registration statement and are liable under Securities Act Section 11 for material misstatements or omissions in the registration statement, subject to a due diligence defense. As a result, signers of a registration statement are expected to satisfy themselves about the accuracy of disclosure at the time of effectiveness. The disclosure at the time of effectiveness of the shelf registration statement does not typically include transaction specific information because the shelf registration process permits a separation between the time of effectiveness and the time securities are offered in a takedown. Shelf takedowns sometimes occur long after the effectiveness of the registration statement, and the signers of a registration statement are not required to sign a prospectus supplement for a takedown. Thus, the process that an officer signing the registration statement would undertake at the time of shelf effectiveness might not necessarily be followed at the time of a takedown. At the time of a takedown, some of these officers may not have carefully reviewed the prospectus disclosures for the accuracy of the disclosures of the pool assets, cash flows, and other transaction features. We believe that investors' willingness to participate in ABS offerings may have suffered, in part, because of a belief by investors that sufficient attention may not have been devoted to the preparation of the disclosures in prospectuses, especially in asset classes characterized by the largest losses and due diligence failures.

Prior to today, a certification by the chief executive officer of the depositor has not been a requirement at the time of registered offerings of ABS. As part of the Sarbanes-Oxley Act (''SOX'') enacted in 2002, CEOs of operating companies are required to certify to the accuracy of the financial statements of their companies.[956] Those SOX certifications are filed with their periodic reports and then incorporated by reference into their shelf registration statements. The same does not apply to ABS. The SOX certifications that are provided by ABS issuers are limited to the disclosures regarding periodic distributions and servicing of the underlying assets since ABS issuers do not provide financial statements. Further, the information in periodic reports relates to an individual ABS transaction, and therefore in most cases, periodic reports of one ABS offering would be unrelated to future offerings of ABS off the same shelf. Thus, the periodic reports of an ABS issuer are not typically incorporated into the shelf registration statement.

We believe, therefore, that because of the market failures described above and where the depositor is a limited purpose entity created by the sponsor for a particular securitization program, it is appropriate to condition shelf eligibility on a certification requirement that should result in a review of the disclosure at the time of a takedown similar to what would occur if the offering were being conducted at the time of effectiveness of the initial registration statement. As noted above, the shelf requirements and practices under the existing regulatory structure were not sufficient to address the failures in the market to provide accurate and full information to investors. An ABS offering most resembles an IPO,[957] which under our rules would not be eligible for shelf registration. The principal executive officer signs the registration statement for an IPO, but no similar process is involved at the time of an offering of ABS off a shelf registration statement. Corporate issuers that are eligible for shelf registration file periodic reports that are certified by their principal executive and financial officers and, for Section 11 purposes, the filing of the annual report on Form 10–K is considered an amendment to a shelf registration statement with a new effective date. We believe that requiring the certification with each takedown will put ABS issuers on a similar footing in that this requirement will provide an incentive for all CEOs to participate more extensively in the oversight of the transaction at the time of takedown. We acknowledge that the certification shelf transaction requirement will impose additional costs on ABS issuers, as discussed more fully below.

The depositor's chief executive officer will need to certify to the characteristics of the asset pool, the payment and rights allocations, the distribution priorities and other structural features of the transaction. We note that because the chief executive officer could rely, in part, on the review that is already required in order for an issuer to comply with Securities Act Rule 193, much of the additional costs will relate to reviewing the securitization structure to have a reasonable basis to conclude that the expected cash flows are sufficient to service payments or distributions in accordance with their terms.[958] We also

[955] *See, e.g.,* Susanne Craig & Kara Scannell, *Goldman Settles Its Battle with SEC,* Wall St. J., July 16, 2010, at A1 and John Griffin and Gonzalo Maturana, ''Who Facilitated Misreporting in Securitized Loans?,'' working paper, 2013 (for evidence that underwriters were aware of some types of asset quality misrepresentation by loan originators, but nevertheless facilitated issuance of RMBS backed by such assets).

[956] Pub. L. 107–204, Section 302, 116 Stat. 745 (2002).

[957] *See* footnote 923.

[958] *See* Securities Act Rule 193 (requiring, at a minimum, that the issuer review must be designed and effected to provide reasonable assurances that the disclosure regarding the pool assets in the prospectus is accurate in all material respects). In that rulemaking, we also added Item 1111(a)(7) to

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note that the certification requirement does not dictate that the chief executive officer follow any particular procedures in order to make the certification. By allowing the issuers to determine what procedures are necessary to meet the obligations of the certification, we have attempted to mitigate the costs associated with compliance. The new certification, however, is intended to increase oversight by the chief executive officer, which will likely require that issuers create or strengthen internal controls and procedures to enable the chief executive officer to meet the certification obligation under the new requirement. To the extent that issuers already regularly monitor and evaluate their policies and procedures, their incremental costs will be lower than those issuers with less robust controls and procedures. Because the size and scope of these internal systems is likely to vary among issuers, it is difficult for us to provide an accurate cost estimate.[959]

The final rules may also affect competition in the asset-backed securities market. For example, the requirement that the chief executive officer provide a certification concerning the disclosures contained in the prospectus and the structure of the securitization is based on the intent that the certification will strengthen oversight over the transaction. Prior to today, a certification by the chief executive officer has not been a requirement of public offerings of ABS. Just as every issuer in an IPO must go through a process to satisfy itself with the disclosure in a prospectus, ABS issuers must institute controls in order to provide the certification. The burden of the certification requirements will likely fall disproportionately on smaller-sized sponsors to the extent that there are direct fixed (i.e., non-scalable) costs related to administrative and legal expenses. This could ultimately result in smaller sponsors not registering their offerings on shelf (by registering their ABS on Form SF–1 instead), offering them through unregistered offerings, or quitting the securitization markets altogether, thereby reducing competition.[960]

As noted above, commenters expressed concern that the certification could be interpreted as a guarantee of the future performance of the assets underlying the ABS. In an attempt to mitigate these costs and taking into account commenters' suggestions, we have revised the certification language to reflect that it is a statement of what is known by the certifier at the time of the offering and that he or she has a reasonable basis to conclude that the securitization is structured to produce, but the certification is not a guarantee that it will produce, expected cash flows at times and in amounts to service scheduled payments of interest and the ultimate repayment of principal on the securities (or other scheduled or required distributions on the securities, however denominated) in accordance with their terms as described in the prospectus.[961] In addition, to address some commenters' concerns about increased certifier liability, which would in turn increase costs, the final certification includes a new paragraph that clarifies that the certifier has any and all defenses available under the securities laws.[962]

When deciding whether to conduct a shelf offering, an issuer may consider the review and due diligence costs, the liability implications, and the reputational consequences to the chief executive officer of signing the certification. We believe that for securitizations of low-risk pool assets, simple structures, or structures used previously that have performed well in the past, issuers likely will conclude that the due diligence, liability, and reputation costs will be relatively low. For such securitizations these costs will likely be justified by the benefits of quick access to the capital markets, and these securitizations will continue to be offered off a shelf registration statement. On the other hand, for securitizations of high-risk assets and complex cash-flow structures, the expected costs of shelf offerings may increase. Issuers may choose not to use shelf registration because the chief executive officer may need to dedicate additional time to review the pool assets and the securitization structure in order to provide the assurances included in the certification. In addition, for such securitizations, the potential litigation risk to the chief executive officer may be higher, even when prudent measures are employed to structure an offering, thus further increasing the costs of shelf registration.

We also acknowledge a commenter's concern that certification is not a requirement for any other debt or equity offering and another commenter's opinion that the certification requirement will impose a barrier to new ABS issuance.[963] We note, however, unlike other offerings, ABS issuers can go directly to shelf without any reporting and operating experience for the trust or any size requirement designed to be a proxy for market following.[964] We also note that the

Regulation AB [17 CFR 229.1111(a)(7)] to require disclosure in the prospectus regarding the nature of the review performed by the issuer, and the findings and conclusions of the review of the assets. *See* the January 2011 ABS Issuer Review Release.

[959] The number of ABS deals by each depositor annually varies widely. According to ABS issuance databases ABAlert and CMAlert, the maximum annual number of ABS issued by a single depositor was 175 (Countrywide Home Loans in 2005), the maximum annual number issued post-crisis was 15 (Citibank in 2013), and, in the real estate sector, 14 (Redwood Trust in 2013), the median is 2 deals per year per depositor both pre- and post-crisis.

[960] We considered academic studies that examined the overall impact of the SOX requirements, which included officer certification as one element, for information about the possible differential impact of a certification requirement on differently-sized sponsors. Because the SOX requirements apply primarily to operating companies and include the internal control report requirement and the auditor's attestation of the report in addition to officer certification, we do not believe these studies provide a direct comparison for assessing the impact of the certification alone. For a general discussion of costs related to these requirements under the Sarbanes-Oxley Act, see, e.g., Office of Economic Analysis, Study of the Sarbanes-Oxley Act of 2002 Section 404 Internal Control over Financial Reporting Requirements (2009), *available at http://www.sec.gov/news/studies/2009/sox-404_study.pdf* (finding that the start-up costs related to SOX Section 404 compliance and the internal control report requirement weighed proportionally more on smaller companies, but dissipated over time and noting that 79% of executives surveyed acknowledged that compliance had a positive impact on the quality of their internal control structure); Cindy R. Alexander, Scott W. Bauguess, Gennaro Bernile, Yoon-Ho Alex Lee, & Jennifer Marietta-Westberg, *Economic Effects of SOX Section 404 Compliance: A Corporate Insider Perspective,* 56 J. Acct. & Econ. 267 (2013) (finding that corporate executives perceived significant benefits from compliance, particularly for larger companies); Ehud Kamar, Pinar Karaca-Mandic & Eric Talley, *Sarbanes-Oxley's Effects on Small Firms: What is the Evidence?, in* In the Name of Entrepreneurship? The Logic and Effects of Special Regulatory Treatment for Small Business 143 (Susan M. Gates & Kristin J. Leuschner, eds., Kauffman-RAND Inst. for Entrepreneurship Pub. Pol'y 2007) (discussing the impact of the entire Sarbanes-Oxley Act, not only the CEO certification requirement); Ellen Engel, Rachel M. Hayes & Xue Wang, *The Sarbanes-Oxley Act and Firms' Going Private Decisions,* J. Acct. & Econ. (2007) (finding that the frequency of going-private transactions increased after the passage of SOX, that SOX compliance costs were more burdensome for smaller and less liquid firms, and that small firms with highly concentrated ownership structures had higher going-private announcement returns); and Peter Iliev, *The Effect of SOX Section 404: Costs, Earnings Quality and Stock Prices,* J. Fin. (2010) (finding that among small companies, SOX compliance reduced the market value of those that had to comply with Section 404 relative to those that did not because they were under the $75 million compliance threshold).

[961] *See, e.g.,* letters from AFME, J.P. Morgan Chase & Co. dated Oct. 4, 2010 submitted in response to the 2010 ABS Proposing Release (''J.P. Morgan II''), SIFMA III-dealers and sponsors, and Wells Fargo II.

[962] *See, e.g.,* letters from ABA II, ABAASA II, ASF V, and J.P. Morgan II.

[963] *See* letters from Kutak and SIFMA II-investors.

[964] We further note that we have replaced the investment-grade rating shelf criterion for non-

principal executive and financial officers certify the Exchange Act reports that are incorporated by reference into a shelf prospectus of a corporate issuer. The certification requirement is not intended to be a barrier to new issuance of ABS since the certification is not a condition for selling or registering ABS as they may be offered in unregistered transactions or registered on new Form SF–1. The certification requirement, along with the other shelf transaction requirements, should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care and should incentivize issuers to provide investors with accurate and complete information at the time of the offering. It is these transactions that are appropriate to be offered to the public off a shelf without prior staff review. For these reasons, we are not limiting the certification to disclosure alone as suggested by some commenters, but we have taken into account those commenters' concerns in developing the text of the final certification.

Other financial regulators, including foreign counterparts, have adopted similar rules designed to enhance accountability for the transaction structure. For example, the European Union adopted requirements that ABS issuers disclose in each prospectus that the securitized assets backing the issue have characteristics that demonstrate a capacity to produce funds to service any payments due and payable on the securities.[965] Although we considered adopting an issuer disclosure requirement, we believe that requiring the chief executive officer to provide a certification is a stronger approach and more appropriate for purposes of determining shelf eligibility.

Therefore, while we recognize that the new shelf certification requirement introduces new costs to issuers, we believe that its net effect on capital formation in the ABS markets would be positive. The certification will help to ensure that the chief executive officer of the depositor is actively involved in the oversight of the transaction, and, as discussed above, along with the other shelf transaction requirements, it should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care and should incentivize issuers to provide investors with accurate and complete information at the time of the offering. As a result, we believe that the certification may also improve investor perceptions about the accuracy and completeness of the disclosures, which may, in turn, help restore investors' willingness to invest and participate in the ABS markets. The impact of certification requirements in other contexts—in particular, certification requirements under the Sarbanes-Oxley Act—provides information about the potential consequences of certification in the securitization market.[966] Several academic studies found that the overall effect on issuer's capitalization and on measures of market efficiency has been estimated to be either neutral[967] or positive,[968] suggesting that many investors perceived that the benefits of SOX certification outweighed the costs. We believe there will be potentially similar benefits for capital formation and market efficiency resulting from the new shelf certification. The final certification consists of five paragraphs.[969] We discuss each one in order below.

(i) Paragraph One

The first paragraph of the final certification is substantially similar to the re-proposed text, with some modifications made in response to comments. The chief executive officer must make the following statement:

> I have reviewed the prospectus relating to [title of all securities, the offer and sale of which are registered] (the ''securities'') and am familiar with, in all material respects, the following: The characteristics of the securitized assets underlying the offering (the ''securitized assets''), the structure of the securitization, and all material underlying transaction agreements as described in the prospectus;

As proposed, the certifier is required to certify that he or she has reviewed the prospectus and the necessary documents to make the certification. We believe that the chief executive officer should be sufficiently involved in overseeing the transaction and should review the prospectus and the documents necessary to make the certification. Several commenters suggested that we clarify that the chief executive officer may rely on senior officers under his or her supervision that are more familiar and involved with the structuring of the transaction in order to more accurately reflect the team-oriented nature of the transaction.[970] We understand that a principal officer of the depositor may rely on the work of other parties, thus we are not requiring that the chief executive officer actually structure the transaction. We continue to believe, however, that the chief executive officer should provide appropriate oversight so that he or she is able to make the certification. Furthermore, the text of this certification in this respect is consistent with the text of other certifications, which do not specifically state that the certifier relied on the work of others.[971]

convertible securities with alternative criteria that serve as proxies for market following. *See* the Security Ratings Release.

[965] Annex VIII, Disclosure Requirements for Asset-Backed Securities Additional Building Block, Section 2.1 (European Commission Regulation (EC) No. 809/2004 (Apr. 29, 2004). *See also* the North American Securities Administrators Association's (''NASAA'') guidelines for registration of asset-backed securities, in which sponsors are required to demonstrate that for securities without an investment-grade rating, based on eligibility criteria or specifically identified assets, the eligible assets being pooled will generate sufficient cash flow to make all scheduled payments on the asset-backed securities after taking certain allowed expenses into consideration. The guidelines are available at *http://www.nasaa.org/.*

[966] We note that there are some differences between the SOX certification requirements and the certification requirements in the rule we are adopting. First, the burdens are different, as SOX mandates that a CEO sign certifications that require a sizeable commitment of resources, whereas the rule we are adopting may require hundreds of ABS deals to be certified each year (see footnote 959 for the estimates of annual certification burden per depositor) but with a significantly lower burden for each certification. Second, the SOX CEO certification carries both civil and criminal penalties for false certification, and, thus, due in part to the availability of criminal penalties, likely imposes higher litigation costs for certifying officers and issuing corporations than the new shelf certification.

[967] *See* Utpal Bhattacharya et al., *Is CEO Certification of Earnings Numbers Value-Relevant?,* 14 J. Empirical Fin., 611 (2007) and Brett R. Wilkinson & Curtis E. Clements, *Corporate Governance Mechanisms and the Early-Filing of CEO Certification,* 25 J. Acct. & Pub. Pol'y, 121 (2006). These papers examined the market reaction to early filing of CEO certifications that the Commission required in advance of the passage of SOX using event-study methodology and found no reaction to early filing for the market as a whole. The Battacharya et al. study also found that certification had a neutral effect on returns, volatility of returns, and volume of trade not only for early certifiers around their certification date, but for the non-certifiers as well.

[968] *See* Hsihui Chang et al., *CEOs'/CFOs' Swearing by the Numbers: Does It Impact Share Price of the Firm?,* 81 Acct. Rev. 1 (2006) (finding also that certifying firms benefited from a significant decline in information asymmetry, as measured by bid-ask spread, after certification) and Beverly Hirtle, *Stock Market Reaction to Financial Statement Certification by Bank Holding Company CEOs,* 38 J. Money Credit and Banking, 1263 (2006) (finding a positive market reaction to certification requirements among bank holding companies, given the inherent opacity in the banking system, with the certification providing valuable information to investors). Because we are requiring new asset-level disclosure to address asymmetric information in addition to the shelf certification, we recognize that the results from these studies may not provide a fully comparable basis for the potential impact of requiring certification for asset-backed securities.

[969] Consistent with other certifications, the language of the certification must not be revised in providing the required certification. *See* the 2004 ABS Adopting Release at 1570.

[970] *See* letters from ABA II, ABAASA II, ASF V, BoA II, and Wells Fargo II.

[971] *See, e.g.,* the 2004 ABS Adopting Release at 1569 (amending Item 601 of Regulation S–K to add

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At the suggestion of commenters, we are adding defined terms for ''securities'' and ''securitized assets'' for purposes of the certification and incorporating those defined terms throughout the remainder of the certification to ease readability.[972] In the final rule, the term ''securities'' refers to all of the securities that are offered and sold with the related prospectus. The term ''securitized assets'' refers to the assets underlying the securities that are being offered.

Commenters also requested that the paragraph be revised to make it more explicit that the certifier is responsible for knowing material aspects of the assets and the material underlying transaction agreements.[973] Commenters argued that ''material'' is consistent with customary disclosure principles, including Regulation AB, and therefore provides consistency.[974] Additionally, commenters explained that the contracts for the transaction and the documents for each underlying asset are extensive and that the certifying officer should not be expected to be familiar with all of the terms in these documents.[975] We have revised the first paragraph to clarify that the certifier is speaking of material facts by inserting ''in all material respects.'' We have also used this phrase at the beginning of paragraphs three and four to address similar concerns by commenters.

We have deleted ''including without limitation'' in response to commenters' suggestions that this language made the scope of the certification unclear.[976] In addition, some commenters requested that we add ''described therein'' following ''am familiar with the structure of the securitization'' to clarify that the certification is based on the certifier's review of the prospectus.[977] The final text does not incorporate this suggestion because we do not believe the chief executive officer's review should necessarily be based solely on the review of the prospectus, which we discuss in more detail below.

Finally, under the re-proposed rule, the certifying officer could take into account only internal credit enhancements in making the certification.[978] Commenters, however, believed that the certifier should be permitted to take into consideration external credit enhancement in providing the certification. One commenter noted, for example, that investors in ABS with external credit enhancement rely on and give credit for external credit enhancement just as they do for internal credit enhancement.[979] Another commenter noted that external credit enhancements can play an integral role in maximizing the likelihood that securities will receive payment.[980] Further, one issuer noted that it could not provide the certification unless it is able to take into account external credit enhancements.[981]

In light of comments, under the final rule, the certifier is permitted to consider internal and external credit enhancement in providing the certification. We continue to believe, however, that the primary focus of the certification should be on the underlying assets rather than on any credit enhancement since, consistent with the Regulation AB definition of asset-backed security, the cash flows from the pool assets should primarily service distributions on the ABS.[982] We also note that we decided not to list ''credit enhancement'' specifically in the final certification because we believe that the phrase ''the structure of the securitization'' encompasses, among other things, credit enhancement and cash flows.

(ii) Paragraph Two

We did not receive any comments suggesting specific changes to paragraph two and we continue to believe that it is appropriate to expect signers of a registration statement to satisfy themselves about the accuracy of the disclosure at the time of each takedown. The chief executive officer must make the following statement:

Based on my knowledge, the prospectus does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(iii) Paragraph Three

The third paragraph of the final certification is substantially similar to the proposed text, with some modifications. The chief executive officer must make the following statement:

Based on my knowledge, the prospectus and other information included in the registration statement of which it is a part fairly present, in all material respects, the characteristics of the securitized assets, the structure of the securitization and the risks of ownership of the securities, including the risks relating to the securitized assets that would affect the cash flows available to service payments or distributions on the securities in accordance with their terms; and

Paragraph three requires a certification that the disclosures in the prospectus and other information in the registration statement are fairly presented.[983] Several commenters requested that we delete the term ''fairly present'' and suggested that we use alternative language.[984] Some commenters noted that the term ''fairly presents'' is customarily used by experts primarily in certifying the accuracy of the financial information.[985] For example, one commenter stated that because the certifying officer is not certifying to the accuracy of the financial information, but rather to the adequacy of the disclosure in the prospectus regarding the securitization it would be more appropriate to use a different term.[986] Commenters differed as to an appropriate replacement. Several commenters recommended ''describe,''[987] and several other commenters suggested ''disclose.''[988] The term ''fairly presents'' is used in our regulations with respect to financial information; however, we do not intend for the term to have the same meaning in this context. We are retaining the phrase in the certification because we

specific form and content of the required ABS Section 302 certification to the exhibit filing requirements).

[972] *See* letters from ABA II, ABAASA II, ASF V, CREFC II, and J.P. Morgan II.

[973] *See* letters from ABA II, ABAASA II, AFME, ASF V, BoA II, CREFC II, J.P. Morgan II, SIFMA III-dealers and sponsors, and Wells Fargo II.

[974] *See, e.g.,* letter from ABA II.

[975] *See, e.g.,* letter from Wells Fargo II.

[976] *See* letters from ABA II, ABAASA II, ASF V, BoA II, CREFC II, and J.P. Morgan II.

[977] *See* letters from ABA II, ABAASA II, ASF V, CREFC II, and J.P. Morgan II.

[978] *See* footnotes 33 and 55 in the 2011 ABS Re-Proposal. In the 2011 ABS Re-Proposing Release, we noted that internal credit enhancement would include subordination provisions, overcollateralization, reserve accounts, cash collateral accounts or spread accounts, as well as guarantees applicable to an underlying loan, whereas, external credit enhancement would include third-party insurance to reimburse losses on the pool assets or the securities.

[979] *See* letter from SIFMA III-dealers and sponsors.

[980] *See* letter from ASF V.

[981] *See* letter from Sallie Mae II (noting that it could not certify student loan transactions without taking into account related government guarantees). In the 2011 ABS Re-Proposing Release, we noted internal credit enhancement would include guarantees applicable to the underlying loans.

[982] *See* Regulation AB definition of asset-backed security in Item 1101(c) of Regulation AB.

[983] For the same reasons articulated in our discussion of paragraph one, we have also added ''structure of the securitization'' here in paragraph three and in paragraph four.

[984] *See* letters from ABA II, ABAASA II, AFME, ASF V, BoA II, CREFC II, J.P. Morgan II, SIFMA III-dealers and sponsors, and Wells Fargo II.

[985] *See* letters from ABA II, ASF V, J.P. Morgan II, SIFMA III-dealers and sponsors, and Wells Fargo II.

[986] *See, e.g.,* letter from ABA II.

[987] *See* letters from ABAASA II, ASF V, BoA II, J.P. Morgan II, and Wells Fargo II.

[988] *See* letters from ABA II (recommending the term ''disclose fairly''), AFME, CREFC II, and SIFMA III-dealers and sponsors.

believe it articulates the appropriate standard for the certification. The term ''fairly presents,'' as adopted, will require the CEO to consider whether the disclosure is tailored to the risks of the particular offering and presented in a clear, non-misleading fashion. Commenters also requested that we insert the term ''material'' in certain places in the paragraph similar to their requests in connection with paragraph one.[989] We are not adding the term ''material'' in multiple parts of the paragraph as requested because we believe that the phrase ''in all material respects'' sufficiently captures materiality across all the statements in the paragraph and therefore use of the term ''material'' elsewhere in the paragraph would be redundant.

In addition, paragraph three, as re-proposed, would have required that the certifier consider the risk factors relating to the securitized assets underlying the offering that would affect the cash flows sufficient to service payments on the asset-backed securities as described in the prospectus. Commenters requested that we revise our reference to ''risk factors'' [990] so that the certifier considers instead ''all material risks'' because disclosure of risks related to the securitized assets is not limited to the information included under the risk factors section of the prospectus but also includes information in other parts of the prospectus, such as historical static pool ''loss'' data.[991] One commenter recommended that instead of referring to ''all risk factors,'' as proposed, that the certification be limited to only the most significant risks because a certifying officer cannot reasonably anticipate that an insignificant risk might cause significant losses at the time the officer signs the certification.[992] The same commenter noted that the existing standard for risk factor disclosure requires ''a discussion of the most significant risk factors that make the offering speculative or risky'' and expressed concern that the language in paragraph three could lead to increased disclosure of risk factors that are not significant to the ABS transaction.[993]

We have considered the comments received and are revising the language of the certification to replace the phrase ''all risk factors'' with ''the risks relating to the securitized assets that would affect the cash flows available to service payments or distributions on the securities in accordance with their terms.'' We agree with commenters that the disclosure related to the risks of the securitized assets is not limited to only the risk factor section of the prospectus and may be appropriately presented in other parts of the prospectus. Some commenters also believed that the certification with regard to material risks related to the securitized assets should be further qualified to include only those that would ''adversely'' affect the cash flows ''available'' to service payments on the ABS ''in accordance with their terms.'' [994] We are not inserting the word ''adversely'' because we believe that the concept is incorporated in the term ''risk'' and therefore would be redundant to include. We are, however, revising the phrase ''cash flows sufficient'' to ''cash flows available'' in order to more accurately reflect the nature of pass-through certificates and junior tranches of registered ABS. We are also adding the phrase ''in accordance with their terms'' as suggested, because we believe it better describes the certification that we are requiring by paragraph three (i.e., fair presentation of the risks relating to the securitized assets that would affect the cash flows available to service payments or distributions on the securities in accordance with their terms).[995]

(iv) Paragraph Four

Paragraph four of the final certification has also been modified. As described below, we have also added a fifth paragraph to address concerns related to paragraph four. The chief executive officer must make the following statement:

> Based on my knowledge, taking into account all material aspects of the characteristics of the securitized assets, the structure of the securitization, and the related risks as described in the prospectus, there is a reasonable basis to conclude that the securitization is structured to produce, but is not guaranteed by this certification to produce, expected cash flows at times and in amounts to service scheduled payments of interest and the ultimate repayment of principal on the securities (or other scheduled or required distributions on the securities, however denominated) in accordance with their terms as described in the prospectus.

We have made revisions to this paragraph similar to revisions made to paragraph one. First, commenters suggested that we add the word ''material'' because, in general, the paragraph should relate only to material information about the securitized assets, the structure of the securitization (as discussed below, which includes any credit enhancement) and the related risks of the offering.[996] We are adding the phrase ''all material aspects of'' to paragraph four. Second, commenters asked that we remove the limitation that the certifier consider only internal credit enhancement in providing the certification.[997] In response to comments, we have revised paragraph four to remove this limitation for the same reasons articulated in our discussion of paragraph one.[998]

[989] *See, e.g.,* letters from ABA II, AFME, BoA II, SIFMA III-dealers and sponsors, and Wells Fargo II (recommending adding ''material'' before ''credit enhancements''). *See also* letters from BoA II and Wells Fargo II (proposing to add ''material'' before ''characteristics of the securitized assets'').

[990] *See* letters from ABA II, ABAASA II, and ASF V. *See also* letter from CREFC II (recommending a slightly different qualification, namely that ''all risks relating to the Assets that would *materially* and adversely affect the cash flows'') (emphasis added).

[991] *See, e.g.,* letter from ABA II.

[992] *See* letter from BoA II.

[993] *See id. See also* Item 1103(b) of Regulation AB and Item 503(c) of Regulation S–K.

[994] *See* letters from ASF V and J.P. Morgan II.

[995] We are also making revisions to enhance readability by listing each element of the certification in paragraph three, which eliminates redundancies from the proposed language, as phrases in the proposed language such as ''described therein'' and ''as described in the prospectus'' are no longer necessary to include. *See* letters from ABAASA II, ASF V, BoA II, J.P. Morgan II, and Wells Fargo II (noting that it was unclear how the language after the third comma modifies the prior portion of the sentence and also whether this language is intended to extend the certification beyond the disclosure to the performance of the transaction and recommending that ''including all material credit enhancements'' should be moved to follow ''the material characteristics of the securitized assets underlying the offering described therein'').

[996] *See* letters from ABA II, ABAASA II, ASF V, BoA II, CREFC II, J.P. Morgan II, and Wells Fargo II.

[997] Several commenters contended that the certifying officer must be permitted to take into account the external credit enhancements given that they can play a critical role in certain transactions. *See* letters from ABAASA II, ASF V, AFME, and SIFMA III-dealers and sponsors. Another commenter requested that the Commission clarify that external credit enhancement that is ultimately backed by the full faith and credit of the United States government may be considered by the certifying officer. *See* letter from Sallie Mae II. This commenter explained that a certifying officer cannot certify that ''a transaction backed by FFELP loans is designed to produce cash flows at times and in amounts sufficient to service expected payments on the ABS'' unless it is able to take into account external credit enhancement. To address this issue, this commenter recommended that the Commission either exempt ABS transactions backed by FFELP loans from the proposed certification requirement or clarify that external credit enhancements from sources backed by the full faith and credit of the United States government may be considered by the certifying officer.

[998] As we emphasized in connection with paragraph one, while we are permitting the certifier to consider credit enhancement in providing the certification, the primary focus in providing the certification should be on the assets, not the credit enhancement. We note that we have also removed the phrase ''any other material features of the transaction'' from paragraph four since we also

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We also received several detailed comments on the remaining text of paragraph four. Some commenters suggested that we replace the word ''designed'' with ''structured'' when certifying to the cash flows that will service payments on the securities.[999] Commenters explained that the term ''structured'' is better understood in the context of these transactions and also reflects the nature of these securitizations as a type of structured finance.[1000] Several commenters recommended adding that the securitization is structured ''to be expected to produce'' rather than just ''structured to produce'' for further clarification that paragraph four does not constitute a guarantee.[1001] We are revising the final certification to use the term ''structured'' as requested by some commenters; however, we note that we believe the term ''structured'' to encompass more than tranching to include, among other things, selection of the assets, credit enhancement, and other structural features designed to enhance credit and facilitate timely payment of monies due on the pool assets to security holders.[1002] We are not inserting the term ''expected'' before ''to produce'' because we believe that the concept of expected is implicit in the phrase ''structured to produce'' and that the phrase ''is not guaranteed by this certification to produce'' adequately addresses some commenters' concern about paragraph four constituting a guarantee.

Many commenters stressed that they were unsure what the ''expected payments'' would be with respect to any particular securitization, such as with pass-through certificates or more junior tranches of registered ABS. With respect to the issue of pass-through certificates, one commenter noted that ''no fixed principal payments are required to be made.'' [1003] Additionally, several commenters explained that the proposed language failed to account for the possibility that more junior tranches of registered ABS may bear a moderate credit risk somewhere in between the most senior registered tranches and the most subordinated unregistered tranches.[1004] Several commenters recommended deleting ''expected payment'' and inserting ''the assets will produce cash flows at times and in amounts sufficient to service payments on the offered securities in accordance with the terms described in the prospectus.'' [1005] One commenter expressed concern that the proposed form of the certification could be interpreted to suggest that the adverse effects of the potential risk had been negated through structuring.[1006] Therefore, this commenter supported modifying the certification so that it clearly states that the risks described in the prospectus could adversely affect the cash flows.[1007] Other commenters similarly noted that the certification fails to acknowledge the Commission's intent, as stated in the 2010 ABS Proposing Release, to qualify the certification by the disclosure in the prospectus.[1008]

To address commenters' concerns with ''expected payments,'' we have revised paragraph four so that the certification relates to ''expected cash flows at times and in amounts to service scheduled payments of interest and the ultimate repayment of principal on the securities (or other scheduled or required distributions on the securities, however denominated) in accordance with their terms as described in the prospectus.'' We agree with commenters that certain ABS may not be required to produce fixed payments, as is the case with pass-through certificates, and that using the term ''expected payments'' may have caused confusion.[1009] We believe the revised language provides greater clarity as to what the chief executive officer is certifying to and more precisely captures the varying terminology used to describe the amounts due to investors depending upon the type of ABS transaction.

We also recognize that characterizing the cash flows as ''sufficient'' to service the payments or distributions may have inadvertently implied that there will always be adequate cash flows to service such payments or distributions regardless of whether the ABS is of a lower tranche or structured as a pass-through security. We have deleted the term ''sufficient'' to eliminate this possible confusion.[1010] We believe, however, that even if fixed payments are not required to be made, a securitization is structured with the expectation that cash flows from the assets will provide distributions at certain times and amounts, and accordingly we believe that certification should reflect that expectation. We have therefore moved ''expected'' to before ''cash flows'' to clarify the requirement. We also believe that this change addresses some commenters' concerns about lower tranches of shelf registered ABS in that the expectation is not so much related to payment as to how the cash flow has been structured to allocate distributions of interest and principal.

One commenter suggested inserting language to indicate that the certifying officer's statements are his or her ''current beliefs'' and that there may be future developments that would cause his or her opinion to change or result in the assets not generating sufficient cash flows.[1011] Also, commenters stressed the importance of including cautionary statements in the certification that identify those risks and uncertainties as factors that could cause the actual results to differ materially from those set forth in the certification.[1012] Several commenters supported the Commission's language outlined in Request for Comment No. 4 in the 2011 ABS Re-Proposal.[1013] As we note above,

believe that ''structure of the securitization'' encompasses such features.

[999] *See* letters from ABA II, ABAASA II, AFME, ASF V, BoA II, CREFC II, J.P. Morgan II, SIFMA III-dealers and sponsors, and Wells Fargo II.

[1000] *See, e.g.,* letter from ABA II.

[1001] *See* letters from J.P. Morgan II and Wells Fargo II.

[1002] *See, e.g.,* Item 1113 of Regulation AB (describing the disclosure required for the structure of transaction).

[1003] *See* letter from ABA II (noting that many pass-through securities ''require payment only to the extent of cash flows actually received and available in accordance with the priority of payments waterfall'' and also indicating that credit rating agencies, in evaluating the likelihood of the payment on ABS classes, typically refer to ''scheduled payments'' of interest and ''ultimate'' repayment of principal and recommended using those terms here).

[1004] *See* letters from AFME, J.P. Morgan II, and SIFMA III-dealers and sponsors.

[1005] *See* letters from AFME, J.P. Morgan II, SIFMA III-dealers and sponsors, and Wells Fargo II.

[1006] *See* letter from ABA II. *See also* letter from Wells Fargo II (stating that the certification, as currently drafted, could be interpreted to say that the certifying officer has taken into consideration all the material information included in the prospectus and that, notwithstanding the risks and uncertainties described in the prospectus, the certifying officer has certified that the securitization is designed to produce cash flows sufficient to service the ABS).

[1007] *See* letter from ABA II (recommending the following language: ''provided that the risks described in the prospectus may adversely affect such cash flows'').

[1008] *See* letters from ABAASA II, AFME (stating that it is important that the certification specifically state that its conclusion takes into account any assumptions described in the prospectus, and also that it state that cash flows may vary if and to the extent that any of the risk factors described in the prospectus come to pass), ASF V, and SIFMA III-dealers and sponsors.

[1009] *See, e.g.,* letter from ABA II.

[1010] We also removed the term ''sufficient'' in paragraph three for the same reason where we changed the language from ''the cash flows sufficient'' to ''cash flows available.''

[1011] *See* letter from J.P. Morgan II.

[1012] *See* letters from ABA II, AFME, BoA II, CREFC II, J.P. Morgan II, SIFMA III-dealers and sponsors, and Wells Fargo II.

[1013] *See* letters from ABAASA II, AFME, ASF V, and SIFMA III-dealers and sponsors. *See also* the 2011 ABS Re-Proposal Release at 47954, Request for Comment No. 4 (requesting comment on whether to allow the certification to state, among other things, that it is only an expression of the executive officer's current belief and is not a guarantee that those assets will generate such cash flows).

the certification will be a statement of what is known by the certifier at the time of the offering. This is made clear by the introductory language to paragraphs three and four (''based on my knowledge'') and therefore we have not made this change.[1014] We are also revising the text to insert the phrase ''a reasonable basis to conclude,'' as suggested by some commenters to further clarify that the certification applies to what is known at the time of securitization.[1015] Many commenters argued that paragraph four represents an assessment and forecast of the future performance of the securitized assets and the ABS, which would make it a forward-looking statement, and thus the issuers should be entitled to protections afforded by the safe harbor for forward-looking statements.[1016] We do not believe that paragraph four is protected by the statutory safe harbor for a forward-looking statement.[1017] We have, however, included ''related risks'' of the securitized assets and structure as described in the prospectus to address comments that the certifier should be allowed to take risk disclosure into account. We also note that because the language of the certification cannot be altered, any issues in providing the required certification must be addressed through disclosure in the prospectus. For example, if the prospectus describes the risk of nonpayment or other risk that such cash flows will not be produced, then the certifier would take those disclosures into consideration in signing the certification.

(v) Paragraph Five

As discussed above, some commenters expressed concern over potential increased liability with the certification. We acknowledge that the potential litigation risk to the chief executive officer may be higher, and we recognize that participants in securities offerings who make statements about those offerings can face liability for their statements, but we believe that possible additional risk to the certifier is justified where each takedown provides investors with offering information about the underlying assets and structure of the securities and recent market events persuade us that these were insufficient incentives for proper oversight over the transaction. In this regard, we also note that the certification is tied to the disclosure in the prospectus. For example, if the prospectus includes disclosure that the terms of the securities do not include any expectation (or limited expectation) that the structure will produce cash flows sufficient to make distributions, the certifier would nonetheless be able to sign the certification because the certification is based, in part, on the disclosure in the prospectus. In response to commenters' concerns about certifier liability,[1018] we note that the CEO can take steps to mitigate the risks of signing. In addition, the final certification includes a fifth paragraph to further clarify that the certifier has any and all defenses available to him or her under the federal securities laws. The chief executive officer must make the following statement:

> The foregoing certifications are given subject to any and all defenses available to me under the federal securities laws, including any and all defenses available to an executive officer that signed the registration statement of which the prospectus referred to in this certification is part.

(vi) Signature Requirement

In the 2010 ABS Proposing Release, we had proposed that the depositor's chief executive officer sign the certification. We explained that the chief executive officer of the depositor is already responsible for the disclosure as a signer of the registration statement.[1019] We also asked, in the 2010 ABS Proposing Release, whether an individual in a different position should be required to provide the certification, such as the senior officer of the depositor in charge of securitization, in order to be consistent with other signature requirements for ABS. In response to comments, as part of the 2011 ABS Re-Proposal, we re-proposed to allow either the chief executive officer of the depositor or the executive officer in charge of securitization of the depositor sign the certification.

We received various comments on the appropriate party to sign the certification. One commenter supported the re-proposal to allow ''the executive officer in charge of securitization'' to sign the certification but suggested modifying it to require the signature of ''*an* executive officer in charge of the securitization.'' [1020] This commenter explained that it may be the case that more than one person may satisfy the role of executive officer in charge of securitization, and it would be appropriate to permit the executive officer with particular knowledge of the specific securitization to sign the certification. In response to a request for comment in the 2011 ABS Re-Proposal regarding whether we should conform signature requirements across forms (e.g., Form 10–K and proposed Form SF–3),[1021] one commenter recommended that the ''senior officer in charge of securitization'' sign the certification,[1022] and another suggested we broaden the list of signers to include the principal executive officer, the principal financial officer and controller or the principal accounting officer of the depositor.[1023] One commenter recommended requiring an executive officer with a title such as ''chief transaction officer'' if the Commission is seeking a party to assume more responsibility for disclosure.[1024]

Commenters also provided comments as to why an executive officer would be

[1014] Also note that paragraph one requires that the certifier review the prospectus and the necessary documents regarding the assets, transactions and disclosures.

[1015] *See* letters from ABAASA II, ASF V, J.P. Morgan II (noting that this language is also consistent with the defenses that an officer of a registrant would have under the federal securities laws), and Wells Fargo II.

[1016] *See* letters from ABAASA II, AFME, ASF V, BoA II, CREFC II, J.P. Morgan II, MBA III, SIFMA III-dealers and sponsors, and Wells Fargo II.

[1017] The statutory safe harbor for forward-looking statements is only available to an issuer that is subject to the reporting requirements of Section 13(a) or Section 15(d) of the Exchange Act. The depositor for the issuing entity of an asset-backed security is a different ''issuer'' from that same person acting as a depositor for any other issuing entity or for purposes of that person's own securities. *See* Securities Act Rule 191 [17 CFR 230.191], and Exchange Act Rule 3b–19 [17 CFR 240.3b–19]. Therefore, at the time of an ABS takedown, other than in the case of master trusts, the entity acting as issuer is not subject to the reporting requirements of Section 13(a) or Section 15(d) of the Exchange Act. *See* Securities Act Section 27A (15 U.S.C. 77z–2).

[1018] *See* letter from ASF V (requesting that the Commission make clear that the certifying officer have any and all defenses available under the federal securities laws as a person signing the registration statement and providing recommended language to include in the certification). *See also* letters from ABA II & J.P. Morgan II (supporting ASF's recommended language).

[1019] *See* the 2010 ABS Proposing Release at 23346.

[1020] *See* letter from MBA III (stressing that in the context of CMBS it is common for more than one person to satisfy the definition of executive officer who has worked closely with the securitization).

[1021] *See* Request for Comment No. 3 in the 2011 ABS Re-Proposing Release. The Form 10–K [17 CFR 249.310] report for ABS issuers must be signed either on behalf of the depositor by the senior officer in charge of securitization of the depositor, or on behalf of the issuing entity by the senior officer in charge of the servicing. In addition, the certifications for ABS issuers that are required under Section 302 of the Sarbanes-Oxley Act must be signed either on behalf of the depositor by the senior officer in charge of securitization of the depositor if the depositor is signing the Form 10–K report, or on behalf of the issuing entity by the senior officer in charge of the servicing function of the servicer if the servicer is signing the Form 10–K report.

[1022] *See* letter from Sallie Mae II.

[1023] *See* letter from J.P. Morgan II.

[1024] *See* letter from Kutak (proposing ''chief transaction officer'' (without defining this position) because the proposed certification would not provide any additional oversight than what is presently required with regard to the signers of a registration statement).

unable to provide the certification. For example, some commenters argued that executive officers lack the expertise to perform the credit analysis necessary to provide the certification.[1025] Another commenter recommended that, with respect to paragraph four as to any assurance about the structure and cash flows of the securitization, the issuer, not a principal officer, should provide the certification because the chief executive officer may be too removed from the process and the team approach to securitization may not leave any one person in a position to evaluate all of the material attributes of the securitization.[1026]

Similarly, some commenters explained why an executive officer might be unwilling to provide the certification. One commenter noted that depositors would be unable to effectively price for the possibility of liability under such a broad certification.[1027] The commenter explained that to the extent that an executive officer is willing to sign it, he or she will likely do so only in the most conservative circumstances, which may result in shelf-offered ABS of only the highest quality and thus preclude shelf offerings of securities with different credit risk and profiles. Another expressed concern that principal officers may be discouraged from taking such positions due to exposure to personal litigation.[1028]

After considering the comments, the final rule requires that the certification be signed by the chief executive officer. We are not adopting the suggestion that the executive officer in charge of the securitization for the depositor sign the certification, as re-proposed, because we are not acting at this time on the proposal to revise the signature requirements for the registration statement. We believe that the certification should be signed by a signatory to the registration statement. Furthermore, we believe that having the chief executive officer as the sole signatory is appropriate for other policy reasons. Although we understand that the chief executive officer may not personally undertake credit analysis and that he or she will likely rely on the work of others to assist him or her with structuring the transaction and preparing the certification as noted by some commenters, we believe that the depositor's chief executive officer, as an officer of the depositor at the highest level, should be responsible for providing proper oversight over the transaction and thus should be held accountable for the structuring of the transaction and for the disclosure provided in the prospectus supplement. In that regard, we believe, as we did when we proposed the certification for Exchange Act periodic reports, that a certification should cause the chief executive officer to more carefully review the disclosure, and in this case, the transaction, and to participate more extensively in the oversight of each transaction.[1029]

(vii) Date of the Certification

The date of the certification, as proposed, is required to be as of the date of the final prospectus.[1030] One commenter supported the proposed date because the deal structure will be final at that time and the final deal structure is what is being addressed in the certification.[1031]

(viii) Opinion by an Independent Evaluator Alternative

In the 2011 ABS Re-Proposing Release, we also requested comments on whether, in lieu of the requirement that the chief executive officer or executive officer in charge of the securitization of the depositor provide a certification, the Commission should allow an opinion to be provided by an ''independent evaluator.'' [1032] Several commenters supported allowing an opinion by an ''independent evaluator'' in lieu of the proposed certification.[1033] One commenter believed that allowing an opinion by an independent evaluator meeting particular requirements would provide a more detached and objective basis for certification.[1034] The other commenter stressed that an independent evaluator is particularly important in evaluating the structure of a transaction given that structures are often the product of investment bankers or third parties who know what securities will sell in the market.[1035] Relatedly, several commenters noted that a credit rating agency is the more appropriate party to perform the credit analysis required.[1036]

In contrast, one commenter noted its opposition to allowing the use of an independent evaluator, stating that the certification, as proposed, may result in a more careful review of the disclosure and transaction by the issuer and ultimately higher-quality ABS in shelf offerings.[1037] Another commenter recommended that we not mandate the use of an independent evaluator, explaining that it is uncertain, especially in the RMBS market, whether there are companies willing to serve as an independent evaluator given the possibility of increased liability and preclusion from performing other more desirable roles in the transaction.[1038]

As reflected in the comments above, an independent evaluator alternative may provide benefits to investors and issuers. For issuers that conduct offerings on an infrequent basis, such an alternative may be less costly than implementing an infrastructure in order for the chief executive officer to conduct the review required by the certification. However, as one commenter noted with respect to RMBS, such issuers may encounter difficulty hiring a company that is willing to provide such services and sign the certification.[1039] A certification by the chief executive officer is designed to increase internal oversight within the issuer. For investors, the independent evaluator may be able to provide a more detached and objective opinion; however, investors should also benefit from the enhanced internal oversight by the issuer obtained from the CEO certification. We are therefore not adopting the independent evaluator as

[1025] *See* letters from AFME and SIFMA III-dealers and sponsors (noting that executives may not be trained to perform the type of credit analysis that would be required to give a certification and that credit rating agencies are the more appropriate parties to perform the credit analysis).

[1026] *See* letter from ABA II.

[1027] *See* letter from SIFMA III-dealers and sponsors.

[1028] *See* letter from SIFMA II-investors.

[1029] *See* the 2011 ABS Re-Proposing Release at 47951 and the 2010 ABS Proposing Release at 23345.

[1030] *See* Item 601(b)(36) of Regulation S–K [17 CFR 229.601(b)(36)]. The certification should be filed as an exhibit to the final 424(b)(2) or (5) prospectus. *See also* new Item 1100(f) of Regulation AB [17 CFR 229.1100(f)] (specifying procedures for filing required exhibits).

[1031] *See* letter from Sallie Mae II.

[1032] *See* Request for Comment No. 12 in the 2011 ABS Re-Proposing Release.

[1033] *See* letters from C. Barnard (recommending independence, experience, and related disclosure requirements related to the independent evaluator) and Kutak (suggesting limiting information disclosed to identification of the independent evaluator, compensation, and affiliations and that the person not be considered an expert).

[1034] *See* letter from C. Barnard (acknowledging that such opinion could reduce the executive oversight of the transaction structure but emphasized that the responsibility for the certification would still reside with the executive).

[1035] *See* letter from Kutak.

[1036] *See* letters from AFME and SIFMA III-dealers and sponsors (noting that any conflict of interest inherent in the rating agency's credit analysis would be magnified exponentially were such analysis to be effectively required to be undertaken by an affiliate of an issuer). Additionally, SIFMA III-dealers and sponsors was troubled that given the Commission's express intent to reduce the reliance on credit analysis by NRSROs, that shelf eligibility would instead be conditioned on a credit analysis by an officer of the depositor.

[1037] *See* letter from CFA II.

[1038] *See* letter from MBA III.

[1039] *See* letter from MBA III.

an alternative to providing a certification.

(2) Asset Review Provision

(a) Proposed Rule

Investors have expressed concerns about the effectiveness of the contractual provisions related to the representations and warranties about the pool assets and the lack of responsiveness by sponsors about potential breaches.[1040] A significant hurdle faced by investors seeking to enforce repurchase obligations has been that transaction agreements typically have not included specific mechanisms to identify breaches of representations and warranties or to resolve a question as to whether a breach of the representations and warranties has occurred. Further, investors have had to rely upon the trustees to enforce repurchase covenants because the transaction agreements do not typically contain a provision for an investor to directly make a repurchase demand. Investors have been frustrated with this structure and process because trustees have not enforced repurchase rights, and investors have been unable to locate other investors in order to force trustees to do so.[1041] Furthermore, these contractual agreements have frequently been ineffective because, without access to documents relating to each pool asset, it can be difficult for the trustee, which typically notifies the sponsor of an alleged breach, to determine whether a representation or warranty relating to a pool asset has been breached.[1042] The impact of these difficulties for investors is particularly concerning given the pervasiveness of misrepresentation among securitized residential real estate loans in the 2000's.[1043]

To address this concern, we proposed in the 2011 ABS Re-Proposal as one of the transaction requirements for shelf eligibility, that the underlying transaction documents of an ABS include provisions requiring a review of the underlying assets of the ABS for compliance with the representations and warranties upon the occurrence of certain post-securitization trigger events. Specifically, we proposed that the transaction agreements require, at a minimum, a review of the underlying assets (1) when the credit enhancement requirements, as specified in the transaction documents, are not met, or (2) at the direction of investors pursuant to processes provided in the transaction agreement and disclosed in the prospectus.[1044] We proposed that the review would be conducted by a ''credit risk manager'' who would have access to the underlying loan documents to assist in determining whether the loan complied with the representations and warranties provided to investors.[1045] A report of the findings and conclusions of the review would be provided to the trustee to use in determining whether a repurchase request would be appropriate, and would also be filed as an exhibit to the Form 10–D.

Finally, we proposed to require certain provisions in the underlying transaction agreements that would help to resolve repurchase request disputes. We discuss the dispute resolution provision requirement below in Section V.B.3.a)(3) Dispute Resolution Provision because we are adopting it as a stand-alone shelf eligibility condition.

As noted above, studies have highlighted the extent of misrepresentations among securitized residential real estate loans in the 2000's; however, we are unable to quantify the extent to which enforcing representations and warranties was an issue during the crisis. While recently adopted Exchange Act Rule 15Ga–1 implementing Section 943 of the Dodd-Frank Act requires disclosure of fulfilled and unfulfilled repurchase request activity, as a practical matter, it does not address directly the enforceability of put-back provisions in the underlying transaction agreements. Further, the historical data provided by Rule 15Ga–1 is limited, as initially only those securitizers that issued ABS between January 1, 2009 and December 31, 2011 were required to report on Form ABS–15G demand and repurchase history that occurred during that same period.[1046] As we discussed in the Section 943 Adopting Release, we limited the rule to a three-year look-back period because we recognized concerns regarding the availability and comparability of historical information related to repurchase demands.[1047] While we recognize these limitations, we used the information contained in recent Form ABS–15G filings in order to provide some baseline information on current market practices. Based on Form ABS–15G filings of the first quarter of 2013, we find that more than 99% of repurchase requests are in dispute, and with respect to the resolved requests: 16.5% were satisfied, 48.5% were withdrawn, and 35% were rejected.[1048] These numbers highlight the fact that enforcing representations and warranties may be time-consuming and lead to uncertain outcomes for investors. We believe that the asset review shelf requirement will help to address this problem and enhance the

[1040] In the underlying agreements for an asset securitization, sponsors or originators typically make representations and warranties about the pool assets and their origination, including representations about the quality of the pool assets. Upon discovery that a pool asset does not comply with the representation or warranty, an obligated party (typically the sponsor) must repurchase the asset or replace it with an asset that complies with the representations and warranties. *See* the 2011 ABS Re-Proposal at 47956–57. *See also* the Section 943 Adopting Release at 4489–90.

[1041] Typically, investor rights require a minimum percentage of investors acting together in order to enforce the representation and warranty provisions contained in the underlying transaction agreements. *See Housing Finance Reform: Fundamentals of a Functioning Private Label Mortgage Backed Securities Market Hearing Before the S. Comm. on Banking, Housing & Urban Affairs,* 113th Cong. 39 (2013) (statement of Adam J. Levitin, law professor at Georgetown University Law Center) (noting that ''before PLS [private label securities] investors are able to spur a trustee to take action to protect their interests, they face the challenge of limited information available on which to determine if an event of default has occurred, the information problem of identifying other PLS investors in their deal, and the collective action problem of coordinating the required threshold of PLS investors (who do not always have identical incentives and may trade in and out of their positions), and the expense of indemnifying the trustee).

[1042] *See, e.g.,* Kathryn Brenzel, *$615M MBS Suit Aims To Rewrite Deal's Terms, Deutsche Says,* Law360, May 6, 2013 (noting that the defendant argued that the notification provided by the trustee did not adequately show misrepresentations). Our requirement addresses this problem because the review required will provide evidence of misrepresentations that the trustees and investors can then use in making a repurchase request.

[1043] Between 10% and 30% of securitized residential real estate loans exhibited some indication of potential misrepresentation. *See* Tomasz Piskorski et al., *Asset Quality Misrepresentation by Financial Intermediaries: Evidence from RMBS Market,* (Nat'l Bureau of Econ. Research, Working Paper No. 18843, 2013) and John Griffin & Gonzalo Maturana, *Who Facilitated Misreporting in Securitized Loans?,* (University of Texas at Austin, Working Paper, 2013), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2256060&download=yes.*

[1044] We also proposed that disclosure of the findings and conclusions of the review be required on Form 10–D if an event triggers a review.

[1045] Under the proposal, the credit risk manager would be appointed by the trustee and could not be affiliated with any sponsor, depositor, or servicer in the transaction. Disclosure about the experience of the credit risk manager in prospectuses would also be required.

[1046] *See* Exchange Act Rule 15Ga–1(c)(1). After December 31, 2011 all securitizers are required to report, on a quarterly basis, demand and repurchase activity for any new or outstanding ABS. *See* Exchange Act Rule 15Ga–1(c)(2).

[1047] *See* the Section 943 Adopting Release at 4498–99. We noted that the three-year look-back period for initial disclosures struck the right balance between the disclosure benefits to investors, availability of historical information and compliance costs to securitizers. In doing so, we acknowledged that older data may be very hard or impossible for securitizers to obtain if they have not had systems in place to track the data required for the required disclosures, which may lead to less comparable data.

[1048] We found similar figures for Form ABS–15G filings in other quarters.

enforceability of the representations and warranties regarding the pool assets.

(b) Comments on Proposed Rule

Several commenters generally agreed that a review of assets for compliance with representations and warranties should be a shelf eligibility requirement.[1049] Commenters made it clear that investors desire more robust representation and warranty enforcement mechanisms.[1050] Many commenters noted that a review mechanism would enhance investor protection and promote the integrity of asset-backed securities.[1051] Some commenters argued that the proposed requirement should not be imposed upon transactions other than RMBS transactions.[1052] They were concerned that enforcement mechanisms could increase costs on transactions where there have been only a limited number of repurchase requests historically.[1053] Some commenters responded to the 2011 ABS Re-Proposal by suggesting that the Commission adopt, as an alternative criterion for shelf eligibility for asset classes other than RMBS, the original proposed shelf requirements that there be a quarterly third-party review of the assets for compliance with the representations and warranties, which we did not re-propose in light of comments.[1054] Below we discuss comments about the various parts of the proposal.

Commenters provided varying comments on the appropriateness of the proposed review triggers. Several commenters suggested that a trigger for review should not be tied to credit enhancement, as proposed.[1055] Commenters stated that, for most transactions, a credit enhancement trigger would not be a feasible measurement across asset classes because many deals provide for a buildup of credit enhancement over time and, under the proposed rule, the first distribution could trigger a review.[1056] One commenter stated that certain transactions do not have pool-level credit enhancements that would trigger a review.[1057] Given these potential issues with a credit enhancement trigger, some commenters suggested as an alternative that the trigger for review be based on a more common measurement of asset performance such as delinquencies.[1058]

As part of the 2011 ABS Re-Proposal, we requested comments on certain aspects of the investor-directed trigger. For example, we requested comment on whether we should require that at least 5% of investors must first call for an investor vote on the question of whether to initiate a review before a vote occurs.[1059] Although comments received were mixed, several commenters supported such a provision.[1060] Additionally, many commenters agreed that investors should have the ability to direct a review of assets and suggested procedures that would provide investors with an effective means to request a review while minimizing baseless claims that could impose costs.[1061]

We also requested comment on whether, as an alternative to specifying voting procedures, it would be appropriate to specify certain maximum conditions, where the percentage of investors required to direct review could be no more than a certain percentage, such as 5%, 10%, or 25%. Commenters provided differing views on imposing maximum conditions. Several commenters suggested that 25% would be the appropriate percentage of investors that should agree to a review before one is required.[1062] Another

[1049] *See* letters from C. Barnard, ICI II, MBA III, Metlife II, Prudential II, SIFMA II-investors, and Sallie Mae II.

[1050] *See* letters from Metlife II, Prudential II, and SIFMA II-investors (stating that they do not believe the ABS market will recover without a mechanism to enforce breaches of representations and warranties).

[1051] *See* letters from ASF III, C. Barnard, ICI II (noting that ''it would provide investors with a stronger basis to pursue remedies under the transaction agreement for violations of representations and warranties relating to pool assets, and create better incentives for obligated parties to consider and monitor the quality of the assets in the pool''), Prudential II, and SIFMA II-investors.

[1052] *See* letters from ABA II (stating that transactions with assets that have no meaningful history of repurchase demands should not be subject to the requirement), ABAASA II (noting that the proposed requirement should be required only for RMBS transactions), ASF III, J.P. Morgan II, and Wells Fargo II (stating that credit card and auto transactions should not be subject to the requirement), BoA II (recommending a tailored approach), Sallie Mae II (noting student loans should not be subject to the proposal), and VABSS III (noting that auto deals have not had a history of significant repurchases and thus should not incur the costs associated with the proposed requirement).

[1053] *See* letters from ABA II, ABAASA II, ASF III, and Wells Fargo II (all supporting a review system for residential mortgage-backed securities transactions and opposing a requirement for other asset-backed securities that do not typically have repurchase demands).

[1054] *See* letters from ASF III, BoA II, and VABSS III. In the 2010 ABS Proposing Release, the Commission proposed to require a provision in the pooling and servicing agreement requiring the party obligated to repurchase the assets for breach of representations and warranties to periodically furnish an opinion of an independent third party regarding whether the obligated party acted consistently with the terms of the pooling and servicing agreement with respect to any loans that the trustee put back to the obligated party for violation of representations and warranties and which were not repurchased. In the 2011 ABS Re-Proposal, we replaced the quarterly third-party opinion proposal with a proposed review of the underlying assets upon certain triggers being reached in response to the comments received on the 2010 ABS Proposal.

[1055] *See* letters from ABA II, ABAASA II, ASF III, BoA II, CREFC II, J.P. Morgan II, Kutak, MBA III, SIFMA III-dealers and sponsors, VABSS III, and Wells Fargo II.

[1056] *See, e.g.,* letters from ASF III, SIFMA III-dealers and sponsors, and Wells Fargo II (explaining that transactions involving assets with interest rates in excess of the rates required to be paid on the ABS may initially be structured with little or no initial overcollateralization and that the required credit enhancement is built up over time by applying excess interest to pay principal on the ABS, resulting in overcollateralization), BoA II (noting that in cases where credit enhancement is built over time, credit enhancement levels do not meet required target levels during most of the early life of the deal), VABSS III (noting that while credit enhancement may increase over time, in other transactions, credit enhancement can be reduced if certain performance results are achieved).

[1057] *See* letter from MBA III.

[1058] *See* letters from ASF III (suggesting objective factors such as cumulative losses, delinquencies, or average loss severity be the trigger), Metlife II (noting the review should be based on delinquencies as a percentage of the original subordination for the senior-most class in a transaction), Prudential II (stating that a review should be triggered if the 60+ day delinquencies percentage is greater than the currently available credit support or if a loan becomes 90 days delinquent within six months of the loan's origination or four months from being included in the pool) and Sallie Mae II (recommending ''linking the action of the CRM to an element that can arise across all asset classes and all structures, namely losses'').

[1059] *See* Request for Comment No. 30 in the 2011 ABS Re-Proposing Release at 47958.

[1060] *See* letters from Metlife II (suggesting that we require 5% of investors to initiate a vote), Prudential II, and SIFMA II-investors (suggesting that at least 5% of the total interest in the pool may poll other investors to determine whether a review should be performed). *See also* letter from Metlife I (explaining that the vast majority of securitization transactions require a ''25%-in-interest voting threshold'' before the trustee can be directed by investors to undertake actions such as polling investors as to whether to exercise rights or remedies under the transaction agreements).

[1061] *See, e.g.,* letters from ASF III (stating that its investor members generally favor the proposal while issuer members generally oppose it), J.P. Morgan II (stating their belief that investors representing a minimum of 25% of the pool be required to trigger a review), MBA III (noting that a threshold of investors should be required to agree to a review due to the potential costs), Prudential II (stating that note holders should be permitted to request a credit risk manager review if 25% of the note holders believe a review is warranted), SIFMA II-investors (stating their belief that a review be triggered if investors with at least 25% (by principal balance) of the total interest in the pool of securitized assets agree to a review), and Sallie Mae II (suggesting specific requirements if the final rule permits investors to direct a review independently of the credit enhancement trigger).

[1062] *See* letters from J.P. Morgan II (stating that ''if there is a requirement for review based on a certain percentage of investors, we strongly recommend that the required percentage of investors required to direct a review be no less than 25% of each class of securities outstanding''), Prudential II (''Note holders should be permitted to request a credit risk manager review if 25% of the note holders believe a review is warranted. A 25% threshold would

commenter suggested that we consider a majority or plurality of those casting a vote, and that we also specify a quorum requirement.[1063] One commenter suggested that a super-majority would be appropriate.[1064]

With respect to disclosing the report on the findings and conclusions of the review, several commenters recommended that we require a summary of the report instead of the proposed requirement that the full report be filed as an exhibit to Form 10–D because of privacy concerns or potential problems that the requirement would cause with workouts or modifications with delinquent borrowers.[1065]

We also received comments on the selection and appointment of the credit risk manager. Commenters, in general, opposed the proposal to require that the trustee appoint the credit risk manager. Commenters noted that the trustee would not be a suitable party to appoint the credit risk manager and would not be likely to accept the responsibility for appointing the credit risk manager.[1066] Furthermore, commenters generally explained that the appointment by a trustee would be unworkable since the trustee is not typically a party to the transaction until it closes, therefore the trustee would technically not have the authority to appoint the manager until after the transaction closes.[1067] One of these commenters stated that it is important to have details about the manager disclosed in the prospectus so that investors can fully understand their impact on the transaction.[1068]

With respect to the proposed prohibited affiliations between the credit risk manager and certain transaction parties, several commenters supported the proposal, although some commenters suggested that we not permit the credit risk manager to be affiliated with other additional transaction parties, such as the trustee or any investor.[1069] One commenter stated that the credit risk manager should not be affiliated with any party hired by the sponsor or underwriter to perform pre-closing due diligence on the pool assets.[1070] However, one commenter suggested that the proposal to limit affiliations was overly broad.[1071]

Additionally, commenters provided comments about other aspects of the credit risk manager. For example, some commenters recommended that we revise the title ''credit risk manager'' as it may not properly describe its function.[1072] Commenters also stated that it was important for managers to have access to the underlying documents in order to perform their duties.[1073] Some commenters also offered their views about the process and conditions for the removal and replacement of a credit risk manager. One commenter stated that it would be acceptable for the trustee to appoint a new credit risk manager if the existing one needs to be removed or replaced for any reason.[1074] Another commenter suggested that we require an affirmative vote of 25% of the investors in order for investors to initiate replacement.[1075] One commenter recommended that the transaction documents detail the conditions and process for removal.[1076]

(c) Final Rule and Economic Analysis of the Asset Review Provision

We are adopting, as a second shelf eligibility requirement, that the underlying transaction agreements include provisions requiring a review of pool assets in certain situations for compliance with the representations and warranties made with regard to those assets. Under the final rule, the agreements must require a review, at a minimum, upon the occurrence of a two-pronged trigger based first upon the occurrence of a specified percentage of delinquencies in the pool and if the delinquency trigger is met, then upon direction of investors by vote. We have made modifications to the review triggers, discussed below, that we believe help to address some of the cost concerns expressed by commenters for asset classes that historically have seen a limited number of repurchase requests. Because we are unable to predict which asset classes may experience problems in the future, we believe that it is prudent to impose this requirement for all asset classes.[1077]

We have taken into consideration the array of comments received related to the triggers and potential costs, while at the same time balancing the need for stronger mechanisms to enforce underlying contract terms. As we noted above, most transaction agreements lack a specific mechanism for investors to not only identify potential assets that fail to comply with the representations and warranties made but also to resolve a question of whether noncompliance of the representations and warranties constitutes a breach of the contractual provisions. These problems have been compounded by the fact that investors typically cannot make repurchase requests directly, thus they have had to rely upon the trustees who have not enforced repurchase requests in most circumstances. We believe that adopting this shelf provision coupled with the new dispute resolution and investor communication shelf requirements should provide investors with effective tools to address the enforceability of repurchase obligations and help overcome collective action problems. In that regard, we see these shelf requirements working together to help investors enforce repurchase obligations. Our investor communication provision, discussed below, will help investors to communicate with each other in order to determine whether they should vote to direct a review of the assets and later

serve to limit both the number of frivolous claims and any unnecessary credit risk manager expenses.''), and Sallie Mae II (stating that if an investor is allowed to direct a review, among other requirements, the requesting investor must own at least 25% of the outstanding principal balance of the related ABS).

[1063] *See* letter from Metlife II.

[1064] *See* letter from Wells Fargo II.

[1065] *See* letters from ASF III (noting that the report may include confidential or non-public personal information on obligors), CREFC II (stating too much detailed information provided to the public could provide a borrower with an inappropriate advantage in negotiations), MBA III, and Wells Fargo II.

[1066] *See, e.g.,* letters from ABA II (noting that appointing any transaction party is outside the scope of a trustee's duties), ASF III (stating that in conversation with trustees the trustees have indicated their discomfort with appointing a manager), BoA II, J.P. Morgan II, SIFMA III-dealers and sponsors (noting that trustees would not likely accept the responsibility of appointing a manager), and VABSS III (stating that the independent reviewer should be appointed in the relevant agreement but not solely by the trustee).

[1067] *See* letters from ABA II, ABAASA II, ASF III, BoA II, SIFMA II-investors, and VABSS III.

[1068] *See* letter from ABAASA II.

[1069] *See* letters from Better Markets (stating that, to ensure independence, the proposal must provide that the manager have no conflicts of interest with any party including investors), J.P. Morgan II (suggesting that the manager not be affiliated with other transaction parties such as the trustee or any investor), Metlife II (noting that independence from other parties in the securitization is imperative), Prudential II (also stating the manager not be affiliated with the trustee), and SIFMA II-investors.

[1070] *See* letter from SIFMA II-investors.

[1071] *See* letter from MBA III.

[1072] *See* letters from ASF III and VABSS III (both noting that prior credit risk managers had varied functions including loss mitigation and reporting advice to the servicer), and Wells Fargo II (noting that the title ''credit risk manager'' could be misleading because the credit risk manager would not guarantee the credit of an underlying borrower).

[1073] *See* letters from Metlife II, Prudential II, and SIFMA III-dealers and sponsors (generally expressing support for the proposal to require the manager to have access to all underlying documents including the underwriting guidelines and credit underwriting files and any other documents necessary to investigate compliance).

[1074] *See* letter from MBA III (RMBS).

[1075] *See* letter from Prudential II.

[1076] *See* letter from MetLife II.

[1077] We note, for example, that there was not a need to enforce representations and warranties for RMBS and CMBS until the crisis.

whether to initiate a repurchase request. The review of the assets required once certain triggers are met will not only benefit investors in determining whether the assets have breached the representations and warranties but also whether to move forward with a repurchase request. Additionally, should those parties with repurchase obligations fail to address investors' repurchase requests in a timely manner, investors will now have a means to demand resolution through arbitration or mediation. We believe that these transactional safeguards will collectively enhance the enforceability of representations and warranties about the pool assets and provide incentives for obligated parties to more carefully consider the characteristics and quality of the assets that are included in the pool. Therefore, this shelf transaction requirement should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care. We believe that stronger enforcement mechanisms should incentivize issuers to provide investors with accurate and complete information at the time of the offering. It is these transactions that are appropriate for public offerings off a shelf without prior staff review. The magnitude of these benefits will depend on whether the reviewers are able to correctly evaluate the contractual terms to identify non-compliance with the representations and warranties about the pool assets. Such evaluations may be challenging to the extent that the contractual language for the representations and warranties are incomplete or ambiguous. Nonetheless, we conclude that the asset review provision will enhance investor protection for the reasons stated above. We also note that the review requirement we are adopting is similar to post-crisis industry efforts, such as the American Securitization Forum's Project RESTART, which includes repurchase principles for investigating, resolving, and enforcing remedies with respect to representations and warranties in RMBS transactions.[1078] Additionally, some recent CMBS deals have included a provision for a third-party review of the underlying assets.

While we believe that this review requirement will enhance the enforceability of repurchase obligations, we acknowledge that it will also increase costs, particularly on investors, who will incur the expense of the reviews. A group of investors noted that despite the additional costs, increased investor protection will produce net economic benefits to investors.[1079] We expect that the bulk of the costs for this shelf requirement will be incurred with individual reviews of pool assets directed by investors. There will also be some expense arising from retaining a reviewer to conduct the reviews in the form of an annual retainer fee.[1080] Although the exact magnitude of the expenses incurred in connection with the reviews is not possible to predict, we expect that they will depend on the frequency with which a review is triggered and on the extent of the review.[1081] For instance, securitizations of high-risk assets are more likely to meet the delinquency threshold and therefore more likely to undergo a review and incur the review expenses. Additionally, sponsor representations about pool assets characterized by low or no documentation may require more time for the reviewer to examine and therefore may result in higher expenses. We have attempted to mitigate the potential costs by not requiring a review of the assets until after the occurrence of a two-pronged trigger as described below. We expect that investors will weigh the benefits of a review of the assets against the costs and vote for a review only if the benefits justify the costs. This revised approach should address concerns about potentially frivolous review requests being made at the cost of other investors.

We also recognize that our approach to require that a reviewer be engaged at the time of issuance, as opposed to when the above two triggers are met, will be more costly. For asset classes that rarely experience breaches of representations and warranties, the benefits of this shelf provision may be smaller than for other asset classes and thus there may be situations where the costs may be greater than the benefits. We believe, however, that for asset classes where the likelihood of investors using the review provision is low, the upfront retainer fee should also be low. We note also that the requirement that the reviewer be engaged at the time of issuance could potentially create incentive alignment issues. Because of this requirement, a reviewer could seek to be appointed to as many ABS transactions as possible, thus potentially creating an incentive to submit reports favorable to sponsors and win future business from them. This could potentially impact the quality and usefulness of the reports if the reviews are not—or are not perceived as being—objective.[1082] The significance of this problem should be reduced to the extent that the reviewer's compensation is paid by investors, particularly if done so after the objective triggers for the asset reviews are met. In addition, transaction agreements may prescribe mechanisms to replace reviewers in the event of failure to meet their obligations. Finally, reputational concerns could potentially influence reviewers' decisions to adhere to their limited role of determining whether the assets comply with the representations and warranties made. As discussed below, the investors through the trustee, not the reviewer, are responsible for determining whether to initiate a repurchase request.[1083] Furthermore, we have chosen to require that the reviewer be named in the offering documents because the identity and competency of the reviewer is an important consideration for investors in making an ABS investment decision.

(i) Triggers for Review

As noted above, the 2011 ABS Re-Proposal specified two separate events, either of which would trigger a review of the underlying assets under the new shelf eligibility requirement. One proposed trigger would have required a review when the credit enhancement requirements of the transaction are not met. The other proposed trigger would have permitted investors to direct a review of the assets, pursuant to

[1078] *See* letter from ASF III.

[1079] *See* letter from SIFMA II-investors (''The concept of increasing costs to investors in order to increase investor protections is not new. On balance, the strict enforcement of the deal documents by an independent credit risk manager, we believe, will in the ordinary course produce net economic benefits to the investors.'').

[1080] The staff is aware of only several recent unregistered RMBS transactions that include a comparable provision for which we have some cost information. According to Kroll's Pre-Sale Report for J.P. Morgan Mortgage Trust 2013–1, the reviewer will be paid an annual retainer fee of $20,000 for the first six years and $12,000 annually thereafter. The reviewer will also be paid $525 for each mortgage loan subject to a review. *See* Kroll's Pre-Sale Report: J.P. Morgan Mortgage Trust 2013–1 (Mar. 20, 2013). We believe that these costs figures are generally comparable to the costs that RMBS issuers and investors will likely incur in connection with our review requirement. The costs for other asset classes may be more or less than these costs figures depending upon the quality of the assets, the extensiveness of the representations and warranties, and the volume of documents required to review.

[1081] In a typical ABS transaction, fees are paid before distributions are made to investors. We remind issuers that information related to the review fees should be disclosed in accordance with Regulation AB requirements. *See, e.g.,* Items 1109(b)(4) and 1113 of Regulation AB.

[1082] We note that our rules do not mandate the particular contents of the report. Should these reports ultimately include subjective elements, the potential incentive misalignments could increase.

[1083] As we have indicated above, investors have encountered difficulty with getting the trustees to initiate repurchase obligations. We believe that the required report of the conclusions and findings to the trustee, which should provide evidence of any noncompliance, will make it difficult for trustees to ignore possible breaches of the contractual provisions.

procedures specified in the transaction agreements. After taking into account the comments received related to the applicability of the proposed triggers and potential costs, we are modifying the triggers for review.

Under the new shelf eligibility requirement, the pooling and servicing agreement, or other transaction agreement, must provide for a review of assets, at a minimum, upon the occurrence of a two-pronged trigger with the first prong being a percentage of delinquencies in the pool and the second prong being the direction of an investor vote, in each case as specified in the transaction agreements. Because these thresholds are negotiated by sponsors and investors in advance of the ABS issuance, and could vary by asset class, deal structure, or takedown, this approach allows the market to optimize and determine the most effective thresholds, subject to caps discussed below. In developing this two-prong trigger approach, we have attempted to balance some commenters' concerns about potentially unfounded claims by requiring that an objective threshold based on delinquencies first be met while protecting investors' ability to effectively direct a review at a time when rising delinquencies may begin to cause concern that the assets in the pool may not have met the representations and warranties made in the transaction documents.

(a) Delinquency Prong

Rather than tying the trigger to credit enhancement levels, we are adopting an objective trigger based on delinquencies.[1084] As summarized above, although commenters generally supported the requirement of an objective trigger, many stated that the proposed credit enhancement trigger did not easily apply across different asset classes and deal structures.[1085] We received some recommendations for alternative objective triggers and, in particular, commenters noted that a trigger based on delinquencies would work across all deal types.[1086] The amount of delinquencies in an asset pool is a metric that is required to be reported at the time of offering and on an ongoing basis.[1087]

We are not specifying the threshold amount of delinquencies that must first be reached, given the variety of thresholds that may be relevant and the differing approaches offered by commenters. For instance, we note that some ABS transactions include delinquent loans at the onset. Furthermore, the shelf eligibility requirements permit registration of offerings of ABS that include up to 20% of delinquent assets.[1088] We also acknowledge that transaction participants should have some flexibility across deal structures and asset classes so that they may negotiate the terms appropriate for each particular offering, including the appropriate delinquency threshold.[1089] We recognize, however, that providing the transaction parties with such flexibility may impose costs to investors depending on the procedures established. In particular, we recognize that by not prescribing a particular delinquency threshold, transaction parties could theoretically set this threshold high and thereby make it difficult for investors to exercise their rights under this provision. To address this concern, we are requiring disclosure in the prospectus that describes how the delinquency trigger was determined to be appropriate.[1090] The disclosure must include a comparison of the delinquency trigger against the delinquencies disclosed for prior securitized pools of the sponsor for that asset type. Using this disclosure, investors will be able to analyze the reasonableness of the delinquency trigger.

The final rule provides some specificity as to how the delinquency threshold must be calculated in order to provide clarity to issuers and consistency to investors across various transactions and assets classes, and to prevent possible mechanisms from reducing the effectiveness of the trigger. The delinquency prong requires that the delinquency threshold be calculated as a percentage of the aggregate dollar amount of delinquent assets in a given pool to the aggregate dollar amount of all the assets in that particular pool, measured as of the end of the reporting period in accordance with the issuer's reporting obligations. By requiring that the delinquency calculation be measured as a percentage of the aggregate dollar amount of all assets in the pool, the calculation will better reflect the magnitude of delinquencies, as compared to a delinquency calculation measured by counting only the number of delinquent assets without consideration of the delinquent assets' relative dollar values.[1091] Furthermore, to prevent issuers from imposing a higher hurdle to trigger the delinquency threshold for transactions with multiple sub-pools, we are also requiring that the percentage be based on the percentage of delinquencies in the sub-pool. For example, if a transaction has divided the underlying assets into three sub-pools, there will be three separate delinquency trigger calculations. If the delinquencies in one sub-pool triggers an investor vote (and, as explained below, the subsequent vote is attained to trigger a review), the final rule requires that the transaction documents specify, at a minimum, that the assets of the respective sub-pool would be subject to review.[1092] We believe that requiring the delinquency threshold to be calculated on a sub-pool basis also recognizes the notion that investors would be primarily concerned about the

[1084] Current Regulation AB does not establish a standard for determining delinquencies, and we are not providing a definition of delinquency for purposes of the asset review provision. Regulation AB requires disclosure of the methodology for determining delinquencies in the prospectus and accordingly, we expect that the transaction agreements provide the method of determining delinquencies. *See* Item 1101(d) of Regulation AB [17 CFR 229.1101(d)]. If the transaction agreements do not use delinquencies to measure late or non-payment of an underlying obligor, then in order to meet this shelf requirement, a comparable metric measuring late or non-payment should be used and disclosed. As discussed below, the final rule requires disclosure regarding how the delinquency trigger was determined to be appropriate. *See* Item 1113(a)(7)(i) of Regulation AB [17 CFR 229.1113(a)(7)(i)]. Under the new rule, in the case of a transaction using a metric other than delinquencies, disclosure regarding why a different metric is appropriate would need to be included.

[1085] *See* letters from ASF III, BoA II, MBA III, SIFMA II-investors, VABSS III, and Wells Fargo II (all noting that many transactions do not provide for a specific level of credit enhancement to be maintained or the credit enhancement levels build up over time to a target. In these situations, the review would be triggered before there would be any real indication that there have been breaches of representations or warranties).

[1086] *See* letters from ASF III (suggesting objective factors such as cumulative losses, delinquencies or average loss severity be the trigger), Metlife II (noting the review should be based on delinquencies as a percentage of the original subordination for the senior-most class in a transaction), and Prudential II (stating that a review should be triggered if the 60+ day delinquencies percentage is greater than the currently available credit support or if a loan becomes 90 days delinquent within six month of the loan's origination or four months from being included in the pool).

[1087] *See* Items 1100(b), 1101(c), 1105, 1111(c) and 1121(a)(9) of Regulation AB.

[1088] *See* General Instruction I.B.1(e) of Form SF–3.

[1089] We also note that our proposed credit enhancement trigger provided the transaction parties with the flexibility to set the target levels of the credit enhancement requirements so that they could tailor the procedures to each ABS transaction, taking into account the specific features of the transaction and/or asset class.

[1090] *See* Item 1113(a)(7)(i) of Regulation AB.

[1091] We also note that this requirement is similar to how delinquencies are reported by servicers in their monthly reports (as a percentage of the ending pool balance).

[1092] Transaction participants may, however, provide for reviews of additional assets in this instance.

assets that support their respective pool.[1093]

(b) Investor Vote Prong

The underlying transaction documentation must include a provision that, after the delinquency threshold has been reached or exceeded, investors have the ability to vote to direct a review. In formulating the final rule, we considered whether an investor vote would be necessary given that the final rule would require an objective trigger first be satisfied. We appreciate the costs that will be incurred by the investors in connection with these reviews.[1094] Furthermore, we acknowledge that there may be cases where some investors may not wish to incur the cost of an asset review, for example, when the transaction is performing as expected. For these reasons, the review is not automatic but rather must be initiated by investors as specified in the transaction documents. In order to balance the concern that the transaction parties may impose stringent voting requirements in the transaction documents in an effort to diminish investors' voting rights, we have imposed certain restrictions on the voting requirements in response to comments that we received.

Under the final rule, if the transaction agreement includes a minimum investor demand percentage in order to trigger a vote on the question of whether to direct a review, then the maximum percentage of investors' interest in the pool required to initiate a vote may not be greater than 5% of the total investors' interest in the pool (i.e., interests that are not held by affiliates of the sponsor or servicer).[1095] We are imposing this restriction because we believe that a higher threshold will blunt its effectiveness.[1096] Once the requisite percentage of investors' interest seeks to initiate a vote, as required by the transaction agreement, investors will proceed to vote on whether to direct a review. Our interpretation of ''pool,'' as discussed above in connection with the delinquency trigger, is also applicable for the voting procedures. Thus, if there are multiple sub-pools, then the calculation of whether there is the requisite percentage of investors' interest to initiate a vote would be determined based on that particular sub-pool.

Under the proposed rule, the transaction parties would have been given significant flexibility in setting the voting requirements for the investor vote trigger. We are concerned, however, that the transaction parties could establish a high delinquency threshold and high investor vote threshold as noted by one commenter, thus making it difficult for investors to utilize this shelf provision.[1097] We requested comments in the 2011 ABS Re-Proposal on whether we should establish maximum conditions for voting. Commenters offered a range of thresholds from 25% to a supermajority.[1098] Under the final rule, the transaction parties will be able to specify the percentage of investors' interest required to direct a review, provided that the threshold of approval shall be no more than a simple majority of those interests casting a vote. The final rule requires a simple majority of those interests casting a vote as the maximum condition because we believe that a simple majority threshold will help to reduce potentially frivolous claims while also helping to ensure that investors will be able to use the review provision. In addition to imposing restrictions on the voting requirements, we note that issuers are required to provide disclosure in the prospectus regarding the voting procedures for the review under existing Regulation AB, which will permit investors to analyze the reasonableness of the voting procedures.[1099]

We also recognize that the rule may complicate the voting process for investors in transactions that include assets consisting of previously issued ABS. In particular, when trigger conditions for a review are met in connection with the previously issued ABS, the trustee acting on behalf of the investors in the second securitization must vote since they are also investors in the first securitization via the resecuritization. To address this potential issue, each securitization will need to have clearly delineated voting rules and eligibility criteria in the event that some of its investors are through a resecuritization. It is hard for us to evaluate the extent to which this problem may affect the ABS markets because, over the past several years, there have been no registered resecuritizations of RMBS, CMBS, or Auto ABS.

The requirements of this shelf eligibility criterion are meant to be the minimum procedures that should be included in the transaction documents to provide investors with a means to trigger a review of the assets. We acknowledge that transaction parties have and may develop more specific and robust procedures for monitoring and reviewing assets that support the ABS.[1100] The adoption of this rule will not preclude the transaction parties from specifying additional, separate triggers for a review in the transaction agreements, as appropriate for a particular deal or asset class. To clarify, while we are permitting additional triggers to be established by the transaction parties, the final rule does not allow the transaction parties to add additional restrictions or requirements on the two triggers that we are establishing in order to make it more onerous for investors to utilize the provision.

(ii) Scope of the Review

We are also modifying the proposal to add some specificity regarding the scope of the review, since we have changed the objective trigger from being based on credit enhancement to one based on delinquencies and received varied comments regarding the appropriate scope for a review based on delinquencies.[1101] Under the final rule, once both prongs have been met (the delinquencies have reached or exceeded the threshold and investors have voted to conduct a review), a review must be

[1093] *See* letter from Metlife II (noting that the review should be based on delinquencies as a percentage of the original subordination for the senior-most class in a transaction).

[1094] *See* letter from SIFMA II-investors (noting that although the review requirement would result in additional costs, it would also increase investor protections).

[1095] The final rule does not require that the transaction agreement include a minimum investor demand percentage to trigger a vote; rather the final rule requires that if such provision is part of the transaction agreement, then it may require no more than 5% of the total interest in the pool.

[1096] *See* letter from Metlife I (noting that many securitization transactions impose a 25%-in-interest voting threshold before the trustee can be directed by investors to undertake certain actions such as polling investors on questions as to whether to exercise certain rights or remedies, thereby making it difficult for investors to act).

[1097] *See* letter from Metlife II (explaining, for example, that in a case where a transaction agreement requires 25% of all investors to initiate a vote, and 75% of all investors to approve a resolution, the likelihood of meeting a voting threshold would be slim at best).

[1098] *See* letters from J.P. Morgan II and Sallie Mae II (recommending a 25% threshold), MetLife II (suggesting a majority or plurality of those casting a vote), and Wells Fargo II (recommending a supermajority).

[1099] *See* Item 1113(a)(12) of Regulation AB (requiring disclosure regarding allocation of voting rights among security holders).

[1100] For example, the shelf requirement would not preclude an ABS issuer from including a review trigger for any asset delinquent for 120 days or more, without requiring an investor vote, if such a trigger is appropriate for that transaction. The transaction documents for the shelf registration statement would, however, need to include, at minimum, the asset review requirements that we are adopting.

[1101] *See* letters from Metlife II (stating that a random sample of all 60+ day delinquent loans should be reviewed once a review is triggered) and Prudential II (stating that once a review is triggered the reviewer should be required to ''review all 60+ day delinquent loans and prior defaults'').

conducted of all assets that are 60 or more days delinquent as reported in the most recent periodic report, at a minimum, for compliance with the related representations and warranties, as suggested by commenters. We are also adopting, as proposed, that the transaction agreement must provide the reviewer with access to copies of the underlying loan documents in order to determine whether the loan complied with the representations and warranties.[1102] As discussed below, a summary of the reviewer's report must be included in the Form 10–D.[1103]

(iii) Report of the Findings and Conclusions

As proposed, under the final rule, a report of the reviewer's findings and conclusions for all assets reviewed will be required to be provided to the trustee.[1104] The trustee could then use the report to determine whether a repurchase request would be appropriate under the terms of the transaction agreements. We are also requiring, as proposed, that disclosure be provided about any event triggering a review of the assets in the Form 10–D filing for the period in which the event occurred.[1105]

We proposed to require that any report of results provided to the trustee also be filed on periodic report Form 10–D. Commenters generally supported filing the reports on Form 10–D. Several commenters indicated, however, that privacy concerns may arise related to the information about the underlying loans if a full report is filed and recommended that we instead require summaries of the reports.[1106] We are persuaded by commenters that only a summary of the report of the findings and conclusions needs to be included on the Form 10–D. We acknowledge, however, a potential cost of this approach is that investors may not receive all of the information necessary to determine whether the trustee, or another party with demand rights, has made an appropriate decision regarding whether to initiate a repurchase request.

(iv) Selection of the Reviewer

In response to comments received, we are not adopting the proposal to require that the trustee appoint the reviewer. We are requiring, instead, that the pooling and servicing agreement or other transaction agreement provide for the selection and appointment of the reviewer since we believe that the transaction parties should be able to agree on who should serve as the reviewer.[1107]

We are requiring, as proposed, disclosure in the prospectus of the name of the reviewer, its form of organization, the extent of its experience serving as a reviewer for ABS transactions involving similar pool assets, and the manner and amount in which the reviewer is compensated.[1108] ABS investors will benefit from this increased disclosure as they will be able to assess the qualifications of the reviewer. ABS issuers will incur some additional disclosure costs to provide this information. In addition, as proposed, under the new rule disclosure is required with respect to: The reviewer's duties and responsibilities under the governing documents and under applicable law; any limitations on the reviewer's liability under the transaction agreements; any indemnification provisions; any contractual provisions or understanding regarding the reviewer's removal, replacement, or resignation, and how any related expenses would be paid.[1109] In addition, we are adopting, as proposed, a requirement that if, during the reporting period, the reviewer has resigned, or has been removed, replaced or substituted, or if a new reviewer has been appointed, then disclosure regarding the event and circumstances surrounding the change must be provided in the report for the period in which the event occurred.[1110]

We are also adopting a requirement that prohibits the reviewer from being affiliated with certain transaction parties and from performing certain duties due to concerns over potential conflicts of interest. Under the final rule, the reviewer, at a minimum, cannot be affiliated with the sponsor, depositor, servicer, the trustee, or any of their affiliates.[1111] In addition, a conflict may arise if the reviewer is also assigned the responsibility under the transaction documents to determine whether non-compliance with representations and warranties constitutes a breach of any contractual provision. Therefore, the reviewer shall not be the party to determine whether the non-compliance constitutes a breach. We believe that the role of the reviewer should be limited to reviewing the assets' compliance with the representations and warranties since we believe that the investors through the trustee are the most appropriate parties for determining, after reviewing the report of the conclusions and findings, whether to pursue a repurchase claim. In response to comments, particularly in the context of CMBS, the final rule will permit that the reviewer may be the same party serving another role in the transaction, provided that it is not affiliated with the sponsor, depositor, servicer, trustee, or any of their affiliates. As recommended by one commenter, however, the final rules prohibit the reviewer from being the same party or an affiliate of the party hired by the sponsor or underwriter to perform pre-closing due diligence on the pool assets due to the inherent conflict posed by the same party performing the pre-closing review and the review required by this shelf provision.[1112] The reviewer is also prohibited from being affiliated with the trustee in light of several commenters recommending this prohibition given the economic relationships the trustee or its affiliates may have with other transaction parties and the conflicts of interest that such relationships may create.[1113] We have not, however, added investors as a prohibited affiliation, as some commenters requested.[1114] We understand that issuers might view investor affiliation with the reviewer as a possible conflict; however, since issuers will be responsible for selecting the reviewer, they will be able to address any concern. We do not think such an affiliation will likely cause harm or conflict to investors as a whole because, if there is evidence of high or growing delinquencies in the asset pool, it would be in the best interest of investors as a whole to have a review conducted in order to determine whether investors should make a repurchase demand.[1115] Because the

[1102] *See* General Instruction I.B.1(b)(B) of Form SF–3.

[1103] We would expect that the reviewer would conduct the review and provide its report to the trustee in a reasonably prompt manner once the review is triggered.

[1104] *See* General Instruction I.B.1(b)(E) of Form SF–3.

[1105] If the transaction parties decide to include additional triggers beyond the minimum two-prong trigger required by this shelf eligibility rule, then disclosure is required about those trigger events as well.

[1106] *See* letters from ABAASA II, ASF III, CREFC II, MBA III, VABSS III, and Wells Fargo II.

[1107] *See* General Instruction I.B.1(b) of Form SF–3.

[1108] *See* Item 1109(b) of Regulation AB [17 CFR 229.1109(b)].

[1109] *Id.*

[1110] *See* Item 1121(d)(2).

[1111] *See* Item 1101(m) of Regulation AB (defining the reviewer).

[1112] *See* letter from SIFMA II-investors.

[1113] *See* letters from Better Markets, J.P. Morgan II, and Prudential II.

[1114] *See* letters from Better Markets and J.P. Morgan II.

[1115] However, any investor, or affiliate of an investor, affiliated with a sponsor, depositor, or any servicer would not qualify as a reviewer. For example, in the context of CMBS, an investor that

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rule establishes the minimum restrictions on affiliations, the transaction parties could agree to exclude other parties based on their relationships. As proposed, the final rule requires disclosure about those relationships in the prospectus, which will help alert investors to any potential conflicts.[1116]

As noted above, some commenters suggested, as an alternative, that we revert back to an approach proposed in the 2010 ABS Proposing Release. They recommended that we allow issuers of asset classes other than residential mortgages the option to choose between the 2011 ABS Re-Proposal to require review of the assets upon certain triggers being met or the 2010 ABS Proposal to allow for a third-party review opinion.[1117] These commenters explained that the 2010 ABS Proposal for a third-party review opinion would limit costs on the issuers where repurchases have not presented the same difficulties as they have in RMBS.[1118] However, in response to the 2010 ABS Proposal, some commenters stated that the third-party opinion provision would not provide investors with the protection they would need in the event issues arise with the enforcement of representations and warranties provisions because, in general, transaction agreements have not included mechanisms to identify potential breaches of representations and warranties.[1119] The rule we are adopting is designed to protect against potential risks even where they have not surfaced in the past. As noted above, a group of investors commented that despite the additional costs, increased investor protections will produce net economic benefits to investors.[1120] In light of these considerations, rather than permitting a third-party opinion as an alternative requirement for shelf eligibility, we have revised the review process to address the costs concerns.

(3) Dispute Resolution Provision

(a) Proposed Rule

In the 2011 ABS Re-Proposal, along with the credit risk manager proposal, we proposed to require that underlying transaction documents include repurchase request dispute resolution procedures. As we have noted elsewhere, not only have investors lacked a mechanism to identify potential breaches of the representations and warranties, they have also lacked a mechanism to require sponsors to address their repurchase requests in a timely manner.[1121] Under the proposal, the transaction agreements would be required to provide that if an asset subject to a repurchase request pursuant to the terms of the transaction agreements is not repurchased by the end of the 180-day period beginning when notice is received, then the party submitting such repurchase request will have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase must agree to the selected resolution method. As noted above, the dispute resolution provision, along with the other new shelf transaction requirements, should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care. We believe that the dispute resolution provision will enhance the enforceability of the transaction terms and should incentivize issuers to provide investors with accurate and complete information at the time of the offering. We believe that these requirements are appropriate for asset-backed securities transactions to be offered to the public off a shelf registration statement.

(b) Comments on Proposed Rule

Commenters generally supported a dispute resolution process.[1122] Several commenters recommended that we require that binding arbitration be the sole process.[1123] We received a significant number of comments stating that 180 days is an appropriate time period for the obligated party to review repurchase requests.[1124] One commenter stated that 180 days may not be long enough for RMBS.[1125] Another commenter noted that transactions backed by assets that have shorter maturity dates should have a shorter timeframe.[1126] Although the proposed rule did not specifically address payment of the costs of the dispute resolution process, several commenters made recommendations for which party should pay.[1127] We also received comments that we specify that a repurchase is not the only way a repurchase request can be satisfied.[1128]

(c) Final Rule and Economic Analysis of the Dispute Resolution Shelf Requirement

As a third transaction requirement for shelf registration, we are requiring, as proposed but with slight modification, that the underlying transaction documents include dispute resolution procedures for repurchase requests.[1129] We note that our original proposal for the dispute resolution requirement appeared in the same subsection of Form SF–3 as our credit risk manager proposal, even though we intended them to operate separately from each other. Thus, while we believed that our asset review shelf requirement would help investors evaluate whether a repurchase request should be made, we structured the dispute resolution provision so that investors could utilize the dispute resolution provision for any repurchase request, regardless of whether investors direct a review of the assets. We believe that organizing the dispute resolution requirement as a separate subsection in the shelf eligibility requirements will help to

is affiliated with a special servicer would not qualify as a reviewer.

[1116] Item 1119 of Regulation AB requires disclosure of any known, material relationships among the various parties to the transaction and the character of those relationships.

[1117] *See* letters from ASF III, BoA II, and VABSS III. *See also* footnote 1054.

[1118] *See* letters from ASF III, BoA II, and VABSS III.

[1119] *See* letters from ABAASA I, ASF I, BoA I, J.P. Morgan I, Metlife I, Prudential I, SIFMA I, VABSS I, Vanguard, and Wells Fargo I.

[1120] *See* letter from SIFMA II-investors.

[1121] *See* the 2011 ABS Re-Proposal at 47956–57. *See also* the Section 943 Adopting Release at 4489–90.

[1122] *See* letters from ASF III, BoA II, J.P. Morgan II, MBA III, Metlife II, Prudential II, SIFMA III-dealers and sponsors, and Wells Fargo II.

[1123] *See* letters from BoA II, J.P. Morgan II, Prudential II, SIFMA II-investors, SIFMA III-dealers and sponsors, and Wells Fargo II (all noting that binding arbitration would be the best form of dispute resolution).

[1124] *See* letters from ASF III, J.P. Morgan II, Metlife II, and Prudential II.

[1125] *See* letter from MBA III (stating that due to rebuttals it may take longer than 180 days to resolve a dispute).

[1126] *See* letter from Metlife II (stating that 180 days may be too long for shorter term transactions since some investors may hold classes that pay off sooner).

[1127] Nine commenters suggested that the party that loses the dispute should pay for all legal fees incurred by the prevailing party. *See* letters from ABASA II, BoA II, J.P. Morgan II, MBA III, Metlife II, SIFMA II-investors, SIFMA III-dealers and sponsors, and Sallie Mae II. One commenter recommended that the arbitrator should be responsible for determining who pays. *See* letter from Prudential II. Another suggested that the transaction documents specify who pays for the resolution. *See* letter from Wells Fargo II.

[1128] *See* letters from ASF III (stating that the requirement, as written, may have the unintended effect of restricting the resolution of a repurchase request to only repurchasing the asset), MBA III (stating ''given the potential for non-repurchase resolution of a breach, MBA recommends changing the focus of the Re-proposal from 'repurchases' not completed in 180 days to 'resolutions' not completed within 180 days''), and SIFMA II-investors and SIFMA III-dealers and sponsors (noting that remedies for a breach would be ''cure of the breach, repurchase of the affected pool asset for the purchase price specified in the transaction documents, or, if applicable and if provided in the transaction documents, substitution of a pool asset having substantially similar characteristics as the defective pool asset'').

[1129] Disclosure regarding the dispute resolution procedures is required in the prospectus under Item 1111(e) of Regulation AB.

clarify the scope of the dispute resolution provision.

As we have discussed above, the shelf eligibility conditions that we are adopting are intended to help ensure that ABS shelf offerings have transactional safeguards and features that make securities appropriate to be issued off a shelf. We believe that the dispute resolution provision will provide a key procedural safeguard for investors to resolve disputes over repurchase requests in an effective and timely manner. We expect that the dispute resolution provision should generate efficiencies in the repurchase request process. We believe that, as a result of the asset review provision and the dispute provision, sponsors may have an increased incentive to carefully consider the characteristics of the assets underlying the securitization and to accurately disclose these characteristics at the time of the offering. We also believe that investors should benefit from reduced losses associated with nonperforming assets since, as a result of this new shelf requirement, sponsors will have less of an incentive to include nonperforming assets in the pool.

Under the new rule, the transaction agreements must provide that if an asset subject to a repurchase request pursuant to the terms of the transaction agreements is not resolved by the end of the 180-day period beginning when notice is received, then the party submitting such repurchase request will have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase or replace must agree to the selected resolution method.[1130] In response to comments, the final rule applies to those assets subject to a repurchase request that has not been resolved. We agree with several commenters that indicated that the term ''resolved'' is more appropriate than ''repurchased,'' which was proposed, since ''repurchased'' could have the unintended effect of restricting resolution of a repurchase request only to repurchasing the asset.[1131] We also believe that investors should be able to utilize the dispute resolution provision not only in connection with those requests in which the sponsor has failed to respond in a timely manner but also for those requests in which investors believe that the resolution offered by the sponsor does not make them whole.

We realize there are possible costs associated with setting the waiting period at 180 days before the party submitting the request has the right to refer the matter to mediation or arbitration. On the one hand, we recognize that there is the possibility that 180 days may not be long enough to come to a resolution due to numerous rebuttals in some situations, as noted by one commenter.[1132] This commenter recommended that the 180 days serve as a timeframe for due diligence and discussion and that the transaction parties be permitted to specify in the transaction agreements how much additional time beyond the 180 days the responsible party should be provided before the requesting party has the right to refer the dispute to mediation or arbitration. We believe that such an approach, however, may result in investors having to wait too long before being able to proceed to mediation or arbitration. On the other hand, we also recognize that the 180-day period may be too long for shorter term transactions since some investors may hold classes of assets that pay off sooner than 180 days. Although commenters generally supported the 180-day waiting period, one commenter recommended, for shorter term transactions, that the timeframe be reduced to 90 days before investors could proceed to mediation or arbitration.[1133] While we appreciate the timing issues raised by shorter term transactions, it is not clear that 90 days provides the responsible party with enough time to complete due diligence and engage in discussions with the requesting party. For these reasons, we believe 180 days, in general, fairly balances the need of investors for quick resolution with the desire of issuers for time to address the request.

In addition, some commenters recommended that we require binding arbitration as the single form of dispute resolution. Because we believe that investors should have access to all options available to resolve a dispute, we are not requiring a specific form or process to resolve disputes. The final rule permits a demanding party to determine what form of dispute resolution is appropriate.

Finally, after considering the comments received, we are requiring that the transaction documents specify that if arbitration occurs, the arbitrator will determine the party responsible for paying the dispute resolution fees and in the case of mediation, the parties, with the assistance of the mediator, will mutually agree on the allocation of the expenses incurred. While some commenters recommended that the losing party should pay the expenses, we believe that letting the arbitrator or the parties in mediation determine who pays balances competing concerns. On the one hand, some commenters expressed concern about the possibility of investors using the dispute resolution process for frivolous disputes and therefore recommended that we require the transaction documents to specify that the losing party pays.[1134] On the other hand, there may be instances where the requesting party uses the dispute resolution process for a legitimate claim and the arbitrator rules against the claim but believes that the requesting party should not be required to bear all the expenses associated with the dispute resolution.[1135] By giving the arbitrator the discretion to make this determination based on the facts and circumstances of the repurchase claim at issue, we believe investors will not be discouraged from using the dispute resolution process for valid claims while also curbing potentially frivolous claims, given the possibility of having to pay the fees associated with the dispute resolution.

We recognize that the dispute resolution provision could result in increased costs for ABS issuers and investors. We believe that these costs will likely be similar to other securities industry dispute resolution costs, which typically include filing fees, hearing session fees, and other miscellaneous arbitrator or mediator expenses. According to FINRA, arbitration and mediation filing fees depend on the size of the claim and can be up to $500 for an amount in controversy over $100,000.[1136] In addition, the dispute parties will incur the costs of arbitrator/mediator compensation, which depends on the length of the hearing and the complexity of the case. A typical arbitration hearing of three days can cost from $2,700 to $6,750 for an amount in controversy in the $100,000 to $500,000 range.[1137] A typical

[1130] Several commenters asked us to clarify that a repurchase is not the only way a repurchase request can be satisfied. *See* letters from ASF III, MBA III, SIFMA II-investors, and SIFMA III-dealers and sponsors.

[1131] *See* letters from ASF III, MBA III, SIFMA II-investors, and SIFMA III-dealers and sponsors. We made a similar change in an asset-level data point capturing repurchase requests in order to use consistent terminology and to help ensure accurate tracking of the status of repurchase requests. *See* footnote 225.

[1132] *See* letter from MBA III.

[1133] *See* letter from MetLife II.

[1134] *See, e.g.,* letters from BoA II, J.P. Morgan II, and MBA III.

[1135] *See* letter from Prudential II.

[1136] For more information about securities-related arbitration and mediation, including typical costs, see FINRA's Dispute Resolution Web site, *http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/.*

[1137] *See* FINRA Manual, Section 12902, Hearing Session Fees, and Other Costs and Expenses, *available at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4190.*

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mediation hearing of one day can cost between $1,000 and $6,400.[1138] The parties will also incur attorneys' fees with arbitration or mediation hearings, which will depend upon the length of the hearing, the number of attorneys involved, and the amount of preparation required.

Because the dispute resolution provision is not limited strictly to repurchase requests connected with a review pursuant to the asset review provision, there is a possibility that frivolous repurchase requests could be made and thus subject to the dispute resolution process. As discussed above, under the final rule the requesting party could be responsible for paying the dispute resolution expenses based on a determination by the arbitrator (or if the parties mutually agree that the requesting party should incur these expenses in the case of mediation). This is intended to limit the number of potentially frivolous claims.

(4) Investor Communication

(a) Proposed Rule

In the 2011 ABS Re-Proposing Release, we proposed, as a shelf eligibility requirement, a method for facilitating investor communication with other investors related to their rights under the terms of the ABS. In particular, the proposed rule would require that the transaction agreements contain a provision requiring the party responsible for filing the Form 10–D to include in ongoing distribution reports on Form 10–D any request received from an investor to communicate with other investors related to investors exercising their rights under the terms of the asset-backed security. The request to communicate would be required to include: the name of the investor making the request, the date the request was received, and a description of the method by which other investors may contact the requesting investor. As we discussed in the 2011 ABS Re-Proposing Release, investors have raised concerns about the inability to locate other investors in order to enforce rights contained in the transaction documents, such as those relating to the repurchase of underlying assets for breach of representations and warranties.[1139] Frequently, in order to act, the transaction agreements require a minimum percentage of investors acting together. Additionally, as one investor noted, since most ABS are held by custodians or brokers in ''street name'' through the Depository Trust Company (DTC), investors face further difficulties in trying to locate one another to communicate about exercising their investor rights.[1140]

While we did not propose specific procedural requirements for verifying that the person requesting to communicate is a beneficial owner of the particular ABS, we proposed to include an instruction to limit investor verification requirements, if the underlying transaction agreements contain such procedures, to no more than the following: (1) If the investor is a record holder of the securities at the time of a request to communicate, then the investor would not have to provide verification of ownership because the person obligated to make the disclosure will have access to a list of record holders; and (2) if the investor is not the record holder of the securities at the time of the request to communicate, the person obligated to make the disclosure must receive a written statement from the record holder verifying that, at the time the request is submitted, the investor beneficially held the securities.

(b) Comments on Proposed Rule

Many commenters were generally supportive of the concept to allow for mechanisms for investors to contact and communicate with each other.[1141] Some commenters generally supported the proposal that investors' requests to communicate be reported on Form 10–D.[1142] Other commenters suggested that the Commission allow for alternative methods of communication and recommended that the Commission permit the use of investor registries and trustee Web site processes currently in practice for many recent CMBS transactions.[1143] Some of these commenters noted that it would be quicker for investors to communicate with each other on a Web site compared to requiring the issuer to include the notice on Form 10–D and would be less costly.[1144] One of these commenters also recommended a Web site approach because it would provide investors with more privacy, which investors may want in certain situations.[1145] The other commenter noted that a Web site approach could provide investors with an open and instant dialogue with other investors.[1146]

Commenters suggested other methods to simplify the verification process. One commenter opposed the proposed instruction on how an investor's ownership of the securities is verified because most certificates are held through DTC, which may make it difficult and costly to determine who the ultimate holders are.[1147] Several commenters suggested requiring investors to complete a certification regarding their ownership.[1148] Another commenter suggested a written certification plus one or more items to verify interest.[1149] One commenter suggested that the right to communicate be limited to current investors and that the nature of communication be limited to a ''factual statement that the investor wishes to communicate with other investors with respect to exercising a right under the transaction documents.'' [1150] This commenter explained that limiting the nature of the

See also Seth Lipner, *Is Arbitration Really Cheaper?,* Forbes, July 14, 2009, *available at http://www.forbes.com/2009/07/14/lipner-arbitration-litigation-intelligent-investing-cost.html* (stating that the average arbitration requires three days of hearings).

[1138] *See* FINRA's Mediation Web site, *http://www.finra.org/ArbitrationAndMediation/Mediation/Process/MediationSessions/index.htm* (stating that mediations usually take one day). We used mediation hourly rates provided by the American Arbitration Association for cost estimates for mediation since FINRA does not provide information on mediator's hourly rates. For more information about the costs of mediation, see the American Arbitration Association's Web site, *www.adr.org.*

[1139] *See* the 2011 ABS Re-Proposing Release at 47959. *See also* Alex Ulam, *Investors Try to Use Trustees as Wedge in Mortgage Put-Back Fight,* American Banker (June 24, 2011) (noting that many attempted put-backs have ''flamed out after investor coalitions failed to get the 25% bondholder votes that pooling and servicing agreements require for a trustee to be forced to take action against a mortgage servicer''); Tom Hals & Al Yoon, *Mortgage Investors Zeroing in on Subprime Lender,* Thomson Reuters (May 9, 2011) (noting that gathering the requisite number of investors needed to demand accountability for faulty loans pooled into investments is a laborious task).

[1140] *See* letter from MetLife I. DTC is a securities depository and a clearing agency registered with the Commission and provides settlement services, including immobilizing securities and making book-entry changes to ownership of securities deposited by its participants, in order to facilitate the end-of-day net settlement in multiple markets. For a more detailed description of DTC's services see *The Depository Trust Company Assessment of Compliance with the CPSS/IOSCO Recommendations for Securities Settlement Systems* (Dec. 12, 2011), *http://dtcc.com/en/legal/policy-and-compliance.aspx.*

[1141] *See* letters from ABA II, ABAASA II, ASF III, BoA II, CREFC II, ICI II, MBA III, Metlife II, Prudential II, VABSS III, and Wells Fargo II.

[1142] *See* letters from ASF III, BoA II, ICI II, Metlife II, and VABSS III.

[1143] *See* letters from ABA II, ABAASA II, ASF III, BoA II, CREFC II, Metlife II, MBA III, Prudential II, VABSS III, and Wells Fargo II.

[1144] *See* letters from CREFC II and Wells Fargo II.

[1145] *See* letter from CREFC II.

[1146] *See* letter from Wells Fargo II.

[1147] *See* letter from CREFC II.

[1148] *See* letters from MBA III and Wells Fargo II.

[1149] *See* letter from ABA II (stating ''in circumstances in which rapid verification of investor status has been required, trustees have accepted screen shots from DTC, letters from registered broker-dealers affirming the identity of the beneficial owner on whose behalf they hold a position, and copies of trade confirmations'').

[1150] *See* letter from MBA III.

communication would eliminate any need for the filing party to monitor or edit the communication and also would address any liability concerns associated with the inclusion of references to a specific party to the transaction or as to what contractual standard may have been violated. Responding to a request for comment in the 2011 ABS Re-Proposing Release,[1151] some commenters stated the disclosure should include a reason for the communication that would be specified in a pre-set list.[1152] One commenter, however, opposed requiring the issuer to disclose the type or category of matter that the investor wishes to discuss with other investors.[1153]

(c) Final Rule and Economic Analysis of the Investor Communication Shelf Requirement

We are adopting, as proposed, a shelf eligibility requirement that an underlying transaction agreement include a provision to require the party responsible for making periodic filings on Form 10–D to include in the Form 10–D any request from an investor to communicate with other investors related to an investor's rights under the terms of the ABS that was received during the reporting period by the party responsible for making the Form 10–D filings.[1154] Without an effective means for investors to communicate with each other, investors may be unable to utilize the contractual rights provided in the underlying transaction agreements.[1155] Therefore, we are requiring that the investor communication provision be included in an underlying transaction agreement so that the party responsible for making Form 10–D filings will be contractually obligated to disclose an investor's desire to communicate.[1156] We continue to believe that this is an appropriate requirement for ABS shelf eligibility because facilitating communications among investors enables them to more effectively exercise the rights included in the underlying transaction agreements, which we believe will enhance the enforceability of representations and warranties regarding the pool assets. As noted above, the new shelf transaction requirements should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care. We believe that stronger enforcement mechanisms should incentivize issuers to provide investors with accurate and complete information at the time of the offering. This shelf eligibility requirement, for example, will assist investors in exercising their rights related to the new asset review provision required for shelf eligibility. Those rights would include the right to direct a review of underlying assets to determine whether the assets comply with the representations and warranties. Consequently, we believe that these new shelf requirements aimed at helping investors exercise their contractual rights will assist in increasing investors' participation in the ABS markets and thereby foster greater capital formation.

In previous releases, we have recognized that in certain circumstances the Internet can present a cost-effective alternative or supplement to traditional disclosure methods. We considered whether a Web site or investor registry would be a more effective approach to facilitate investor communication, including consideration of the comments received supporting a Web site approach. While we appreciate some of the potential benefits that may be afforded by a Web site approach, such as faster dissemination of the notices and more robust communication capabilities as noted by some commenters,[1157] we believe that requiring that the investor communication notices be filed with the Form 10–D is the best way to ensure that these requests reach investors. This approach is consistent with our efforts to facilitate the distribution of all investor information regarding the ABS in one place at an expected time—that is, through distribution reports that are attached as exhibits to the Form 10–D. We also believe that this approach is a cost-effective means for issuers to provide investors with communication notices since we are using an existing periodic report. Additionally, by requiring issuers to file the notices with the Commission, as opposed to posting the notices on a Web site, we will be able to more effectively monitor compliance with this shelf requirement and provide investors with reliable access to the notices through EDGAR, even at times when the markets are in distress and issuers' Web sites are not accessible. Finally, we note that while our shelf requirement is intended to provide investors with at least one method to contact other investors, the final rule does not preclude issuers from utilizing Web sites to provide investors with more robust communications capabilities and we encourage issuers to do so.

We acknowledged in the 2011 ABS Re-Proposing Release that transaction parties might want to specify procedures in the underlying transaction agreements for verifying the identity of a beneficial owner in a particular ABS prior to including a notice in a Form 10–D. While we did not propose specific procedural requirements to be added to the agreements, we did propose to limit the extent of the verification procedures that the transaction parties could impose to verify investor ownership. As summarized above, several commenters consisting of issuers, investors, trustees, and trade associations suggested that the investor verification procedures should be easy and quick to perform and provided various recommendations for the Commission to consider.[1158] Taking into account suggestions from commenters, we are modifying part of the proposed instruction to specify that, if the investor is not the record holder of the securities, an issuer may require no more than a written certification from the investor that it is a beneficial owner and another form of documentation such as a trade confirmation, an account statement, a letter from the broker or dealer, or other similar document verifying ownership.[1159] We are making this

[1151] *See* Request for Comment No. 43 in the 2011 ABS Re-Proposing Release (requesting comment as to whether a pre-set list of reasons for communication should be required—the pre-set list would include the following categories: Servicing, trustee, representations and warranties, voting matters, pool assets, and other).

[1152] *See* letters from ABAASA II and BoA II.

[1153] *See* letter from ABA II (noting its belief that ''such information is more appropriately conveyed directly by the investor itself and should not be given an imprimatur of the issuer (or trustee) involved in facilitating the request'').

[1154] Most ABS issuers report and distribute payments to investors on a monthly basis. The Form 10–D is required to be filed within fifteen days after a required distribution date, and a distribution date is typically two weeks after the end of a reporting period. For example, under our final rule, for the month of June, a request from an investor would have to be received prior to the close of the reporting period on June 30, a distribution would be due to investors by July 15, and the Form 10–D filing due date would be July 30.

[1155] *See* Paul A. Burke & Michael C. Morcom, *Improving Issuer-Investor Communication in U.S. Securitization Transactions,* J. Structured Fin., Summer 2013, at 27–31 (discussing the problems associated with the current communication process between issuers and investors and arguing that ''[a] critical piece of an effective bondholder communication system is [the] initial 'push' of information out to the investor'').

[1156] *See also* new Item 1121(e) (requiring disclosure of investors' request to communicate on Form 10–D).

[1157] *See, e.g.,* letters from CREFC II and Wells Fargo II.

[1158] *See* letters from ABA II, BoA II, CREFC II, and MBA III.

[1159] We note that these ownership verification procedures are less prescriptive than the ownership eligibility requirements to submit a proposal under Exchange Act Rule 14a–8; however, we believe that this flexibility is appropriate because the provision is more limited in its scope to only providing

Continued

change since ownership of most ABS is held in book-entry form through DTC.[1160] We are also adopting, as proposed, the other part of the instruction that states that if the investor is the record holder of the securities, an investor will not have to provide verification of ownership because the person obligated to make the disclosure will have access to a list of record holders.

Under the final rule, the disclosure in Form 10–D is required to include no more than the name of the investor making the request, the date the request was received, a statement to the effect that the party responsible for filing the Form 10–D has received a request from such investor, stating that such investor is interested in communicating with other investors about the possible exercise of rights under the transaction agreements, and a description of the method by which other investors may contact the requesting investor.[1161] While we requested comment on whether we should prescribe a pre-set list of objective categories from which an investor could choose for the purpose of indicating why it is requesting communication with other investors, we are not requiring that the investor specify the substance of the communication due to concerns raised by commenters. As summarized above, some commenters opposed imposing any obligation on the party responsible for filing the Form 10–D to monitor or edit the communications.[1162] We also agree with one commenter that the substance of the communication is more appropriately conveyed directly by the investor and should not be given an imprimatur of the party involved in facilitating the communication request.[1163] Thus, the purpose of this communication requirement is not to communicate specific issues or concerns of an investor but rather is intended to be a method for investors to notify other investors of their interest to communicate.

As proposed, we are also including an instruction to Item 1121(e) of Regulation AB to define the type of notices that are required to be on Form 10–D. The party responsible for filing the Form 10–D will be required to include disclosure of only those notices of an investor's desire to communicate where the communication relates to the investor exercising its rights under the terms of the ABS. Thus, the party responsible for filing is not required to disclose an investor's desire to communicate for other purposes, such as identifying potential customers or marketing efforts.[1164]

While we acknowledge that issuers will incur some cost to implement this provision, we believe, taken together with the new asset review provision, that the disclosure will benefit investors by helping them establish communication and overcome collective action problems. As a result, this requirement should help investors exercise their rights under the transaction agreements, including those that are required to be included in the transaction documents to comply with shelf eligibility requirements. We acknowledge that the rule will minimally increase the costs for the party responsible for making the periodic filings on Form 10–D since it will need to modify its existing information systems to receive investors' requests to communicate. However, this is a very low cost method to help distinguish shelf appropriate ABS offerings. The Form 10–D is an existing periodic report that provides investors with, among other things, distribution information and pool performance information for the distribution period. Given the nature and frequency of the Form 10–D, we believe that adding the investor communication request requirement to the Form 10–D is appropriate and beneficial to investors because it will facilitate the distribution of all investor information regarding the ABS in one place, at an expected time. Using an existing form will also limit the cost for issuers because a separate reporting mechanism will not be necessary. While we have sought to limit costs by using Form 10–D, we recognize for those issuers that currently offer investor registries or Web sites and decide to continue to offer those methods of communication that there will be additional costs.

(b) Shelf Eligibility—Registrant Requirements

In the 2010 ABS Proposing Release, we proposed new registrant requirements related to compliance with the proposed transaction requirements for shelf eligibility (i.e., risk retention, a third-party opinion provision in transaction agreements, an officer certification, and an undertaking to file ongoing Exchange Act reports).[1165] We proposed that prior to filing a registration statement on proposed Form SF–3 to the extent the depositor, any issuing entity that was previously established by the depositor, or an affiliate of the depositor is or was at any time during the previous twelve months required to comply with the proposed transaction requirements of Form SF–3 with respect to a previous offering of asset-backed securities involving the same asset class, such depositor, each such issuing entity, and any affiliate of the depositor must have filed all material required to be filed during the twelve months (or shorter period that the entity was required to have filed such materials). Also, such material, other than certain specified reports on Form 8–K, must have been filed in a timely manner.[1166] Finally, we proposed a separate registrant requirement that there be disclosure in the registration statement stating that the proposed registrant requirements have been complied with.

In light of the changes to proposed amendments to the transaction requirements for shelf eligibility, we revised the proposed registrant requirements to make conforming changes in the 2011 ABS Re-Proposal. We re-proposed that to the extent the depositor, any issuing entity that was previously established by the depositor, or any affiliate of the depositor is or was at any time during the twelve month look-back period required to comply with the proposed transaction requirements of Form SF–3 with respect to a previous offering of asset-backed securities involving the same asset class then the registrant must meet certain registrant requirements at the time of filing the shelf registration statement. The re-proposed registrant requirements would require that such depositor, each such issuing entity, and any affiliate of the depositor must have timely filed all required certifications and all transaction agreements that contain the required provisions relating to the credit

notification to other investors of their interest to communicate.

[1160] *See* letter from CREFC II (explaining that although the trustee can request a list of beneficial owners from DTC, the process can be costly and can take days or weeks to complete).

[1161] *See* Item 1121(e) and Item 1.B. of Form 10–D.

[1162] *See* letters from ABA II and MBA III.

[1163] *See* letter from ABA II.

[1164] To the extent an investor wishes to communicate with other investors about other matters, the investor must consider independently the potential applicability of other regulatory provisions under the federal securities laws. For example, an investor proposing to commence a tender offer for securities in the ABS class must evaluate whether such a communication is subject to Exchange Act Sections 14(d) and 14(e) and Regulations 14D and 14E thereunder.

[1165] For a list of existing shelf eligibility conditions that we are including in new Form SF–3, see footnote 874.

[1166] *See* General Instruction I.A.2 to Form SF–3.

risk manager, repurchase request disputes, and investor communication.

In addition, we re-proposed to make the proposed separate registrant requirement that would have required the registrant to include disclosure in the registration statement stating the depositor has complied with the registrant requirements an instruction rather than a shelf eligibility registrant requirement.

Because we did not receive any comments on the revised registrant requirements for shelf eligibility, we are adopting the revised registrant requirements largely as re-proposed. Under the final rule, we are retaining the registrant requirement that was previously in Form S–3 relating to delinquent filings of the depositor or an affiliate of the depositor for purposes of new Form SF–3. Since registrants are already required to comply with this particular existing shelf registrant requirement, registrants should not incur additional compliance costs.

The final rule also requires that to the extent the depositor or any issuing entity that was previously established by the depositor, or any affiliate of the depositor is or was at any time during the twelve month look-back period required to comply with the transaction requirements of Form SF–3 with respect to a previous offering of asset-backed securities involving the same asset class, then such depositor, each such issuing entity, and any affiliate of the depositor, must have timely filed all required certifications and all transaction agreements that contain the required provisions relating to the asset review provision, dispute resolution, and investor communication.

We believe that connecting the registrant requirements to the transaction requirements of prior offerings by the depositor, or affiliates of the depositor, will incentivize the depositor to timely file all required transaction documents with the required provisions and the required certifications.

In addition, as proposed, we are including an instruction stating that the registrant must disclose in a prospectus that it has met the registrant requirements. We believe disclosure of compliance with the registrant requirements will provide a means for market participants (as well as the Commission and its staff) to better gauge compliance with the shelf eligibility conditions of Form SF–3.

(c) Annual Evaluation of Form SF–3 Eligibility in Lieu of Section 10(a)(3) Update

(1) Annual Compliance Check Related to Timely Exchange Act Reporting

(a) Proposed Rule

As we noted in the 2010 ABS Proposing Release, Form S–3 eligibility is determined at the time of filing the registration statement and again at the time of updating the registration statement under Securities Act Section 10(a)(3) by filing audited financial statements.[1167] We explained that, because ABS registration statements do not contain financial statements of the issuer, we believe a different periodic determination of continued shelf eligibility must be established. We believed that such an evaluation would provide us and the staff with a better means to oversee compliance of the new Form SF–3 eligibility conditions that would replace the investment-grade ratings requirement. Therefore, in lieu of the Section 10(a)(3) updating, we proposed to revise Securities Act Rule 401 to require, as a condition to conducting an offering off an effective shelf registration statement, an annual evaluation of whether the Exchange Act reporting registrant requirements have been satisfied. An ABS issuer wishing to conduct a takedown off an effective shelf registration statement would be required to evaluate whether the depositor, any issuing entity previously established by the depositor or any affiliate of the depositor that was required to report under Sections 13(a) and 15(d) of the Exchange Act during the previous twelve months for asset-backed securities involving the same asset class, have filed such reports on a timely basis, as of 90 days after the end of the depositor's fiscal year end.[1168] Under this proposal the related registration statement could not be utilized for subsequent offerings for at least one year from the date the depositor or the affiliated issuing entity that had failed to file Exchange Act reports then became current in its Exchange Act reports (and the other requirements had been met).

(b) Comments on Proposed Rule

We received only a few comments on our proposal. One commenter expressed concern that it is not possible for ABS issuers to fully verify compliance with the Exchange Act reporting registrant requirements as of 90 days after the end of the depositor's fiscal year end because there could be an unknown defect, latent or otherwise, in one or another of the relevant issuing entities' reports or reporting history.[1169] Another commenter suggested that the loss of shelf eligibility should not be automatic.[1170] This commenter suggested allowing for an explanation and any resulting penalty should be at the staff's discretion.[1171]

(c) Final Rule and Economic Analysis of the Final Rule

Under the new rule, an ABS issuer with an effective shelf registration statement will be required to evaluate whether the depositor, any issuing entity previously established by the depositor or any affiliate of the depositor was required to report under Sections 13(a) or 15(d) of the Exchange Act during the previous twelve months for asset-backed securities involving the same asset class, have filed such reports on a timely basis. As noted above, one commenter expressed concern that ABS issuers would be unable to fully verify compliance with the Exchange Act reporting registrant requirements as of 90 days after fiscal year end due to an unknown defect in one or another of the relevant issuing entities' periodic reports or reporting history.[1172] We note that this annual compliance check is the same evaluation undertaken today by registrants at the time of filing the registration statement and at the time of filing Form 10–K; therefore, we expect that issuers would use the same procedures that are used to verify compliance at the time of filing the registration statement. As a result, this rule conforms the ABS process to the corporate issuers' process. Additionally, we believe that the costs will be minimal and limited to ABS issuers performing the same procedures they perform at the time of filing a registration statement. We believe that

[1167] 15 U.S.C. 77j(a)(3).

[1168] *See* the 2004 ABS Adopting Release at 1525 (noting our belief that given past deficiencies in Exchange Act reporting compliance in the ABS sector that issuers that fail to comply with their responsibilities under the Exchange Act for prior transactions should not continue to receive the benefits of shelf registration and, further, that issuers should not be able to create a new special purpose depositor to avoid the consequences of Exchange Act reporting noncompliance).

[1169] *See* letter from ASF III.

[1170] *See* letter from SIFMA III-dealers and sponsors.

[1171] *Id.*

[1172] *See* letter from ASF III (also suggesting that we follow Rule 401(g) and deem the registration statement to be filed on the proper registration form unless and until the Commission notifies the issuer of its objection). We note that Rule 401(g) applies to automatically effective registration statements, and those are not the type of registration statements in question here.

this annual shelf eligibility compliance check will benefit investors because it will encourage issuers to file their Exchange Act reports in connection with prior offerings at the required time and therefore enhance informed investment decisions. We acknowledge, however, that there will be costs to those issuers that determine, as a result of their annual evaluation, that they did not timely file their Exchange Act reports and lose shelf access since they will be required to use Form SF–1. These costs are related to market timing given the possibility of additional staff review that may occur with a Form SF–1 compared to Form SF–3. We believe that this new provision simply ensures that the shelf process for ABS includes a mechanism to check whether the shelf issuer is current and timely with its Exchange Act reporting obligations as is currently required for corporate shelf issuers.

(2) Annual Compliance Check Related to the Fulfillment of the Transaction Requirements in Previous ABS Offerings

(a) Proposed Rule

In the 2010 ABS Proposing Release, we also proposed to require that, for continued shelf eligibility, an ABS issuer would be required to conduct an evaluation at the end of the fiscal quarter prior to the takedown of whether the ABS issuer was in compliance with the proposed transaction requirements relating to risk retention, third-party opinions, the officer certification, and the undertaking to file ongoing reports. If the ABS issuer was not in compliance with the transaction requirements, then it could not utilize the registration statement or file a new registration statement on Form SF–3 until one year after the required filings were filed.

In the 2011 ABS Re-Proposal, we re-proposed this registrant requirement to require an annual evaluation of compliance with the transaction requirements of shelf registration rather than an evaluation on a quarterly basis as we had originally proposed. Therefore, notwithstanding that the registration statement may have been previously declared effective, in order for the registrant to conduct a takedown off an effective registration statement, an ABS issuer would be required to evaluate, as of 90 days after the end of the depositor's fiscal year end, whether it meets the registrant requirements. Under the 2011 ABS Re-Proposal, to the extent that the depositor or any issuing entity previously established by the depositor or any affiliate of the depositor, is or was at any time during the previous twelve months, required to comply with the proposed new transaction requirements related to the certification, credit risk manager and repurchase dispute resolution provisions, and investor communication provision, with respect to a previous offering of ABS involving the same asset class, such depositor and each issuing entity must have filed on a timely basis, at the required time for each takedown, all transaction agreements containing the provisions that are required by the proposed transaction requirements as well as all certifications.

In response to commenters' concerns that the one-year penalty for non-compliance with the transaction requirements was too extreme, we revised and re-proposed to allow depositors and issuing entities to cure any failure to file the required certification or transaction agreements with the required shelf provisions. Under the proposed cure mechanism, the depositor or any issuing entity would be deemed to have met the registrant requirements, for purposes of Form SF–3, 90 days after the date all required filings were made.

(b) Comments on Proposed Rule

Commenters recommended that we reduce the waiting period after curing the deficiency. Some commenters requested that the waiting period after curing the deficiency be reduced to 30 days.[1173] Another commenter recommended changing the period to 30 or 45 days.[1174]

(c) Final Rule and Economic Analysis of the Final Rule

The final rule includes a registrant requirement that requires an annual evaluation of compliance with the transaction requirements of shelf registration, as re-proposed in the 2011 ABS Re-Proposing Release. Under the final rule, notwithstanding that the registration statement may have been previously declared effective, in order to conduct a takedown off an effective shelf registration statement, an ABS issuer would be required to evaluate, as of 90 days after the end of the depositor's fiscal year end, whether it meets the registrant requirements, which is the same look-back period for the ABS issuer as the compliance evaluation for Exchange Act reporting described above.

Under the final rule, a depositor and issuing entity may cure the deficiency if it subsequently files the information that was required. After a waiting period, it will be permitted to continue to use its shelf registration statement.[1175] Under the cure mechanism, the depositor and issuing entity will be deemed to have met the registrant requirements, for purposes of Form SF–3, 90 days after the date all required filings are filed.

Because the issuer can cure the deficiency while it continues to use the shelf and before the required annual evaluation, the issuer can avoid being out of the market. For example, a depositor with a December 31 fiscal year end has an effective shelf registration statement and on March 30 of Year 1, it evaluates compliance with all registrant requirements under new Rule 401(g) (90 days after the last fiscal year end) and determines that it is in compliance. The depositor then offers ABS but does not timely file the required transaction agreements that should have been filed on June 20 of Year 1. The depositor would be able to continue to use its existing shelf until it is required to perform the annual evaluation required by new Rule 401(g), on March 30 of Year 2. After March 30 of Year 2 and until June 20 of Year 2 (one year after the agreements should have been filed), the depositor would not be able to offer ABS off of the shelf registration statement, and would not be permitted to file a new shelf registration statement. However, if the depositor had cured the deficiency by filing the agreements on July 1 of Year 1, under the final rule, a new registration statement could be filed 90 days after July 1 of Year 1 (or September 29 of Year 1), instead of waiting until June 20 of Year 2 (when it otherwise would meet the twelve month timely filing requirement). In that case, at the time of the next annual evaluation for the registration statement on March 30 of Year 2, the depositor would be deemed to have met the registrant requirements because it would have cured the deficiency more than 90 days earlier on July 1 of Year 1, and thus the depositor could continue to use its existing shelf registration statement.[1176]

[1173] *See* letters from CREFC II and Kutak.

[1174] *See* letter from MBA III.

[1175] Curing the deficiency also allows the depositor, or its affiliates, to file a new registration statement if it also meets the other registrant requirements. *See* General Instruction I.A.1. of Form SF–3. As we emphasized in the 2011 ABS Re-Proposing Release, failure to file the information required (i.e., the required certification and transaction agreements with required provisions) will be a violation of our rules, and subject to liability accordingly. Furthermore, failing to provide disclosure at the required time periods may raise serious questions about whether all required disclosure was provided to investors prior to investing in the securities.

[1176] Using the example above, if the failure occurs in the first 90 days of the year before the March 30 annual compliance evaluation, but the issuer

Our approach is designed to strike a balance between encouraging issuers' compliance with the shelf transaction requirements and commenters' concerns that the one-year time out period in the 2010 ABS Proposals was too long. Also, as discussed above, we received comments that 90 days was still too long and that a 30 or 45 day waiting period would be more appropriate.[1177] We continue to be concerned that 30 or 45 days would not adequately incentivize issuers to comply with the transaction requirements. Based on staff observations of shelf offerings since the crisis, registrants typically conduct between two and three offerings during the course of a year. Under such conditions, a short waiting period such as 30 or 45 days would provide minimal, if any, incentive to comply with transaction requirements.

We are not adopting another commenter's suggestion that the loss of shelf eligibility not be automatic and that issuers should instead be allowed to explain and be penalized at the staff's discretion.[1178] The eligibility requirement is an incentive for issuers to comply with the shelf transaction requirements—providing the market with information about the issuer and thus an appropriate eligibility criterion to offer securities off the shelf. Furthermore, an ad hoc review of justifications for delays or missing filings would be inefficient use of the Commission's resources and would not incentivize issuers to monitor compliance.

We believe that the annual shelf eligibility compliance check will benefit investors because it will encourage issuers to file their transaction documents in connection with prior offerings at the required time and therefore enhance informed investment decisions. We acknowledge that the annual evaluations of compliance with the transaction requirements will impose additional costs on ABS issuers in the form of systems needed to examine compliance with the filing requirements. However, we believe that these costs should be minimal because issuers should already have, in most instances, systems designed to ensure that the transaction agreements are being filed timely in accordance with rules under the Securities Act.

4. Continuous Offerings

(a) Proposed Rule

In the 2010 ABS Proposing Release, we had proposed to amend Rule 415 to limit the registration of continuous offerings for ABS offerings to ''all or none'' offerings. In an ''all or none'' offering, the transaction is completed only if all of the securities are sold. In contrast, in a ''best-efforts'' or ''mini-max'' offering, a variable amount of securities may be sold by the issuer. In those latter cases, because the size of the offering would be unknown, investors would not have the transaction-specific information and, in particular, would not know the specific assets to be included in the transaction. Thus, information about the asset pool required by Item 1111 of Regulation AB, either in its existing form or as amended today, could not be complied with.[1179] As noted in the 2010 ABS Proposing Release, we believe that our proposed restriction would help ensure that ABS investors receive sufficient information relating to the pool assets, if an issuer registered an ABS offering to be conducted as a continuous offering.[1180]

(b) Comments on Proposed Rule

Only one commenter commented on the proposal to limit the use of continuous offerings on shelf to ''all or none'' offerings.[1181] This commenter agreed that ''in a continuous offering where the ultimate size of the offering is unknown, investors would not necessarily know the specific assets to be included in the transaction'' and the proposal properly eliminates this issue. However, this commenter suggested more guidance on what constitutes an ''all or none'' offering.[1182]

(c) Final Rule and Economic Analysis of the Final Rule

We are adopting the rule as proposed. The new rule will provide ABS investors in continuous ABS offerings with information about all relevant pool assets and would close a potential gap in our regulations for ABS offerings. Under the final rule, the continuous offering must be commenced promptly and must be made on the condition that all of the consideration paid for such security will be promptly refunded to the purchaser unless (A) all of the securities being offered are sold at a specified price within a specified time, and (B) the total amount due to the seller is received by the seller by a specified date.[1183]

As one commenter noted, in some ABS offerings, all or a portion of one or more classes of ABS that are offered for sale to investors through one or more underwriters may initially be retained by the depositor or sold to one or more of its affiliates.[1184] In these cases, the offerings may be conducted as a firm commitment underwritten offering or as a best efforts offering. The commenter believed that such offering would not be a ''mini-max'' offering because the total size of the offering is known and disclosed in the prospectus. We agree with the commenter that these offerings would not be a ''mini-max'' offering if the prospectus includes all transaction-specific information, including information about the specific assets included in the pool.

This rule will be beneficial to investors in continuous offerings by ensuring that the information they receive is about all pool assets underlying the asset-backed securities they purchase. While ABS offerings are typically not conducted as a continuous offering, we believe that it is important for us to close a potential gap in our regulations for ABS offerings so that ABS investors receive this material information when making an investment decision—irrespective of the type of public offering. We acknowledge that restricting continuous offerings to ''all or none'' limits issuers' choice and may potentially impose costs on those issuers that would have preferred to conduct the offering on a best efforts basis. However, we also note that the staff is not aware of any prior public offering of ABS that was conducted on a continuous offering—either as ''all or none'' or best efforts—and therefore we expect these costs to be minimal. For similar reasons, we do not believe that the amended rule will have an impact

corrects the deficiency by filing the required information before providing the evaluation on March 30, the issuer will still be deemed to satisfy the registrant requirements for purposes of continued shelf eligibility and thus not be required to wait until March 30 of the next year to use the existing shelf registration statement or file a new one. The issuer, however, must still wait 90 days after filing the required information before using the existing effective shelf registration statement or filing a new shelf registration statement. We have revised the requirement to make this clear.

[1177] *See* letters from MBA III and SIFMA III-dealers and sponsors.

[1178] *See* letter from SIFMA III-dealers and sponsors.

[1179] The staff has advised us that they believe that neither ''best efforts'' offerings nor any continuous offerings have been utilized in the past for public offerings of asset-backed securities.

[1180] *See* the 2010 ABS Proposing Release at 23350.

[1181] *See* letter from ASF I.

[1182] *See* letter from ASF I (suggesting that there are offerings that should not be included in the ''mini-max'' definition).

[1183] All or none offerings are described in Exchange Act Rules 10b–9 [17 CFR 240.10b–9] and 15c2–4 [17 CFR 240.15c2–4] in the same manner.

[1184] *See* letter from ASF I (noting that this typically arises when the offered securities have a lower return or carry a lower spread relative to market demand and confirming that any subsequent sale of the securities by the depositor or its affiliates would be undertaken in accordance with the registration provisions under the Securities Act).

on competition, efficiency, or capital formation.

5. Mortgage Related Securities

(a) Proposed Rule

In the 2010 ABS Proposing Release, we proposed to require that offerings of mortgage related securities be eligible for shelf registration on a delayed basis only if, like other asset-backed securities, they meet the registrant and transaction requirements for shelf registration. Under the proposal, delayed shelf offerings of mortgage related securities could be registered only on new Form SF–3, and accordingly, must meet the eligibility requirements of Form SF–3. We proposed eliminating the provision in Rule 415 that permits the registration of ''mortgage related securities,'' as that term is defined in Section 3(a)(41) of the Exchange Act, for shelf offerings without regard to form eligibility requirements. This was a provision that was added to Rule 415 contemporaneous with the enactment of SMMEA.[1185] Therefore, under the provision, an offering of mortgage related securities did not have to meet the requirements of Form S–3 and could have been registered on a delayed basis on Form S–1.[1186] As we stated in the 2010 ABS Proposing Release, we proposed this requirement based on our belief that mortgage related securities should be required to meet all the requirements that we proposed for shelf eligibility in order to be eligible for registration on a delayed basis since these securities present the same complexities and concerns as other ABS.[1187]

(b) Comments on Proposed Rule

One commenter agreed that mortgage related securities should be held to the same standards as other asset-backed securities.[1188] Another commenter believed that both proposed Forms SF–1 and SF–3 should be available for delayed offerings of mortgage related securities ''to accommodate issuers or transactions that may not have a need for an SF–3 registration or assets that are unique and better suited for an SF–1 filing,'' but the commenter did not provide specific examples or further explanation.[1189]

(c) Final Rule and Economic Analysis of the Final Rule

We are revising Rule 415 as proposed. The change requires that mortgage related securities meet all criteria for eligibility for shelf registration on new Form SF–3. We believe that mortgage related securities should meet all the requirements we are adopting in order to be eligible for shelf registration on a delayed basis since these securities present the same complexities and concerns as other asset-backed securities. If we continue to allow issuers of mortgage related securities to offer securities on a delayed basis off the shelf without regard to the shelf eligibility requirements, we would effectively allow mortgage related securities issuers to circumvent the requirements we are adopting.

We believe that the amendment to Rule 415 adopted today will result in consistent and fair treatment of all asset-backed securities, regardless of the nature of the underlying pool assets. We believe that the impact of this rule on competition and capital formation will be minimal since most, if not all, issuers of mortgage related securities have met the shelf eligibility requirements and conducted offerings off shelf registration statements.

C. Exchange Act Rule 15c2–8(b)

1. Proposed Rule

Except for securities issued under master trust structures, shelf-eligible ABS issuers generally are not reporting issuers at the time of issuance. Under Exchange Act Rule 15c2–8(b),[1190] with respect to an issue of securities where the issuer has not been previously required to file reports pursuant to Sections 13(a) or 15(d) of the Exchange Act, unless the issuer has been exempted from the requirement to file reports thereunder pursuant to Section 12(h) of the Exchange Act, a broker or dealer is required to deliver a copy of the preliminary prospectus to any person who is expected to receive a confirmation of sale at least 48 hours prior to the sending of such confirmation (''48-hour preliminary prospectus delivery requirement''). The rule contains an exception to the 48-hour preliminary prospectus delivery requirement for offerings of asset-backed securities eligible for registration on Form S–3. An exception to the 48-hour preliminary prospectus delivery requirement was first provided in 1995 by staff no-action position.[1191] This staff position was later codified in 2004.[1192]

In light of recent economic events and to make this rule consistent with our other proposed revisions, in the 2010 ABS Proposing Release, we proposed to eliminate this exception so that a broker or dealer would be required to deliver a preliminary prospectus at least 48 hours before sending a confirmation of sale for all offerings of asset-backed securities, including those involving master trusts. Because each pool of assets in an ABS offering is unique, we believe that an ABS offering is akin to an IPO, and therefore we believe the 48-hour preliminary prospectus delivery requirement in Rule 15c2–8(b) should apply. Even with subsequent offerings of a master trust, the offerings are more similar to an IPO given that the mix of assets changes and is different for each offering. Additionally, requiring that a broker or dealer provide an investor with a preliminary prospectus at least 48 hours before sending a confirmation of sale should be feasible and made easier to implement as a result of our proposal that a form of preliminary prospectus be filed with the Commission at least three business days in advance of the first sale in a shelf offering.

2. Comments on Proposed Rule

Commenters generally supported the proposal.[1193] Several trade associations agreed that investors should have sufficient time to review an offering.[1194] One trade association supported the proposal, but suggested an ''access equals delivery'' model akin to final prospectuses to satisfy the requirements.[1195] One individual commenter supported the proposal but suggested that ABS structured as master trusts be treated differently so as not to require information delivered previously to be delivered again.[1196]

[1185] *See* Section V.A. Background and Economic Discussion.

[1186] *See* footnote 61 of the 2004 ABS Adopting Release.

[1187] *See* the 2010 ABS Proposing Release at 23350.

[1188] *See* letter from CFA I.

[1189] *See* letter from MBA I.

[1190] 17 CFR 240.15c2–8(b).

[1191] *See* footnote 163 of the 2004 ABS Adopting Release and accompanying text (discussing staff no-action letters providing relief to ABS issuers from Rule 15c2–8(b)).

[1192] In the 2004 ABS Adopting Release, we noted some concerns that investors did not have sufficient time to consider ABS offering information. However, as we were considering other proposals at that time that sought to address information disparity in the offering process, we decided to codify the staff position.

[1193] *See* letters from ASF I, A. Zonca, BoA I, MBA I, Sallie Mae I, and SIFMA I.

[1194] *See* letters from ASF I, MBA I, and SIFMA I.

[1195] *See* letter from ASF. *See also* letters from MBA I and SIFMA I (focusing their comments in this area on the waiting period that would be required by proposed Rules 424(h) and 430D).

[1196] *See* letter from A. Zonca (also suggesting that ABS master trusts not be required to deliver the information if any changes to previously delivered information relates to new account additions with

3. Final Rule and Economic Analysis of the Final Rule

We are eliminating the exception in Rule 15c2–8(b) for shelf-eligible asset-backed securities from the 48-hour preliminary prospectus delivery requirement as proposed.[1197] Under the final rule, a broker or dealer is required to comply with the 48-hour preliminary prospectus delivery requirement with respect to the sale of securities by each ABS issuer, regardless of whether the issuer has previously been required to file reports pursuant to Sections 13(a) or 15(d) of the Exchange Act.[1198] In addition, the 48-hour preliminary prospectus delivery requirement also applies to ABS issuers utilizing master trust structures that are exempt from the reporting requirements pursuant to Section 12(h) of the Exchange Act. This requirement is necessary because assets in a master trust routinely change, whether or not they are exempt from or subject to Section 13(a) or 15(d) reporting requirements. In a master trust securitization, assets may be added to the pool in connection with future issuances of the securities backed by the pool.[1199] Although ABS issuers utilizing master trust structures may be reporting under the Exchange Act at the time of a ''follow-on'' or subsequent offering of securities, additional assets are added to the entire pool backing the trust in connection with a subsequent offering of securities.

The adoption of today's amendment will benefit investors by allowing them more time to consider the characteristics of the offering. We recognize that this benefit may be lower for investors in ABS structured as master trusts, because such offerings are issued from an existing issuing entity, which would have previously disclosed much of the information to be provided in the 48-hour preliminary prospectus. Nonetheless, such investors should benefit from having additional time to consider information about the new assets that is not provided in Exchange Act reports. The cost of today's amendment will be borne by issuers, who will have to prepare and provide to investors the preliminary prospectus. These costs will likely be small as a result of our other new rule requiring that a preliminary prospectus be filed with the Commission at least five days in advance of the first sale.[1200]

We considered one commenter's suggestion to provide for an ''access equals delivery'' model akin to final prospectuses.[1201] Access equals delivery is only permitted for a final prospectus and not a preliminary prospectus. The rule is the same for prospectuses of both corporate securities as well as ABS. The commenter did not address why ABS should be different from corporate securities in the context of delivery of a preliminary prospectus under Rule 15c2–8(b).[1202]

We are also adopting, as proposed, a correcting amendment to Rule 15c2–8(j). Paragraph (j) states that the terms ''preliminary prospectus'' and ''final prospectus'' include terms that are defined in Rule 434.[1203] In 1995, at the same time we adopted Rule 434, we added paragraph (j) to expand the use of the terms ''preliminary prospectus'' and ''final prospectus'' to reflect the terminology used in Rule 434.[1204] Rule 434, however, was later repealed in 2005.[1205] Accordingly, we are deleting paragraph (j), which is no longer applicable.

D. Including Information in the Form of Prospectus in the Registration Statement

1. Presentation of Disclosure in Prospectuses

(a) Proposed Rule

We proposed to eliminate the current practice in shelf ABS offerings of providing a base prospectus and prospectus supplement by requiring the filing of a form of prospectus at the time of effectiveness of the Form SF–3 and a single prospectus for each takedown. As we noted in the 2010 ABS Proposing Release, we are concerned that the base and supplement format has resulted in unwieldy documents with excessive and inapplicable disclosure that is not useful to investors.[1206] To address this concern, we proposed to add a provision in proposed Rule 430D and an instruction to proposed Form SF–3 that would require ABS issuers to file a form of prospectus at the time of effectiveness of the proposed Form SF–3 and to file a single prospectus for each takedown, which would include all of the information required by Regulation AB. We also proposed to require each depositor to file a separate registration statement for each form of prospectus. Under this proposal, each registration statement would cover offerings by depositors securitizing only one asset class.

(b) Comments on Proposed Rule

Several commenters supported[1207] our proposal requiring the filing of one integrated prospectus rather than a base prospectus and prospectus supplement for each takedown, and one commenter opposed.[1208] One commenter, in support of the proposed rules, believed that our proposal will provide investors with clearer information relating to the assets that are the subject of the takedown by not being encumbered with information that may not relate to that particular transaction.[1209] Another commenter, opposing the proposal, argued that our concern that the base and supplement format has resulted in unwieldy documents with excessive and inapplicable disclosure that is not useful to investors is unwarranted.[1210]

With respect to our proposal to limit each shelf registration statement to one

balances representing less than five percent of the master trust).

[1197] Because of the other changes we are adopting, we are also repealing Securities Act Rule 190(b)(7). Rule 190(b)(7) provides that if securities in the underlying asset pool of asset-backed securities are being registered, and the offering of the asset-backed securities and the underlying securities is not made on a firm commitment basis, the issuing entity must distribute a preliminary prospectus for both the underlying securities and the expected amount of the issuer's securities that is to be included in the asset pool to any person who is expected to receive a confirmation of sale of the asset-backed securities at least 48 hours prior to sending such confirmation. Rule 190(b)(7) effectively overrules the exclusion in Rule 15c2–8 for ABS issuers from the 48-hour preliminary prospectus delivery requirement for particular types of ABS offerings. Because we are repealing the Rule 15c2–8 exclusion for ABS issuers, and because our disclosure requirements regarding the underlying securities for resecuritizations requires significantly more information than what is required in Rule 190(b)(7) to be provided in the preliminary prospectus, we are deleting Rule 190(b)(7).

[1198] *See* definition of issuer in relation to asset-backed securities in Exchange Act Rule 3b-19.

[1199] The typical master trust securitization is backed by assets arising out of revolving accounts such as credit card receivables or dealer floorplan financings.

[1200] *See* Section V.B.1 New Shelf Registration Procedures.

[1201] *See* letter from ASF I. *See also* the Securities Offering Reform Release at 44783.

[1202] However, as is the case today, delivery of a preliminary prospectus may be made electronically as permitted under our current rules. *See Use of Electronic Media for Delivery Purposes,* Release No. 33–7233 (Oct. 6, 1995) [60 FR 53458] (the 1995 Release).

[1203] 17 CFR 230.434. Securities Act Rule 434 allowed issuers and other offering participants to meet their prospectus delivery requirement by delivering a preliminary prospectus and a term sheet or abbreviated term sheet before or at the time of sale. The information contained in the preliminary prospectus, confirmation and term sheet or abbreviated term sheet must, in the aggregate, meet the informational requirements of Securities Act Section 10(a).

[1204] *See* Section II.B.4.a of *Prospectus Delivery; Securities Transactions Settlement,* Release No. 33–7168 (May 11, 1995) [60 FR 26604].

[1205] Rule 434 was repealed in the Securities Offering Reform Release.

[1206] *See* the 2010 ABS Proposing Release at 23352.

[1207] *See* letters from BoA I, CFA I, and MBA I.

[1208] *See* letter from ASF I.

[1209] *See* letter from CFA I.

[1210] *See* letter from ASF I (expressed views of issuers only). ASF investor members offered mixed views on the proposal.

asset class, one commenter asserted its belief that this proposal had no bearing on the nature and quality of disclosure for any particular shelf offering.[1211] This commenter also noted that our proposed limitation would not permit securitization platforms where more than one depositor transfers or sells pool assets into the same issuing entity to conduct shelf offerings. The commenter, although opposing the proposal, recommended that the Commission clarify the scope of any limitation so that multiple depositors who transfer or sell pool assets into the same issuing entity would be permitted under the final rule.

(c) Final Rule and Economic Analysis of the Final Rule

After considering the comments provided, we are adopting the rule regarding presentation of disclosure in prospectuses as proposed so that issuers must file a form of prospectus at the time of effectiveness of Form SF–3 and file a single prospectus for each takedown.[1212] We continue to believe that the current format has the unintended effect of encouraging ABS issuers to draft disclosure documents that build in maximum flexibility for as many differing transactions as possible with the investor bearing the burden of determining which disclosures are relevant to a particular transaction. Given that the registration statement is primarily for the benefit of investors, we believe that we should facilitate investor understanding and access to prospectuses for ABS and eliminate unnecessary disclosures given to investors.[1213] A single form of prospectus at the time of effectiveness and a single prospectus for each takedown should provide investors with clearer and more focused information relating to the assets that are the subject of the takedown by not encumbering investors with information that may not relate to that particular transaction. Additionally, because we believe that this rule will enhance investor understanding of the offering materials and the transaction, the rule will, in turn, promote more efficient capital formation. While we note one commenter's view that the existing practice did not result in unwieldy documents,[1214] we remain concerned about the usefulness of the prospectus supplement format for investors, especially in light of other commenters' support for our proposal and the staff's experience in reviewing prospectuses in registration statements and in takedowns.[1215]

We are also adopting our proposed limitation of one asset class per registration statement with one clarification in response to comments.[1216] We continue to note the practice of some issuers to include multiple depositors, multiple base prospectuses and multiple prospectus supplements all in one registration statement.[1217] We believe that this practice has made the disclosure difficult for investors to understand and difficult for market participants to locate and obtain offering documents. Although one commenter stated that limiting each shelf registration statement to one asset class has no bearing on the quality or nature of the disclosure for any particular shelf offering, we disagree.[1218] The cumulative effect of including multiple depositors, multiple base prospectuses and multiple prospectus supplements in one registration statement is an unwieldy registration statement for investors to navigate in determining what information they should review before making their investment decision and difficult for market participants to follow which registration statement relates to which takedown. By limiting a registration statement to one asset class, the quality and nature of the disclosure should be enhanced as the disclosure would be presented in a more accessible and useful format for investors. While the revisions to both presentation of disclosure as well as the limitation of one asset class per registration statement could place additional costs on issuers that need to file additional registration statements, we believe that these additional costs are reasonable in light of the expected improved transparency benefits for investors.[1219] Furthermore, we believe that our pay-as-you-go amendment that we are also adopting should offset some of the costs that issuers could incur with additional registration statements.

2. Adding New Structural Features or Credit Enhancements

(a) Proposed Rule

We proposed to restrict the ability of ABS issuers to add information about new structural features or credit enhancements by filing a prospectus under Rule 424(b).[1220] It has been our longstanding position, as articulated in the 2004 ABS Adopting Release, that structural features or credit enhancements must be fully described in the registration statement at the time of effectiveness.[1221] As part of this position, we have stated that a takedown off a shelf that involves new structural features or credit enhancements that were not described as contemplated in the base prospectus will usually require a post-effective amendment rather than describing them in the final prospectus filed with the Commission pursuant to Securities Act Rule 424.[1222] In that regard, we proposed to codify our position that when an issuer desires to add information that relates to new structural features or credit enhancements, the issuer must file that information by a post-effective amendment to the registration statement. By requiring the issuer to file a post-effective amendment, the Commission's staff would have an opportunity to review the disclosure regarding these new structural features and credit enhancements that would be contemplated for future takedowns from the shelf registration statement.

(b) Comments on Proposed Rule

Commenters were generally supportive of our proposal to codify the requirement of a post-effective amendment for new structural features or credit enhancements.[1223] One commenter believed that all market participants would benefit from the enhanced understanding of a transaction that would result from the proposed rule.[1224] One commenter noted that the proposed rule would provide the staff with time to focus on new structural features or credit

[1211] *See* letter from ASF I.

[1212] *See* General Instruction IV of Form SF–3.

[1213] *See* the 2010 ABS Proposing Release at 23352.

[1214] *See* letter from ASF I.

[1215] *See* letters from BoA I, CFA I, and MBA I.

[1216] *See* General Instruction IV of Form SF–3. We note existing market practice in the case of some master trust structures, such as credit card ABS involving a single platform, in which multiple affiliated depositors transfer credit card receivables into the issuing entity. We would view, in these limited instances, such master trust structure with a single securitization platform as one transaction (that is, one program), with multiple registrants.

[1217] *See* the 2010 ABS Proposing Release at 23352.

[1218] *See* letter from ASF I.

[1219] *See* Section X Paperwork Reduction Act (estimating this requirement will result in approximately four new registration statements to be filed annually by shelf ABS issuers).

[1220] *See* the 2010 ABS Proposing Release at 23353.

[1221] *See* the 2004 ABS Adopting Release at 1524.

[1222] *See id. See also* the 2010 ABS Proposing Release at 23353 (noting that although Rule 430B provides all issuers on Form S–3 with the ability to include information previously omitted in a prospectus filed pursuant to Securities Act Rule 424(b), the staff has continued to apply our position articulated in the 2004 ABS Adopting Release).

[1223] *See* letters from BoA I, CFA I, MBA I, Prudential I, and Wells Fargo I.

[1224] *See* letter from Prudential I.

enhancements.[1225] Another commenter noted that the proposed rule would allow the Commission to control the purpose of shelf filing and allow for more targeted review.[1226] One commenter noted that the term ''structural features'' is too vague and suggested that the Commission provide more specificity.[1227]

(c) Final Rule and Economic Analysis of the Final Rule

After considering the comments, we are adopting, as proposed, new Securities Act Rule 430D(d)(2), which codifies a longstanding position of the Commission that an ABS issuer must file a post-effective amendment to the registration statement when it wants to add information about new structural features or credit enhancements that were not described as contemplated in the base prospectus of an effective registration statement. As noted above, one commenter stated that the term ''structural features'' was too vague to use as a trigger for a post-effective amendment and was concerned that the term could be interpreted to trigger a post-effective amendment for minor structural adjustments that would not have required a post-effective amendment under the existing standard.[1228] Because our new rule merely codifies the Commission's longstanding position, the final rule does not change when such requirement is triggered.[1229]

We believe that codification of our existing position will provide issuers with clarity about how the rules work. It will also help to ensure that the staff has the opportunity to review these new structural features or credit enhancements that would be contemplated for future offerings. Because this rule is simply a codification of our existing position, we believe that the new rule will result in no material increase in costs and will be neutral in terms of its impact on competition, efficiency, and capital formation.

E. Pay-as-You-Go Registration Fees

1. Proposed Rule

To alleviate some of the burden of managing multiple registration statements among ABS issuers, we proposed to allow, but not require, ABS issuers eligible to use Form SF–3 to pay filing fees as securities are offered off a shelf registration statement, commonly known as ''pay-as-you-go.'' [1230] Under the proposal, the triggering event for a fee payment would be the filing of a preliminary prospectus.

2. Comments on Proposed Rule

Several trade associations agreed that the proposal would be a helpful change.[1231] Some commenters noted that they would like the Commission to clarify that, under existing Rule 457(p), if an ABS offering is not completed, or the size of the offering is reduced, after the fee is paid, the unused portion of the fee can be applied to future takedowns off the same or a replacement registration statement by the depositor or an affiliate of such depositor.[1232] One issuer requested that the timing of the fee payment be changed from the filing of the preliminary prospectus to the filing of the final prospectus in order to alleviate any risk that the issuer did not pay sufficient registration fees to cover any upsizing of the offering as well as to alleviate the possibility of overpayment of the registration fees if the offering is downsized.[1233]

3. Final Rule and Economic Analysis of the Final Rule

We are adopting, as proposed, revisions to our rules to permit ABS issuers to pay registration fees as securities are offered off a registration statement as opposed to paying all registration fees upfront at the time of filing a registration statement on Form SF–3. As proposed, under the new rule, a dollar amount or a specific number of securities is not required to be included in the calculation of the registration fee table in the registration statement, unless a fee based on an amount of securities is paid at the time of filing.[1234] As proposed, the fee table on the cover of the registration statement must list the securities or class of securities registered and must indicate if the filing fee will be paid on a pay-as-you-go basis.[1235]

Under the final rule, as proposed, the triggering event for a fee payment will be the filing of an initial preliminary prospectus.[1236] At the time of filing an initial preliminary prospectus,[1237] the ABS issuer is required to include a calculation of registration fee table on the cover page of the prospectus and to pay the appropriate fee calculated in accordance with Securities Act Rule 457. In light of one commenter's concern about the possibility of overpaying the registration fee by requiring it to be paid in connection with the preliminary prospectus, we note ABS issuers opting to pay the required registration fees with each takedown could rely upon Rule 457(p) to apply a portion of the fee associated

[1225] *See* letter from CFA I.

[1226] *See* letter from Wells Fargo I.

[1227] *See* letter from BoA I.

[1228] *See* letter from BoA I.

[1229] *See* the 2004 ABS Adopting Release at 1524 (''A takedown off of a shelf that involves assets, structural features, credit enhancement or other features that were not described as contemplated in the base prospectus will usually require either a new registration statement (e.g., to include additional assets) or a post-effective amendment (e.g., to include new structural features or credit enhancement) rather than simply describing them in the final prospectus filed with the Commission pursuant to Securities Act Rule 424.'').

[1230] In 2005, we first adopted pay-as-you-go rules to allow well-known seasoned issuers using automatic shelf registration statements to pay filing fees at the time of a securities offering. *See* Section V.B.2.b.(D) of the Securities Offering Reform Release. Under the current pay-as-you-go procedure for WKSIs, an issuer can pay any filing fee, in whole or in part, in advance of takedown or at the time of takedown, providing flexibility in the timing of the fee payment. Issuers using pay-as-you-go can still deposit monies in an account for payment of filing fees when due. The fee rules applicable to the use of such account, also referred to as the ''lockbox account,'' apply. The amount of the fee is calculated based on the fee schedule in effect when the money is withdrawn from the lockbox account. This flexibility had been provided so issuers may determine the fee payment approach most appropriate for them. *See* footnote 529 of the Securities Offering Reform Release. *See* Securities Act Rules 456(b) [17 CFR 230.456(b)] and 457(r) [17 CFR 230.457(r)].

[1231] *See* letters from ABA I, ASF I, MBA I, and SIFMA I.

[1232] *See* letters from ASF I, BoA I, MBA I, and Sallie Mae I.

[1233] *See* letter from Sallie Mae I.

[1234] *See* new Securities Act Rule 457(s).

[1235] In the case of ABS, the fee table on the registration statement typically lists the offering of certificates and notes as separate classes of securities. Each class (or tranche) of those certificates and notes offered would not need to be separately listed on the fee table. However, if the ABS is a resecuritization, where registration of the underlying securities would be required under Rule 190 and the underlying security was not listed on the fee table of the Form SF–3 registration statement, the underlying securities would need to be registered on a different new registration statement. Likewise, if a servicer or trustee invests cash collections in other instruments which may be securities under the Securities Act, such as guarantees or debt instruments of an affiliate, under Rule 190 those underlying securities also may need to be registered concurrently with the asset-backed offering. If those underlying securities were not listed on the fee table of the registration statement, a new registration statement would be required.

[1236] *See* new Securities Act Rule 456(c). Unlike the pay-as-you-go rules for WKSIs, we do not believe that a cure period is necessary for ABS issuers because we are requiring ABS issuers to pay the required fee at the time the preliminary prospectus is filed. The timing of the fee payment for ABS would not give rise to the same effective date and registration concerns that arise with WKSIs. *See* Section V.B.2.b.(D) of the Securities Offering Reform Release.

[1237] If, after the initial preliminary prospectus, an issuer files a subsequent preliminary prospectus or prospectus supplement solely to update the fee table and pay additional fees, the subsequent preliminary prospectus will not trigger a new waiting period. *See* discussion in Section V.B.1 New Shelf Registration Procedures related to preliminary prospectuses and related waiting periods.

with the unsold securities under a previously-filed registration statement as an offset against the filing fee due at the time of the preliminary prospectus filing by the same depositor or affiliates of the depositor across asset classes. Similarly, such registrants could apply unused fees paid in connection with a preliminary prospectus filing toward a future takedown off the same registration statement. We believe that this amendment will alleviate some of the burden ABS issuers incur with managing multiple registration statements. Additionally, it should offset some of the additional costs that issuers will incur with our new rule, discussed earlier, requiring a separate registration statement for each form of prospectus. We also believe that our pay-as-you-go rule should produce some efficiencies in the shelf offering process by providing shelf issuers with greater payment flexibility.

F. Codification of Staff Interpretations Relating to Securities Act Registration

We proposed to codify several staff positions relating to the registration of asset-backed securities.[1238] In proposing these codifications, we sought to simplify our rules by making our staff's positions more transparent and readily available to the public.

1. Fee Requirements for Collateral Certificates or Special Units of Beneficial Interest

We proposed to amend Rule 190 [1239] of the Securities Act to clarify the existing requirement that if the pool assets for the asset-backed securities are collateral certificates or special units of beneficial interest (SUBIs),[1240] then the offer and sale of those collateral certificates or SUBIs must be registered concurrently with the registration of the asset-backed securities. While the offer and sale of the certificates or SUBIs must be concurrently registered, we proposed to codify the staff position that no separate registration fee for the collateral certificates or SUBIs is required to be paid, provided that the certificates or SUBIs meet the requirements of Rule 190(c).[1241] Additionally, we proposed to amend Rule 457 [1242] of the Securities Act, governing the computation of registration fees, to reflect the staff's position that where the securities to be offered are collateral certificates or SUBIs underlying asset-backed securities which are being concurrently registered, no separate fee for the certificates or SUBIs will be payable.

Several commenters supported the proposal to codify the staff's position in Rule 190 and Rule 457 under the Securities Act.[1243] One commenter noted generally that codifying the staff's interpretations is a benefit for all market participants,[1244] and another commenter indicated that it concurred with the Commission's rationale.[1245] No commenter opposed the proposal. After considering the comments, we are adopting the amendments to Rule 190 and Rule 457 of the Securities Act as proposed.[1246]

2. Incorporating by Reference Subsequently Filed Exchange Act Reports

(a) Proposed Rule

Item 12(b) of Form S–3 requires that the registrant incorporate by reference all subsequently filed Exchange Act reports prior to the termination of the offering. In the 2004 ABS Adopting Release, we explained that Item 12(b) of Form S–3 is required for asset-backed issuers only ''if applicable.'' [1247] The staff has provided interpretive guidance to issuers as to which periodic reports and other Exchange Act reports the issuer may be required to incorporate by reference into the registration statement.[1248] The staff has noted that information filed with a current report on Form 8–K prior to the termination of the offering would often be required to be incorporated into the registration statement.[1249] In contrast, the staff has explained that Form 10–D or Form 10–K reports may not necessarily contain information that is required to be, or that the issuer desires to be, incorporated by reference into the registration statement.[1250]

To simplify our rules, we proposed to codify the staff's position that an issuer of asset-backed securities may modify the incorporation by reference language included in the registration statement to provide that only the current reports on Form 8–K subsequently filed by the registrant prior to the termination of the offering shall be deemed to be incorporated by reference into the registration statement.[1251]

(b) Comments on Proposed Rule

Several commenters supported the proposal, and no commenters opposed it.[1252] One commenter believed that the proposed rule struck the right balance by permitting issuers to incorporate by reference only Form 8–K filings rather than requiring issuers to incorporate all subsequently filed Exchange Act reports.[1253] Some commenters indicated that the proposed rule is consistent with current practice of issuers.[1254]

(c) Final Rule and Economic Analysis of the Final Rule

After consideration of the comments, we are adopting the proposed codification of the staff's position regarding incorporation by reference of subsequently filed periodic reports in Form SF–3. Thus, under Item 10(d) of Form SF–3, the prospectus shall provide a statement regarding the incorporation by reference of Exchange Act reports prior to the termination of the offering pursuant to one of the following two ways. The registrant may state that all reports subsequently filed by the registrant pursuant to Sections 13(a), 13(c), or 15(d) of the Exchange Act prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus. In the alternative, the registrant may state that all current reports on Form 8–K subsequently filed by the registrant

[1238] *See* Section VII.A. of the 2010 ABS Proposing Release.

[1239] 17 CFR 230.190. Rule 190 governs the registration requirements for the underlying securities of an asset securitization.

[1240] In some ABS transactions backed by auto leases, the leases and car titles are originated in the name of a separate trust to avoid the administrative expenses of re-titling the physical property underlying the leases. The separate trust, commonly referred to as the ''origination trust'' or ''titling trust,'' will issue a collateral certificate, often called a ''special unit of beneficial interest,'' to the issuing entity for the asset-backed security. The issuing entity will then issue the asset-backed securities backed by the collateral certificate or SUBI.

[1241] Rule 190(c) provides for the conditions in which an asset-backed issuer is not required to register a pool asset representing an interest in or the right to the payments or cash flows of another asset.

[1242] 17 CFR 230.457.

[1243] *See* letters from BoA I, Prudential I, and SIFMA I.

[1244] *See* letter from Prudential I.

[1245] *See* letter from BoA I.

[1246] *See* 17 CFR 230.190(d) and 457(t).

[1247] *See* Section III.A.3 of the 2004 ABS Adopting Release.

[1248] *See* Interpretation 15.02 of the Division's Manual of Publicly Available Interpretations on Regulation AB and Related Rules.

[1249] Examples of circumstances when an asset-backed issuer may be required to incorporate by reference its current reports on Form 8–K into the registration statement include filing required exhibits, such as legal and tax opinions, or to provide disclosure under Item 6.05 of Form 8–K regarding changes in the composition of the pool assets.

[1250] We explained in the 2010 ABS Proposing Release that because the Form 10-Ds and Form 10-Ks that are filed prior to the termination of the offering are generally for a different ABS issuer than the ABS issuer that has filed the prospectus, the Form 10–D and Form 10–K reports may not be relevant to the asset-backed offering that is the subject of the prospectus. *See* Section VII.B of the 2010 ABS Proposing Release.

[1251] *See* Section VII.B of the 2010 ABS Proposing Release.

[1252] *See* letters from BoA I, MBA I, Prudential I, and SIFMA I.

[1253] *See* letter from BoA I.

[1254] *See* letters from BoA I and MBA I.

pursuant to Sections 13(a), 13(c), or 15(d) of the Exchange Act prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus.

We believe that the codification of these staff positions will simplify our rules by making our staff's positions more transparent and readily available to the public. Because these codifications are consistent with current practice of issuers, we do not believe that they will pose a cost to either issuers or investors.

VI. Filing Requirements for Transaction Documents

A. Proposed Rule

Item 1100(f) of Regulation AB allows ABS issuers to file agreements or other documents as exhibits on Form 8–K and, in the case of offerings off a shelf registration statement, incorporate the exhibits by reference instead of filing a post-effective amendment. In the 2010 ABS Proposing Release, we noted our belief that the information in the transaction agreements and other documents provide important information on the terms of the transactions, representations and warranties about the assets, servicing terms, and many other rights that would be material to an investor. In the staff's experience with the filing of these documents, some ABS issuers have delayed filing such material agreements with the Commission until several days or even weeks after the offering of securities off a shelf registration statement. We also noted that investors have expressed concerns regarding the timeliness of information in ABS offerings, including the timeliness of the filing of these documents.[1255] In light of these concerns, we proposed to revise Item 1100(f) of Regulation AB to state explicitly that the exhibits filed with respect to an ABS offering registered on Form SF–3 must be on file and made part of the registration statement at the latest by the date the final prospectus is required to be filed.[1256] In response to the 2010 ABS Proposing Release, some commenters recommended that the exhibits should be available for investor review prior to making an investment decision.[1257] Therefore, in the 2011 ABS Re-Proposing Release, we re-proposed the amendments to Item 1100(f) of Regulation AB to also require that the underlying transaction documents, in substantially final form, be filed and made part of the registration statement by the date the preliminary prospectus is required to be filed rather than by the date that the final prospectus is required to be filed.

B. Comments Received on Proposed Rule

Comments on the re-proposed amendments to Item 1100(f) of Regulation AB were mixed with mostly investors supporting the amendments[1258] and issuers opposing them.[1259] The commenters that opposed the proposal generally believed that the preliminary prospectus provides all material information related to a particular transaction and, therefore, there is no material benefit to providing the transaction documents in substantially final form.[1260] The commenters also were concerned that the requirement would likely result in additional costs to issuers or consumers;[1261] that it would pose a restriction on the parties' ability to tailor the transaction to meet investor requests;[1262] revising the prospectus and the transaction documents at the same time could lead to more inconsistencies or errors;[1263] and may require the filing of the same documents three times.[1264] Some commenters also believed that for certain transactions the documents cannot be given in the proposed time frame.[1265] Similarly, another commenter contended that the requirement compels issuers to ''finalize transaction agreements'' by the time of the preliminary prospectus filing, which will inevitably delay issuers' access to the market and thereby potentially expose both issuers and investors to market movements that may be adverse to one or the other.[1266]

On the other hand, some investors believed that the transaction documents

[1255] *See* the 2010 ABS Proposing Release at 23388.

[1256] We permit the filing of these agreements with the Form 8–K and incorporated by reference into the registration statement in lieu of filing a post-effective amendment to the registration statement. As such, the filing requirements for these agreements, including the timing of the filing, is governed by our registration requirements, not the provisions of Form 8–K.

[1257] *See* letters from Tricadia Capital, Pacific Life Insurance Company, PPM America, Inc., Allstate Investments LLC, New York Life Investments, Guardian Life Insurance Company, AllianceBernstein L.P., Prudential Fixed Income Management, Principal Real Estate Investors, Capital Research Company, T. Rowe Price Associates, Inc., BlackRock, AEGON USA Investment Management, and State Street Corporation (collectively, ''CMBS Investors'') dated Feb. 25, 2011 submitted in response to the 2010 ABS Proposing Release (suggesting that the rules require that key disclosures, including the pooling and servicing agreement, be made available to investors during the marketing period so that investors have adequate time to review prior to making an investment decision), Prudential I (noting its concern with possible ''last minute financial engineering'' that contributes to poor understanding of the transaction), and SIFMA I (requesting for purposes of shelf eligibility that we clarify that if exhibits are timely filed in substantially final form, the fact that any such document is subsequently amended or otherwise corrected will not be viewed by the Commission as a failure to timely file the corrected document).

[1258] *See* letters from ASF V (expressed views of investors only), Better Markets, ICI II, MetLife II (stating that the prospectus and transaction documents in substantially final form should be provided at least five business days before the first sale in an offering), Prudential II (stating that a draft set of operative documents should be released at least five business days prior to the first sale in the offering and the executed set of operative documents should be released with the final prospectus filing at least three business days prior to closing), and SIFMA II-investors.

[1259] *See* letters from ABA II, AFME, ASF V (expressed views of dealers and sponsors only), Kutak, SIFMA III-dealers and sponsors, Sallie Mae II, VABSS III, and Wells Fargo II.

[1260] *See, e.g.,* letters from ABA II, Sallie Mae II (suggesting the transaction documents should be filed no earlier than the time the final prospectus is filed), SIFMA III-dealers and sponsors, VABSS III, and Wells Fargo II. *See also* letter from AFME (supporting SIFMA's (dealer and sponsor members) position and stating that any filing requirements adopted by the Commission should be consistent with the requirements already in place in the European Union and its member states, such as posting the relevant closing documents on an issuer Web site).

[1261] *See* letters from Sallie Mae II (focusing on increased costs to the issuer without any explanation or quantification), VABSS III (focusing on costs to the issuer without any explanation or quantification), and Wells Fargo II.

[1262] *See* letters from AFME and SIFMA III-dealers and sponsors.

[1263] *See* letter from ABA II (stating that the proposed amendments to Item 1100(f) will impose unnecessary costs and timing constraints on the issuer and introduce ''inefficiencies into the offering process,'' but if the Commission requires ''current documentation'' before pricing, the ABA believes that to the extent that deal-specific terms create significant changes to or clarifications of the forms filed with the registration statement, then the updated documents should be made available to investors one business day before they are asked to make an investment decision).

[1264] *See* letter from ASF V (stating that a filing may be necessary, at the time the preliminary prospectus is filed, again at the time the final prospectus is filed, in the event a change (other than a ''minor'' change) to the agreement occurs, and at or after the time those transaction agreements are executed because ''regulations appear to provide that an exhibit to a registration statement filed without signatures would be considered an incomplete exhibit and, therefore, could not be incorporated by reference in any subsequent filing under any Act administered by the Commission'').

[1265] *See* letters from ABA II (stating swap agreements are generally negotiated after the transaction has been priced to reflect pricing terms and market conditions on the date of entry and that some of the technical real estate mortgage investment conduit (''REMIC'') provisions that must be added into RMBS and CMBS documentation cannot be provided within the proposed time frame (but also have little relevance for investors, so long as they are properly drafted) and Kutak (suggesting the documents are constantly being revised, although in most cases, not materially, until the final prospectus is filed).

[1266] *See* letter from ASF V (without clarification as to why this requirement may delay pricing and the formation of contracts).

should be provided in substantially final form at least five business days before the first sale in an offering,[1267] and one of these investors believed that an executed set of operative documents should be released with the filing of the final prospectus (at least three business days prior to closing).[1268] One investor stated that access to these documents was necessary in order to conduct appropriate due diligence on transactions,[1269] and a group of investors also stated that the underlying transaction documents are material to their investment decision and should be available in substantially final form at the time the preliminary prospectus is filed.[1270] Another group of investors supported the proposal and stated that ''[t]he complexity of those transactions does not lend itself to abbreviated disclosure.'' [1271] Another commenter noted that ''access to the underlying transaction documents is also essential for the benefit of investors.'' [1272]

In the 2011 ABS Re-Proposing Release, we also requested comment on whether we should require issuers to file as an exhibit a copy of the representations, warranties, remedies, and exceptions marked to show how it compares to industry-developed model provisions. The comments that we received on our request for comment as to filing exhibits marked to industry-developed models were mixed with investors supporting the proposal [1273] and mostly issuers opposing it.[1274]

C. Final Rule and Economic Analysis of the Final Rule

After considering the comments received, we are adopting the requirement, as proposed in the 2010 ABS Proposing Release, to clarify existing exhibit filing requirements by making explicit that the exhibits filed with respect to an ABS offering, registered on new Form SF–3, must be on file and made part of the registration statement at the latest by the date the final prospectus is filed. We believe that this revision should address the problem that we noted above about some issuers delaying their filing of the transaction agreements with the Commission until several days and, in some cases, even weeks after a shelf offering of the securities. We also note that ABS shelf offerings were designed to mirror non-shelf offerings in terms of filing the exhibits and final prospectuses. Because all exhibits to Form SF–1 must be filed by the time of effectiveness, we believe that all transaction agreements for shelf offerings filed as exhibits should be filed and made part of the shelf registration statement by the time of the final prospectus.

We are not adopting at this time, however, the part of the proposal to require the transaction documents be filed, in substantially final form, and made part of the registration statement by the date the preliminary prospectus is required to be filed. We continue to consider the balance between investors' interest in having access to the transaction documents earlier and the costs and difficulties with requiring issuers to provide the transaction documents in substantially final form by the time of the preliminary prospectus. Also, in light of the new disclosure requirements that must be provided at the time of the preliminary prospectus, as well as the certification by the issuer that the prospectus must fairly present information about the transaction, including the structure of the transaction, we believe further consideration is warranted. Therefore, the proposal to require the transaction documents be filed, in substantially final form, and made part of the registration statement by the date of the preliminary prospectus is required to be filed remains outstanding and unchanged.

In light of the comments received, we are also not adopting any requirements that investors be provided with blacklines of how the issuer's representations and warranties compare against the industry-developed model provisions or blacklines of how the transaction documents compare to the transaction documents from prior transactions or from prior versions of the transaction documents filed for the current transaction. While we believe that these types of marked documents could be an important tool for the identification of discrete or material changes between original and revised documents, we acknowledge commenters' concerns that there is no consistent industry standard at this time nor a clear identity of what other agreements to use as a comparison. We also believe, at this time, that most investors should have the capacity to produce documents marked to show differences from prior documents.

VII. Definition of Asset-Backed Security

A. Proposed Rule

As part of our effort to provide more timely and detailed disclosure regarding the pool assets to investors, we proposed revisions to the Regulation AB definition of an asset-backed security.[1275] A security must meet the definition of an ''asset-backed security'' under Regulation AB in order to utilize the disclosure requirements of Regulation AB and be eligible for shelf registration as an asset-backed security.[1276] As noted in previous releases, a core principle of the Regulation AB definition of an asset-backed security is that the security is backed by a discrete pool of assets that by their terms convert into cash, with a general absence of active pool management. However, in response to commenters and previous staff interpretation, in 2004, we adopted certain exceptions to the ''discrete pool'' requirement in the definition of asset-backed security to accommodate master trusts, prefunding periods, and revolving periods.[1277]

In the 2010 ABS Proposing Release, we proposed to amend the ''discrete pool of assets'' exceptions to the current definition of ''asset-backed security'' by amending:

(i) The master trust exception to exclude securities that are backed by

[1267] *See* letters from ASF V (expressed views of investors only), MetLife II, Prudential II, and SIFMA II-investors.

[1268] *See* letter from Prudential II.

[1269] *See* letter from MetLife II (stating that in order to conduct due diligence, investors need access to the following documents: The pooling and servicing agreement and a blackline against the original pooling and servicing agreement contained in the shelf; the representations, warranties, and exceptions and a blackline against industry model representations and warranties (e.g., CMBS or other sectors that adopt these); or a blackline against original representations and warranties contained in the shelf; and the indenture (along with any blacklines thereto)).

[1270] *See* letter from ASF V (expressed views of investors only).

[1271] *See* letter from SIFMA II-investors.

[1272] *See* letter from Better Markets.

[1273] *See* letters from ASF V (expressed views of investors only), MetLife II (recommending that a copy of the current pooling and servicing agreement be marked against the original pooling and servicing agreement in the registration statement), and Prudential II (recommending that we should require certain marked copies of current filings against prior filings to assist investors in identifying structural changes and suggesting that the release of operative documents and blacklined documents should begin within 30 days after adoption of the new rules because this information is critical to an investor's understanding of a securitization).

[1274] *See* letters from Better Markets, CREFC II (noting that the representations and warranties will be in the ''substantially final mortgage loan purchase agreement'' filed with the Rule 424(h) filing), MBA II (with respect to CMBS), and SIFMA III-dealers and sponsors (noting its support of industry efforts to develop model provisions but emphasizing that such models do not currently exist for most asset classes and that identifying trade associations to be tasked with generating model provisions and doing so in a fair and open manner would be an enormous challenge while resulting in minimal additional investor protection).

[1275] *See* Item 1101(c) of Regulation AB.

[1276] *See* Item 1100 of Regulation AB.

[1277] *See* Item 1101(c)(3) of Regulation AB.

assets that arise in non-revolving accounts;

(ii) the revolving period exception to reduce the permissible duration of the revolving period for securities backed by non-revolving assets from three years to one year; and

(iii) the prefunding exception to decrease the prefunding limit from 50% to 10% of the offering proceeds or, in the case of master trusts, from 50% to 10% of the principal balance of the total asset pool.[1278]

We were concerned that pools that are not sufficiently developed at the time of an offering to fit within the ABS disclosure regime may, nonetheless, qualify for ABS treatment, which may result in investors not receiving appropriate information about the securities being offered.[1279] Consequently, we proposed amendments to these exceptions in order to restrict deviations from the ''discrete pool of assets'' requirement.

B. Comments on Proposed Rule

While some commenters provided specific comments, several commenters provided general comments on the proposal to change the definition of asset-backed security. One commenter noted that the changes to the definition would not prohibit public issuances of ABS with larger prefunding accounts and revolving periods, and noted that such offerings would be governed by the more extensive disclosure requirements of Form S–1.[1280] Another commenter requested that the definition of asset-backed security be sufficiently narrow to restrict access to only those securities where sufficient and robust disclosure, including collateral pool disclosure, can be provided during the initial offering process and at the same time, the definition should be calibrated to permit a reasonable degree of flexibility to accommodate innovation and new product development.[1281]

1. The Master Trust Exception

One commenter supported the proposal to exclude securities that are backed by assets that arise in non-revolving accounts.[1282] This commenter noted that master trust structures are appropriate for sponsors with recurring variable collateral funding needs (e.g., credit cards, fleet leases, floor plans, and rental cars) and that any asset type that follows a traditional amortization schedule or without the ability to redraw on the loan generally should not be included in a publicly issued master trust structure.[1283]

However, other commenters opposed the proposal to limit the exception to master trusts backed by revolving accounts.[1284] Several commenters believed that distinguishing securities backed by revolving versus non-revolving assets is unwarranted. One commenter noted that it did not believe there is any credit, disclosure, or other investor protection reason to support the change.[1285] The issuer and investor members of another commenter agreed that, in applying the master trust exception, efforts to distinguish securities backed by revolving versus non-revolving assets will impose artificial limits on which asset classes may use the master trust structure, thereby eliminating an investment option that both issuers and investors desire.[1286]

Some commenters noted that the master trust structure is commonly used to securitize mortgages in the United Kingdom and that the proposed rule would result in those mortgage master trusts no longer being eligible for shelf registration.[1287] One commenter noted that European market participants expressed concern that since the proposed change would reduce the ability of mortgage master trust issuers to place their bonds in the U.S. market, it would effectively reduce the efficiency of issuances for existing master trusts, which would adversely impact the overall efficiency of the asset-backed market.[1288]

2. The Revolving Period Exception

Although an investor commenter supported the proposal relating to reducing the revolving period for non-revolving assets (e.g., auto loans and equipment loans), the commenter acknowledged that concerns about lack of information about new collateral additions to the pool would be mitigated if the issuer would be required to file loan-level information at issuance and each month that new assets are added to the collateral pool.[1289] This commenter also noted that this transparency will allow investors to evaluate the changing nature of the risk layering introduced by the new assets.

Several commenters opposed the proposal.[1290] One commenter noted that investors have a significant interest in purchasing ABS supported by non-revolving assets with longer maturities than are possible without the use of revolving periods and reducing the revolving period to one year would effectively eliminate the ability of issuers to satisfy such investor demand.[1291] One commenter stated that the primary effect of not being able to register these offerings on Form SF–3 would be to increase the timing and cost burdens placed on issuers.[1292] Another commenter stated that the proposed one-year period for revolving periods should not apply to certain loans that are homogenous in nature.[1293] It explained, for example, that since all loans issued under a federal student loan program such as the Federal Family Education Loan Program (''FFELP'')[1294] have the same credit risk, investors need not be concerned that the addition of future FFELP loans would adversely impact the credit quality of the asset pool.[1295]

3. The Prefunding Exception

Certain investor members of one commenter were supportive of the proposal to decrease the prefunding limitation.[1296] Several commenters did not support the proposal to decrease the prefunding limitation and believed that the prefunding amount should remain at 50% of the offering proceeds.[1297] One commenter noted that by utilizing securitizations rather than more expensive warehouse credit facilities or other financing alternatives, it is able to pass along cost savings to consumers via

[1278] *See* the 2010 ABS Proposing Release at 23389.

[1279] *Id.*

[1280] *See* letter from ELFA I.

[1281] *See* letter from FSR.

[1282] *See* letter from Prudential I.

[1283] *See* letter from Prudential I.

[1284] *See* letters from AFME/ESF, ASF I, BoA I, and IPFS I.

[1285] *See* letter from IPFS I.

[1286] *See* letter from ASF I.

[1287] *See* letters from AFME/ESF (noting that it would still be possible for such transactions to be registered in the U.S. using a new registration statement for each offering) and BoA I (noting that while the domestic RMBS market does not currently utilize a master trust structure, given the current mortgage finance market, we should allow for the possibility that a master trust structure could develop).

[1288] *See* letter from AFME/ESF.

[1289] *See* letter from Prudential I.

[1290] *See* letters from ASF I, Sallie Mae I, and VABSS I.

[1291] *See* letter from ASF I (also noting that the current three-year limitation on the use of revolving periods for non-revolving assets already limits the ability to issue publicly-registered ABS matching investor preferences).

[1292] *See* letter from VABSS I.

[1293] *See* letter from Sallie Mae I (also proposing, in the alternative, a three-year revolving period limitation for homogenous assets, such as FFELP loans, and a one-year revolving period limitation for other assets).

[1294] *See* letter from Sallie Mae I (noting that FFELP loans are generally based on need, instead of credit quality of the underlying obligor).

[1295] *See* letter from Sallie Mae I (also noting that revolving periods allow issuers to efficiently manage their funding needs without having to issue additional bonds).

[1296] *See* letter from ASF I.

[1297] *See* letters from AmeriCredit, IPFS I, and VABSS I.

low interest rates and that reducing the limit to 10% would reduce flexibility and cost efficiencies when executing a securitization.[1298]

Issuer members of one commenter noted that the greater the limits on prefunding, the more expensive the carrying costs for originators and, potentially, the higher the borrowing rates for consumers and small businesses.[1299] This commenter suggested that the prefunding limit instead be based on the duration of the prefunding period,[1300] or the prefunding limit should decrease from 50% to 25% (but retain a prefunding period of up to one year), which would make the standard consistent with the prefunding standards under the Employee Retirement Income Security Act of 1974 (''ERISA'').[1301] Several other commenters also suggested that a 25% prefunding ceiling would be more appropriate for the same reason.[1302] Another commenter suggested reducing the limit to 20%, while imposing a 10% limit in the case of shelf offerings on Form SF–3 because it would be more consistent with market practice and more restrictive than the limitation on prefunding that is applicable to ABS that are eligible for sale under ERISA.[1303]

Lastly, one student loan issuer believed that the proposed 10% limitation on prefunding should not apply to FFELP loans (or other asset types) that are homogenous in nature.[1304]

C. Final Rule and Economic Analysis of the Final Rule

We are adopting the prefunding limitation in the definition of asset-backed security, as proposed, with some modification. The new rule decreases the prefunding limit from 50% to 25% (instead of 10%, as proposed) of offering proceeds or, in the case of master trusts, the principal balance of the total asset pool. The new rule is based on suggestions from several commenters that 25% would be an appropriate restriction, in part, because it is consistent with prefunding standards under ERISA.

We believe that this reduction will result in the asset pool being more developed at the time of the offering, which will provide investors with more appropriate information about the securities being offered. We recognize, however, that the rule could impose higher carrying costs on originators and, in turn, potentially higher borrowing rates for consumers and small businesses. We believe that our final rule balances the need to provide investors with more appropriate information and these cost concerns by raising the prefunding period limit from the proposed 10% to 25% of the offering proceeds (or principal balance of the total assets for master trusts).

We are not adopting the revision to the master trust exception to exclude securities that are backed by assets that arise in non-revolving accounts because we are persuaded by commenters' concerns that it would eliminate the use of shelf for certain master trusts. The cost of not adopting this revision today is the possibility that more ABS issuers of non-revolving assets will utilize master trust structures, which will result in investors lacking access to information about all pool assets before making an investment decision. This concern is mitigated, to some extent, by the adoption of initial and ongoing asset-level disclosure requirements for some asset classes.

We are also not adopting the proposal to revise the revolving period exception that would reduce the permissible duration of the revolving period for securities backed by non-revolving assets from three years to one year due to comments received. An investor commenter noted, for example, that receiving updated asset-level information about the pool's assets on an ongoing basis would mitigate concerns regarding the duration of the revolving period.[1305] We also recognize, as noted by another commenter, that shortening the revolving period for securities backed by non-revolving assets could preclude certain issuers, such as auto and equipment issuers, from issuing securities with longer maturities than the underlying loans.[1306]

VIII. Exchange Act Reporting

A. Distribution Reports on Form 10–D

1. Delinquency Presentation

(a) Proposed Rule

In the 2004 ABS Adopting Release, we stated that delinquency disclosures required in the Form 10–D under Item 1121(a)(9) were based on materiality[1307] and not on Item 1100(b) of Regulation AB, which requires presentation of delinquency data to be provided in 30- or 31-day increments, as applicable, beginning at least with assets that are 30 or 31 days delinquent, as applicable, through the point that assets are written off or charged off as uncollectable. However, in registration statements, delinquency disclosures are to be presented pursuant to Item 1100(b). Consistent with our efforts to standardize the disclosure across all ABS, we proposed to add a new instruction to Item 1121(a)(9) to require that pool-level delinquency disclosure in periodic reports be provided in accordance with Item 1100(b) of Regulation AB.

(b) Comments on Proposed Rule

We received several comment letters that provided differing views on the proposal. One commenter stated that it would not object to the proposal because it would ''provide clarity and consistency in reporting.''[1308] This commenter also indicated that disclosure provided in the CREFC's IRP contains delinquency information in this format.[1309] On the other hand, several commenters expressed concern about applying the requirements of Item 1100(b) to ongoing reporting in that it applies a ''one-size-fits-all approach across different asset classes.''[1310] They believed that for various asset classes the presentation of delinquency information would be provided for ''considerably longer periods of time, or in more granular increments, than would be required under general principles of materiality'' and in ways that differ from the current disclosure

[1298] *See* letter from AmeriCredit (also suggesting that disclosures involving prefunding structures be required to include certain representations and warranties that there has been no material variation in the overall composition of the characteristics (such as underwriting, origination, or pool selection criteria) of the initial loans and the pool of loans as whole after giving effect to the transfer of the subsequent loans).

[1299] *See* letter from ASF I.

[1300] *See* letter from ASF I (suggesting, for example, permitting prefunding not in excess of 10% where a prefunding period may last up to one year, prefunding not in excess of 25% where a prefunding period may last up to nine months, and prefunding not in excess of 50% where a prefunding period may last up to six months).

[1301] Pub. L. No. 93–406, 88 Stat. 829 (1974). ERISA is a federal law that sets uniform minimum standards to ensure that employee benefit plans are established and maintained in a fair and financially sound manner. In addition, employers have an obligation to provide promised benefits and satisfy ERISA's requirements for managing and administering private retirement and welfare plans.

[1302] *See* letters from BoA I and Sallie Mae I.

[1303] *See* letter from SIFMA I (also noting that the Commission staff would have the opportunity to review and comment on the disclosure for an offering on Form SF–1 where the 20% limit would be applicable and reiterating that a 10% limit on prefunding is appropriate in a shelf offering).

[1304] *See* letter from Sallie Mae I.

[1305] *See* letter from Prudential I.

[1306] *See* letter from ASF I.

[1307] *See* footnote 477 of the 2004 ABS Adopting Release.

[1308] *See* letter from MBA I.

[1309] *See* letter from MBA I. For more information about the CREFC IRP, see footnote 104.

[1310] *See* letters from ASF I and VABSS I.

practices across different asset classes.[1311] The commenter believed that issuers and servicers should not be required to incur the additional time and cost to track and present delinquency information in additional prescribed increments as required under Item 1100(b).[1312]

(c) Final Rule and Economic Analysis of the Final Rule

We are adopting a revised requirement in light of comments received. The final instruction to Item 1121(a)(9) requires delinquency disclosures included in the Form 10–D to be presented in accordance with Item 1100(b) with respect to presenting delinquencies in 30- or 31-day increments. In response to commenters' concerns that requiring such granular presentation through charge-off is too long a time period, we have modified the proposed instruction to require such presentation through no less than 120 days. We believe that this revised time period helps to address commenters' concerns about the cost and burden of having to track and report this information in a more granular manner for a longer period of time while still providing investors with a more comprehensive picture of delinquencies and losses in a uniform manner across asset classes. We also note that the revised time period is consistent with the new asset-level data requirement for presentation of delinquencies and losses in RMBS.[1313] While investors will not receive as granular a presentation as proposed (through charge-off), investors investing in asset classes required to provide asset-level disclosures will be receiving more detailed information about the payment status of each individual asset, such as the paid through date.[1314] We recognize that to the extent that issuers will now be required to present delinquencies and losses for a longer period of time than previously provided in the distribution reports, such issuers will incur some costs. We believe, however, the benefits gained from standardized and comparable delinquency and loss disclosure justify the costs issuers may incur to provide the information.

2. Identifying Information and Cross-References to Previously Reported Information

In the 2010 ABS Proposing Release, we proposed several revisions to Exchange Act Form 10–D or to the requirements governing the disclosures to be provided with the Form 10–D.[1315] We proposed to revise General Instruction C.3. of Form 10–D to provide that if information required by an item has been previously reported,[1316] the Form 10–D does not need to repeat the information. Because information that is previously reported may relate to a different issuer from the issuer to which the report relates, such information may be difficult to locate. As a result, we also proposed to amend Form 10–D to require disclosure of a reference to the CIK number, file number, and date of the previously reported information. Additionally, we proposed to revise the cover page of the Form 10–D to include the name and phone number of the person to contact in connection with the filing because we believed this would assist the staff in its review of asset-backed filings.[1317] We did not receive any comments regarding these proposed revisions to Form 10–D. We believe the costs of these requirements to be very limited and offset by the benefit to investors and staff in easily and quickly locating the previously reported information. Because of that and since we did not receive any comments opposing these proposed revisions to Form 10–D, we are adopting them as proposed.

3. Changes in Sponsor's Interest in the Securities

(a) Proposed Rule

To assist investors in monitoring the sponsor's interest in the securities, we proposed to add a new item to Form 8–K to require the filing of a Form 8–K for any material change in the sponsor's interest in the securities. Under the proposal, the report on Form 8–K would be required to include disclosure of the amount of change in interest and a description of the sponsor's resulting interest in the transaction.

(b) Comments on Proposed Rule

We received a mixed response to the proposal with some commenters supporting the proposal[1318] and other commenters opposing the disclosure and suggesting that the disclosures were not material.[1319] In support of the proposal, the investor members of a trade association believed that if the sponsor retains exposure to the risks of the assets, the sponsor will likely have greater incentives to include higher quality assets and ongoing monitoring of this exposure helps to align the interests of the sponsor and investors.[1320] They also believed that the sponsor is akin to an ''insider'' and its decision to hold or sell its retained interest may be triggered based upon a negative or positive view of the securitization. Another investor stated that the sponsor and its affiliates should regularly report their current risk retention related holdings by each tranche of a securitization, because any change in risk retention holdings is material.[1321] Another commenter, an issuer of student loan ABS, generally supported the proposal, but requested an instruction be added to clarify that transfers by the sponsor to its affiliates or subsidiaries would not trigger a filing obligation under Item 6.09 because transfers within a corporate family are not material changes that should require a Form 8–K filing.[1322]

[1311] *See* letter from ASF I (noting that standard practice in the mortgage industry has been to present delinquency information in Form 10–D reports and in static pool information in 30- or 31-day increments through the point that loans are 179 or 180 days delinquent, followed by an additional 180-day increment and a final increment of 359 or 360 days or more, and for ABS supported, directly or indirectly, by motor vehicles, equipment and other similar physical assets that have finite lives over which their value depreciates, delinquency information is presented in 30- or 31-day increments through the point that loans are 119 or 120 days delinquent, followed by a final increment of 119 or 120 days or more).

[1312] Even though we did not propose any changes to Item 1100(b)(1), ASF I requested we make revisions to Item 1100(b)(1) that they believed would provide for consistent presentation of delinquency information across issuers within the same asset class, while recognizing that ''some variation across asset classes is meaningful and appropriate.'' *See* letter from ASF I (Exhibit L).

[1313] *See* new Item 1(g)(33) of Schedule AL.

[1314] *See* new Item 1(g)(28) of Schedule AL. *See* Section III.A.2.b Asset Specific Disclosure Requirements and Economic Analysis of These Requirements. Due to the transition period for implementing the loan-level requirements, there will be a period of time during which investors will not have access to this more granular data about assets in prior securitized pools. *See* Section IX.B Transition Period for Asset-Level Disclosure Requirements.

[1315] *See* the 2010 ABS Proposing Release at 23390.

[1316] The term ''previously reported'' is defined in Exchange Act Rule 12b–2 [17 CFR 240.12b–2].

[1317] Issuers are also encouraged to provide the name and phone number of the outside attorney or other contact in accompanying correspondence to their reports on Form 10–D.

[1318] *See* letters from ASF I (expressed views of investors only), Prudential I, and Sallie Mae I.

[1319] *See* letters from ASF I (expressed views of dealer and sponsors only) (stating that the information has not been shown to be material), BoA I, MBA I (questioning the materiality of the disclosure and suggesting that all the disclosure would provide was that the sponsor was at some level above the minimum required level), and SIFMA I.

[1320] *See* letter from ASF I (expressed views of investors only) (suggesting that because our shelf eligibility requirements proposed in 2010 to require disclosure that the sponsor or an affiliate of the sponsor retained a net economic interest in each securitization that this requirement should be extended to affiliates of the sponsor).

[1321] *See* letter from Prudential I.

[1322] *See* letter from Sallie Mae I.

Some commenters who opposed the proposal suggested it was too broad and should be limited to the monitoring of a sponsor's retention of risk that is required as a condition of shelf eligibility, law, or regulation.[1323] Another commenter also opposed the proposal because it did not see a benefit to the disclosure, the compliance costs would be substantial, and the issuer would need information from parties that it does not control.[1324] In addition, the issuer members of a trade association also disagreed with the investor members who suggested, as discussed above, that a sponsor's decision to hold or sell any portion of its interest in the securities may serve as an indicator of the future prospects for the securitization [1325] and that the requirement should extend to changes in the interest of affiliates of the sponsors.[1326] The issuer members also stated that privacy concerns could arise with disclosing this type of information, although no further detail was provided.[1327]

We also received several comments seeking revisions to the proposal. For instance, some commenters suggested that, if we adopt the rule, it should not include the reporting of changes that arise as a result of organic changes in the sponsor's interest in securities, such as pool assets converting into cash in accordance with their terms or, in the case of revolving pool assets, fluctuating account balances based on credit line usage or those arising as a result of payments made on other securities issued by the issuing entity.[1328] One of these commenters also suggested that we make clear that no reporting requirement arises as a result of the ''sponsor's pledge of the securities in the ordinary course of business for on balance sheet funding purposes.'' [1329] Finally, some commenters suggested that the disclosure be provided in the Form 10–D rather than in the Form 8–K.[1330] One of these commenters believed that this approach would permit issuers to avoid constant monitoring of changes in retained interest and repeated filing of Forms 8–K, while keeping investors informed of the sponsor's retained interest amount.[1331]

(c) Final Rule and Economic Analysis of the Final Rule

We are adopting the proposed requirement that disclosure be provided regarding material changes in a sponsor's interest in the ABS transaction with some modification. Instead of providing a description in a Form 8–K as proposed, we are requiring that if there has been a material change in the sponsor's interest during the period covered by the Form 10–D, then a description of the material change must be provided in the Form 10–D for that reporting period. We agree with the commenters that suggested this approach because it would permit issuers to avoid monitoring of changes in retained interest to meet the current reporting requirements of Form 8–K, thus minimizing costs.[1332] At the same time, investors will continue to benefit from being kept informed of the sponsor's retained interest amount. Further, we are also clarifying that disclosure of any material change in the sponsor's retained interest includes any interest held by an affiliate of the sponsor in order to be consistent with the disclosure required in the prospectus and to allow investors to monitor changes in the interest held. The rule requires disclosure of a material change in the sponsor's retained interest in the ABS transaction due to the purchase, sale or other acquisition or disposition of the securities by the sponsor or an affiliate.[1333] While we note that the credit risk retention rules under Section 15G of the Exchange Act have not yet been adopted,[1334] under the rules we are adopting, if there is a material change (such as a transfer) in any interest or assets that are required to be retained in compliance with law, disclosure of such change would be required. In order to clarify the interplay of the disclosure requirement with risk retention requirements, we have included an instruction specifying that the disclosure about the resulting amount and nature of any interest or asset retained in compliance with law must be separately stated. Finally, we understand that the sponsor may not be a party that is controlled by the issuer. We believe, however, that contracts that relate to the transfer of the assets to the trust can include an ongoing duty for the sponsor to provide the information required for this disclosure. Furthermore, we believe that by requiring changes in the sponsor's interest to be disclosed periodically on the Form 10–D, instead of on a Form 8–K, lessens the burden of obtaining this information from parties that the issuer may not control.

B. Annual Report on Form 10–K

1. Servicer's Assessment of Compliance With Servicing Criteria

(a) Proposed Rule

The Form 10–K report of an asset-backed issuer is required to contain, among other things, an assessment of compliance with servicing criteria that is set forth in Item 1122 of Regulation AB by each party participating in the servicing function.[1335] The body of the Form 10–K report must also contain disclosure regarding material instances of noncompliance with servicing criteria. Our rules require an asset-backed issuer to provide an assessment of compliance with respect to all asset-backed securities transactions involving the asserting party that are backed by assets of the type backing the asset-

[1323] *See* letters from BoA I and SIFMA I.

[1324] *See* letter from MBA I.

[1325] *See* letter from ASF I (expressed views of dealers and sponsors only) (stating in many deals, the sponsor is not an affiliate of the servicer and may not even be an affiliate of the depositor and, in any event, a sponsor's affiliation with an issuer or servicer does not involve the same level of relationship as the relationship of an officer, director, or other control person to a corporation).

[1326] *See* letter from ASF I (expressed views of dealers and sponsors only) (suggesting that this new requirement would entail an extraordinarily difficult monitoring process and that the sponsor may never be able to administer with reliable results).

[1327] *See* letter from ASF I (expressed views of dealers and sponsors only).

[1328] *See* letters from ABA I, ASF I (expressed views of dealers and sponsors only), and Discover.

[1329] *See* letter from ASF I (expressed views of dealers and sponsors only).

[1330] *See* letters from ASF I (expressed views of dealers and sponsors only) (requesting that, in cases where the sponsor is not an affiliate of the ABS issuer, the Commission except Item 6.09 Form 8–K reports from the Exchange Act filing requirements for Form SF–3 eligibility purposes. The dealer and sponsor members stated that unlike other cases where the content or completeness of an Exchange Act report is dependent on the timely receipt of reports or other information from unaffiliated third parties, an ABS issuer would have no way of even knowing whether and when a change in a sponsor's interest in the securities had occurred and, therefore, it would be inappropriate and unfair for a registrant to lose its eligibility to use Form SF–3) and Discover.

[1331] *See* letter from Discover.

[1332] *See* letters from ASF I (expressed views of dealers and sponsors only) and Discover. The obligation to file a report on Form 8–K is triggered by the occurrence of a reportable event described in Form 8–K, which typically must be filed within four business days of the event.

[1333] Activities like pledging would not be required. *See* letter from ASF I (expressed views of issuers only).

[1334] *See* the 2013 Risk Retention Re-Proposing Release.

[1335] Exchange Act Rules 13a–18(b) and 15d–18(b) [17 CFR 240.13a–18(b) and 17 CFR 240.15d–18(b)] and Item 1122 of Regulation AB. Item 1122 of Regulation AB defines ''a party participating in the servicing function'' as any entity (e.g., master servicer, primary servicers, trustees) that is performing activities that address the criteria set forth in paragraph (d) of Item 1122, unless such entity's activities relate only to 5% or less of the pool assets. *See* Instruction 2 to Item 1122. For purposes of this discussion, we refer to the party that is required to provide a servicer's assessment as the ''servicer.''

backed securities.[1336] In order to provide enhanced information regarding instances of noncompliance with servicing criteria with respect to the offering to which the annual report relates, including information on steps taken to address noncompliance, we proposed to expand the disclosure requirements to require in the body of the annual report disclosure as to whether the instance of noncompliance identified under Item 1122 involved the servicing of the assets backing the asset-backed securities covered in the particular Form 10–K report.[1337] As part of its assessment of compliance, the asserting party typically conducts a sampling of the transactions for which it is responsible for the Item 1122 criteria in order to determine whether there is a material instance of noncompliance in their servicing. The proposed rule would require that if the examination of the sample found a material instance of noncompliance and that material instance of noncompliance involved the servicing of assets of a particular ABS, then the annual report covering that particular ABS would include disclosure indicating that the material instance of noncompliance involved the servicing of the assets underlying the ABS. We also proposed to require that the body of the annual report discuss any steps taken to remedy a material instance of noncompliance previously identified by an asserting party for its activities made on a platform level.[1338]

(b) Comments on Proposed Rule

One commenter supported the proposed requirement that the body of the annual report indicate whether an instance of noncompliance identified under Item 1122 involved the servicing of the assets backing the asset-backed securities covered in the particular Form 10–K report,[1339] while several commenters opposed the proposal.[1340]

The commenter, who supported the proposed requirement, noted that such information is, in fact, already being reported in annual reports on Form 10–K.[1341] However, the commenter requested that we clarify that the ''lack of such disclosure could not be interpreted as confirmation that the transaction had not been affected.'' On the other hand, a commenter who opposed the requirement stated that it is not possible ''for the servicer (much less an ABS issuer) to identify each transaction impacted by the instance of noncompliance'' and ''it would be 'inappropriate and arbitrary' to require an ABS issuer to identify only those transactions within the test sample that were impacted by the instance of noncompliance.'' [1342] This commenter believed that if an ABS issuer were required to disclose whether a reported instance of noncompliance involved assets backing the ABS covered in a particular 10–K report, then investors may draw the incorrect conclusion that in the absence of such disclosure, the reported instance of noncompliance did not involve the servicing of assets backing its ABS.[1343]

One commenter supported requiring the disclosure of any steps taken to remedy a material instance of noncompliance previously identified by an asserting party for the activities made on a platform level.[1344] This commenter recommended, however, that instead of requiring the disclosure in the body of the annual report that the disclosure be included as part of the servicer's management assessment of compliance. The commenter explained that in certain circumstances the management responsible for the noncompliance (e.g., servicer management) is not the same as management responsible for filing the Form 10–K (e.g., issuer). The commenter also requested that we clarify that the remediation activity described in the servicer's management assessment is not covered by the auditor's servicing compliance report because the remediation activities are undertaken subsequent to the date of the auditor's report. Another commenter generally requested that we not adopt any of the proposed revisions to Item 1122.[1345]

(c) Final Rule and Economic Analysis of the Final Rule

After considering the comments received, we are adopting a requirement that disclosure be provided in the body of the annual report as to whether the identified material instance of noncompliance pursuant to Item 1122 was determined to have involved the servicing of the assets backing the asset-backed securities covered in the particular Form 10–K report.[1346] If the material instance of noncompliance is identified as relating to a particular transaction, investors with investments in that particular transaction will benefit from receiving this information.[1347] We continue to believe that testing every transaction in the platform is cost prohibitive and that a platform-level assessment for purposes of assessing servicing compliance provides an appropriate level of information to investors while balancing the substantial increase in cost that issuers would incur to assess the compliance with servicing criteria for every transaction in the platform.[1348] The amendments that we adopt today do not require any change in that approach.

We understand that some commenters are concerned that requiring issuers to disclose a reported instance of noncompliance involving assets backing the ABS covered by the 10–K report may impose an indirect cost to investors if investors draw the incorrect conclusion that in the absence of such disclosure, the reported instance of

[1336] Issuers should provide descriptions of each servicing party's role in the transaction, particularly if multiple servicing parties have overlapping responsibilities, by describing in the Form 10–K the responsibilities assigned to each party and the servicing criteria applicable to such party under Item 1122(d) of Regulation AB.

[1337] *See* the 2010 ABS Proposing Release at 23391. While some information about instances of noncompliance may also be required by Item 1123 of Regulation AB, because of the differences in the definition of servicer between Item 1122 and Item 1123, we believed that Item 1123 does not cover the same information that our proposed revision to Item 1122 would cover.

[1338] This proposed disclosure would be required whether or not the instance of noncompliance involved the servicing of assets backing the securities covered in the particular Form 10–K.

[1339] *See* letter from ABA I.

[1340] *See* letters from ASF I, CREFC I, and KPMG (stating the proposed requirement would require an issuer to identify each transaction that involved the instance of noncompliance identified in the Item 1122 assessment and attestation and then report in the annual report of each transaction that had that instance of noncompliance, which may offset the efficiencies gained by allowing management to provide a platform-level assessment).

[1341] *See* letter from ABA I.

[1342] *See* letter from ASF I.

[1343] *See* letters from ASF I (noting ''because the platform level report is based on only a sampling of transactions, a reported instance of noncompliance does not purport to, nor by its nature could it, identify all transactions where noncompliance may have occurred''), CREFC I, and KPMG.

[1344] *See* letter from KPMG.

[1345] *See* letter from CREFC I (without explaining why this particular proposed revision to Item 1122 should not be adopted).

[1346] For example, if the servicer selected 10 transactions as part of their sample for purposes of assessing Item 1122 servicing criteria and it was determined that five of those transactions involved instances of noncompliance that are material to the platform, then, under this requirement, each Form 10–K report for those five transactions must disclose in the body of the 10–K report that: (1) This transaction was part of the sample and (2) it was determined that this particular transaction involved a material instance of noncompliance.

[1347] We observe, however, that the absence of disclosure of instances of noncompliance involving the servicing of assets backing a particular transaction in an annual report is not necessarily an indication that the transaction had not been affected. We also note that, to the extent appropriate, issuers can provide explanatory disclosure in the annual reports of the transactions that were not part of the Item 1122 sample and explain that it is not clear whether their transaction has been affected by the material instance of noncompliance identified in the Item 1122 assessment and attestation.

[1348] *See* Section III.D.7.b.iii of the 2004 ABS Adopting Release.

noncompliance did not involve the servicing of assets backing its ABS.[1349] We believe disclosure can be provided in the Form 10–K or in the servicer's Item 1122 report regarding the scope and structure of the assessment that can adequately addresses this concern.

We are also adopting, as proposed, the requirement to disclose any steps taken to remedy a material instance of noncompliance for activities made on a platform level in the body of the annual report. While we note one commenter's recommendation that such disclosure be provided as part of the servicer's management assessment of compliance rather than in the body of the Form 10–K, we continue to believe that the issuer is ultimately responsible for the disclosure provided in the Form 10–K and therefore should be assessing the information provided by the servicers in their reports, including considering whether the information provided by the servicers in their reports at the platform level applies to the transaction for which the 10–K is filed.[1350] The final rule does not, however, prohibit the servicer from also providing such disclosure in the servicer's assessment of compliance. We are adopting the disclosure requirement in order to provide investors with insight into the potential impact of the instance of noncompliance on their transaction and whether they should reassess their continuing investment decision. Further, we do not believe adding this disclosure is burdensome to the issuers since the information should be readily available to them and is a logical extension of the disclosure of material instances of noncompliance.

Finally, in the 2010 ABS Proposing Release, we noted the staff's belief that the application of Item 1108(b)(2), which requires a detailed discussion in the prospectus of the servicer's experience in, and procedures for, the servicing function it will perform in the current transaction for assets of the type included in the current transaction, has not been consistent among issuers.[1351] While we are not adopting any changes to Item 1108(b)(2) at this time, we continue to believe that Item 1108(b)(2) requires disclosure in the prospectus of any material instances of noncompliance noted in the assessment or attestation reports required by Item 1122 or the servicer compliance statement that is required by Item 1123. In addition, the prospectus should provide disclosure of any steps taken to remedy the noncompliance disclosed and the current status of those steps. With respect to requiring disclosure in the prospectus of a material instance of noncompliance noted in Item 1123 servicer compliance statements, we believe such disclosure is appropriate because investors should have access to information related to the performance of servicers.

2. Codification of Prior Staff Interpretations Relating to the Servicer's Assessment of Compliance With Servicing Criteria

We also proposed to codify certain staff positions issued by the Division of Corporation Finance relating to the servicer's assessment requirement, with some modification. The first staff interpretation that we proposed to codify related to aggregation and conveyance of information between a servicer and another party (who may also be a servicer for purposes of the servicer's assessment requirement).[1352] This new criterion, as proposed, would, if information obtained in the course of performing the servicer's duties is required by any party or parties in the transaction in order to complete their duties under the transaction agreements, require an assessment that the aggregation of such information, as applicable, is mathematically accurate and the information conveyed accurately reflects the information.[1353]

We also proposed to codify in an instruction to Item 1122 staff interpretations relating to the scope of the Item 1122 servicer's assessment. In a publicly available telephone interpretation the staff explained, among other things, that the platform for reporting purposes should not be artificially designed, but rather, it should mirror the actual servicer practices of the servicer.[1354] The servicer may, however, take into account in determining the platform for reporting purposes divisions in its servicing function by geographic locations or among separate computer systems. Although, if the servicer includes in its platform less than all of the transactions backed by the same asset type that it services, the proposed instruction would provide that a description of the scope of the platform should be included in the servicer's assessment.

We received general support for the proposed codifications from several commenters[1355] and one commenter generally requested that we not adopt any of the proposed changes to Item 1122.[1356] We are adopting these codifications, as proposed, because we continue to believe that adopting these positions makes them more transparent and readily available to the public. We do not anticipate that these codifications will cause a hardship for servicers as they are consistent with current servicer practices to the extent they were executed under existing staff interpretations.

C. Central Index Key Numbers for Depositor, Sponsor and Issuing Entity

In the 2010 ABS Proposing Release, we noted that ABS offerings with a particular file number may be associated with a registration statement with a different file number and that Forms 8–K for ABS offerings may be filed under the depositor file number, making it difficult to track material for the related offering with only the information provided in the Form 8–K. To make it easier for interested parties to locate the depositor's registration statement and periodic reports associated with a particular offering and information related to the sponsor of the offering, we

[1349] *See* letters from ASF I, CREFC I, and KPMG.

[1350] *See* letter from KPMG.

[1351] *See* the 2010 ABS Proposing Release at 23383. Item 1108 also requires a general discussion of the servicer's experience in servicing the assets of any type.

[1352] The staff had taken the position that, while the conveyance of information to another party is not explicitly contained in any of the criterion in Item 1122(d), the accurate conveyance of the information was part of the same servicing criterion under which the activity that generated the information was assessed. *See* the Division of Corporation Finance's Manual of Publicly Available Interpretations on Regulation AB and Related Rules, Interpretation 11.03. We proposed to codify this position, but instead of requiring it be included with an existing criterion, the proposed rule would make it a new servicing criterion in Item 1122. *See* proposed Item 1122(d)(1)(v).

[1353] For example, if Servicer A is responsible for administering the assets of the pool and passing along the aggregated information about the assets in the pool to Servicer B, and Servicer B is responsible for calculating the waterfall or preparing and filing the Exchange Act reports with that information, Servicer A's activity with respect to administering the assets would be required to be assessed under Item 1122(d)(4). In addition to assessing Servicer A's pool asset administration, Servicer A would be required under proposed Item 1122(d)(1)(v) to separately assess whether its aggregation of the information is mathematically accurate and the information conveyed to Servicer B accurately reflects the information. If instead of aggregating the individual asset information, Servicer A conveys it un-aggregated, then Servicer B would be required to include its own aggregation of the individual asset data in Servicer B's assessment of calculating the waterfall or preparing and filing Exchange Act reports. Servicer A would still need to assess under proposed Item 1122(d)(1)(v) that the un-aggregated information conveyed to Servicer B accurately reflects the information.

[1354] *See* the Division of Corporation Finance's Manual of Publicly Available Interpretations on Regulation AB and Related Rules, Interpretation 17.03.

[1355] *See* letters from E&Y, KPMG, and Prudential I.

[1356] *See* letter from CREFC I (opposing without providing an explanation why this particular proposed revision to Item 1122 should not be adopted).

proposed amendments to require that the cover pages of registration statements on Form SF–1 and Form SF–3 include the CIK number [1357] of the depositor, and if applicable, the CIK number of the sponsor. We also proposed to require that the cover pages of the Form 10–D, Form 10–K, and Form 8–K for ABS issuers include the CIK number of the depositor, the issuing entity, and, if applicable, the sponsor.

Several commenters expressed general support for these proposals; no commenters opposed.[1358] These commenters agreed that adding the CIK numbers of the depositor and the issuing entity to the cover pages of filings will enhance the accessibility of information to investors.[1359]

We are adopting these amendments, as proposed, given the benefits that they will provide as recognized by commenters. Furthermore, we do not believe that requiring this information on certain cover pages for ABS filings will be burdensome to issuers, nor did we receive any comments stating any cost concern.

IX. Transition Period

In the 2010 ABS Proposing Release, we noted our belief that compliance dates should not extend past a year after adoption of the new rules, but we sought comment about feasible dates for implementation of the proposed amendments. We also acknowledged that the asset-level disclosure requirements may initially impose significant burdens on sponsors and originators as they adjust to the new requirements, including changes to how information relating to the pool assets is collected and disseminated to various parties along the chain of the securitization.[1360] We also requested comment on whether we should provide a transition period for compliance with the asset-level disclosure requirements that would allow the filing of test submissions.[1361] We describe below the comments received and the overall transition period for revisions to Regulation AB and the additional transition period for asset-level disclosure requirements.

A. General Transition Period

With respect to implementation of the overall proposals to revise Regulation AB, a majority of commenters expressed a need for a longer transition period. The commenters were generally concerned that the proposed rules would impose new substantial obligations on various industry parties, such as originators, sponsors, and other transaction parties that will require changes to operational procedures and infrastructures in order to meet the new disclosure requirements.[1362] These commenters suggested that we consider various factors when determining the implementation timeframe, including: The existence of other rulemaking processes and regulatory developments,[1363] how the final regulations relate to and work with other new and revised regulations,[1364] and the ability of issuers to implement the various rules' changes simultaneously.[1365]

As noted above, several commenters suggested compliance timeframes that would extend past the proposed one-year transition period. One trade association suggested an implementation period of at least eighteen months [1366] and another suggested two years.[1367] Another commenter suggested that implementation of the proposed rules should be staggered in one and two year increments with those changes that can be implemented in the near-term implemented in a one-year timeframe and the ''more elaborate implementation measures'' implemented within two years.[1368] Another trade association did not specifically suggest a longer compliance period, but suggested that for the disclosure aspects of the proposal that the effective date should be no earlier than one year following the date of publication of the related final rules in the **Federal Register**.[1369]

We understand that some of the requirements that we are adopting, including the asset-level disclosure requirements, will take time and resources in order to satisfy the new requirements. We also understand that issuers and market participants are working to implement many different regulations that have recently been adopted or may be adopted in the near future. We are therefore adopting a tiered approach. All new rules, except for asset-level disclosures require compliance within one year from the effective date of the rules. We believe that this time period provides a sufficient transition period for compliance. We believe that 12 months will allow the transaction parties to better manage the changes necessary to their systems and processes. Therefore, any registered offering of asset-backed securities commencing with an initial bona fide offer one year after the effective date of the rules and the asset-backed securities that are the subject of that offering must comply with the new rules and forms, except for asset-level disclosures. Consequently, after the one year transition period, ABS issuers seeking to conduct a shelf ABS offering must conduct such offering off of an effective Form SF–3 registration statement.

In addition, any Form 10–D or Form 10–K that is filed after one year after the effective date of the rules must include the information required by the new rules, except for asset-level disclosures.

B. Transition Period for Asset-Level Disclosure Requirements

We received substantial feedback with respect to the appropriate compliance dates for our requirements related to the asset-level disclosure requirements.

[1357] The CIK is a number that we assign to each entity (company or individual) that submits filings to the Commission. Use of the CIK allows the Commission to differentiate between filing entities with similar names. A CIK is used to identify all filers, both EDGAR and non-EDGAR.

[1358] *See* letters from BoA I and MBA I.

[1359] *See* letter from MBA I (noting that sponsors' CIK numbers should be required only if the sponsor has a CIK number). *See also* letter from BoA I (stating our proposal to require CIK numbers for the depositor and the sponsor (if applicable) on the cover pages of the proposed Forms SF–l and SF–3 will also help investors locate materials related to an ABS offering or ABS issuer).

[1360] *See* Section VIII of the 2010 ABS Proposing Release.

[1361] EDGAR currently provides the ability to file a test submission which allows the filer to test the ability to create a filing in an EDGAR-acceptable format. For a test submission, fees will not be deducted, the filing will not be disseminated, and the filing will not count towards any filing requirements.

[1362] *See* letters from ASF I, ABA I, BoA I, CREFC I, and MBA I (requesting an 18-month implementation period because the new obligations will require the implementation of new operational procedures and infrastructures, and originators and servicers will need sufficient time to evaluate and update their origination and servicing platforms).

[1363] *See, e.g.,* letters from ABA I, CREFC I, and MBA I.

[1364] *See* letters from CREFC I (stating we should take into consideration how the final rules' new and revised regulations relate to and work with other new or proposed regulations, such as those described in Section 941(b) of the Dodd-Frank Act, which provides for a two-year transition period for securitizers and originators of all classes of asset-backed securities other than RMBS to comply with risk retention requirements) and MBA.

[1365] *See* letter from MBA I.

[1366] *See* letter from MBA I (with respect to RMBS).

[1367] *See* letter from CREFC I. *See also* letter from BoA I (suggesting, in general, a longer transition period should be provided).

[1368] *See* letter from MBA III (with respect to CMBS) (reiterating its suggested implementation timeframes in its Oct. 4, 2011 letter submitted in response to the 2011 ABS Re-Proposing Release).

[1369] *See* letter from ASF I (suggesting that if a prospectus is included in a new registration statement filed on or after the effective date that the new disclosure rules should apply to that prospectus and that we should also allow for a period to convert to the proposed new Form SF–3 so that a prospectus included in the registration statement may be made compliant). The ASF reiterated this position in its Oct. 4, 2011 letter submitted in response to the 2011 ABS Re-Proposing Release. *See* letter from ASF III.

Issuers, market participants, and trade associations representing issuers generally believed that a significant number of the proposed data points required data that is currently not captured by originators or servicers.[1370] They also argued that there will be substantial costs in time and resources to develop systems that will capture the data in the required format and, therefore, believed an extended implementation timeframe is appropriate.

Commenters suggested varying timeframes for implementation. For instance, investor members of one group suggested that the transition period should not exceed one year from the date the final rules are published.[1371] In contrast, other commenters suggested longer timeframes, including: A transition period of no earlier than 12 months from the publication of the final rules in the **Federal Register**,[1372] 18 months,[1373] and 24 months.[1374] We also received a number of comments suggesting that the asset-level disclosures may not be available for assets originated before the effective date of the asset-level disclosure requirements or for assets underlying asset-backed securities originated before the effective date of the requirements.[1375] These commenters suggested a range of possible solutions, including a full exemption,[1376] a multi-year phase-in,[1377] and an exemption to the extent that information called for under those rules with respect to legacy loans is unknown and not available to the issuer without unreasonable effort or expense.[1378] However, investor members of one trade association suggested that any grandfathering period for assets originated prior to the compliance date should be limited to an additional one year after the compliance date.[1379]

Some commenters also recommended allowing exemptions or ''deferrals'' from the reporting requirements for data that they were unable to start collecting within the implementation timeframe.[1380] One commenter also stated that it was important that the Commission provide the public with the ''the detailed file layout that is necessary with XML'' when the final rule is adopted so that market participants can begin programming their systems and that any delay in receiving this information will greatly affect the industry's ability to comply in a timely manner.[1381]

As we noted earlier, we believe that, in order for investors to have access to robust information concerning the pool assets, asset-level disclosure needs to be provided. We understand that some of the disclosures that we are requiring are not currently captured by originators or servicers and that it will take time and resources to reprogram systems and processes to capture the data and then report it in XML. We also understand that issuers and market participants are working to implement many different regulations that have recently been adopted. Therefore, we have decided to delay the compliance date for the asset-level disclosure requirements so that market participants will have ample time to prepare and satisfy the new requirements. In this regard, issuers will be required to provide asset-level information no later than two years after the effective date of the rules, which we believe is a reasonable implementation timeframe. We believe the extended timeframe will ultimately benefit investors because it will give issuers and market participants the time to plan for and implement appropriate reporting processes and more meaningful and relevant disclosure documents. In addition, as discussed in Section III.A.2.b.5 Resecuritizations, we are adopting an exemption for resecuritizations of ABS issued prior to two years after the effective date of the rules, the compliance date for the asset-level disclosure requirements.

We also understand that certain changes to issuers' and market participants' systems may not be able to occur until the final technical requirements are published in the EDGAR Filer Manual and EDGAR Technical Specification documents. In order to provide issuers and other filers time to make adjustments to their systems, we anticipate making a draft of the EDGAR Technical Specification documents[1382] available soon.

We also note that at least one commenter requested a test period. We believe that submissions may assist both the Commission and issuers with addressing unknown and unforeseeable issues that may arise with the submission of the asset-level disclosures.[1383] We will permit issuers to file test submissions during the transition period.

We are not adopting a commenter's suggestion that we adopt a hardship exemption from the reporting requirements for those issuers that may be unable to start collecting by the implementation timeframe. We believe that our timeframe provides ample time for the necessary reprogramming of systems and processes to capture the information, including for smaller originators.

[1370] *See, e.g.,* letters from ABA I, ASF I, BoA I, CREFC I, J.P. Morgan I, PricewaterhouseCoopers dated July 30, 2010 submitted in response to the 2010 ABS Proposing Release (''PwC''), MBA I, SIFMA I (expressed views of dealers and sponsors only), and Wells Fargo I. None of these commenters provided a specific cost estimate for compliance.

[1371] *See* letter from SIFMA I (expressed views of investors only). The dealer and sponsor members of this commenter suggested that a one-year transition period would be the minimum needed and recommending 18 months for asset-level disclosure because many securitizers are unprepared for these requirements and this timeframe would also allow smaller originators and servicers to examine the feasibility of converting their platforms to comply with the disclosure requirements.

[1372] *See* letter from ASF I.

[1373] *See* letters from J.P. Morgan I (suggesting an 18-month implementation period following the effective date of the rule without specifying whether the recommended timeframe should apply to all of the rules or just the new asset-level requirements), MBA I (with respect to RMBS) (suggesting 18 months will ensure more compliance and smoother transition), SIFMA I, and Wells Fargo I (suggesting a 12-month implementation period followed by a six-month test period).

[1374] *See* letters from CREFC I, MBA I (with respect to CMBS), and PwC.

[1375] *See, e.g.,* letters from ABA I, ASF I, BoA I, J.P. Morgan I, MBA I, and SIFMA I. *See also* letters from J.P. Morgan II and SIFMA III-dealers and sponsors.

[1376] *See* letters from ABA I and Citi (also suggesting we create an explicit safe harbor for earlier-originated assets that may not be able to satisfy all of the disclosure requirements based on a Rule 409 type standard).

[1377] *See* letter from ABA I (without describing the multi-year phase-in approach).

[1378] *See* letters from ASF I (suggesting that resecuritizations supported by legacy underlying securities be grandfathered and not be subject to the new and amended rules, at least to the extent that information called for under those rules with respect to legacy assets is unknown and not available to the issuer without unreasonable effort or expense), Citi, and J.P. Morgan I (suggesting that we provide a bright-line test for compliance based on the origination date of the related asset, or allow as an acceptable response to the data points an indication that certain data fields for such asset are unavailable, accompanied by an explanation of why the data is not available and whether it will be available in the future). *See also* letters from ASF II and J.P. Morgan II.

[1379] *See* letter from SIFMA I (expressed views of investors only).

[1380] *See* letters from ASF I (suggesting that some cases will exist where compliance cannot be accomplished within the implementation timeframe and in those cases, issuers should be able to apply for a hardship exemption and be granted additional time to comply as needed on a case-by-case basis, or on a ''class of transactions'' basis, where the class might be defined by any number of common characteristics (e.g., common depositor, sponsor or other transaction party, asset type or transaction structure)) and BoA I (suggesting we allow issuers to report exceptions or deferrals in cases where responses to non-crucial data points cannot be provided in the exact manner contemplated by the proposed rule to ease transition concerns and indicating that this is consistent with Regulation AB, which permits concessions when data requests require significant cost or effort).

[1381] *See* letter from MBA I.

[1382] The draft EDGAR Technical Specification documents will include preliminary tagging requirements for asset-level data points.

[1383] *See* letter from Wells Fargo I (suggesting a six-month test period).

C. Compliance Dates

As discussed above, we are adopting different compliance periods for the new rules. Registrants must comply with new rules, forms, and disclosures other than the asset-level disclosure requirements no later than November 23, 2015. Offerings of asset-backed securities backed by RMBS, CMBS, Auto ABS, and debt securities (including resecuritizations) must comply with the asset-level disclosure requirements no later than November 23, 2016. Any Form 10–D or Form 10–K filed after November 23, 2015, must comply with the new rules and disclosures, except asset-level disclosures. If any provision of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

X. Paperwork Reduction Act

A. Background

Certain provisions of the new rules and rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[1384] We published a notice requesting comment on the collection of information requirements in the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release, and we submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[1385]

An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid control number. The titles for the collections of information are:

(1) ''Form S–1'' (OMB Control No. 3235–0065);

(2) ''Form S–3'' (OMB Control No. 3235–0073);

(3) ''Form 10–K'' (OMB Control No. 3235–0063);

(4) ''Form 10–D'' (OMB Control No. 3235–0604);

(5) ''Form 8–K'' (OMB Control No. 3235–0060);

(6) ''Regulation S–K'' (OMB Control No. 3235–0071);

(7) ''Regulation S–T'' (OMB Control No. 3235–0424);

(8) ''Form SF–1'' (OMB Control No. 3235–0707);

(9) ''Form SF–3'' (OMB Control No. 3235–0690); and

(10) ''Form ABS–EE'' (OMB Control No. 3235–0706).

The forms listed in Nos. 1 through 7 were adopted under the Securities Act and the Exchange Act and set forth the disclosure requirements for registration statements and periodic and current reports filed with respect to asset-backed securities and other types of securities to inform investors. Regulation S–K, which includes the item requirements in Regulation AB, contains the requirements for disclosure that an issuer must provide in filings under both the Securities Act and the Exchange Act. Regulation S–T specifies the requirements that govern the submission of electronic documents.

The regulations and forms listed in Nos. 8 through 10 are new collections of information under the Securities Act and the Exchange Act. Form SF–1 and Form SF–3 represent the new registration forms for offerings of asset-backed securities, as defined in Item 1101(c) of Regulation AB. Form SF–3 represents the registration form for asset-backed offerings that meet certain shelf eligibility conditions and can be offered off a shelf under Rule 415. Form SF–1 represents the registration form for other asset-backed offerings. Form ABS–EE[1386] is a new form for the filing of certain asset-level information required in connection with registration statements and periodic reports for asset-backed issuers. Under the requirements, an asset-backed issuer is required to submit to the Commission specified, tagged information on assets in the pool underlying the securities.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collections of information. Compliance with the rule amendments is mandatory. Responses to the information collection will not be kept confidential, and there is no mandatory retention period for the information disclosed.

B. Summary of Comment Letters on the PRA Analysis

In the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release, we requested comment on the PRA analysis. While many commenters provided qualitative comments on the possible costs of the proposed rules and amendments, we received limited quantitative comments on our PRA analysis. The only quantitative comment we received on asset-level disclosure came from a commenter representing a group of Auto ABS sponsors. This commenter estimated that, if we adopted each of the Auto ABS data points originally proposed, the average costs and employee hours per sponsor necessary to comply with the asset-level requirements would be approximately $2 million and 12,000 hours, respectively.[1387] This commenter also noted that if we adopted the reduced number of data points proposed in their comment letter, the burden would decrease to $750,000 and 3,500 hours.

We received only one comment letter with quantitative comments on the additional burden to complete Form SF–3.[1388] This commenter believed that our 100 burden hour estimate for asset-backed issuers to complete the disclosure requirements for Form SF–3, prepare the information, and file it with the Commission is ''inadequate'' and ''not realistic.'' This commenter stated that at least 100 burden hours should be separately allocated to certain of the shelf transaction requirements, including the certification provision, the asset review provision, and the dispute resolution provision. The commenter noted that there would be an increased burden of at least 100 hours for the certification requirement because the certifying officer would likely need to rely on an independent evaluator or hire an additional executive officer with the expertise necessary in order to provide the certification. The commenter also noted that there will be additional burden in retaining a reviewer and its counsel to comply with the asset review provision. Finally, the commenter stated that the dispute resolution provision alone could exceed our 100 burden hour estimate without providing any quantitative analysis.

Qualitative comments that we received generally noted that the new data collection requirements will impose additional burdens on issuers and sponsors. For example, we received several qualitative comments noting that the proposal would likely impose burdens on sponsors by requiring them

[1384] 44 U.S.C. 3501 *et seq.*

[1385] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[1386] We proposed this new collection of information in the 2010 ABS Proposing Release under the title ''Asset Level Data.'' We have revised the title of this collection of information to reflect the location of the asset-level data requirements under the final rule.

[1387] *See* letter from VABSS IV. As the commenter noted, the sponsors ''estimated the costs and employee hours necessary to reprogram systems and business procedures to capture, track and report all of the items for auto loans currently set forth in the [2010 ABS Proposing Release].'' We assume that these costs and burden hours include the costs and burden hours associated with providing information at the time the ABS is issued as well as on an ongoing basis, as was contemplated in the 2010 ABS Proposing Release.

[1388] *See* letter from Kutak.

to collect, capture, maintain, evaluate and report data in new or different ways.[1389]

C. Revisions to Proposals

We considered all of the comments we received, as we considered how to quantify and possibly mitigate the burdens that could potentially be imposed by the new requirements. In order to address commenters' concerns about the asset-level requirements for Auto ABS, we have significantly reduced the scope of the asset-level data required from the proposal.

For the new shelf eligibility criteria, we have made several changes to address cost concerns—for example, we revised the certification to indicate that the certification is not a guarantee about the future performance of the assets and have clarified that the certifying officer has any and all defenses available under the securities laws. We also note, in response to one commenter's concern discussed above,[1390] that we do not believe that an additional executive officer or independent evaluator will need to be hired as a result of the new rules to actually structure the transaction because the certifying officer may rely on senior officers under his or her supervision that may be more familiar with the structuring of the transaction. We do expect, however, that the certifying officer will provide appropriate oversight over the transaction, including supervision of the structuring, so that he or she is able to make the certification. Finally, we believe that providing the certification should not impose any additional significant burden in terms of preparing additional disclosure, as such burden is already accounted for in the preparation of prospectus disclosure that is part of the Form SF–3 registration statement.

We acknowledge that the asset review provision will impose an upfront cost on the transaction since we are requiring that the reviewer be named in the prospectus. We believe, however, that most of the costs will be incurred in connection with reviews, which will occur during the life of the securitization only if the triggering events have been met. Consequently, if the reviewer does not perform any reviews, then the costs will be limited to the retainer fee. Recognizing that the bulk of the cost will be incurred with the actual reviews, we have attempted to reduce the burden of ongoing compliance with this shelf transaction requirement by requiring that a delinquency threshold must first be reached or exceeded before investors will be able to vote for a review. Disclosure is required in a Form 10–D only if a review is triggered.

We do not agree with a commenter that the dispute resolution provision could exceed the 100 burden hour estimate to collect the information. Under the final rules, a dispute resolution provision is required in the pooling and servicing agreement and disclosure of that provision is required in the prospectus. We acknowledge that additional costs may be incurred as a result of the number of hours that will be expended by certain personnel, including counsel, to come to a resolution if a dispute occurs. Because we are not requiring additional disclosures about the dispute resolution provision, we are not increasing our burden estimates. Accordingly, while we recognize that the new shelf conditions will impose additional costs on issuers, these costs are not primarily disclosure or record keeping burdens. Thus, we do not believe that we need to increase the 100 burden hour estimate to complete and file Form SF–3.

We have also made a number of changes in response to more general qualitative comments in an effort to avoid potential unintended consequences and reduce potential additional costs or burdens identified by commenters. For example, for the asset-level requirements, we have attempted to reduce burden and cost concerns by aligning the requirements with industry standards where feasible. We have also revised how we are calculating the burden hours and costs for data collection to more accurately reflect how data will be captured and organized in the industry, as described by commenters. Further, we are providing for an extended implementation timeframe, which we also believe will reduce the burden of implementing the requirements.

D. PRA Reporting and Cost Burden Estimates

Our PRA burden estimate for each of the existing collections of information, except for Form 10–D, are based on an average of the time and cost incurred by all types of public companies, not just asset-backed issuers, to prepare a particular collection of information. Form 10–D is a form that is prepared and filed only by asset-backed issuers. In 2004, we codified requirements for asset-backed issuers in these regulations and forms, recognizing that the information relevant to asset-backed securities differs substantially from that relevant to other securities.

Our PRA burden estimates for the new rules and rule amendments are based on information that we receive on entities assigned to Standard Industrial Classification Code 6189, the code used for asset-backed securities, as well as information from outside data sources.[1391] When possible, we base our estimates on an average of the data that we have available for years 2004 through 2013.[1392] In some cases, our estimates for the number of asset-backed issuers that file Form 10–D with the Commission are based on an average of the number of ABS offerings from 2006 through 2013.[1393]

1. Form ABS–EE

The asset-level reporting requirement that we are adopting for issuances of certain ABS is a new collection of information.[1394] As proposed, under the new rules the asset-level information will be provided at the time the ABS is issued and on an ongoing basis. The rules also require the information be filed as an exhibit to new Form ABS–EE.

Our estimates in the 2010 ABS Proposing Release were based on the costs to provide the required data at the time of securitization and on an ongoing basis. We estimated that each unique

[1389] *See, e.g.,* letters from ABA I, J.P. Morgan II, MBA II, and Wells Fargo I.

[1390] *See* letter from Kutak.

[1391] In the 2010 ABS Proposing Release, we relied on the AB Alert database for the initial terms of offerings and supplemented that data with information from the Securities Data Corporation (SDC). In this release, outside databases referenced in this section include the AB Alert and CM Alert databases for the initial terms of offerings.

[1392] We selected this time period in order to account for the market disruption caused by the financial crisis by using data that captures both pre-crisis and post-crisis filings.

[1393] Form 10–D was not implemented until 2006. Before implementation of Form 10–D, asset-backed issuers often filed their distribution reports under cover of Form 8–K.

[1394] We proposed this new collection of information in the 2010 ABS Proposing Release under the title ''Asset Level Data.'' We are revising the title to reflect that the asset-level information will be filed as an exhibit to new Form ABS–EE. Also, the proposed requirements would have required asset-level data across all asset types, except for credit card receivables ABS and stranded costs ABS. We proposed that credit card ABS issuers would be required to provide grouped account data, both at the time of securitization and on an ongoing basis. The rules we are adopting at this time, however, only require asset-level data for ABS where the underlying assets consist of residential mortgages, commercial mortgages, auto loans or auto leases, resecuritizations of ABS, or of debt securities. Also, we are not adopting at this time the proposed requirement that credit card ABS issuers provide grouped account data. Because of the number of data points involved, our estimates for the asset-level requirements in the proposal were based on data for RMBS, CMBS and credit card ABS issuers. In line with the requirements we are adopting, we have revised our burden hour estimate to base the estimate on the hours that sponsors of RMBS, CMBS, Auto ABS, debt security ABS or resecuritizations may incur to provide the required data.

sponsor[1395] would incur a one-time setup cost for the initial filing of asset-level data.[1396] Software costs and costs associated with adjusting existing systems in order to provide the data are included in the one-time setup costs. The burden estimate also included costs associated with tagging the data and filing it with the Commission. After the first filing of asset-level information, we estimated that sponsors would incur costs to provide the required data with subsequent offerings of ABS and with each Form 10–D.

Some comments on the asset-level proposal suggested that sponsors would incur substantial costs to capture the required data and to provide it in the format requested.[1397] We continue to assume that asset-backed issuers currently required by Regulation AB to file pool-level information on the assets in the underlying pool have access to a substantial portion of the required asset-level information, although we acknowledge that sponsors may incur additional costs to provide the data currently collected in the format required by the rules we are adopting. We recognize that some of the required data is not currently collected by sponsors and that sponsors will incur costs to capture and provide some of the required data in the format requested.

To address concerns about the costs to provide the data, we revised our calculation of the estimated number of burden hours a sponsor may incur to acknowledge that a sponsor may need to revise its existing systems or procedures for each required data point. The burden estimate in the proposal assumed that approximately two percent of the proposed asset-level data points would require a sponsor to adjust its existing systems and procedures for capturing and reporting data. For each data point that required the sponsor to adjust its existing systems and procedures, a sponsor would expend at least 18 minutes per adjustment for each asset in the pool. We have revised our estimate to assume that before the first filing of asset-level information a sponsor will need to adjust its existing systems and procedures in some way for each required data point in order to provide the response to the data point based on our definitions and that each adjustment will require ten hours.[1398]

The burden estimate in the proposal for the initial filing of asset-level data included ten hours to tag and file the data with the Commission.[1399] We continue to believe that a sponsor will incur approximately ten hours to tag, review and file the required data the first time the sponsor files the asset-level data to comply with our rules. Based on comments received raising concerns about the burden to provide the asset-level data in XML, we are also estimating that each sponsor will also expend approximately 10 hours per data point in order to adjust its systems to be able to provide the data in XML with the first filing of asset-level data.[1400] Based on the asset-level requirements applicable to each asset class and our estimates for the XML conversion costs and filing costs, we estimate that each RMBS sponsor will incur 5,410 hours, each CMBS sponsor will incur 3,050 hours, each Auto ABS sponsor will incur 2,770 hours and each debt security ABS sponsor or resecuritization sponsor will incur 1,210 hours[1401] in one-time setup costs and to provide the asset-level data for the first time.[1402] Based on the average number of unique sponsors in each asset class, we estimate that the total burden estimate for the initial filing of asset-level data, including the one-time setup cost to be 259,711 hours.[1403] We allocate 25% of

[1395] In the proposal, we estimated that the number of unique ABS sponsors from 2004 to 2009 was 343, for an average of 57 unique sponsors per year. We have updated our estimate of the total number of unique sponsors among the relevant assets classes. Based on our updated estimate, we estimate 60 as the average number of unique sponsors of registered ABS subject to the rules we are adopting per year (23 RMBS sponsors, 25 CMBS sponsors, 20 Auto ABS sponsors, two debt security ABS sponsors, and one resecuritization sponsor (the total of these numbers for all asset classes is greater than the 60 unique sponsors estimate due to the fact that a single sponsor often sponsors ABS from different asset classes). For purposes of our updated estimate, the average annual number of unique sponsors for RMBS, CMBS and Auto ABS is based on data from outside databases for the period of 2004 through 2013. *See* footnote 1391. We believe the time period selected provides a conservative estimate of the average annual number of unique sponsors for these asset classes as the 2004 through 2013 timeframe captures both the time period prior to the financial crisis when there was a larger number of unique ABS sponsors per year and the more recent time period when the number of unique sponsors per year has been substantially lower. For debt security ABS and resecuritizations, we were unable to obtain from outside databases the average annual number of unique debt security ABS or resecuritization sponsors. Based on data available through EDGAR for the period of 2010 to 2013, we estimate that for each year there will be two unique debt security ABS sponsors. There have been no registered resecuritization offerings over the past several years. We assume for this estimate, however, that for each year there will be at least one unique resecuritization sponsor.

[1396] Under the proposal, the asset-level information outlined in proposed Schedule L would be required at the time of issuance. On an ongoing basis, the asset-level information outlined in proposed Schedule L–D would be required. Under the final rules, we are condensing these schedules into one schedule titled Schedule AL. *See* Section III.B.2 The Scope of New Schedule AL. The burden estimate in the proposal provided an estimate for the one-time burden cost for issuers to provide the asset-level disclosures required at issuance and a separate estimate for the one-time burden cost for issuers to provide the ongoing disclosures. For purposes of our updated estimate and in line with the condensed schedule format we are adopting, we combined the estimates for one-time setup costs into one calculation. This change resulted in a substantially lower estimate of average annual burden hours for filing asset-level data on an ongoing basis, but a higher amount of professional costs associated with the first filing of asset-level data at issuance.

[1397] *See, e.g.,* letters from ABA I, ABAASA I, SIFMA I (expressed views of dealer and sponsors only), and VABSS I.

[1398] For instance, the requirements for RMBS include 270 data points, and we estimate that for each of these 270 data points a sponsor will need to adjust its systems and procedures in some way and that each adjustment will require ten hours. In the proposal, our calculation considered the number of assets in each pool. Since we continue to assume that a sponsor will need to make a one-time change to its existing systems and procedures before the first filing of asset-level information, the number of assets in the pool is less relevant because the revisions to a sponsor's existing systems and procedures will be completed before it provides asset-level data for any ABS. The revised estimate focuses on the changes each required data point will cause to a sponsor's existing systems and procedures before it must provide asset-level information.

[1399] *See* the 2010 ABS Proposing Release at 23404.

[1400] The estimated per hour cost to convert the required data into an XML format is based on the estimate of the cost to provide the required asset-level data in XML provided in Section III.B.3. *See* footnote 748. For purposes of that estimate, we assumed that a sponsor would work with all asset types and would need to convert the data for all asset classes into an XML format and that conversion would require 6,283 hours. With a combined 680 unique data points (RMBS = 270, CMBS = 152, Auto ABS = 138, debt security ABS = 60 and resecuritizations = 60), we estimate that responding to each data point in XML for the first time will require approximately 10 hours per data point.

[1401] For each resecuritization, the asset pool is comprised of one or more ABS. The final rules require disclosures about the ABS in the pool, and if the ABS in the asset pool is an RMBS, CMBS or Auto ABS, issuers are also required to provide asset-level disclosures about the assets underlying the ABS. For purposes of this estimate, the one-time setup costs for resecuritizations is based on the number of data points each resecuritization sponsor must respond to for each ABS in the pool. Our estimate for the one-time setup cost for providing asset-level data for resecuritizations does not include the cost to provide asset-level data if the ABS in the pool is an RMBS, CMBS or Auto ABS since these one-time setup costs are already included in the one-time setup estimates for RMBS, CMBS and Auto ABS and sponsors of resecuritizations may be able to reference asset-level information about the assets underlying the securities in the pool.

[1402] In the 2010 ABS Proposal, we estimated that an RMBS sponsor would incur a total of 7,005 hours (3,194 hours for the data required at securitization and 3,811 hours for the data required on an ongoing basis), and a CMBS sponsor would incur a total of 178 hours (86 hours for the data required at securitization and 92 hours for the data required on an ongoing basis). *See* the 2010 ABS Proposing Release at 23404.

[1403] The burden estimate in the proposal estimated the total annual burden hours for preparing, tagging and filing asset-level disclosure at the time of securitization for all ABS issuers to

Continued

those hours (64,928) to internal burden hours and 75% of the hours (194,783) to out-of-pocket expenses for software consulting and filing agent costs at a rate of $250 per hour for a total cost of $48,695,625.

After a sponsor has made an initial filing of asset-level data, we estimate that each subsequent filing of asset-level data will take approximately 10 hours to prepare, review, tag and file the information. Based on the number of offerings after the first filing of asset-level data [1404] and the number of Form 10–D filings per year,[1405] we estimate the average annual hours to prepare and file asset-level disclosure after the first filing of asset-level data will be 140,215 hours.[1406] We allocate 75% of those hours (105,161) to internal burden hours and 25% of the hours (35,054) to out-of-pocket expenses for software consulting and filing agent costs at a rate of $250 per hour totaling $8,763,438. Thus, we estimate the total annual burden hours for the asset-level disclosure requirements at 170,089 hours [1407] and the total amount of out-of-pocket expenses for software and filing agent costs at $57,459,063.[1408]

2. Form S–3 and Form SF–3

Our current PRA burden estimate for Form S–3 is 136,392 annual burden hours. This estimate is based on the assumption that most disclosures required of the issuer are incorporated by reference from separately filed Exchange Act reports. However, because an Exchange Act reporting history is not a condition for Form S–3 eligibility for ABS, asset-backed issuers using Form S–3 often must present all of the relevant disclosure in the registration statement rather than incorporate relevant disclosure by reference. Thus, our current burden estimate for asset-backed issuers using Form S–3 under existing requirements is similar to our current burden estimate for asset-backed issuers using Form S–1. During 2004 through 2013, we received an average of 71 Form S–3 filings annually related to asset-backed securities.

Under the rules that we are adopting, we are moving the requirements for asset-backed issuers into new forms that will be used solely to register offerings of asset-backed securities. New Form SF–3 is the ABS equivalent of existing Form S–3. For purposes of our calculations, we estimate that the provisions relating to shelf eligibility will cause a 5% movement in the number of filers (i.e., a decrease of four registration statements) out of the shelf system due to the new requirements, which include the certification, the asset review provision, the dispute resolution provision, the investor communications provision, and the annual evaluations of compliance with timely Exchange Act reporting and timely filing of the transaction agreements and the related certifications.[1409] On the other hand, we estimate the number of shelf registration statements for asset-backed issuers will increase by four as a result of the amendments eliminating the practice of providing a base prospectus and a prospectus supplement for ABS offerings.[1410] Thus, we estimate that the annual number of shelf registration statements concerning ABS offerings will remain the same. Accordingly, since the rule amendments will shift all shelf-eligible ABS filings from Form S–3 to Form SF–3, we estimate that the amendments will cause a decrease of 71 ABS filings on Form S–3 and a corresponding increase of 71 ABS filings on Form SF–3 filed annually.[1411]

In 2004, we estimated that an asset-backed issuer, under the 2004 amendments to Form S–3, would take an average of 1,250 hours to prepare a Form S–3 to register ABS.[1412] Additionally, in the January 2011 ABS Issuer Review Release, we estimated that the requirements described in that release would increase the annual incremental burden to asset-backed issuers by 30 hours per form.[1413] For registration statements, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden is carried by outside professionals retained by the registrant at an average cost of $400 per hour.

We are also adopting additional disclosure requirements that will impose some additional costs to asset-backed issuers with respect to registration statements, which we have included as part of our burden estimate for Form SF–3. We do not believe, however, that the shelf eligibility requirements that we are adopting will substantially increase the burden hours

be 151,368 with 25% of those hours allocated to internal burden costs and 75% of those hours allocated to external burden hours. For a description of the factors that contributed to differences between the proposed and final estimates see footnotes 1396 and 1407.

[1404] The burden estimate in the proposal estimated the average number of offerings for all asset classes to be 958 per year. For purposes of comparison, we have adjusted the average number of offerings from 958 to 629 to account for the fact that we are adopting asset-level requirements for fewer asset classes than we had proposed. For purposes of this burden estimate because we are adopting requirements only for certain asset classes, we estimate there will be an average of 431 registered ABS offerings per year (RMBS = 343, CMBS = 33, Auto ABS = 51, debt security ABS and resecuritizations = 4). For purposes of this estimate, the average annual number of registered RMBS, CMBS and Auto ABS offerings is based on data from outside databases for the period of 2004 through 2013. We believe the time period selected provides a conservative estimate of the average annual number of registered offerings for these asset classes as the 2004–2013 timeframe captures both the time prior to the financial crisis when there was a larger number of registered ABS offerings per year and the more recent time period when the number of registered ABS offerings per year has been substantially lower. For debt security ABS and resecuritizations, we are unable to obtain from outside databases the average annual number of registered offerings of debt security ABS or resecuritizations between 2004 and 2013. Based on data available through EDGAR for the period of 2010 to 2013, we estimate there will be three registered debt security ABS offerings per year. There have been no registered resecuritization offerings over the past several years. We assume for this estimate, however, that each year there will be at least one registered resecuritization offering.

[1405] For purposes of estimating the number of expected Form 10–D filings, we are using the actual average annual number of Form 10–D filings, which was 13,014. We apportioned the burden of Form 10–D filings across each asset class based on the average number of offerings per year for each asset class. We believe this results in a conservative estimate because the rules we are adopting do not require that all asset classes provide asset-level disclosure and therefore not every Form 10–D filed will include asset-level data.

[1406] We estimated in the 2010 ABS Proposing Release that the average annual burden hours to provide the asset-level data with Form 10–D on an ongoing basis would be 207,009 hours for all ABS issuers with 75% of those hours allocated to internal burden hours and 25% allocated to external burden hours. The final estimate reflects the cost of ongoing maintenance for XML, which we estimated to be 5% of the initial XML conversion costs. For a description of the factors that contributed to differences between the proposed and final estimate and the proposed estimate see footnotes 1396 and 1407.

[1407] 170,089 = 64,928 + 105,161. The proposal estimated that the total average annual burden hours to provide the asset-level data or grouped asset data would be 193,099 hours and the total amount of out-of-pocket expenses for software and filing agent costs would be $41,319,571. The drop in total average annual burden hours can be attributed to changes in the average annual number of unique RMBS sponsors and the expected annual number of registered ABS offerings. Also, other changes to our calculation to address comments received (e.g., XML conversion cost, system changes) and differences between the proposed requirements and the final requirements (e.g., combining the initial and ongoing disclosure schedules into one schedule) also impacted our estimate.

[1408] $57,459,063 = $48,695,625 + 8,763,438.

[1409] We calculated the decrease of four Form SF–3s by multiplying the average number of Form S–3s filed (71) by 5%.

[1410] Based on staff reviews, we believe that it is unusual to see ABS registration statements with multiple unrelated collateral types such as auto loans and student loans. There are occasionally multiple related collateral types such as HELOCs, subprime mortgages and Alt-A mortgages in ABS registration statements.

[1411] This is based on the number of registration statements for asset-backed issuers currently filed on Form S–3 and the new shelf eligibility requirements.

[1412] *See* the 2004 ABS Adopting Release.

[1413] *See* the 2011 ABS Issuer Review Adopting Release.

of filing a Form SF–3 since they generally do not impose significant new disclosure or record-keeping obligations.[1414] We note that we have added a disclosure component to the asset review provision to require information about the reasonableness of the delinquency trigger selected by the transaction parties. We did not increase the total burden hours for this additional disclosure because the additional burden to provide this information should be minimal since issuers already have the required information.

We estimate that the incremental burden for asset-backed issuers to complete the additional disclosure requirements for Form SF–3, prepare the information, and file it with the Commission will be 100 burden hours per response on Form SF–3. As a result, we estimate that each Form SF–3 will take approximately 1,380 hours to complete and file.[1415] We estimate the total internal burden for Form SF–3 to be 24,495 hours and the total related professional costs to be $29,394,000.[1416] This would result in a corresponding decrease in Form S–3 burden hours of 22,720 and $27,264,000 in professional costs.[1417]

3. Form S–1 and Form SF–1

New Form SF–1 is the ABS equivalent of existing Form S–1. As noted above, for purposes of our calculation, we estimate that the new requirements for shelf eligibility and new shelf procedures will cause some movement in the number of filers from the shelf system to the non-shelf system. For purposes of the PRA, we estimate four asset-backed issuers will move from the shelf system to the non-shelf system of Form SF–1.[1418] From 2004 through 2013, an average of two Forms S–1 were filed annually by asset-backed issuers. Correspondingly, we estimate that the number of filings on Form SF–1 will be six, which is the sum of the two average filings per year and the estimated incremental four filings from shelf to Form SF–1.

For ABS filings on Form S–1, we have used the same estimate of burden per response that we used for Form S–3, because the disclosures in both filings are similar.[1419] Even under the new requirements, the disclosures will continue to be similar for shelf registration statements and non-shelf registration statements. The burden for the new requirements for the Asset Data File to be filed as an exhibit to Forms SF–1 and SF–3 is included in the new Form ABS–EE collection of information discussed above. Thus, we estimate that an ABS Form SF–1 filing will impose an incremental burden of 100 hours per response, which is equal to the incremental burden to file Form SF–3. We estimate the total number of hours to prepare and file each Form SF–1 to be 1,380, the total annual burden to be 2,070 hours and added costs for professional expenses to be $2,484,000.[1420] This will result in a corresponding decrease in Form S–1 burden hours of 640 and $768,000 in professional costs.[1421]

4. Form 10–K

The ongoing periodic and current reporting requirements applicable to operating companies differ substantially from the reporting that is most relevant to investors in asset-backed securities. For asset-backed issuers, in addition to a specified set of Form 10–K disclosure items, the issuer must file a servicer compliance statement, a servicer's assessment of compliance with servicing criteria, and an attestation of an independent public accountant as exhibits to the Form 10–K. In 2004, we estimated that 120 hours would be needed to complete and file a Form 10–K for an asset-backed issuer. We believe that our revisions related to the disclosure requirements for material instances of noncompliance will cause an increase in the number of hours incurred to prepare, review, and file Form 10–K by five hours. We estimate that, for Exchange Act reports, 75% of the burden of preparation is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the registrant at an average rate of $400 per hour. We also estimate that 1,046 Form 10–K filings for asset-backed issuers are filed per year, based on the average number of Forms 10–K filed over the period 2004–2013. Therefore, we estimate for PRA purposes that the increase in total annual number of hours to prepare, review, and file Form 10–K for asset-backed issuers will be 5,230 hours.[1422] We allocate 75% of those hours (3,923) to internal burden and the remaining 25% to external costs totaling $523,000 using a rate of $400 per hour.

5. Form 10–D

In 2004, we adopted Form 10–D as a new form for only asset-backed issuers. This form is filed within 15 days of each required distribution date on the asset-backed securities, as specified in the governing documents for such securities. The form contains periodic distribution and pool performance information.

In 2004, we estimated that it would take 30 hours to complete and file Form 10–D.[1423] We also estimate that 13,014 Form 10–D filings are filed per year based on current annual responses.[1424]

[1414] In connection with the new shelf eligibility requirements, we are adopting a number of ongoing disclosure requirements that will be triggered at the time a particular provision (e.g., the asset review or investor communications provision) is invoked. As discussed below, the burden of these additional disclosure requirements is reflected in the revised burden estimate for Form 10–D.

[1415] The total burden hours to file Form SF–3 are calculated by adding the existing burden hours of 1,280 that we estimate for Form S–3 and the incremental burden of 100 hours imposed by our new requirements for a total of 1,380 total burden hours.

[1416] To calculate these values, we first multiply the total burden hours per Form SF–3 (1,380) by the number of Forms SF–3 expected under the new requirements (71), resulting in 97,980 total burden hours. Then, we allocate 25% of those hours to internal burden, resulting in 24,495 hours. We allocate the remaining 75% of the total burden hours to related professional costs and use a rate of $400 per hour to calculate the external professional costs of $29,394,000.

[1417] To calculate these values, we first multiply the total burden hours per Form S–3 (1,280) by the average number of Forms S–3 over the period 2004–2013 (71), resulting in 90,880 total burden hours. Then, we allocate 25% of these hours to internal burden, resulting in 22,720 hours. We allocate the remaining 75% of the total burden hours to related professional costs and use a rate of $400 per hour to calculate the external professional costs of $27,264,000.

[1418] We estimate in the section above that the requirements relating to shelf eligibility and new shelf procedures will cause a 5% movement in the number of ABS filers out of the shelf system. We assume, for the purposes of our PRA estimates, that the other filers that do not move to Form SF–1 will utilize unregistered offerings or offshore offerings for offerings of ABS.

[1419] *See* Section IV.B.2 of the 2004 ABS Proposing Release.

[1420] The total burden hours to file Form SF–1 are calculated by adding the existing burden hours of 1,280 and the incremental burden of 100 hours imposed by the new requirements for total of 1,380 hours. To calculate the annual internal and external costs, we first multiply the total burden hours per Form SF–1 (1,380) by the number of Forms SF–1 expected under the new requirements (six), resulting in 8,280 total burden hours. Then, we allocate 25% of these hours to internal burden, resulting in 2,070 hours. We allocate the remaining 75% of the total burden hours to related professional costs and use a rate of $400 per hour to calculate the external professional costs of $2,484,000.

[1421] To calculate these values, we first multiply the total burden hours per Form S–1 (1,280) by the average number of Form S–1s filed during 2004–2013 (two), resulting in 2,560 total burden hours. Then, we allocate 25% of these hours to internal burden, resulting in 640 hours. We allocate the remaining 75% of the total burden hours to related professional costs and use a rate of $400 per hour to calculate the external professional costs of $768,000.

[1422] To calculate the annual internal and external costs, we first multiply the incremental burden of five hours imposed by the new requirements by the number of Forms 10–K (1,046), resulting in an increase of 5,230 burden hours.

[1423] *See* the 2004 ABS Adopting Release.

[1424] To calculate current annual responses, we used the average number of respondents that filed

Continued

As discussed above, we are adopting asset-level disclosure requirements that relate to ongoing performance of the assets to be filed at the same time as Form 10–D; the burden of this requirement is included in our estimate of the asset-level disclosure collection of information requirements. We estimate that the new Regulation AB disclosure requirements that will be included in Form 10–D related to the asset review (Item 1121(d)), investor communications (Item 1121(e)), and material changes to the sponsor's interest in the transaction (Item 1124) will result in an additional burden of five hours for Items 1121(d) & (e), plus two hours for Item 1124 per filing to prepare. Therefore, we estimate that the new requirements will increase the number of hours to prepare, review, and file a Form 10–D to 37 hours, thereby increasing the total burden hours for all Form 10–Ds filed annually to 481,518 hours. We allocate 75% of those hours (361,139) to internal burden and the remaining 25% to external costs totaling $48,151,800 using a rating of $400 per hour.

6. Form 8–K

Our current PRA estimate for Form 8–K is based on the use of the report to disclose the occurrence of certain defined reportable events, some of which are applicable to asset-backed securities. In the 2010 ABS Proposing Release, we noted three portions of the proposal which would cause an increase in the number of reports on Form 8–K for ABS issuers; however, we are not adopting any of those proposed requirements.[1425] We are amending Form 8–K to include a specific item number under which static pool information that is filed on Form 8–K must be reported. This amendment will assist investors in locating static pool information that is incorporated by reference into the prospectus. Because the static pool requirement is included in the existing burden estimate for Form S–3, which we are transferring to the new Form SF–3, we are not assigning any additional burden hours to the Form 8–K for this new requirement.

7. Regulation S–K and Regulation S–T

Regulation S–K, which includes the item requirements in Regulation AB, contains the requirements for disclosure that an issuer must provide in filings under both the Securities Act and the Exchange Act. As noted above, Regulation S–T contains the requirements that govern the electronic submission of documents.

The new rules and rule amendments that we are adopting will result in revisions to Regulation S–K and Regulation S–T. The collection of information requirements, however, are reflected in the burden hours estimated for the various Securities Act and Exchange Act forms related to asset-backed issuers. The rules in Regulation S–K and Regulation S–T do not impose any separate burden. Consistent with historical practice, we have retained an estimate of one burden hour each to Regulation S–T and Regulation S–K for administrative convenience.

E. Summary of Changes to Annual Burden of Compliance in Collection of Information

The table below illustrates the changes in annual compliance burden in the collection of information in hours and costs for existing reports and registration statements and for the new registration statements and forms for asset-backed issuers. Bracketed numbers indicate a decrease in the estimate.

Form	Current annual responses [1426]	Final annual responses	Current burden hours	Decrease or increase in burden hours	Final burden hours	Current professional costs	Decrease or increase in professional costs	Final professional costs
S–3	1,153	1,082	136,192	[22,720]	113,472	163,435,444	[27,264,000]	136,171,444
S–1	903	901	219,501	[640]	218,861	263,401,488	[768,000]	262,633,488
SF–3		71		24,495	24,495		29,394,000	29,394,000
SF–1		6		2,070	2,070		2,484,000	2,484,000
10–K	8,137	8,137	12,198,094	3,923	12,202,017	1,626,412,494	523,000	1,626,935,494
10–D	13,014	13,014	292,815	68,324	361,139	39,042,000	9,109,800	48,151,800
Form ABS–EE		13,374		170,089	170,089		57,459,063	57,459,063

XI. Regulatory Flexibility Act Certification

In Part XIV of the 2010 ABS Proposing Release and Part IX of the 2011 ABS Re-Proposing Release, we certified pursuant to 5 U.S.C. 605(b) that the new rules contained in this release would not have a significant economic impact on a substantial number of small entities. One commenter provided comments in response to the Commission's request for written comments regarding this certification.[1427] This commenter faulted the Commission for reaching its conclusion by ''focusing exclusively on the size of the sponsors that would be required to comply.'' [1428] The commenter suggested that the analysis should extend beyond the impact on small entities as sponsors of securitization transactions.[1429] This commenter did not suggest that there would be a significant impact on entities directly subject to any of the rules we had proposed.[1430] Further, the commenter did not describe the nature of any impact on small entities or provide empirical data to support the extent of the impact. The Regulatory Flexibility Act analysis only applies to those entities ''which will be subject to the requirement[s]'' of the rule.[1431]

Form 10–Ds between 2011 and 2013, which was 2,169. We then multiplied the average number of respondents (2,169) by the average number of times that a respondent would file a Form 10–D per year (6) for a total of 13,014 Form 10–Ds per year. Different types of asset-backed securities have different distribution periods, and the Form 10–D is filed for each distribution period. We derived the multiplier of six by comparing the number of Forms 10–D that have been filed since 2006 with the number of Forms 10–K (which are only required to be filed once a year) that have been filed.

[1425] *See* Section X.B.5. of the 2010 ABS Proposing Release.

[1426] The current annual responses reflects the average number of filings that the Commission has received from 2011 to 2013.

[1427] *See* letter from ABA II.

[1428] *Id.*

[1429] In justifying a thorough regulatory analysis, the ABA contended, ''[g]iven securitization's pervasive role in our economy and the importance of securitization to the availability of credit to small businesses, it is difficult to fathom how the 2010 ABS Proposals, as revised by the Re-Proposing Release, if adopted, would not have a significant impact on a substantial number of small entities.''

[1430] *See* letter from ABA II.

[1431] *See* 5 U.S.C. 604(a)(5). *See also Mid-Tex Elec. Co-op, Inc.* v. *FERC,* 773 F.2d 327, 343 (D.C. Cir.

Accordingly, based on the analysis set forth in the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release, we continue to believe that the rules being adopted would not have a significant economic impact on a substantial number of small entities.

XII. Statutory Authority and Text of Rule and Form Amendments

We are adopting the new rules, forms and amendments contained in this document under the authority set forth in Sections 5, 6, 7, 8, 10, 19(a) and 28 of the Securities Act, Sections 12, 13, 15, 23(a), 35A and 36 of the Exchange Act, and Section 319 of the Trust Indenture Act.

List of Subjects

17 CFR Part 230

Advertising, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 229, 232, 239, 240, 243 and 249

Reporting and recordkeeping requirements, Securities.

For the reasons set out above, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 777iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3,78*l,* 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

■ 2. Amend § 229.512 by:

■ a. In paragraph (a)(1)(iii)(B) adding the phrase ‘‘, Form SF–3 (§ 239.45 of this chapter)’’ immediately after the phrase, ‘‘Form S–3 (§ 239.13 of this chapter)’’;

■ b. In paragraph (a)(1)(iii)(C) removing the phrase ‘‘on Form S–1 (§ 239.11 of this chapter) or Form S–3 (§ 239.13 of this chapter)’’ and adding in its place ‘‘on Form SF–1 (§ 239.44 of this chapter) or Form SF–3 (§ 239.45 of this chapter)’’;

■ c. Adding paragraphs (a)(5)(iii) and (a)(7); and

■ d. Removing paragraph (l).

The additions read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(a) * * *

(5) * * *

(iii) If the registrant is relying on § 230.430D of this chapter:

(A) Each prospectus filed by the registrant pursuant to § 230.424(b)(3) and (h) of this chapter shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to § 230.424(b)(2), (b)(5), or (b)(7) of this chapter as part of a registration statement in reliance on § 230.430D of this chapter relating to an offering made pursuant to § 230.415(a)(1)(vii) or (a)(1)(xii) of this chapter for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 (15 U.S.C. 77j(a)) shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in § 230.430D of this chapter, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or

* * * * *

(7) If the registrant is relying on § 230.430D of this chapter, with respect to any offering of securities registered on Form SF–3 (§ 239.45 of this chapter), to file the information previously omitted from the prospectus filed as part of an effective registration statement in accordance with § 230.424(h) and § 230.430D of this chapter.

* * * * *

■ 3. Amend § 229.601 by:

■ a. Revising the exhibit table in paragraph (a); and

■ b. Adding paragraphs (b)(36) and (b)(102) through (b)(106).

The additions read as follows:

§ 229.601 (Item 601) Exhibits.

(a) * * *

EXHIBIT TABLE

* * * * *

EXHIBIT TABLE

	Securities act forms										Exchange act forms					
	S–1	S–3	SF–1	SF–3	S–4 [1]	S–8	S–11	F–1	F–3	F–4 [1]	10	8–K [2]	10–D	10–Q	10–K	ABS–EE
(1) Underwriting agreement	X	X	X	X	X	.....	X	X	X	X	.....	X	.....	.....	.....	.....
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	X	X	.....	X	X	X	X	X	X	.....	X	X	.....
(3) (i) Articles of incorporation	X	.....	X	X	X	.....	X	X	.....	X	X	X	X	X	X	.....
(ii) Bylaws	X	.....	X	X	X	.....	X	X	.....	X	X	X	X	X	X	.....
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	.....
(5) Opinion re legality	X	X	X	X	X	X	X	X	X	X	.....	.....	.....	.....	.....	.....
(6) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

1985) (reasoning that because ‘‘Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy’’), *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855, 869 (D.C. Cir. 2001) (reasoning that ‘‘to require an agency to assess the impact on all of the nation's small businesses possibly affected by a rule would be to convert every rulemaking process into a massive exercise in economic modeling, an approach we have already rejected’’).

EXHIBIT TABLE—Continued

	Securities act forms										Exchange act forms					
	S–1	S–3	SF–1	SF–3	S–4[1]	S–8	S–11	F–1	F–3	F–4[1]	10	8–K[2]	10–D	10–Q	10–K	ABS–EE
(7) Correspondence from an independent accountant regarding non-reliance on a previously issued audit report or completed interim review												X				
(8) Opinion re tax matters	X	X	X	X	X		X	X	X	X						
(9) Voting trust agreement	X				X		X	X		X	X				X	
(10) Material contracts	X		X	X	X		X	X		X	X		X	X	X	
(11) Statement re computation of per share earnings	X				X		X	X		X	X			X	X	
(12) Statements re computation of ratios	X	X			X		X	X		X	X				X	
(13) Annual report to security holders, Form 10–Q or quarterly report to security holders[3]					X										X	
(14) Code of Ethics												X			X	
(15) Letter re unaudited interim financial information	X	X			X	X	X	X	X	X				X		
(16) Letter re change in certifying accountant[4]	X				X		X				X	X			X	
(17) Correspondence on departure of director												X				
(18) Letter re change in accounting principles														X	X	
(19) Report furnished to security holders														X		
(20) Other documents or statements to security holders												X				
(21) Subsidiaries of the registrant	X		X	X	X		X	X		X	X				X	
(22) Published report regarding matters submitted to vote of security holders													X	X	X	
(23) Consents of experts and counsel	X	X	X	X	X	X	X	X	X	X		[5]X	[5]X	[5]X	[5]X	
(24) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X		X	X	
(25) Statement of eligibility of trustee	X	X	X	X	X			X	X	X						
(26) Invitation for competitive bids	X	X	X	X	X			X	X	X						
(27) through (30) [Reserved]																
(31) (i) Rule 13a–14(a)/15d–14(a) Certifications															X	
(ii) Rule 13a–14/15d–14 Certifications															X	
(32) Section 1350 Certifications[6]														X	X	
(33) Report on assessment of compliance with servicing criteria for asset-backed issuers															X	
(34) Attestation report on assessment of compliance with servicing criteria for asset-backed securities															X	
(35) Servicer compliance statement															X	
(36) Depositor Certification for shelf offerings of asset-backed securities				X												
(37) through (94) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(95) Mine Safety Disclosure Exhibit														X	X	
(96) through (98) [Reserved]																
(99) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
(100) XBRL-Related Documents											X	X		X	X	
(101) Interactive Data File	X	X			X		X	X	X	X		X		X	X	
(102) Asset Data File			X	X									X			X
(103) Asset Related Documents			X	X									X			X
(104) [Reserved]																
(105) [Reserved]																
(106) Static Pool PDF			X	X								X				

[1] An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S–4 or F–4 to provide information about such company at a level prescribed by Form S–3 or F–3; and (2) the form, the level of which has been elected under Form S–4 or F–4, would not require such company to provide such exhibit if it were registering a primary offering.

[2] A Form 8–K exhibit is required only if relevant to the subject matter reported on the Form 8–K report. For example, if the Form 8–K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

[3] Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10–K, where the annual report to security holders is incorporated by reference into the text of the Form 10–K.

[4] If required pursuant to Item 304 of Regulation S–K.

[5] Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

[6] Pursuant to §§ 240.13a–13(b)(3) and 240.15d–13(b)(3) of this chapter, asset-backed issuers are not required to file reports on Form 10–Q.

* * * * *

(b) * * *

(36) *Certification for shelf offerings of asset-backed securities.* Provide the certification required by General Instruction I.B.1.(a) of Form SF–3 (§ 239.45 of this chapter) exactly as set forth below:

Certification

I [identify the certifying individual] certify as of [the date of the final prospectus under § 230.424 of this chapter] that:

1. I have reviewed the prospectus relating to [title of all securities, the offer and sale of which are registered] (the ''securities'') and am familiar with, in all material respects, the following: The characteristics of the securitized assets underlying the offering (the ''securitized assets''), the structure of the securitization, and all material underlying transaction agreements as described in the prospectus;

2. Based on my knowledge, the prospectus does not contain any untrue statement of a material fact or omit to

state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;

3. Based on my knowledge, the prospectus and other information included in the registration statement of which it is a part fairly present, in all material respects, the characteristics of the securitized assets, the structure of the securitization and the risks of ownership of the securities, including the risks relating to the securitized assets that would affect the cash flows available to service payments or distributions on the securities in accordance with their terms; and

4. Based on my knowledge, taking into account all material aspects of the characteristics of the securitized assets, the structure of the securitization, and the related risks as described in the prospectus, there is a reasonable basis to conclude that the securitization is structured to produce, but is not guaranteed by this certification to produce, expected cash flows at times and in amounts to service scheduled payments of interest and the ultimate repayment of principal on the securities (or other scheduled or required distributions on the securities, however denominated) in accordance with their terms as described in the prospectus.

5. The foregoing certifications are given subject to any and all defenses available to me under the federal securities laws, including any and all defenses available to an executive officer that signed the registration statement of which the prospectus referred to in this certification is part.

Date: _____

_____

_____

[Signature]

_____

[Title]

The certification must be signed by the chief executive officer of the depositor, as required by General Instruction I.B.1.(a) of Form SF–3.

* * * * *

(102) *Asset Data File.* An Asset Data File (as defined in § 232.11 of this chapter) filed pursuant to Item 1111(h)(3) of Regulation AB (§ 229.1111(h)(3)).

(103) *Asset Related Document.* Additional asset-level information or explanatory language pursuant to Item 1111(h)(4) and (5) of Regulation AB (§ 229.1111(h)(4) and (h)(5)).

(104) [Reserved].

(105) [Reserved]

(106) *Static pool.* If not included in the prospectus filed in accordance with § 230.424(b)(2) or (5) and (h) of this chapter, static pool disclosure as required by § 229.1105.

* * * * *

■ 4. Amend § 229.1100 by:

■ a. Revising the heading and introductory text of paragraph (c); and

■ b. Revising paragraph (f).

The revisions read as follows:

§ 229.1100 (Item 1100) General.

* * * * *

(c) *Presentation of certain third party information.* If information of a third party is required in a filing by Item 1112(b) of this Regulation AB (Information regarding significant obligors) (§ 229.1112(b)), Items 1114(b)(2) or 1115(b) of this Regulation AB (Information regarding significant provider of enhancement or other support) (§ 229.1114(b)(2) or (§ 229.1115(b)), or Item 1125 of this Regulation AB (Asset-level information) (§ 229.1125) such information, in lieu of including such information, may be provided as follows:

* * * * *

(f) *Filing of required exhibits.* Where agreements or other documents in this Regulation AB (§§ 229.1100 through 229.1124) are specified to be filed as exhibits to a Securities Act registration statement, such agreements or other documents, if applicable, may be incorporated by reference as an exhibit to the registration statement, such as by filing a Form 8–K (§ 249.308 of this chapter) in the case of offerings registered on Form SF–3 (§ 239.45 of this chapter). Final agreements must be filed and made part of the registration statement no later than the date the final prospectus is required to be filed under § 230.424 of this chapter.

■ 5. Amend § 229.1101 by:

■ a. In paragraphs (c)(3)(ii)(A) and (B) removing the references to ''50%'' and adding in their place ''25%''; and

■ b. Adding paragraph (m).

The addition reads as follows:

§ 229.1101 (Item 1101) Definitions.

* * * * *

(m) *Asset representations reviewer* means any person appointed to review the underlying assets for compliance with the representations and warranties on the underlying pool assets and is not affiliated with any sponsor, depositor, servicer, or trustee of the transaction, or any of their affiliates. The asset representations reviewer shall not be the party to determine whether noncompliance with representations or warranties constitutes a breach of any contractual provision. The asset representations reviewer also shall not be the same party or an affiliate of any party hired by the sponsor or underwriter to perform pre-closing due diligence work on the pool assets.

■ 6. Amend § 229.1102 by adding a second sentence to paragraph (a) to read as follows:

§ 229.1102 (Item 1102) Forepart of registration statement and outside cover page of the prospectus.

* * * * *

(a) * * * Such identifying information should include a Central Index Key number for the depositor and the issuing entity, and if applicable, the sponsor.

* * * * *

■ 7. Amend § 229.1103 by adding an instruction after paragraph (a)(2) to read as follows:

§ 229.1103 (Item 1103) Transaction summary and risk factors.

(a) * * *

(2) * * *

Instruction to Item 1103(a)(2). What is required is summary disclosure tailored to the particular asset pool backing the asset-backed securities. While the material characteristics will vary depending on the nature of the pool assets, summary disclosure may include, among other things, statistical information of: The types of underwriting or origination programs, exceptions to underwriting or origination criteria and, if applicable, modifications made to the pool assets after origination. Include a cross-reference in the prospectus summary to the more detailed statistical information found in the prospectus.

* * * * *

■ 8. Amend § 229.1104 by:

■ a. In paragraph (e)(1) removing the phrase ''Section 3(a)(77) of the Securities Exchange Act of 1934)'' and adding in its place ''Section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79))''; and

■ b. Adding paragraphs (f) and (g).

The additions read as follows:

§ 229.1104 (Item 1104) Sponsors.

* * * * *

(f) If the sponsor is required to repurchase or replace any asset for breach of a representation and warranty pursuant to the transaction agreements, provide information regarding the sponsor's financial condition to the extent that there is a material risk that the effect on its ability to comply with the provisions in the transaction agreements relating to the repurchase obligations for those assets resulting from such financial condition could have a material impact on pool

performance or performance of the asset-backed securities.

(g) Describe any interest that the sponsor, or any affiliate of the sponsor, has retained in the transaction, including the amount and nature of that interest. Disclose any hedge (security specific or portfolio) materially related to the credit risk of the securities that was entered into by the sponsor or, if known, by an affiliate of the sponsor to offset the risk position held.

Instruction to Item 1104(g). The disclosure required under this item shall separately state the amount and nature of any interest or asset retained in compliance with law, including any amounts that are retained by parties other than the sponsor in order to satisfy such requirements.

■ 9. Amend § 229.1105 by:

■ a. Adding introductory text;

■ b. Revising paragraph (a)(3)(ii);

■ c. Adding an instruction to paragraph (a)(3)(ii);

■ d. Adding paragraph (a)(3)(iv); and

■ e. Revising paragraph (c).

The additions and revisions read as follows:

§ 229.1105 (Item 1105) Static pool information.

Describe the static pool information presented. Provide appropriate introductory and explanatory information to introduce the characteristics, the methodology used in determining or calculating the characteristics and any terms or abbreviations used. Include a description of how the static pool differs from the pool underlying the securities being offered, such as the extent to which the pool underlying the securities being offered was originated with the same or differing underwriting criteria, loan terms, and risk tolerances than the static pools presented. In addition to a narrative description, the static pool information should be presented graphically if doing so would aid in understanding.

(a) * * *

(3) * * *

(ii) Present delinquency, cumulative loss and prepayment data for each prior securitized pool or vintage origination year, as applicable, over the life of the prior securitized pool or vintage origination year. The most recent periodic increment for the data must be as of a date no later than 135 days after the date of first use of the prospectus.

Instruction to Item 1105(a)(3)(ii). Present historical delinquency and loss information in accordance with Item 1100(b) of this Regulation AB (§ 229.1100(b)) through no less than 120 days.

* * * * *

(iv) Provide graphical illustration of delinquencies, prepayments and losses for each prior securitized pool or by vintage origination year regarding originations or purchases by the sponsor, as applicable for that asset type.

* * * * *

(c) If the information that would otherwise be required by paragraph (a)(1), (a)(2) or (b) of this section is not material, but alternative static pool information would provide material disclosure, provide such alternative information instead. Similarly, information contemplated by paragraph (a)(1), (a)(2) or (b) of this section regarding a party or parties other than the sponsor may be provided in addition to or in lieu of such information regarding the sponsor if appropriate to provide material disclosure. In addition, provide other explanatory disclosure, including why alternative disclosure is being provided and explain the absence of any static pool information contemplated by paragraph (a)(1), (a)(2) or (b) of this section, as applicable.

* * * * *

■ 10. Amend § 229.1108 by:

■ a. In paragraph (a)(3) removing the phrase ''(c) and (d)'' and adding in its place ''(c), (d), and (e)'';

■ b. Removing paragraph (c)(6);

■ c. Redesignating paragraphs (c)(7) and (c)(8) as paragraphs (c)(6) and (c)(7); and

■ d. Adding paragraph (e).

The addition reads as follows:

§ 229.1108 (Item 1108) Servicers.

* * * * *

(e) Describe any interest that the servicer, or any affiliate of the servicer, has retained in the transaction, including the amount and nature of that interest. Disclose any hedge (security specific or portfolio) materially related to the credit risk of the securities that was entered into by the servicer or, if known, by an affiliate of the servicer to offset the risk position held.

Instruction to Item 1108(e). The disclosure required under this item shall separately state the amount and nature of any interest or asset retained in compliance with law, including any amounts that are retained by parties other than the servicer in order to satisfy such requirements.

■ 11. Amend § 229.1109 by:

■ a. Revising the section heading;

■ b. Redesignating paragraphs (a), (b), (c), (d), (e) and (f) as paragraphs (a)(1), (2), (3), (4), (5), and (6), respectively;

■ c. Redesignating the introductory text as paragraph (a) introductory text and adding the paragraph heading ''*Trustees.*'' to newly redesignated paragraph (a) introductory text; and

■ d. Adding new paragraph (b).

The revision and addition read as follows:

§ 229.1109 (Item 1109) Trustees and other transaction parties.

(a) *Trustees.* * * *

* * * * *

(b) *Asset representations reviewer.* Provide the following for each asset representations reviewer:

(1) State the asset representations reviewer's name and describe its form of organization.

(2) Describe to what extent the asset representations reviewer has had prior experience serving as an asset representations reviewer for asset-backed securities transactions involving similar pool assets.

(3) Describe the asset representations reviewer's duties and responsibilities regarding the asset-backed securities under the governing documents and under applicable law. In addition, describe any actions required of the asset representations reviewer, including whether notices are required to investors, rating agencies or other third parties, and any required percentage of a class or classes of asset-backed securities that is needed to require the asset representations reviewer to take action.

(4) Disclose the manner and amount in which the asset representations reviewer is compensated.

(5) Describe any limitations on the asset representations reviewer's liability under the transaction agreements regarding the asset-backed securities transaction.

(6) Describe any indemnification provisions that entitle the asset representations reviewer to be indemnified from the cash flow that otherwise would be used to pay holders of the asset-backed securities.

(7) Describe any contractual provisions or understandings regarding the asset representations reviewer's removal, replacement or resignation, as well as how the expenses associated with changing from one asset representations reviewer to another asset representations reviewer will be paid.

■ 12. Amend § 229.1110 by:

■ a. Adding a second sentence to paragraph (a); and

■ b. Adding paragraphs (b)(3) and (c).

The additions read as follows:

§ 229.1110 (Item 1110) Originators.

(a) * * * Also identify any originator(s) originating less than 10% of the pool assets if the cumulative amount originated by parties other than the sponsor or its affiliates is more than 10% of the pool assets.

(b) * * *

(3) Describe any interest that the originator, or any affiliate of the originator, has retained in the transaction, including the amount and nature of that interest. Disclose any hedge (security specific or portfolio) materially related to the credit risk of the securities that was entered into by the originator or, if known, by an affiliate of the originator to offset the risk position held.

Instruction to Item 1110(b)(3). The disclosure required under this item shall separately state the amount and nature of any interest or asset retained in compliance with law, including any amounts that are retained by parties other than the originator in order to satisfy such requirements.

(c) For any originator identified under paragraph (b) of this section, if such originator is required to repurchase or replace a pool asset for breach of a representation and warranty pursuant to the transaction agreements, provide information regarding the originator's financial condition to the extent that there is a material risk that the effect on its ability to comply with the provisions in the transaction agreements relating to the repurchase obligations for those assets resulting from such financial condition could have a material impact on pool performance or performance of the asset-backed securities.

■ 13. Amend § 229.1111 by:

■ a. Revising paragraph (e); and

■ b. Adding paragraph (h).

The revision and addition read as follows:

§ 229.1111 (Item 1111) Pool assets.

* * * * *

(e) *Representations and warranties and modification provisions relating to the pool assets.* Provide the following information:

(1) *Representations and warranties.* Summarize any representations and warranties made concerning the pool assets by the sponsor, transferor, originator or other party to the transaction, and describe briefly the remedies available if those representations and warranties are breached, such as repurchase obligations.

(2) *Modification provisions.* Describe any provisions in the transaction agreements governing the modification of the terms of any asset, including how such modification may affect the cash flows from the assets or to the securities.

* * * * *

(h) *Asset-level information.* (1) If the asset pool includes residential mortgages, commercial mortgages, automobile loans, automobile leases, debt securities or resecuritizations of asset-backed securities, provide asset-level information for each asset or security in the pool in the manner specified in Schedule AL (§ 229.1125).

(2) File the disclosures as an Asset Data File (as defined in § 232.11 of this chapter) in the format required by the EDGAR Filer Manual. See § 232.301 of this chapter.

(3) File the Asset Data File as an exhibit to Form ABS–EE (§ 249.1401 of this chapter) in accordance with Item 601(b)(102) of Regulation S–K (§ 229.601(b)(102)).

(4) A registrant may provide additional explanatory disclosure related to an Asset Data File by filing an asset related document as an exhibit to Form ABS–EE (§ 249.1401 of this chapter) in accordance with Item 601(b)(103) of Regulation S–K (§ 229.601(b)(103)).

(5) A registrant may provide other asset-level information in addition to the information required by Schedule AL (§ 229.1125) by filing an asset related document as an exhibit to Form ABS–EE (§ 249.1401 of this chapter) in accordance with Item 601(b)(103) of Regulation S–K (§ 229.601(b)(103)). The asset related document(s) must contain the definitions and formulas for each additional data point and the related tagged data and may contain explanatory disclosure about each additional data point.

Instruction to Item 1111(h). All of the information required by this Item must be provided at the time of every filing for each asset that was in the asset pool during the reporting period, including assets removed prior to the end of the reporting period.

§ 229.1112 [Amended]

■ 14. Amend § 229.1112 by:

■ a. Removing Instruction 2 to Item 1112(b); and

■ b. Redesignating Instructions 1, 3 and 4 to Item 1112(b) as Instructions 1, 2, and 3, respectively.

■ 15. Amend § 229.1113 by:

■ a. Adding paragraph (a)(7)(i); and

■ b. Adding and reserving paragraph (a)(7)(ii).

The addition reads as follows:

§ 229.1113 (Item 1113) Structure of the transaction.

(a) * * *

(7) * * *

(i) Describe how the delinquency threshold that triggers a review by the asset representations reviewer was determined to be appropriate. In describing the appropriateness of such delinquency threshold, compare such delinquency threshold against the delinquencies disclosed for prior securitized pools of the sponsor for that asset type in accordance with Item 1105 of Regulation AB (§ 229.1105).

(ii) [Reserved]

* * * * *

§ 229.1114 [Amended]

■ 16. Amend § 229.1114 by:

■ a. Removing the heading ''Instructions to Item 1114:'' ;

■ b. Removing Instruction 3 to Item 1114(b); and

■ c. Redesignating Instructions 1, 2, 4 and 5 to Item 1114 as ''Instruction 1 to Item 1114(b)'', ''Instruction 2 to Item 1114(b)'', ''Instruction 3 to Item 1114(b)'' and ''Instruction 4 to Item 1114(b)'', respectively.

■ 17. Amend § 229.1119 by adding paragraph (a)(7) to read as follows:

§ 229.1119 (Item 1119) Affiliations and certain relationships and related transactions.

(a) * * *

(7) Asset representations reviewer.

* * * * *

■ 18. Amend § 229.1121 by:

■ a. Revising the second sentence of paragraph (a)(9); and

■ b. Adding paragraphs (d) and (e).

The revision and additions read as follows:

§ 229.1121 (Item 1121) Distribution and pool performance information.

(a) * * *

(9) * * * Present historical delinquency and loss information in accordance with Item 1100(b) of this Regulation AB (§ 229.1100(b)) through no less than 120 days.

* * * * *

(d) *Asset review.* (1) If during the distribution period a review of the underlying assets for compliance with the representations and warranties on the underlying assets is required, provide the following information, as applicable:

(i) A description of the event(s) that triggered the review during the distribution period; and

(ii) If the asset representations reviewer provided to the trustee during the distribution period a report of the findings and conclusions of the review, a summary of the report.

(2) *Change in asset representations reviewer.* If during the distribution

period an asset representations reviewer has resigned or has been removed, replaced or substituted, or if a new asset representations reviewer has been appointed, state the date the event occurred and the circumstances surrounding the change. If a new asset representations reviewer has been appointed, provide the disclosure required by Item 1109(b) (§ 229.1109(b)), as applicable, regarding such asset representations reviewer.

(e) *Investor communication.* Disclose any request received from an investor to communicate with other investors during the reporting period received by the party responsible for making the Form 10–D filings on or before the end date of a distribution period. The disclosure regarding the request to communicate is required to include the name of the investor making the request, the date the request was received, a statement to the effect that the party responsible for filing the Form 10–D (§ 249.312 of this chapter) has received a request from such investor, stating that such investor is interested in communicating with other investors with regard to the possible exercise of rights under the transaction agreements, and a description of the method by which other investors may contact the requesting investor.

Instruction to Item 1121(e). The party responsible for filing the Form 10–D (§ 249.312 of this chapter) is required to disclose an investor's interest to communicate only where the communication relates to an investor exercising its rights under the terms of the transaction agreement.

■ 19. Amend § 229.1122 by:
■ a. Revising paragraph (c)(1);
■ b. Redesignating paragraph (c)(2) as paragraph (c)(3);
■ c. Adding new paragraph (c)(2);
■ d. Adding paragraph (d)(1)(v);
■ e. Removing the heading ''Instructions to Item 1122:'';
■ f. Redesignating Instructions 1, 2 and 3 to Item 1122 as, ''Instruction 2 to Item 1122.'', ''Instruction 3 to Item 1122.'', and ''Instruction 4 to Item 1122.'', respectively; and
■ g. Adding a new instruction 1 to Item 1122.

The revision and additions read as follows:

§ 229.1122 (Item 1122) Compliance with applicable servicing criteria.

* * * * *

(c) * * * (1) If any party's report on assessment of compliance with servicing criteria required by paragraph (a) of this section, or related registered public accounting firm attestation report required by paragraph (b) of this section, identifies any material instance of noncompliance with the servicing criteria, identify the material instance of noncompliance in the report on Form 10–K (§ 249.310 of this chapter). Also disclose whether the identified instance was determined to have involved the servicing of the assets backing the asset-backed securities covered in this Form 10–K report.

(2) Discuss any steps taken to remedy a material instance of noncompliance previously identified by an asserting party for its activities with respect to asset-backed securities transactions taken as a whole involving such party and that are backed by the same asset type backing the asset-backed securities.

* * * * *

(d) * * *

(1) * * *

(v) Aggregation of information, as applicable, is mathematically accurate and the information conveyed accurately reflects the information.

* * * * *

Instruction 1 to Item 1122: The assessment should cover all asset-backed securities transactions involving such party and that are backed by the same asset type backing the class of asset-backed securities which are the subject of the Commission filing. The asserting party may take into account divisions among transactions that are consistent with actual practices. However, if the asserting party includes in its platform less than all of the transactions backed by the same asset type that it services, a description of the scope of the platform should be included in the assessment.

* * * * *

■ 20. Add § 229.1124 to read as follows:

§ 229.1124 (Item 1124) Sponsor interest in the securities.

Provide information about any material change in the sponsor's, or an affiliate's, interest in the securities resulting from the purchase, sale or other acquisition or disposition of the securities by the sponsor, or an affiliate, during the period covered by the report. Describe the change, including the amount of change and the sponsor's, or the affiliate's, resulting interest in the transaction after the change.

Instruction to Item 1124. The disclosure required under this item shall separately state the resulting amount and nature of any interest or asset retained in compliance with law, including any amounts that are retained by parties other than the sponsor in order to satisfy such requirement.

■ 21A. Add § 229.1125 to read as follows:

§ 229.1125 (Item 1125) Schedule AL—Asset-level information.

(a) The following definitions apply to the terms used in this schedule unless otherwise specified:

Debt service reduction. A modification of the terms of a loan resulting from a bankruptcy proceeding, such as a reduction of the amount of the monthly payment on the related mortgage loan.

Deficient valuation. A bankruptcy proceeding whereby the bankruptcy court may establish the value of the mortgaged property at an amount less than the then-outstanding principal balance of the mortgage loan secured by the mortgaged property or may reduce the outstanding principal balance of a mortgage loan.

Underwritten. The amount of revenues or expenses adjusted based on a number of assumptions made by the mortgage originator or seller.

(b) As required by Item 1111(h) (§ 229.1111(h)), provide asset-level information for each asset or security in the pool in the manner specified in Appendix to § 229.1125.

■ 21B. Add an appendix to § 229.1125 to read as follows:

Appendix to § 229.1125—Schedule AL

Item 1. Residential mortgages. If the asset pool includes residential mortgages, provide the following data and the data under Item 1 for each loan in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the unique ID number of the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(3) Asset group number. For structures with multiple collateral groups, indicate the collateral group number in which the asset falls.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the residential mortgage.* (1) Original loan purpose. Specify the code which describes the purpose of the loan at the time the loan was originated.

(2) Originator. Identify the name of the entity that originated the loan.

(3) Original loan amount. Indicate the amount of the loan at the time the loan was originated.

(4) Original loan maturity date. Indicate the month and year in which the final payment on the loan is scheduled to be made at the time the loan was originated.

(5) Original amortization term. Indicate the number of months that would have been required to retire the mortgage loan through regular payments, as determined at the origination date of the loan. In the case of an interest-only loan, the original amortization term is the original term to maturity (other than in the case of a balloon loan). In the case of a balloon loan, the original amortization term is the number of months used to calculate the principal and interest payment due each month (other than the balloon payment).

(6) Original interest rate. Provide the rate of interest at the time the loan was originated.

(7) Accrual type. Provide the code that describes the method used to calculate interest on the loan.

(8) Original interest rate type. Indicate whether the interest rate on the loan is fixed, adjustable, step or other.

(9) Original interest only term. Indicate the number of months in which the obligor is permitted to pay only interest on the loan beginning from when the loan was originated.

(10) Underwriting indicator. Indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(11) Original lien position. Indicate the code that describes the priority of the lien against the subject property at the time the loan was originated.

(12) Information related to junior liens. If the loan is a first mortgage with subordinate liens, provide the following additional information for each non-first mortgage if obtained or available:

(i) Most recent junior loan balance. Provide the most recent combined balance of any subordinate liens.

(ii) Date of most recent junior loan balance. Provide the date of the most recent junior loan balance.

(13) Information related to non-first mortgages. For non-first mortgages, provide the following information if obtained or available:

(i) Most recent senior loan amount. Provide the total amount of the balances of all associated senior loans.

(ii) Date of most recent senior loan amount. Provide the date(s) of the most recent senior loan amount.

(iii) Loan type of most senior lien. Indicate the code that describes the loan type of the first mortgage.

(iv) Hybrid period of most senior lien. For non-first mortgages where the associated first mortgage is a hybrid ARM, provide the number of months remaining in the initial fixed interest rate period for the first mortgage.

(v) Negative amortization limit of most senior lien. For non-first mortgages where the associated first mortgage features negative amortization, indicate the negative amortization limit of the mortgage as a percentage of the original unpaid principal balance.

(vi) Origination date of most senior lien. Provide the origination date of the associated first mortgage.

(14) Prepayment penalty indicator. Indicate yes or no as to whether the loan includes a penalty charged to the obligor in the event of a prepayment.

(15) Negative amortization indicator. Indicate yes or no as to whether the loan allows negative amortization.

(16) Modification indicator. Indicate yes or no as to whether the loan has been modified from its original terms.

(17) Number of modifications. Provide the number of times that the loan has been modified.

(18) Mortgage insurance requirement indicator. Indicate yes or no as to whether mortgage insurance is or was required as a condition for originating the loan.

(19) Balloon indicator. Indicate yes or no as to whether the loan documents require a lump-sum to fully pay off the loan.

(20) Covered/High cost loan indicator. Indicate yes, no or unknown as to whether as of the end of the reporting period the loan is categorized as ''high cost,'' ''higher priced'' or ''covered'' according to applicable federal, state or local statutes, ordinances or regulations.

(21) Servicer-placed hazard insurance. Indicate yes, no or unknown as to whether as of the end of the reporting period the hazard insurance on the property is servicer-placed.

(22) Refinance cash-out amount. For any refinance loan that is a cash-out refinance provide the amount the obligor received after all other loans to be paid by the mortgage proceeds have been satisfied. For any refinance loan that is a no-cash-out refinance provide the result of the following calculation: [NEW LOAN AMOUNT] – [PAID OFF FIRST MORTGAGE LOAN AMOUNT] – [PAID OFF SECOND MORTGAGE LOAN AMOUNT] – [CLOSING COSTS].

(23) Total origination and discount points. Provide the amount paid to the lender to increase the lender's effective yield and, in the case of discount points, to reduce the interest rate paid by the obligor.

(24) Broker. Indicate yes or no as to whether a broker originated or was involved in the origination of the loan.

(25) Channel. Specify the code that describes the source from which the issuer obtained the loan.

(26) NMLS company number. Specify the National Mortgage License System (NMLS) registration number of the company that originated the loan.

(27) Buy down period. Indicate the total number of months during which any buy down is in effect, representing the accumulation of all buy down periods.

(28) Loan delinquency advance days count. Indicate the number of days after which a servicer can stop advancing funds on a delinquent loan.

(29) Information related to ARMs. If the loan is an ARM, provide the following additional information:

(i) Original ARM Index. Specify the code that describes the type and source of index to be used to determine the interest rate at each adjustment.

(ii) ARM Margin. Indicate the number of percentage points that is added to the index value to establish the new interest rate at each interest rate adjustment date.

(iii) Fully indexed interest rate. Indicate the fully indexed interest rate to which the obligor was underwritten.

(iv) Initial fixed rate period for hybrid ARM. If the interest rate is initially fixed for a period of time, indicate the number of months between the first payment date of the loan and the first interest rate adjustment date.

(v) Initial interest rate decrease. Indicate the maximum percentage by which the interest rate may decrease at the first interest rate adjustment date.

(vi) Initial interest rate increase. Indicate the maximum percentage by which the interest rate may increase at the first interest rate adjustment date.

(vii) Index look-back. Provide the number of days prior to an interest rate effective date used to determine the appropriate index rate.

(viii) Subsequent interest rate reset period. Indicate the number of months between subsequent rate adjustments.

(ix) Lifetime rate ceiling. Indicate the percentage of the maximum interest rate that can be in effect during the life of the loan.

(x) Lifetime rate floor. Indicate the percentage of the minimum interest rate that can be in effect during the life of the loan.

(xi) Subsequent interest rate decrease. Provide the maximum number of percentage points by which the interest rate may decrease at each rate adjustment date after the initial adjustment.

(xii) Subsequent interest rate increase. Provide the maximum number of percentage points by which the interest rate may increase at each rate adjustment date after the initial adjustment.

(xiii) Subsequent payment reset period. Indicate the number of months between payment adjustments after the first interest rate adjustment date.

(xiv) ARM round indicator. Indicate the code that describes whether an adjusted interest rate is rounded to the next higher adjustable rate mortgage round factor, to the next lower round factor, or to the nearest round factor.

(xv) ARM round percentage. Indicate the percentage to which an adjusted interest rate is to be rounded.

(xvi) Option ARM indicator. Indicate yes or no as to whether the loan is an option ARM.

(xvii) Payment method after recast. Specify the code that describes the means of computing the lowest monthly payment available to the obligor after recast.

(xviii) Initial minimum payment. Provide the amount of the initial minimum payment the obligor is permitted to make.

(xix) Convertible indicator. Indicate yes or no as to whether the obligor of the loan has an option to convert an adjustable interest rate to a fixed interest rate during a specified conversion window.

(xx) HELOC indicator. Indicate yes or no as to whether the loan is a home equity line of credit (HELOC).

(xxi) HELOC draw period. Indicate the original maximum number of months from the month the loan was originated during

which the obligor may draw funds against the HELOC account.

(30) Information related to prepayment penalties. If the obligor is subject to prepayment penalties, provide the following additional information:

(i) Prepayment penalty calculation. Specify the code that describes the method for calculating the prepayment penalty for the loan.

(ii) Prepayment penalty type. Specify the code that describes the type of prepayment penalty.

(iii) Prepayment penalty total term. Provide the total number of months after the origination of the loan that the prepayment penalty may be in effect.

(iv) Prepayment penalty hard term. For hybrid prepayment penalties, provide the number of months after the origination of the loan during which a ''hard'' prepayment penalty applies.

(31) Information related to negative amortization. If the loan allows for negative amortization, provide the following additional information:

(i) Negative amortization limit. Specify the maximum amount of negative amortization that is allowed before recalculating a fully amortizing payment based on the new loan balance.

(ii) Initial negative amortization recast period. Indicate the number of months after the origination of the loan that negative amortization is allowed.

(iii) Subsequent negative amortization recast period. Indicate the number of months after which the payment is required to recast after the first amortization recast period.

(iv) Negative amortization balance amount. Provide the amount of the negative amortization balance accumulated as of the end of the reporting period.

(v) Initial fixed payment period. Indicate the number of months after the origination of the loan during which the payment is fixed.

(vi) Initial periodic payment cap. Indicate the maximum percentage by which a payment can increase in the first amortization recast period.

(vii) Subsequent periodic payment cap. Indicate the maximum percentage by which a payment can increase in one amortization recast period after the initial cap.

(viii) Initial minimum payment reset period. Provide the maximum number of months after the origination of the loan that an obligor can initially pay the minimum payment before a new minimum payment is determined.

(ix) Subsequent minimum payment reset period. Provide the maximum number of months after the initial period an obligor can pay the minimum payment before a new minimum payment is determined.

(x) Minimum payment. Provide the amount of the minimum payment due during the reporting period.

(d) *Information related to the property.* (1) Geographic location. Specify the location of the property by providing the two-digit zip code.

(2) Occupancy status. Specify the code that describes the property occupancy status at the time the loan was originated.

(3) Most recent occupancy status. If a property inspection has been performed after the loan is originated, provide the code that describes the manner in which the property is occupied.

(4) Property type. Specify the code that describes the type of property that secures the loan.

(5) Most recent property value. If an additional property valuation was obtained by any transaction party or its affiliates after the original appraised property value, provide the most recent property value obtained.

(6) Most recent property valuation type. Specify the code that describes the method by which the most recent property value was reported.

(7) Most recent property valuation date. Specify the date on which the most recent property value was reported.

(8) Most recent AVM model name. Provide the code indicating the name of the AVM model if an AVM was used to determine the most recent property value.

(9) Most recent AVM confidence score. If an additional AVM was obtained by any transaction party or its affiliates after the original valuation, provide the confidence score presented on the most recent AVM report.

(10) Original combined loan-to-value. Provide the ratio obtained by dividing the amount of all known outstanding mortgage liens on a property at origination by the lesser of the original appraised property value or the sales price.

(11) Original loan-to-value. Provide the ratio obtained by dividing the amount of the original mortgage loan at origination by the lesser of the original appraised property value or the sales price.

(e) *Information related to the obligor.* (1) Original number of obligors. Indicate the number of obligors who are obligated to repay the mortgage note at the time the loan was originated.

(2) Original obligor credit score. Provide the standardized credit score of the obligor used to evaluate the obligor during the loan origination process.

(3) Original obligor credit score type. Specify the type of the standardized credit score used to evaluate the obligor during the loan origination process.

(4) Most recent obligor credit score. If an additional credit score was obtained by any transaction party or its affiliates after the original credit score, provide the most recently obtained standardized credit score of the obligor.

(5) Most recent obligor credit score type. Specify the type of the most recently obtained standardized credit score of the obligor.

(6) Date of most recent obligor credit score. Provide the date of the most recently obtained standardized credit score of the obligor.

(7) Obligor income verification level. Indicate the code describing the extent to which the obligor's income was verified during the loan origination process.

(8) 4506—T Indicator. Indicate yes or no whether a Transcript of Tax Return (received pursuant to the filing of IRS Form 4506–T) was obtained and considered.

(9) Originator front-end debt-to-income (DTI). Provide the front-end DTI ratio used by the originator to qualify the loan.

(10) Originator back-end DTI. Provide the back-end DTI ratio used by the originator to qualify the loan.

(11) Obligor employment verification. Indicate the code describing the extent to which the obligor's employment was verified during the loan origination process.

(12) Length of employment—obligor. Indicate whether the obligor was employed by its current employer for greater than 24 months at the time the loan was originated.

(13) Obligor asset verification. Indicate the code describing the extent to which the obligor's assets used to qualify the loan was verified during the loan origination process.

(14) Original pledged assets. If the obligor(s) pledged financial assets to the lender instead of making a down payment, provide the total value of assets pledged as collateral for the loan at the time of origination.

(15) Qualification method. Specify the code that describes the type of mortgage payment used to qualify the obligor for the loan.

(f) *Information related to mortgage insurance.* If mortgage insurance is required on the mortgage, provide the following additional information:

(1) Mortgage insurance company name. Provide the name of the entity providing mortgage insurance for the loan.

(2) Mortgage insurance coverage. Indicate the total percentage of the original loan balance that is covered by mortgage insurance.

(3) Pool insurance company. Provide the name of the pool insurance provider.

(4) Pool insurance stop loss percent. Provide the aggregate amount that the pool insurance company will pay, calculated as a percentage of the pool balance.

(5) Mortgage insurance coverage plan type. Specify the code that describes the coverage category of the mortgage insurance applicable to the loan.

(g) *Information related to activity on the loan.* (1) Asset added indicator. Indicate yes or no whether the asset was added to the pool during the reporting period.

Instruction to paragraph (g)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under § 230.424 of this chapter is filed.

(2) Remaining term to maturity. Indicate the number of months from the end of the reporting period to the loan maturity date.

(3) Modification indicator—reporting period. Indicate yes or no whether the asset was modified during the reporting period.

(4) Next payment due date. For loans that have not been paid off, indicate the next payment due date.

(5) Advancing method. Specify the code that indicates a servicer's responsibility for advancing principal or interest on delinquent loans.

(6) Servicing advance methodology. Indicate the code that describes the manner in which principal and/or interest are advanced by the servicer.

(7) Stop principal and interest advance date. Provide the first payment due date for

which the servicer ceased advancing principal or interest.

(8) Reporting period beginning loan balance. Indicate the outstanding principal balance of the loan as of the beginning of the reporting period.

(9) Reporting period beginning scheduled loan balance. Indicate the scheduled principal balance of the loan as of the beginning of the reporting period.

(10) Next reporting period payment amount due. Indicate the total payment due to be collected in the next reporting period.

(11) Reporting period interest rate. Indicate the interest rate in effect during the reporting period.

(12) Next interest rate. For loans that have not been paid off, indicate the interest rate that is in effect for the next reporting period.

(13) Servicing fee—percentage. If the servicing fee is based on a percentage, provide the percentage used to calculate the aggregate servicing fee.

(14) Servicing fee—flat-fee. If the servicing fee is based on a flat-fee amount, indicate the monthly servicing fee paid to all servicers.

(15) Other assessed but uncollected servicer fees. Provide the cumulative amount of late charges and other fees that have been assessed by the servicer, but not paid by the obligor.

(16) Other loan-level servicing fee(s) retained by the servicer. Provide the amount of all other fees earned by loan administrators during the reporting period that reduced the amount of funds remitted to the issuing entity (including subservicing, master servicing, trustee fees, etc.).

(17) Scheduled interest amount. Indicate the interest payment amount that was scheduled to be collected during the reporting period.

(18) Other interest adjustments. Indicate any unscheduled interest adjustments during the reporting period.

(19) Scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected during the reporting period.

(20) Other principal adjustments. Indicate any other amounts that caused the principal balance of the loan to be decreased or increased during the reporting period.

(21) Reporting period ending actual balance. Indicate the actual balance of the loan as of the end of the reporting period.

(22) Reporting period ending scheduled balance. Indicate the scheduled principal balance of the loan as of the end of the reporting period.

(23) Reporting period scheduled payment amount. Indicate the total payment amount that was scheduled to be collected during the reporting period (including all fees and escrows).

(24) Total actual amount paid. Indicate the total payment (including all escrows) paid to the servicer during the reporting period.

(25) Actual interest collected. Indicate the gross amount of interest collected during the reporting period, whether or not from the obligor.

(26) Actual principal collected. Indicate the amount of principal collected during the reporting period, whether or not from the obligor.

(27) Actual other amounts collected. Indicate the total of any amounts, other than principal and interest, collected during the reporting period, whether or not from the obligor.

(28) Paid through date. Provide the date the loan's scheduled principal and interest is paid through as of the end of the reporting period.

(29) Interest paid through date. Provide the date through which interest is paid with the payment received during the reporting period, which is the effective date from which interest will be calculated for the application of the next payment.

(30) Paid-in-full amount. Provide the scheduled loan ''paid-in-full'' amount (principal) (do not include the current month's scheduled principal). Applies to all liquidations and loan payoffs.

(31) Information related to servicer advances.

(i) Servicer advanced amount—principal. Provide the total amount the servicer advanced for the reporting period for due but unpaid principal on the loan.

(ii) Servicer advanced amounts repaid—principal. Provide the total amount of any payments made by the obligor during the reporting period that was applied to outstanding advances of due but unpaid principal on the loan.

(iii) Servicer advances cumulative—principal. Provide the outstanding cumulative amount of principal advances made by the servicer as of the end of the reporting period, including amounts advanced for the reporting period.

(iv) Servicer advanced amount—interest. Provide the total amount the servicer advanced for the reporting period for due but unpaid interest on the loan.

(v) Servicer advanced amounts repaid—interest. Provide the total amount of any payments made by the obligor during the reporting period that was applied to outstanding advances of due but unpaid interest on the loan.

(vi) Servicer advances cumulative—interest. Provide the outstanding cumulative amount of interest advances made by the servicer as of the end of the reporting period, including amounts advanced for the reporting period.

(vii) Servicer advanced amount—taxes and insurance. Provide the total amount the servicer advanced for the reporting period for due but unpaid property tax and insurance payments (escrow amounts).

(viii) Servicer advanced amount repaid—taxes and insurance. Provide the total amount of any payment made by the obligor during the reporting period that was applied to outstanding advances of due but unpaid escrow amounts.

(ix) Servicer advances cumulative—taxes and insurance. Provide the outstanding cumulative amount of escrow advances made by the servicer as of the end of the reporting period, including amounts advanced for the reporting period.

(x) Servicer advanced amount—corporate. Provide the total amount the servicer advanced for property inspection and preservation expenses for the reporting period.

(xi) Servicer advanced amount repaid—corporate. Provide the total amount of any payments made by the obligor during the reporting period that was applied to outstanding corporate advances.

(xii) Servicer advances cumulative—corporate. Provide the outstanding cumulative amount of corporate advances made by the servicer as of the end of the reporting period, including amounts advanced for the reporting period.

Instruction to paragraph (g)(31): For loans modified or liquidated during a reporting period the data provided in response to this paragraph (g)(31) is to be information as of the liquidation date or modification date, as applicable.

(32) Zero balance loans. If the loan balance was reduced to zero during the reporting period, provide the following additional information about the loan.

(i) Zero balance effective date. Provide the date on which the loan balance was reduced to zero.

(ii) Zero balance code. Provide the code that indicates the reason the loan's balance was reduced to zero.

(33) Most recent 12-month pay history. Provide the string that indicates the payment status per month listed from oldest to most recent.

(34) Number of payments past due. Indicate the number of payments the obligor is past due as of the end of the reporting period.

(35) Information related to activity on ARM loans. If the loan is an ARM, provide the following additional information.

(i) Rate at next reset. Provide the interest rate that will be used to determine the next scheduled interest payment, if known.

(ii) Next payment change date. Provide the next date that the amount of scheduled principal and/or interest is scheduled to change.

(iii) Next interest rate change date. Provide the next scheduled date on which the interest rate is scheduled to change.

(iv) Payment at next reset. Provide the principal and interest payment due after the next scheduled interest rate change, if known.

(v) Exercised ARM conversion option indicator. Indicate yes or no whether the obligor exercised an option to convert an ARM loan to a fixed interest rate loan during the reporting period.

(h) *Information related to servicers.* (1) Primary servicer. Indicate the name of the entity that serviced the loan during the reporting period.

(2) Most recent servicing transfer received date. If a loan's servicing has been transferred, provide the effective date of the most recent servicing transfer.

(3) Master servicer. Provide the name of the entity that served as master servicer during the reporting period, if applicable.

(4) Special servicer. Provide the name of the entity that served as special servicer during the reporting period, if applicable.

(5) Subservicer. Provide the name of the entity that served as a subservicer during the reporting period, if applicable.

(i) *Asset subject to demand.* Indicate yes or no whether during the reporting period the

loan was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the loan is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. Indicate the code that describes the status of the repurchase or replacement demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the loan from the pool.

(3) Demand resolution date. Indicate the date the loan repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase or replacement.

(j) *Information related to loans that have been charged off.* If the loan has been charged off, provide the following additional information:

(1) Charged-off principal amount. Specify the total amount of uncollected principal charged off.

(2) Charged-off interest amount. Specify the total amount of uncollected interest charged off.

(k) [Reserved]

(l) *Loss mitigation type indicator.* Indicate the code that describes the type of loss mitigation the servicer is pursuing with the obligor, loan, or property as of the end of the reporting period.

(m) *Information related to loan modifications.* If the loan has been modified from its original terms, provide the following additional information about the most recent loan modification:

(1) Most recent loan modification event type. Specify the code that describes the most recent action that has resulted in a change or changes to the loan note terms.

(2) Effective date of the most recent loan modification. Provide the date on which the most recent modification of the loan has gone into effect.

(3) Post-modification maturity date. Provide the loan's maturity date as of the modification effective payment date.

(4) Post-modification interest rate type. Indicate whether the interest rate type on the loan after the modification is fixed, adjustable, step, or other.

(5) Post-modification amortization type. Indicate the amortization type after modification.

(6) Post-modification interest rate. Provide the interest rate in effect as of the modification effective payment date.

(7) Post-modification first payment date. Indicate the date of the first payment due after the loan modification.

(8) Post-modification loan balance. Provide the loan balance as of the modification effective payment date as reported on the modification documents.

(9) Post-modification principal and interest payment. Provide total principal and interest payment amount as of the modification effective payment date.

(10) Total capitalized amount. Provide the amount added to the principal balance of the loan due to the modification.

(11) Income verification indicator (at modification). Indicate yes or no whether a Transcript of Tax Return (received pursuant to the filing of IRS Form 4506–T) was obtained and considered during the loan modification process.

(12) Modification front-end DTI. Provide the front-end DTI ratio used to qualify the modification.

(13) Modification back-end DTI. Provide the back-end DTI ratio used to qualify the modification.

(14) Total deferred amount. Provide the deferred amount that is non-interest bearing.

(15) Forgiven principal amount (cumulative). Provide the total amount of all principal balance reductions as a result of loan modifications over the life of the loan.

(16) Forgiven principal amount (reporting period). Provide the total principal balance reduction as a result of a loan modification during the reporting period.

(17) Forgiven interest amount (cumulative). Provide the total amount of all interest forgiven as a result of loan modifications over the life of the loan.

(18) Forgiven interest amount (reporting period). Provide the total gross interest forgiven as a result of a loan modification during the reporting period.

(19) Actual ending balance—total debt owed. For a loan with principal forbearance, provide the sum of the actual ending balance field plus the principal deferred amount. For all other loans, provide the actual ending balance.

(20) Scheduled ending balance—total debt owed. For a loan with principal forbearance, provide the sum of the scheduled ending balance field plus the deferred amount. For all other loans, provide the scheduled ending balance.

(21) Information related to ARM loan modifications. If the loan was an ARM before and after the most recent modification, provide the following additional information:

(i) Post-modification ARM indicator. Indicate whether the loan's existing ARM parameters have changed per the modification agreement.

(ii) Post-modification ARM index. Specify the code that describes the index on which an adjustable interest rate is based as of the modification effective payment date.

(iii) Post-modification margin. Provide the margin as of the modification effective payment date. The margin is the number of percentage points added to the index to establish the new rate.

(iv) Post-modification interest reset period (if changed). Provide the number of months of the interest reset period of the loan as of the modification effective payment date.

(v) Post-modification next reset date. Provide the next interest reset date as of the modification effective payment date.

(vi) Post-modification index lookback. Provide the number of days prior to an interest rate effective date used to determine the appropriate index rate as of the modification effective payment date.

(vii) Post-modification ARM round indicator. Indicate the code that describes whether an adjusted interest rate is rounded to the next higher adjustable rate mortgage round factor, to the next lower round factor, or to the nearest round factor as of the modification effective payment date.

(viii) Post-modification ARM round percentage. Indicate the percentage to which an adjusted interest rate is to be rounded as of the modification effective payment date.

(ix) Post-modification initial minimum payment. Provide the amount of the initial minimum payment the obligor is permitted to make as of the modification effective payment date.

(x) Post-modification next payment adjustment date. Provide the due date on which the next payment adjustment is scheduled to occur for an ARM loan per the modification agreement.

(xi) Post-modification ARM payment recast frequency. Provide the payment recast frequency of the loan (in months) per the modification agreement.

(xii) Post-modification lifetime rate floor. Provide the minimum rate of interest that may be applied to an adjustable rate loan over the course of the loan's life as of the modification effective payment date.

(xiii) Post-modification lifetime rate ceiling. Provide the maximum rate of interest that may be applied to an adjustable rate loan over the course of the loan's life as of the modification effective payment date.

(xiv) Post-modification initial interest rate increase. Indicate the maximum percentage by which the interest rate may increase at the first interest rate adjustment date after the loan modification.

(xv) Post-modification initial interest rate decrease. Provide the maximum percentage by which the interest rate may adjust downward on the first interest rate adjustment date after the loan modification.

(xvi) Post-modification subsequent interest rate increase. Provide the maximum number of percentage points by which the rate may increase at each rate adjustment date after the initial rate adjustment as of the modification effective payment date.

(xvii) Post-modification subsequent interest rate decrease. Provide the maximum number of percentage points by which the interest rate may decrease at each rate adjustment date after the initial adjustment as of the modification effective payment date.

(xviii) Post-modification payment cap. Provide the percentage value by which a payment may increase or decrease in one period as of the modification effective payment date.

(xix) Post-modification payment method after recast. Specify the code that describes the means of computing the lowest monthly payment available to the obligor after recast as of the modification effective payment date.

(xx) Post-modification ARM interest rate teaser period. Provide the duration in months that the teaser interest rate is in effect as of the modification effective payment date.

(xxi) Post-modification payment teaser period. Provide the duration in months that the teaser payment is in effect as of the modification effective payment date.

(xxii) Post-modification ARM negative amortization indicator. Indicate yes or no whether a negative amortization feature is

part of the loan as of the modification effective payment date.

(xxiii) Post-modification ARM negative amortization cap. Provide the maximum percentage of negative amortization allowed on the loan as of the modification effective payment date.

(22) Information related to loan modifications involving interest-only periods. If the loan terms for the most recent loan modification include an interest only period, provide the following additional information:

(i) Post-modification interest-only term. Provide the number of months of the interest-only period from the modification effective payment date.

(ii) Post-modification interest-only last payment date. Provide the date of the last interest-only payment as of the modification effective payment date.

(23) Post-modification balloon payment amount. Provide the new balloon payment amount due at maturity as a result of the loan modification, not including deferred amounts.

(24) Information related to step loans. If the loans terms for the most recent loan modification agreement call for the interest rate to step up over time, provide the following additional information:

(i) Post-modification interest rate step indicator. Indicate whether the terms of the modification agreement call for the interest rate to step up over time.

(ii) Post-modification step interest rate. Provide the rate(s) that will apply at each change date as stated in the loan modification agreement. All rates must be provided, not just the first change rate, unless there is only a single change date.

(iii) Post-modification step date. Provide the date(s) at which the next rate and/or payment change will occur per the loan modification agreement. All dates must be provided, not just the first change, unless there is only a single change date.

(iv) Post-modification—step principal and interest. Provide the principal and interest payment(s) that will apply at each change date as stated in the loan modification agreement. All payments must be provided, not just the first change payment, unless there is only a single change date.

(v) Post-modification—number of steps. Provide the total number of step rate adjustments under the step agreement.

(vi) Post-modification maximum future rate under step agreement. Provide the maximum interest rate to which the loan will step up.

(vii) Post-modification date of maximum rate under step agreement. Provide the date on which the maximum interest rate will be reached.

(25) Non-interest bearing principal deferred amount (cumulative). Provide the total amount of principal deferred (or forborne) by the modification that is not subject to interest accrual.

(26) Non-interest bearing principal deferred amount (reporting period). Provide the total amount of principal deferred by the modification that is not subject to interest accrual.

(27) Recovery of deferred principal (reporting period). Provide the amount of deferred principal collected from the obligor during the reporting period.

(28) Non-interest bearing deferred paid-in-full amount. If the loan had a principal forbearance and was paid in full or liquidated, provide the amount paid towards the amount of the principal forbearance.

(29) Non-interest bearing deferred interest and fees amount (reporting period). Provide the total amount of interest and expenses deferred by the modification that is not subject to interest accrual during the reporting period.

(30) Non-interest bearing deferred interest and fees amount (cumulative). Provide the total amount of interest and expenses deferred by the modification that is not subject to interest accrual.

(31) Recovery of deferred interest and fees (reporting period). Provide the amount of deferred interest and fees collected during the reporting period.

(n) *Information related to forbearance or trial modification.* If the type of loss mitigation is forbearance or a trial modification, provide the following additional information. A forbearance plan refers to a period during which either no payment or a payment amount less than the contractual obligation is required from the obligor. A trial modification refers to a temporary loan modification during which an obligor's application for a permanent loan modification is under evaluation.

(1) Most recent forbearance plan or trial modification start date. Provide the date on which a payment change pursuant to the most recent forbearance plan or trial modification started.

(2) Most recent forbearance plan or trial modification scheduled end date. Provide the date on which a payment change pursuant to the most recent forbearance plan or trial modification is scheduled to end.

(3) Most recent trial modification violated date. Provide the date on which the obligor ceased complying with the terms of the most recent trial modification.

(o) *Information related to repayment plan.* If the type of loss mitigation is a repayment plan, provide the following additional information. A repayment plan refers to a period during which an obligor has agreed to make monthly mortgage payments greater than the contractual installment in an effort to bring a delinquent loan current.

(1) Most recent repayment plan start date. Provide the date on which the most recent repayment plan started.

(2) Most recent repayment plan scheduled end date. Provide the date on which the most recent repayment plan is scheduled to end.

(3) Most recent repayment plan violated date. Provide the date on which the obligor ceased complying with the terms of the most recent repayment plan.

(p) *Information related to short sales.* Short sale refers to the process in which a servicer workers with a delinquent obligor to sell the property prior to the foreclosure sale. If the type of loss mitigation is short sale, provide the following information:

(1) Short sale accepted offer amount. Provide the amount accepted for a pending short sale.

(2) [Reserved]

(q) *Information related to loss mitigation exit.* If the loan has exited loss mitigation efforts during the reporting period, provide the following additional information:

(1) Most recent loss mitigation exit date. Provide the date on which the servicer deemed the most recent loss mitigation effort to have ended.

(2) Most recent loss mitigation exit code. Indicate the code that describes the reason the most recent loss mitigation effort ended.

(r) *Information related to loans in the foreclosure process.* If the loan is in foreclosure, provide the following additional information:

(1) Attorney referral date. Provide the date on which the loan was referred to a foreclosure attorney.

(2) Foreclosure delay reason. Indicate the code that describes the reason for delay within the foreclosure process.

(3) Foreclosure exit date. If the loan exited foreclosure during the reporting period, provide the date on which the loan exited foreclosure.

(4) Foreclosure exit reason. If the loan exited foreclosure during the reporting period, indicate the code that describes the reason the foreclosure proceeding ended.

(5) NOI Date. If a notice of intent (NOI) has been sent, provide the date on which the servicer sent the NOI correspondence to the obligor informing the obligor of the acceleration of the loan and pending initiation of foreclosure action.

(s) *Information related to REO.* REO (Real Estate Owned) refers to property owned by a lender after an unsuccessful sale at a foreclosure auction. If the loan is REO, provide the following additional information:

(1) Most recent accepted REO offer amount. If an REO offer has been accepted, provide the amount accepted for the REO sale.

(2) Most recent accepted REO offer date. If an REO offer has been accepted, provide the date on which the REO sale amount was accepted.

(3) Gross liquidation proceeds. If the REO sale has closed, provide the gross amount due to the issuing entity as reported on Line 420 of the HUD–1 settlement statement.

(4) Net sales proceeds. If the REO sale has closed, provide the net proceeds received from the escrow closing (before servicer reimbursement).

(5) Reporting period loss amount passed to issuing entity. Provide the cumulative loss amount passed through to the issuing entity during the reporting period, including subsequent loss adjustments and any forgiven principal as a result of a modification that was passed through to the issuing entity.

(6) Cumulative total loss amount passed to issuing entity. Provide the loss amount passed through to the issuing entity to date, including any forgiven principal as a result of a modification that was passed through to the issuing entity.

(7) Subsequent recovery amount. Provide the reporting period amount recovered subsequent to the initial gain/loss recognized at the time of liquidation.

(8) Eviction indicator. Indicate whether an eviction process has begun.

(9) REO exit date. If the loan exited REO during the reporting period, provide the date on which the loan exited REO status.

(10) REO exit reason. If the loan exited REO during the reporting period, indicate the code that describes the reason the loan exited REO status.

(t) *Information related to losses.*

(1) Information related to loss claims.

(i) UPB at liquidation. Provide the actual unpaid principal balance (UPB) at the time of liquidation.

(ii) Servicing fees claimed. Provide the amount of accrued servicing fees claimed at time of servicer reimbursement after liquidation.

(iii) Servicer advanced amounts reimbursed—principal. Provide the total amount of unpaid principal advances made by the servicer that were reimbursed to the servicer.

(iv) Servicer advanced amounts reimbursed—interest. Provide the total amount of unpaid interest advances made by the servicer that were reimbursed to the servicer.

(v) Servicer advanced amount reimbursed—taxes and insurance. Provide the total amount of any unpaid escrow amounts advanced by the servicer that were reimbursed to the servicer.

(vi) Servicer advanced amount reimbursed—corporate. Provide the total amount of any outstanding advances of property inspection and preservation expenses made by the servicer that were reimbursed to the servicer.

(vii) REO management fees. If the loan is in REO, provide the total amount of REO management fees (including auction fees) paid over the life of the loan.

(viii) Cash for keys/cash for deed. Provide the total amount paid to the obligor or tenants in exchange for vacating the property, or the payment to the obligor to accelerate a deed-in-lieu process or complete a redemption period.

(ix) Performance incentive fees. Provide the total amount paid to the servicer in exchange for carrying out a deed-in-lieu or short sale or similar activities.

(2) [Reserved]

(u) *Information related to mortgage insurance claims.* If a mortgage insurance claim (MI claim) has been submitted to the primary mortgage insurance company for reimbursement, provide the following additional information:

(1) MI claim filed date. Provide the date on which the servicer filed an MI claim.

(2) MI claim amount. Provide the amount of the MI claim filed by the servicer.

(3) MI claim paid date. If the MI claim has been paid, provide the date on which the MI company paid the MI claim.

(4) MI claim paid amount. If the MI claim has been decided, provide the amount of the claim paid by the MI company.

(5) MI claim denied/rescinded date. If the MI claim has been denied or rescinded, provide the final MI denial date after all servicer appeals.

(6) Marketable title transferred date. If the deed for the property has been conveyed to the MI company, provide the date of actual title conveyance to the MI company.

(v) *Information related to delinquent loans.* (1) Non-pay status. Indicate the code that describes the delinquency status of the loan.

(2) Reporting action code. Further indicate the code that defines the default/delinquent status of the loan.

Item 2. Commercial mortgages. If the asset pool includes commercial mortgages, provide the following data for each loan in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the unique ID number of the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(3) Group ID. Indicate the alpha-numeric code assigned to each loan group within a securitization.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the commercial mortgage.* (1) Originator. Identify the name or MERS organization number of the originator entity.

(2) Origination date. Provide the date the loan was originated.

(3) Original loan amount. Indicate the amount of the loan at the time the loan was originated.

(4) Original loan term. Indicate the term of the loan in months at the time the loan was originated.

(5) Maturity date. Indicate the date the final scheduled payment is due per the loan documents.

(6) Original amortization term. Indicate the number of months that would have been required to retire the loan through regular payments, as determined at the origination date of the loan.

(7) Original interest rate. Provide the rate of interest at the time the loan was originated.

(8) Interest rate at securitization. Indicate the annual gross interest rate used to calculate interest for the loan as of securitization.

(9) Interest accrual method. Provide the code that indicates the ''number of days'' convention used to calculate interest.

(10) Original interest rate type. Indicate whether the interest rate on the loan is fixed, adjustable, step or other.

(11) Original interest-only term. Indicate the number of months in which the obligor is permitted to pay only interest on the loan.

(12) First loan payment due date. Provide the date on which the borrower must pay the first full interest and/or principal payment due on the mortgage in accordance with the loan documents.

(13) Underwriting indicator. Indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(14) Lien position at securitization. Indicate the code that describes the lien position for the loan as of securitization.

(15) Loan structure. Indicate the code that describes the type of loan structure including the seniority of participated mortgage loan components. The code relates to the loan within the securitization.

(16) Payment type. Indicate the code that describes the type or method of payment for a loan.

(17) Periodic principal and interest payment at securitization. Provide the total amount of principal and interest due on the loan in effect as of securitization.

(18) Scheduled principal balance at securitization. Indicate the outstanding scheduled principal balance of the loan as of securitization.

(19) Payment frequency. Indicate the code that describes the frequency mortgage loan payments are required to be made.

(20) Number of properties at securitization. Provide the number of properties which serve as mortgage collateral for the loan as of securitization.

(21) Number of properties. Provide the number of properties which serve as mortgage collateral for the loan as of the end of the reporting period.

(22) Grace days allowed. Provide the number of days after a mortgage payment is due in which the lender will not require a late payment charge in accordance with the loan documents. Does not include penalties associated with default interest.

(23) Interest only indicator. Indicate yes or no whether this is a loan for which scheduled interest only is payable, whether for a temporary basis or until the full loan balance is due.

(24) Balloon indicator. Indicate yes or no whether the loan documents require a lump-sum payment of principal at maturity.

(25) Prepayment premium indicator. Indicate yes or no whether the obligor is subject to prepayment penalties.

(26) Negative amortization indicator. Indicate yes or no whether negative amortization (interest shortage) amounts are permitted to be added back to the unpaid principal balance of the loan if monthly payments should fall below the true amortized amount.

(27) Modification indicator. Indicate yes or no whether the loan has been modified from its original terms.

(28) Information related to ARMs. If the loan is an ARM, provide the following additional information for each loan:

(i) ARM index. Specify the code that describes the index on which an adjustable interest rate is based.

(ii) First rate adjustment date. Provide the date on which the first interest rate adjustment becomes effective (subsequent to loan securitization).

(iii) First payment adjustment date. Provide the date on which the first adjustment to the regular payment amount becomes effective (after securitization).

(iv) ARM margin. Indicate the spread added to the index of an ARM loan to determine the interest rate at securitization.

(v) Lifetime rate cap. Indicate the maximum interest rate that can be in effect during the life of the loan.

(vi) Lifetime rate floor. Indicate the minimum interest rate that can be in effect during the life of the loan.

(vii) Periodic rate increase limit. Provide the maximum amount the interest rate can increase from any period to the next.

(viii) Periodic rate decrease limit. Provide the maximum amount the interest rate can decrease from any period to the next.

(ix) Periodic pay adjustment maximum amount. Provide the maximum amount the principal and interest constant can increase or decrease on any adjustment date.

(x) Periodic pay adjustment maximum percentage. Provide the maximum percentage amount the payment can increase or decrease from any period to the next.

(xi) Rate reset frequency. Indicate the code describing the frequency which the periodic mortgage rate is reset due to an adjustment in the ARM index.

(xii) Pay reset frequency. Indicate the code describing the frequency which the periodic mortgage payment will be adjusted.

(xiii) Index look back in days. Provide the number of days prior to an interest rate adjustment effective date used to determine the appropriate index rate.

(29) Information related to prepayment penalties. If the obligor is subject to prepayment penalties, provide the following additional information for each loan:

(i) Prepayment lock-out end date. Provide the effective date after which the lender allows prepayment of a loan.

(ii) Yield maintenance end date. Provide the date after which yield maintenance prepayment penalties are no longer effective.

(iii) Prepayment premium end date. Provide the effective date after which prepayment premiums are no longer effective.

(30) Information related to negative amortization. If the loan allows for negative amortization, provide the following additional information for each loan:

(i) Maximum negative amortization allowed (% of original balance). Provide the maximum percentage of the original loan balance that can be added to the original loan balance as the result of negative amortization.

(ii) Maximum negative amortization allowed. Provide the maximum amount of the original loan balance that can be added to the original loan balance as the result of negative amortization.

(iii) Negative amortization/deferred interest capitalized amount. Indicate the amount for the reporting period that was capitalized (added to) the principal balance.

(iv) Deferred interest—cumulative. Indicate the cumulative deferred interest for the reporting period and prior reporting cycles net of any deferred interest collected.

(v) Deferred interest collected. Indicate the amount of deferred interest collected during the reporting period.

(d) *Information related to the property.* Provide the following information for each of the properties that collateralizes a loan identified above:

(1) Property name. Provide the name of the property which serves as mortgage collateral. If the property has been defeased, then populate with ''defeased.''

(2) Property address. Specify the address of the property which serves as mortgage collateral. If multiple properties, then print ''various.'' If the property has been defeased then leave field empty. For substituted properties, populate with the new property information.

(3) Property city. Specify the city name where the property which serves as mortgage collateral is located. If the property has been defeased, then leave field empty.

(4) Property state. Indicate the two character abbreviated code representing the state in which the property which serves as mortgage collateral is located.

(5) Property zip code. Indicate the zip (or postal) code for the property which serves as mortgage collateral.

(6) Property county. Indicate the county in which the property which serves as mortgage collateral is located.

(7) Property type. Indicate the code that describes how the property is being used.

(8) Net rentable square feet. Provide the net rentable square feet area of the property.

(9) Net rentable square feet at securitization. Provide the net rentable square feet area of the property as determined at the time the property is contributed to the pool as collateral.

(10) Number of units/beds/rooms. If the property type is multifamily, self-storage, healthcare, lodging or mobile home park, provide the number of units/beds/rooms of the property.

(11) Number of units/beds/rooms at securitization. If the property type is multifamily, self-storage, healthcare, lodging or mobile home park, provide the number of units/beds/rooms of the property at securitization.

(12) Year built. Provide the year that the property was built.

(13) Year last renovated. Provide the year that the last major renovation/new construction was completed on the property.

(14) Valuation amount at securitization. Provide the valuation amount of the property as of the valuation date at securitization.

(15) Valuation source at securitization. Specify the code that identifies the source of the property valuation.

(16) Valuation date at securitization. Provide the date the valuation amount at securitization was determined.

(17) Most recent value. If an additional property valuation was obtained by any transaction party or its affiliates after the valuation obtained at securitization, provide the most recent valuation amount.

(18) Most recent valuation date. Provide the date of the most recent valuation.

(19) Most recent valuation source. Specify the code that identifies the source of the most recent property valuation.

(20) Physical occupancy at securitization. Provide the percentage of rentable space occupied by tenants.

(21) Most recent physical occupancy. Provide the most recent available percentage of rentable space occupied by tenants.

(22) Property status. Provide the code that describes the status of the property.

(23) Defeasance option start date. Provide the date when the defeasance option becomes available.

(24) Defeasance status. Provide the code that indicates if a loan has or is able to be defeased.

(25) Largest tenant.

(i) Largest tenant. Identify the tenant that leases the largest square feet of the property based on the most recent annual lease rollover review.

Instruction to paragraph (d)(25)(i): If the tenant is not occupying the space but is still paying rent, print ''Dark'' after tenant name. If tenant has sub-leased the space, print ''Sub-leased/name'' after tenant name.

(ii) Square feet of largest tenant. Provide total number of square feet leased by the largest tenant based on the most recent annual lease rollover review.

(iii) Date of lease expiration of largest tenant. Provide the date of lease expiration for the largest tenant.

(26) Second largest tenant.

(i) Second largest tenant. Identify the tenant that leases the second largest square feet of the property based on the most recent annual lease rollover review.

Instruction to paragraph (d)(26)(i): If the tenant is not occupying the space but is still paying rent, print ''Dark'' after tenant name. If tenant has sub-leased the space, print ''Sub-leased/name'' after tenant name.

(ii) Square feet of second largest tenant. Provide the total number of square feet leased by the second largest tenant based on the most recent annual lease rollover review.

(iii) Date of lease expiration of second largest tenant. Provide the date of lease expiration for the second largest tenant.

(27) Third largest tenant.

(i) Third largest tenant. Identify the tenant that leases the third largest square feet of the property based on the most recent annual lease rollover review.

Instruction to paragraph (d)(27)(i): If the tenant is not occupying the space but is still paying rent, print ''Dark'' after tenant name. If tenant has sub-leased the space, print ''Sub-leased/name'' after tenant name.

(ii) Square feet of third largest tenant. Provide the total number square feet leased by the third largest tenant based on the most recent annual lease rollover review.

(iii) Date of lease expiration of third largest tenant. Provide the date of lease expiration for the third largest tenant.

(28) Financial information related to the property. Provide the following information as of the most recent date available:

(i) Date of financials as of securitization. Provide the date of the operating statement for the property used to underwrite the loan.

(ii) Most recent financial as of start date. Specify the first date of the period for the most recent, hard copy operating statement (e.g., year-to-date or trailing 12 months).

(iii) Most recent financial as of end date. Specify the last day of the period for the most recent, hard copy operating statement (e.g., year-to-date or trailing 12 months).

(iv) Revenue at securitization. Provide the total underwritten revenue amount from all sources for a property as of securitization.

(v) Most recent revenue. Provide the total revenues for the most recent operating statement reported.

(vi) Operating expenses at securitization. Provide the total underwritten operating expenses as of securitization. Include real estate taxes, insurance, management fees, utilities, and repairs and maintenance. Exclude capital expenditures, tenant improvements, and leasing commissions.

(vii) Operating expenses. Provide the total operating expenses for the most recent operating statement. Include real estate taxes, insurance, management fees, utilities, and repairs and maintenance. Exclude capital expenditures, tenant improvements, and leasing commissions.

(viii) Net operating income at securitization. Provide the total underwritten revenues less total underwritten operating expenses prior to application of mortgage payments and capital items for all properties as of securitization.

(ix) Most recent net operating income. Provide the total revenues less total operating expenses before capital items and debt service per the most recent operating statement.

(x) Net cash flow at securitization. Provide the total underwritten revenue less total underwritten operating expenses and capital costs as of securitization.

(xi) Most recent net cash flow. Provide the total revenue less the total operating expenses and capital costs but before debt service per the most recent operating statement.

(xii) Net operating income or net cash flow indicator at securitization. Indicate the code that describes the method used to calculate at securitization net operating income or net cash flow.

(xiii) Net operating income or net cash flow indicator. Indicate the code that describes the method used to calculate net operating income or net cash flow.

(xiv) Most recent debt service amount. Provide the amount of total scheduled or actual payments that cover the same number of months as the most recent financial operating statement.

(xv) Debt service coverage ratio (net operating income) at securitization. Provide the ratio of underwritten net operating income to debt service as of securitization.

(xvi) Most recent debt service coverage ratio (net operating income). Provide the ratio of net operating income to debt service during the most recent operating statement reported.

(xvii) Debt service coverage ratio (net cash flow) at securitization. Provide the ratio of underwritten net cash flow to debt service as of securitization.

(xviii) Most recent debt service coverage ratio (net cash flow). Provide the ratio of net cash flow to debt service for the most recent financial operating statement.

(xix) Debt service coverage ratio indicator at securitization. If there are multiple properties underlying the loan, indicate the code that describes how the debt service coverage ratio was calculated.

(xx) Most recent debt service coverage ratio indicator. Indicate the code that describes how the debt service coverage ratio was calculated for the most recent financial operating statement.

(xxi) Date of the most recent annual lease rollover review. Provide the date of the most recent annual lease rollover review.

(e) *Information related to activity on the loan.* (1) Asset added indicator. Indicate yes or no whether the asset was added during the reporting period.

Instruction to paragraph (e)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under § 230.424 of this chapter is filed.

(2) Modification indicator—reporting period. Indicate yes or no whether the loan was modified during the reporting period.

(3) Reporting period beginning scheduled loan balance. Indicate the scheduled balance as of the beginning of the reporting period.

(4) Total scheduled principal and interest due. Provide the total amount of principal and interest due on the loan in the month corresponding to the current distribution date.

(5) Reporting period interest rate. Indicate the annualized gross interest rate used to calculate the scheduled interest amount due for the reporting period.

(6) Servicer and trustee fee rate. Indicate the sum of annual fee rates payable to the servicers and trustee.

(7) Scheduled interest amount. Provide the amount of gross interest payment that was scheduled to be collected during the reporting period.

(8) Other interest adjustment. Indicate any unscheduled interest adjustments during the reporting period.

(9) Scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected during the reporting period.

(10) Unscheduled principal collections. Provide the principal prepayments and other unscheduled payments of principal received on the loan during the reporting period.

(11) Other principal adjustments. Indicate any other amounts that caused the principal balance of the loan to be decreased or increased during the reporting period, which are not considered unscheduled principal collections and are not scheduled principal amounts.

(12) Reporting period ending actual balance. Indicate the outstanding actual balance of the loan as of the end of the reporting period.

(13) Reporting period ending scheduled balance. Indicate the scheduled or stated principal balance for the loan (as defined in the servicing agreement) as of the end of the reporting period.

(14) Paid through date. Provide the date the loan's scheduled principal and interest is paid through as of the end of the reporting period.

(15) Hyper-amortizing date. Provide the date after which principal and interest may amortize at an accelerated rate, and/or interest expense to the mortgagor increases substantially.

(16) Information related to servicer advances.

(i) Servicing advance methodology. Indicate the code that describes the manner in which principal and/or interest are advanced by the servicer.

(ii) Non-recoverability determined. Indicate yes or no whether the master servicer/special servicer has ceased advancing principal and interest and/or servicing the loan.

(iii) Total principal and interest advance outstanding. Provide the total outstanding principal and interest advances made (or scheduled to be made by the distribution date) by the servicer(s).

(iv) Total taxes and insurance advances outstanding. Provide the total outstanding tax and insurance advances made by the servicer(s) as of the end of the reporting period.

(v) Other expenses advance outstanding. Provide the total outstanding other or miscellaneous advances made by the servicer(s) as of the end of the reporting period.

(17) Payment status of loan. Provide the code that indicates the payment status of the loan.

(18) Information related to activity on ARM loans. If the loan is an ARM, provide the following additional information:

(i) ARM index rate. Provide the index rate used to determine the gross interest for the reporting period.

(ii) Next interest rate. Provide the annualized gross interest rate that will be used to determine the next scheduled interest payment.

(iii) Next interest rate change adjustment date. Provide the next date that the interest rate is scheduled to change.

(iv) Next payment adjustment date. Provide the date that the amount of scheduled principal and/or interest is next scheduled to change.

(f) *Information related to servicers.* (1) Primary servicer. Identify the name of the entity that services or will have the right to service the asset.

(2) Most recent special servicer transfer date. Provide the date the transfer letter, email, etc. provided by the master servicer is accepted by the special servicer.

(3) Most recent master servicer return date. Provide the date of the return letter, email, etc. provided by the special servicer which is accepted by the master servicer.

(g) *Asset subject to demand.* Indicate yes or no whether during the reporting period the loan was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the loan is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. If the loan is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, indicate the code that describes the status of the repurchase demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the loan from the pool.

(3) Demand resolution date. Indicate the date the loan repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase.

(h) *Realized loss to trust.* Indicate the difference between net proceeds (after liquidation expenses) and the scheduled or stated principal of the loan as of the beginning of the reporting period.

(i) *Information related to prepayments.* If a prepayment was received, provide the following additional information for each loan:

(1) Liquidation/Prepayment code. Indicate the code assigned to any unscheduled principal payments or liquidation proceeds received during the reporting period.

(2) Liquidation/Prepayment date. Provide the effective date on which an unscheduled principal payment or liquidation proceeds were received.

(3) Prepayment premium/yield maintenance received. Indicate the amount received from a borrower during the reporting period in exchange for allowing a borrower to pay off a loan prior to the maturity or anticipated repayment date.

(j) *Workout strategy.* Indicate the code that best describes the steps being taken to resolve the loan.

(k) *Information related to modifications.* If the loan has been modified from its original terms, provide the following additional information about the most recent loan modification:

(1) Date of last modification. Indicate the date of the most recent modification. A modification includes any material change to the loan document, excluding assumptions.

(2) Modification code. Indicate the code that describes the type of loan modification.

(3) Post-modification interest rate. Indicate the new initial interest rate to which the loan was modified.

(4) Post-modification payment amount. Indicate the new initial principal and interest payment amount to which the loan was modified.

(5) Post-modification maturity date. Indicate the new maturity date of the loan after the modification.

(6) Post-modification amortization period. Indicate the new amortization period in months after the modification.

Item 3. Automobile loans. If the asset pool includes automobile loans, provide the following data for each loan in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the unique ID number of the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the automobile loan.* (1) Originator. Identify the name of the entity that originated the loan.

(2) Origination date. Provide the date the loan was originated.

(3) Original loan amount. Indicate the amount of the loan at the time the loan was originated.

(4) Original loan term. Indicate the term of the loan in months at the time the loan was originated.

(5) Loan maturity date. Indicate the month and year in which the final payment on the loan is scheduled to be made.

(6) Original interest rate. Provide the rate of interest at the time the loan was originated.

(7) Interest calculation type. Indicate whether the interest rate calculation method is simple or other.

(8) Original interest rate type. Indicate whether the interest rate on the loan is fixed, adjustable or other.

(9) Original interest-only term. Indicate the number of months from origination in which the obligor is permitted to pay only interest on the loan beginning from when the loan was originated.

(10) Original first payment date. Provide the date of the first scheduled payment that was due after the loan was originated.

(11) Underwriting indicator. Indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(12) Grace period. Indicate the number of months during which interest accrues but no payments are due from the obligor.

(13) Payment type. Specify the code indicating how often payments are required or if a balloon payment is due.

(14) Subvented. Indicate yes or no to whether a form of subsidy is received on the loan, such as cash incentives or favorable financing for the buyer.

(d) *Information related to the vehicle.* (1) Vehicle manufacturer. Provide the name of the manufacturer of the vehicle.

(2) Vehicle model. Provide the name of the model of the vehicle.

(3) New or used. Indicate whether the vehicle financed is new or used at the time of origination.

(4) Model year. Indicate the model year of the vehicle.

(5) Vehicle type. Indicate the code describing the vehicle type.

(6) Vehicle value. Indicate the value of the vehicle at the time of origination.

(7) Source of vehicle value. Specify the code that describes the source of the vehicle value.

(e) *Information related to the obligor.* (1) Obligor credit score type. Specify the type of the standardized credit score used to evaluate the obligor during the loan origination process.

(2) Obligor credit score. Provide the standardized credit score of the obligor used to evaluate the obligor during the loan origination process.

(3) Obligor income verification level. Indicate the code describing the extent to which the obligor's income was verified during the loan origination process.

(4) Obligor employment verification. Indicate the code describing the extent to which the obligor's employment was verified during the loan origination process.

(5) Co-obligor present indicator. Indicate whether the loan has a co-obligor.

(6) Payment-to-income ratio. Provide the scheduled monthly payment amount as a percentage of the total monthly income of the obligor and any other obligor at the origination date. Provide the methodology for determining monthly income in the prospectus.

(7) Geographic location of obligor. Specify the location of the obligor by providing the current U.S. state or territory.

(f) *Information related to activity on the loan.* (1) Asset added indicator. Indicate yes or no whether the asset was added during the reporting period.

Instruction to paragraph (f)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under § 230.424 of this chapter is filed.

(2) Remaining term to maturity. Indicate the number of months from the end of the reporting period to the loan maturity date.

(3) Modification indicator—reporting period. Indicates yes or no whether the asset was modified from its original terms during the reporting period.

(4) Servicing advance method. Specify the code that indicates a servicer's responsibility for advancing principal or interest on delinquent loans.

(5) Reporting period beginning loan balance. Indicate the outstanding principal balance of the loan as of the beginning of the reporting period.

(6) Next reporting period payment amount due. Indicate the total payment due to be collected in the next reporting period.

(7) Reporting period interest rate. Indicate the current interest rate for the loan in effect during the reporting period.

(8) Next interest rate. For loans that have not been paid off, indicate the interest rate that is in effect for the next reporting period.

(9) Servicing fee—percentage. If the servicing fee is based on a percentage, provide the percentage used to calculate the aggregate servicing fee.

(10) Servicing fee—flat-fee. If the servicing fee is based on a flat-fee amount, indicate the monthly servicing fee paid to all servicers.

(11) Other loan-level servicing fee(s) retained by servicer. Provide the amount of all other fees earned by loan administrators that reduce the amount of funds remitted to the issuing entity (including subservicing, master servicing, trustee fees, etc.).

(12) Other assessed but uncollected servicer fees. Provide the cumulative amount of late charges and other fees that have been assessed by the servicer, but not paid by the obligor.

(13) Scheduled interest amount. Indicate the interest payment amount that was scheduled to be collected during the reporting period.

(14) Scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected during the reporting period.

(15) Other principal adjustments. Indicate any other amounts that caused the principal balance of the loan to be decreased or increased during the reporting period.

(16) Reporting period ending actual balance. Indicate the actual balance of the loan as of the end of the reporting period.

(17) Reporting period scheduled payment amount. Indicate the total payment amount that was scheduled to be collected during the reporting period (including all fees).

(18) Total actual amount paid. Indicate the total payment paid to the servicer during the reporting period.

(19) Actual interest collected. Indicate the gross amount of interest collected during the reporting period, whether or not from the obligor.

(20) Actual principal collected. Indicate the amount of principal collected during the reporting period, whether or not from the obligor.

(21) Actual other amounts collected. Indicate the total of any amounts, other than principal and interest, collected during the reporting period, whether or not from the obligor.

(22) Servicer advanced amount. If amounts were advanced by the servicer during the reporting period, specify the amount.

(23) Interest paid through date. Provide the date through which interest is paid with the payment received during the reporting period, which is the effective date from which interest will be calculated for the application of the next payment.

(24) Zero balance loans. If the loan balance was reduced to zero during the reporting period, provide the following additional information about the loan:

(i) Zero balance effective date. Provide the date on which the loan balance was reduced to zero.

(ii) Zero balance code. Provide the code that indicates the reason the loan's balance was reduced to zero.

(25) Current delinquency status. Indicate the number of days the obligor is delinquent past the obligor's payment due date, as determined by the governing transaction agreement.

(g) *Information related to servicers.* (1) Primary loan servicer. Provide the name of the entity that services or will have the right to service the loan.

(2) Most recent servicing transfer received date. If a loan's servicing has been transferred, provide the effective date of the most recent servicing transfer.

(h) *Asset subject to demand.* Indicate yes or no whether during the reporting period the loan was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the loan is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. Indicate the code that describes the status of the repurchase or replacement demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the loan.

(3) Demand resolution date. Indicate the date the loan repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase or replacement.

(i) *Information related to loans that have been charged off.* If the loan has been charged off, provide the following additional information:

(1) Charged-off principal amount. Specify the amount of uncollected principal charged off.

(2) Amounts recovered. If the loan was previously charged off, specify any amounts received after charge-off.

(j) *Information related to loan modifications.* If the loan has been modified from its original terms, provide the following additional information about the most recent loan modification:

(1) Modification type. Indicate the code that describes the reason the asset was modified during the reporting period.

(2) Payment extension. Provide the number of months the loan was extended during the reporting period.

(k) *Repossessed.* Indicate yes or no whether the vehicle has been repossessed. If the vehicle has been repossessed, provide the following additional information:

(1) Repossession proceeds. Provide the total amount of proceeds received on disposition (net of repossession fees and expenses).

(2) [Reserved]

Item 4. Automobile leases. If the asset pool includes automobile leases, provide the following data for each lease in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the unique ID number of the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the automobile lease.* (1) Originator. Identify the name of the entity that originated the lease.

(2) Origination date. Provide the date the lease was originated.

(3) Acquisition cost. Provide the original acquisition cost of the lease.

(4) Original lease term. Indicate the term of the lease in months at the time the lease was originated.

(5) Scheduled termination date. Indicate the month and year in which the final lease payment is scheduled to be made.

(6) Original first payment date. Provide the date of the first scheduled payment after origination.

(7) Underwriting indicator. Indicate whether the lease met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(8) Grace period. Indicate the number of months during the term of the lease when no payments are due from the lessee.

(9) Payment type. Specify the code indicating the payment frequency of the lease.

(10) Subvented. Indicate yes or no whether a form of subsidy is received on the lease, such as cash incentives or favorable financing for the lessee.

(d) *Information related to the vehicle.* (1) Vehicle manufacturer. Provide the name of the manufacturer of the leased vehicle.

(2) Vehicle model. Provide the name of the model of the leased vehicle.

(3) New or used. Indicate whether the leased vehicle is new or used.

(4) Model year. Indicate the model year of the leased vehicle.

(5) Vehicle type. Indicate the code describing the vehicle type.

(6) Vehicle value. Indicate the value of the vehicle at the time of origination.

(7) Source of vehicle value. Specify the code that describes the source of the vehicle value.

(8) Base residual value. Provide the securitized residual value of the leased vehicle.

(9) Source of base residual value. Specify the code that describes the source of the base residual value.

(10) Contractual residual value. Provide the residual value, as stated on the contract, that the lessee would need to pay to purchase the vehicle at the end of the lease term.

(e) *Information related to the lessee.* (1) Lessee credit score type. Specify the type of the standardized credit score used to evaluate the lessee during the lease origination process.

(2) Lessee credit score. Provide the standardized credit score of the lessee used to evaluate the lessee during the lease origination process.

(3) Lessee income verification level. Indicate the code describing the extent to which the lessee's income was verified during the lease origination process.

(4) Lessee employment verification. Indicate the code describing the extent to which the lessee's employment was verified during the lease origination process.

(5) Co-lessee present indicator. Indicate whether the lease has a co-lessee.

(6) Payment-to-income ratio. Provide the scheduled monthly payment amount as a percentage of the total monthly income of the lessee and any other co-lessee at the origination date. Provide the methodology for determining monthly income in the prospectus.

(7) Geographic location of lessee. Specify the location of the lessee by providing the current U.S. state or territory.

(f) *Information related to activity on the lease.* (1) Asset added indicator. Indicate yes or no whether the asset was added during the reporting period.

Instruction to paragraph (f)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under § 230.424 of this chapter is filed.

(2) Remaining term to maturity. Indicate the number of months from the end of the reporting period to the lease maturity date.

(3) Modification indicator—reporting period. Indicates yes or no whether the asset was modified from its original terms during the reporting period.

(4) Servicing advance method. Specify the code that indicates a servicer's responsibility for advancing principal or interest on delinquent leases.

(5) Reporting period securitization value. Provide the sum of the present values, as of the beginning of the reporting period, of the remaining scheduled monthly payment amounts and the base residual value of the leased vehicle, computed using the securitization value discount rate.

(6) Securitization value discount rate. Provide the discount rate of the lease for the securitization transaction.

(7) Next reporting period payment amount due. Indicate the total payment due to be collected in the next reporting period.

(8) Servicing fee—percentage. If the servicing fee is based on a percentage, provide the percentage used to calculate the aggregate servicing fee.

(9) Servicing fee—flat-fee. If the servicing fee is based on a flat-fee amount, indicate the monthly servicing fee paid to all servicers.

(10) Other lease-level servicing fee(s) retained by servicer. Provide the amount of all other fees earned by lease administrators that reduce the amount of funds remitted to the issuing entity (including subservicing, master servicing, trustee fees, etc.).

(11) Other assessed but uncollected servicer fees. Provide the cumulative amount of late charges and other fees that have been assessed by the servicer, but not paid by the lessee.

(12) Reporting period ending actual balance. Indicate the actual balance of the lease as of the end of the reporting period.

(13) Reporting period scheduled payment amount. Indicate the total payment amount that was scheduled to be collected during the reporting period (including all fees).

(14) Total actual amount paid. Indicate the total lease payment received during the reporting period.

(15) Actual other amounts collected. Indicate the total of any amounts, other than the scheduled lease payment, collected during the reporting period, whether or not from the lessee.

(16) Reporting period ending actual securitization value. Provide the sum of the present values, as of the end of the reporting period, of the remaining scheduled monthly payment amounts and the base residual value of the leased vehicle, computed using the securitization value discount rate.

(17) Servicer advanced amount. If amounts were advanced by the servicer during the reporting period, specify the amount.

(18) Paid through date. Provide the date through which scheduled payments have been made with the payment received during the reporting period, which is the effective date from which amounts due will be calculated for the application of the next payment.

(19) Zero balance leases. If the lease balance was reduced to zero during the reporting period, provide the following additional information about the lease:

(i) Zero balance effective date. Provide the date on which the lease balance was reduced to zero.

(ii) Zero balance code. Provide the code that indicates the reason the lease's balance was reduced to zero.

(20) Current delinquency status. Indicate the number of days the lessee is delinquent past the lessee's payment due date, as determined by the governing transaction agreement.

(g) *Information related to servicers.* (1) Primary lease servicer. Provide the name of the entity that services or will have the right to service the lease.

(2) Most recent servicing transfer received date. If a lease's servicing has been transferred, provide the effective date of the most recent servicing transfer.

(h) *Asset subject to demand.* Indicate yes or no whether during the reporting period the lease was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the lease is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. Indicate the code that describes the status of the repurchase or replacement demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the lease from the pool.

(3) Demand resolution date. Indicate the date the lease repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase or replacement.

(i) *Information related to loans that have been charged off.* If the loan has been charged off, provide the following additional information:

(1) Charge-off amounts. Provide the amount charged off on the lease.

(2) [Reserved]

(j) *Information related to loan modifications.* If the loan has been modified from its original terms, provide the following additional information about the most recent loan modification:

(1) Modification type. Indicate the code that describes the reason the lease was modified during the reporting period.

(2) Lease extension. Provide the number of months the lease was extended during the reporting period.

(k) *Information related to lease terminations.* If the lease was terminated, provide the following additional information:

(1) Termination indicator. Specify the code that describes the reason why the lease was terminated.

(2) Excess fees. Specify the amount of excess fees received upon return of the vehicle, such as excess wear and tear or excess mileage.

(3) Liquidation proceeds. Provide the liquidation proceeds net of repossession fees, auction fees and other expenses in accordance with standard industry practice.

Item 5. Debt securities. If the asset pool includes debt securities, provide the following data for each security in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the standard industry identifier assigned to the asset. If a standard industry identifier is not assigned to the asset, provide a unique ID number for the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(3) Asset group number. For structures with multiple collateral groups, indicate the collateral group number in which the asset falls.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the underlying security.* (1) Issuer. Provide the name of the issuer.

(2) Original issuance date. Provide the date the underlying security was issued. For revolving asset master trusts, provide the issuance date of the receivable that will be added to the asset pool.

(3) Original security amount. Indicate the amount of the underlying security at the time the underlying security was issued.

(4) Original security term. Indicate the initial number of months between the month the underlying security was issued and the security's maturity date.

(5) Security maturity date. Indicate the month and year in which the final payment on the underlying security is scheduled to be made.

(6) Original amortization term. Indicate the number of months in which the underlying security would be retired if the amortizing principal and interest payment were to be paid each month.

(7) Original interest rate. Provide the rate of interest at the time the underlying security was issued.

(8) Accrual type. Provide the code that describes the method used to calculate interest on the underlying security.

(9) Interest rate type. Indicate the code that indicates whether the interest rate on the underlying security is fixed, adjustable, step or other.

(10) Original interest-only term. Indicate the number of months from the date the

underlying security was issued in which the obligor is permitted to pay only interest on the underlying security.

(11) First payment date from issuance. Provide the date of the first scheduled payment.

(12) Underwriting indicator. Indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(13) Title of underlying security. Specify the title of the underlying security.

(14) Denomination. Give the minimum denomination of the underlying security.

(15) Currency. Specify the currency of the underlying security.

(16) Trustee. Specify the name of the trustee.

(17) Underlying SEC file number. Specify the registration statement file number of the registration of the offer and sale of the underlying security.

(18) Underlying CIK number. Specify the CIK number of the issuer of the underlying security.

(19) Callable. Indicate whether the security is callable.

(20) Payment frequency. Indicate the code describing the frequency of payments that will be made on the underlying security.

(21) Zero coupon indicator. Indicate yes or no whether an underlying security or agreement is interest bearing.

(d) *Information related to activity on the underlying security.* (1) Asset added indicator. Indicate yes or no whether the underlying security was added to the asset pool during the reporting period.

Instruction to paragraph (d)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under § 230.424 of this chapter is filed.

(2) Modification indicator. Indicates yes or no whether the underlying security was modified from its original terms.

(3) Reporting period beginning asset balance. Indicate the outstanding principal balance of the underlying security as of the beginning of the reporting period.

(4) Reporting period beginning scheduled asset balance. Indicate the scheduled principal balance of the underlying security as of the beginning of the reporting period.

(5) Reporting period scheduled payment amount. Indicate the total payment amount that was scheduled to be collected during the reporting period.

(6) Reporting period interest rate. Indicate the interest rate in effect on the underlying security.

(7) Total actual amount paid. Indicate the total payment paid to the servicer during the reporting period.

(8) Actual interest collected. Indicate the gross amount of interest collected during the reporting period.

(9) Actual principal collected. Indicate the amount of principal collected during the reporting period.

(10) Actual other amounts collected. Indicate the total of any amounts, other than principal and interest, collected during the reporting period.

(11) Other principal adjustments. Indicate any other amounts that caused the principal balance of the underlying security to be decreased or increased during the reporting period.

(12) Other interest adjustments. Indicate any unscheduled interest adjustments during the reporting period.

(13) Scheduled interest amount. Indicate the interest payment amount that was scheduled to be collected during the reporting period.

(14) Scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected during the reporting period.

(15) Reporting period ending actual balance. Indicate the actual balance of the underlying security as of the end of the reporting period.

(16) Reporting period ending scheduled balance. Indicate the scheduled principal balance of the underlying security as of the end of the reporting period.

(17) Servicing fee—percentage. If the servicing fee is based on a percentage, provide the percentage used to calculate the aggregate servicing fee.

(18) Servicing fee—flat-fee. If the servicing fee is based on a flat-fee amount, indicate the monthly servicing fee paid to all servicers as an amount.

(19) Zero balance loans. If the loan balance was reduced to zero during the reporting period, provide the following additional information about the loan:

(i) Zero balance code. Provide the code that indicates the reason the underlying security's balance was reduced to zero.

(ii) Zero balance effective date. Provide the date on which the underlying security's balance was reduced to zero.

(20) Remaining term to maturity. Indicate the number of months from the end of the reporting period to the maturity date of the underlying security.

(21) Current delinquency status. Indicate the number of days the obligor is delinquent as determined by the governing transaction agreement.

(22) Number of days payment is past due. If the obligor has not made the full scheduled payment, indicate the number of days since the scheduled payment date.

(23) Number of payments past due. Indicate the number of payments the obligor is past due as of the end of the reporting period.

(24) Next reporting period payment amount due. Indicate the total payment due to be collected in the next reporting period.

(25) Next due date. For assets that have not been paid off, indicate the next payment due date on the underlying security.

(e) *Information related to servicers.* (1) Primary servicer. Indicate the name or MERS organization number of the entity that serviced the underlying security during the reporting period.

(2) Most recent servicing transfer received date. If the servicing of the underlying security has been transferred, provide the effective date of the most recent servicing transfer.

(f) *Asset subject to demand.* Indicate yes or no whether during the reporting period the asset was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the asset is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. Indicate the code that describes the status of the repurchase or replacement demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the underlying security from the pool.

(3) Demand resolution date. Indicate the date the underlying security repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase or replacement.

Item 6. Resecuritizations.

(a) If the asset pool includes asset-backed securities, provide the asset-level information specified in Item 5. Debt Securities in this Schedule AL for each security in the asset pool.

(b) If the asset pool includes asset-backed securities issued November 23, 2016, provide the asset-level information specified in § 229.1111(h) for the assets backing each security in the asset pool.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 22. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78*o,* 78*o*–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. No. 112–106, sec. 201(a), 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

§ 230.139a [Amended]

■ 23. Amend § 230.139a by:

■ a. In the introductory text removing the phrase ''General Instruction I.B.5 of Form S–3 (§ 239.13 of this chapter) (''S–3 ABS'')'' and adding in its place ''Form SF–3 (§ 239.45 of this chapter) (''SF–3 ABS'')''; and

■ b. Removing the phrase ''S–3 ABS'' and adding in its place the phrase ''SF–3 ABS'' wherever it appears.

§ 230.167 [Amended]

■ 24. Amend § 230.167, paragraph (a), by removing the phrase ''meeting the requirements of General Instruction I.B.5 of Form S–3 (§ 239.13 of this chapter) and registered under the Act on Form S–3 pursuant to § 230.415'' and adding in its place ''registered on Form SF–3 (§ 239.45 of this chapter)''.

■ 25. Amend § 230.190 by:

■ a. Revising paragraph (b)(1);

■ b. In paragraph (b)(6) removing ''; and'' and adding a period in its place;
■ c. Removing paragraph (b)(7); and
■ d. Adding paragraph (d).

The revision and addition read as follows:

§ 230.190 Registration of underlying securities in asset-backed securities transactions.

* * * * *

(b) * * *

(1) If the offering of asset-backed securities is registered on Form SF–3 (§ 239.45 of this chapter), the offering of the underlying securities itself must be eligible to be registered under Form SF–3, Form S–3 (§ 239.13 of this chapter), or F–3 (§ 239.33 of this chapter) as a primary offering of such securities;

* * * * *

(d) Notwithstanding paragraph (c) of this section (that is, although the pool asset described in paragraph (c) of this section is an not an ''underlying security'' for purposes of this section), if the pool assets for the asset-backed securities are collateral certificates or special units of beneficial interest, those collateral certificates or special units of beneficial interest must be registered concurrently with the registration of the asset-backed securities. However, pursuant to § 230.457(t) no separate registration fee for the certificates or special units of beneficial interest is required to be paid.

§ 230.193 [Amended]

■ 26. Amend § 230.193 by removing the phrase ''Section 3(a)(77) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(77)),'' and adding in its place ''Section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79)),''.

■ 27. Amend § 230.401 by:
■ a. In paragraph (g)(1) removing the phrase ''and (g)(3)'' and adding in its place '', (g)(3), and (g)(4)''; and
■ b. Adding paragraph (g)(4).

The addition reads as follows:

§ 230.401 Requirements as to proper form.

* * * * *

(g) * * *

(4) Notwithstanding that the registration statement may have become effective previously, requirements as to proper form under this section will have been violated for any offering of securities where the requirements of General Instruction I.A. of Form SF–3 (§ 239.45 of this chapter) have not been met as of ninety days after the end of the depositor's fiscal year end prior to such offering.

§ 230.405 [Amended]

■ 28. Amend § 230.405 by, in paragraph (1) of the definition of a *Free writing prospectus,* adding the phrase ''Rule 430D (§ 230.430D),'' before ''or Rule 431''.
■ 29. Amend § 230.415 by:
■ a. Revising paragraphs (a)(1)(vii) and (a)(1)(ix); and
■ b. Adding paragraph (a)(1)(xii).

The revisions and addition read as follows:

§ 230.415 Delayed or continuous offering and sale of securities.

(a) * * *

(1) * * *

(vii) Asset-backed securities (as defined in 17 CFR 229.1101(c)) registered (or qualified to be registered) on Form SF–3 (§ 239.45 of this chapter) which are to be offered and sold on an immediate or delayed basis by or on behalf of the registrant;

Instruction to paragraph (a)(1)(vii): The requirements of General Instruction I.B.1 of Form SF–3 (§ 239.45 of this chapter) must be met for any offerings of an asset-backed security (as defined in 17 CFR 229.1101(c)) registered in reliance on this paragraph (a)(1)(vii).

* * * * *

(ix) Securities, other than asset-backed securities (as defined in 17 CFR 229.1101(c)), the offering of which will be commenced promptly, will be made on a continuous basis and may continue for a period in excess of 30 days from the date of initial effectiveness;

* * * * *

(xii) Asset-backed securities (as defined in 17 CFR 229.1101(c)) that are to be offered and sold on a continuous basis if the offering is commenced promptly and being conducted on the condition that the consideration paid for such securities will be promptly refunded to the purchaser unless:

(A) All of the securities being offered are sold at a specified price within a specified time; and

(B) The total amount due to the seller is received by him by a specified date.

* * * * *

■ 30. Amend § 230.424 by:
■ a. Adding in paragraph (b)(2) the phrase ''or, in the case of asset-backed securities, Rule 430D (§ 230.430D)'' after the phrase ''in reliance on Rule 430B (§ 230.430B),'';
■ b. Redesignating the Instruction following the note to paragraph (b)(8) as ''Instruction to paragraph (b):'' and in that newly redesignated instruction removing the phrase ''mortgage-related securities on a delayed basis under § 230.415(a)(1)(vii) or asset-backed securities on a delayed basis under § 230.415(a)(1)(x)'' and adding in its place ''asset-backed securities under § 230.415(a)(1)(vii) or 230.415(a)(1)(xii)''; and
■ c. Adding paragraph (h).

The addition reads as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(h)(1) Three copies of a form of prospectus relating to an offering of asset-backed securities pursuant to § 230.415(a)(1)(vii) or § 230.415(a)(1)(xii) disclosing information previously omitted from the prospectus filed as part of an effective registration statement in reliance on § 230.430D shall be filed with the Commission at least three business days before the date of the first sale in the offering, or if used earlier, the earlier of:

(i) The applicable number of business days before the date of the first sale; or

(ii) The second business day after first use.

(2) Three copies of a prospectus supplement relating to an offering of asset-backed securities pursuant to § 230.415(a)(1)(vii) or § 230.415(a)(1)(xii) that reflects any material change from the information contained in a prospectus filed in accordance with § 230.424(h)(1) shall be filed with the Commission at least forty-eight hours before the date and time of the first sale in the offering. The prospectus supplement must clearly delineate what material information has changed and how the information has changed from the prospectus filed in accordance with paragraph (h)(1) of this section.

Instruction to paragraph (h): The filing requirements of this paragraph (h) do not apply if a filing is made solely to add fees pursuant to § 230.457 and for no other purpose.

§ 230.430B [Amended]

■ 31. Amend § 230.430B, paragraph (a), first sentence by removing the phrase ''Rule 415(a)(1)(vii) or (a)(1)(x) (§ 230.415(a)(1)(vii) or (a)(1)(x))'' and adding in its place ''Rule 415(a)(1)(x) (§ 230.415(a)(1)(x))''; and in the second sentence removing the phrase ''(vii) or ''.

§ 230.430C [Amended]

■ 32. Amend § 230.430C, paragraph (a), by adding the phrase ''or Rule 430D (§ 230.430D)'' after the phrase ''in reliance on Rule 430B (§ 230.430B)''.

■ 33. Add § 230.430D to read as follows:

§ 230.430D Prospectus in a registration statement after effective date for asset-backed securities offerings.

(a) A form of prospectus filed as part of a registration statement for primary offerings of asset-backed securities pursuant to § 230.415(a)(1)(vii) or § 230.415(a)(1)(xii) may omit from the information required by the form to be in the prospectus information that is unknown or not reasonably available to the issuer pursuant to § 230.409.

(b) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section (other than information with respect to offering price, underwriting syndicate (including any material relationships between the registrant and underwriters not named therein), underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent upon the offering price to the extent such information is unknown or not reasonably available to the issuer pursuant to § 230.409) shall be disclosed in a form of prospectus required to be filed with the Commission pursuant to § 230.424(h). Each such form of prospectus shall be deemed to have been filed as part of the registration statement for the purpose of section 7 of the Act (15 U.S.C. 77g).

(c) A form of prospectus filed as part of a registration statement that omits information in reliance upon paragraph (a) of this section meets the requirements of section 10 of the Act (15 U.S.C. 77j) for the purpose of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)). This provision shall not limit the information required to be contained in a form of prospectus in order to meet the requirements of section 10(a) of the Act for the purposes of section 5(b)(2) (15 U.S.C. 77e(b)(2)) or exception (a) of section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)(a)).

(d)(1) Except as provided in paragraph (b) or (d)(2) of this section, information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section may be included subsequently in the prospectus that is part of a registration statement by:

(i) A post-effective amendment to the registration statement;

(ii) A prospectus filed pursuant to § 230.424(b); or

(iii) If the applicable form permits, including the information in the issuer's periodic or current reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that are incorporated or deemed incorporated by reference into the prospectus that is part of the registration statement in accordance with the applicable requirements, subject to the provisions of paragraph (h) of this section.

(2) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section that adds a new structural feature or credit enhancement must be included subsequently in the prospectus that is part of a registration statement by a post-effective amendment to the registration statement.

(e)(1) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section and contained in a form of prospectus required to be filed with the Commission pursuant to § 230.424(b), other than as provided in paragraph (f) of this section, shall be deemed part of and included in the registration statement as of the date such form of filed prospectus is first used after effectiveness.

(2) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section and contained in a form of prospectus required to be filed with the Commission pursuant to § 230.424(h) shall be deemed part of and included in the registration statement the earlier of the date such form of filed prospectus is filed with the Commission pursuant to § 230.424(h) or, if used earlier than the date of filing, the date it is first used after effectiveness.

(f)(1) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section, and is contained in a form of prospectus required to be filed with the Commission pursuant to § 230.424(b)(2) or (b)(5), shall be deemed to be part of and included in the registration statement on the earlier of the date such subsequent form of prospectus is first used or the date and time of the first contract of sale of securities in the offering to which such subsequent form of prospectus relates.

(2) The date on which a form of prospectus is deemed to be part of and included in the registration statement pursuant to paragraph (f)(1) of this section shall be deemed, for purposes of liability under section 11 of the Act (15 U.S.C. 77k) of the issuer and any underwriter at the time only, to be a new effective date of the part of such registration statement relating to the securities to which such form of prospectus relates, such part of the registration statement consisting of all information included in the registration statement and any prospectus relating to the offering of such securities (including information relating to the offering in a prospectus already included in the registration statement) as of such date and all information relating to the offering included in reports and materials incorporated by reference into such registration statement and prospectus as of such date, and in each case not modified or superseded pursuant to § 230.412. The offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) If a registration statement is amended to include or is deemed to include, through incorporation by reference or otherwise, except as otherwise provided in § 230.436, a report or opinion of any person made on such person's authority as an expert whose consent would be required under section 7 of the Act (15 U.S.C. 77g) because of being named as having prepared or certified part of the registration statement, then for purposes of this section and for liability purposes under section 11 of the Act (15 U.S.C. 77k), the part of the registration statement for which liability against such person is asserted shall be considered as having become effective with respect to such person as of the time the report or opinion is deemed to be part of the registration statement and a consent required pursuant to section 7 of the Act has been provided as contemplated by section 11 of the Act.

(4) Except for an effective date resulting from the filing of a form of prospectus filed for purposes of including information required by section 10(a)(3) of the Act (15 U.S.C. 77j(a)(3)) or pursuant to Item 512(a)(1)(ii) of Regulation S–K (§ 229.512(a)(1)(ii) of this chapter), the date a form of prospectus is deemed part of and included in the registration statement pursuant to this paragraph shall not be an effective date established pursuant to paragraph (f)(2) of this section as to:

(i) Any director (or person acting in such capacity) of the issuer;

(ii) Any person signing any report or document incorporated by reference into the registration statement, except for such a report or document incorporated by reference for purposes of including information required by section 10(a)(3) of the Act (15 U.S.C. 77j(a)(3)) or pursuant to Item 512(a)(1)(ii) of Regulation S–K (§ 229.512(a)(1)(ii) of this chapter) (such person except for such reports being deemed not to be a person who signed the registration statement within the

meaning of section 11(a) of the Act (15 U.S.C. 77k(a)).

(5) The date a form of prospectus is deemed part of and included in the registration statement pursuant to paragraph (f)(2) of this section shall not be an effective date established pursuant to paragraph (f)(2) of this section as to:

(i) Any accountant with respect to financial statements or other financial information contained in the registration statement as of a prior effective date and for which the accountant previously provided a consent to be named as required by section 7 of the Act (15 U.S.C. 77g), unless the form of prospectus contains new audited financial statements or other financial information as to which the accountant is an expert and for which a new consent is required pursuant to section 7 of the Act or § 230.436; and

(ii) Any other person whose report or opinion as an expert or counsel has, with their consent, previously been included in the registration statement as of a prior effective date, unless the form of prospectus contains a new report or opinion for which a new consent is required pursuant to section 7 of the Act (15 U.S.C. 77g) or § 230.436.

(g) Notwithstanding paragraph (e) or (f) of this section or § 230.412(a), no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement after the effective date of such registration statement or portion thereof in respect of an offering determined pursuant to this section will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(h) Where a form of prospectus filed pursuant to § 230.424(b) relating to an offering does not include disclosure of omitted information regarding the terms of the offering, the securities or the plan of distribution for the securities that are the subject of the form of prospectus, because such omitted information has been included in periodic or current reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) incorporated or deemed incorporated by reference into the prospectus, the issuer shall file a form of prospectus identifying the periodic or current reports that are incorporated or deemed incorporated by reference into the prospectus that is part of the registration statement that contain such omitted information. Such form of prospectus shall be required to be filed, depending on the nature of the incorporated information, pursuant to § 230.424(b)(2) or (b)(5).

(i) Issuers relying on this section shall furnish the undertakings required by Item 512(a) of Regulation S–K (§ 229.512(a) of this chapter).

§ 230.433 [Amended]

■ 34. Amend § 230.433 by:

■ a. In paragraph (b)(1)(i) removing the phrase ''I.B.5, I.C., or I.D. thereof'' and adding in its place ''I.C., or I.D. thereof or on Form SF–3 (§ 239.45 of this chapter)'';

■ b. In paragraph (c)(1)(i) removing the phrase ''Rule 430B or Rule 430C (§ 230.430B or § 230.430C)'' and adding in its place ''Rule 430B (§ 230.430B), Rule 430C (§ 230.430C) or Rule 430D (§ 230.430D)''; and

■ c. Removing paragraph (d)(6)(iii).

■ 35. Amend § 230.456 by adding paragraph (c) to read as follows:

§ 230.456 Date of filing; timing of fee payment.

* * * * *

(c)(1) Notwithstanding paragraph (a) of this section, an asset-backed issuer that registers asset-backed securities offerings on Form SF–3 (§ 239.45 of this chapter), may, but is not required to, defer payment of all or any part of the registration fee to the Commission required by section 6(b)(1) of the Act (15 U.S.C. 77f(b)(1)) on the following conditions:

(i) If the issuer elects to defer payment of the registration fee, it shall pay the registration fees (pay-as-you-go registration fees) calculated in accordance with § 230.457(s) in advance of or in connection with an offering of securities from the registration statement at the time of filing the prospectus pursuant to § 230.424(h) for the offering; and

(ii) The issuer reflects the amount of the pay-as-you-go registration fee paid or to be paid in accordance with paragraph (c)(1)(i) of this section by updating the ''Calculation of Registration Fee'' table to indicate the class and aggregate offering price of securities offered and the amount of registration fee paid or to be paid in connection with the offering or offerings on the cover page of a prospectus filed pursuant to § 230.424(h).

(2) A registration statement filed relying on the pay-as-you-go registration fee payment provisions of paragraph (c)(1) of this section will be considered filed as to the securities or classes of securities identified in the registration statement for purposes of this section and section 5 of the Act (15 U.S.C. 77e) when it is received by the Commission, if it complies with all other requirements of the Act and the rules with respect to it.

(3) The securities sold pursuant to a registration statement will be considered registered, for purpose of section 6(a) of the Act (15 U.S.C. 77f(a)), if the pay-as-you-go registration fee has been paid and the post-effective amendment or prospectus including the amended ''Calculation of Registration Fee'' table is filed pursuant to paragraph (c)(1) of this section.

■ 36. Amend § 230.457 by adding paragraphs (s) and (t) to read as follows:

§ 230.457 Computation of fee.

* * * * *

(s) Where securities are asset-backed securities being offered pursuant to a registration statement on Form SF–3 (§ 239.45 of this chapter), the registration fee is to be calculated in accordance with this section. When the issuer elects to defer payment of the fees pursuant to § 230.456(c), the ''Calculation of Registration Fee'' table in the registration statement must indicate that the issuer is relying on § 230.456(c) but does not need to include the number of units of securities or the maximum aggregate offering price of any securities until the issuer updates the ''Calculation of Registration Fee'' table to reflect payment of the registration fee, including a pay-as-you-go registration fee in accordance with § 230.456(c). The registration fee shall be calculated based on the fee payment rate in effect on the date of the fee payment.

(t) Where the security to be offered is a collateral certificate or is a special unit of beneficial interest, underlying asset-backed securities (as defined in § 229.1101(c) of this chapter) which are being registered concurrently, no separate fee for the certificate or the special unit of beneficial interest shall be payable.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 37. The authority citation for Part 232 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350.

* * * * *

■ 38. Amend § 232.11 by adding a definition for ''Asset Data File'' in alphabetical order to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

Asset Data File. The term Asset Data File means the machine-readable computer code that presents information in eXtensible Markup Language (XML) electronic format pursuant to § 229.1111(h) of this chapter.

* * * * *

■ 39. Amend § 232.101 by:

■ a. In paragraph (a)(1)(xii) removing ''and'' after the semicolon;

■ b. Adding paragraph (a)(1)(xiv); and

■ c. Redesignating the note following paragraph (a)(3) as ''Note to paragraph (a)(3)'' and in the newly redesignated Note to paragraph (a)(3) removing the phrase ''F–2 and F–3 (see §§ 239.12, 239.13, 239.16b, 239.32 and 239.33'' and adding in its place ''SF–3, F–2 and F–3 (see §§ 239.12, 239.13, 239.16b, 239.32, 239.33 and 239.45''.

The addition reads as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xiv) Form ABS–EE (§ 249.1401 of this chapter); and

* * * * *

■ 40. Amend § 232.201 by:

■ a. Revising paragraph (a) introductory text;

■ b. In Note 1 to paragraph (b) removing the phrase ''and F–3 (*see §§* 239.12, 239.13, 239.16b, 239.32 and 239.33 of this section'' and adding in its place '', F–3 and SF–3 (see §§ 239.12, 239.13, 239.16b, 239.32, 239.33 and 239.45 of this chapter''; and

■ c. Adding paragraph (d).

The revision and addition read as follows:

§ 232.201 Temporary hardship exemption.

(a) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter), a Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), a Form TA–1 (§ 249.100 of this chapter), a Form TA–2 (§ 249.102 of this chapter), a Form TA–W (§ 249.101 of this chapter), a Form D (§ 239.500 of this chapter), an Interactive Data File (§ 232.11), or an Asset Data File (as defined in § 232.11), the electronic filer may file the subject filing, under cover of Form TH (§§ 239.65, 249.447, 269.10 and 274.404 of this chapter), in paper format no later than one business day after the date on which the filing was to be made.

* * * * *

(d) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an Asset Data File (as defined in § 232.11) and any asset related document pursuant to Items 601(b)(102) and 601(b)(103) (§§ 229.601(b)(102) and 229.601(b)(103) of this chapter) the electronic filer still can timely satisfy the requirement to submit the Asset Data File or any asset related document in the following manner by:

(1) Posting on a Web site the Asset Data File and any asset related documents unrestricted as to access and free of charge;

(2) Substituting for the Asset Data File and any asset related documents in the required Form ABS–EE (§ 249.1401 of this chapter), a statement specifying the Web site address and that sets forth the following legend; and

IN ACCORDANCE WITH THE TEMPORARY HARDSHIP EXEMPTION PROVIDED BY RULE 201 OF REGULATION S–T, THE DATE BY WHICH THE ASSET DATA FILE IS REQUIRED TO BE SUBMITTED HAS BEEN EXTENDED BY SIX BUSINESS DAYS.

(3) Submitting the required Asset Data File and asset related documents no later than six business days after the Asset Data File originally was required to be submitted.

§ 232.202 [Amended]

■ 41. Amend § 232.202, paragraph (a) introductory text, by removing the phrase ''or a Form D (§ 239.500 of this chapter)'' and adding in its place '', a Form D (§ 239.500 of this chapter), or an Asset Data File (§ 232.11)''.

■ 42. Amend § 232.305 by revising paragraph (b) to read as follows:

§ 232.305 Number of characters per line; tabular and columnar information.

* * * * *

(b) Paragraph (a) of this section does not apply to HTML documents, Interactive Data Files (as defined in § 232.11) or XBRL-Related Documents (as defined in § 232.11).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 43. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78*o*(d), 78o–7, 78o–7 note, 78u–5, 78w(a), 78*ll*, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, and Pub. L. No. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 44. Revise § 239.11 to read as follows:

§ 239.11 Form S–1, registration statement under the Securities Act of 1933.

This Form shall be used for the registration under the Securities Act of 1933 of securities of all registrants for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political subdivisions thereof or asset-backed securities, as defined in 17 CFR 229.1101(c).

■ 45. Amend Form S–1 (referenced in § 239.11) by revising General Instruction I. to read as follows:

Note: The text of Form S–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S–1

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form S–1

This Form shall be used for the registration under the Securities Act of 1933 (''Securities Act'') of securities of all registrants for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political subdivisions thereof or asset-backed securities, as defined in 17 CFR 229.1101(c).

* * * * *

■ 46. Amend § 239.13 by:

■ a. Removing paragraph (a)(4);

■ b. Redesignating paragraphs (a)(5), (a)(6), (a)(7) and (a)(8) as paragraphs (a)(4), (a)(5), (a)(6), and (a)(7), respectively;

■ c. Revising paragraph (b)(5); and

■ d. In paragraph (e) introductory text removing the phrase ''(a)(2), (a)(3) and (a)(4)'' and adding in its place ''(a)(2) and (a)(3)''.

The revision reads as follows:

§ 239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(b) * * *

(5) This Form shall not be used to register offerings of asset-backed

securities, as defined in 17 CFR 229.1101(c).

* * * * *

■ 47. Amend Form S–3 (referenced in § 239.13) by:

■ a. Removing General Instruction I.A.4;

■ b. Redesignating General Instructions I.A.5, I.A.6, I.A.7, and I.A.8 as General Instructions I.A.4, I.A.5, I.A.6, and I.A.7, respectively;

■ c. Revising General Instruction I.B.5;

■ d. Removing ''I.B.5,'' in General Instruction II.F; and

■ e. Removing General Instruction V.

The revision reads as follows:

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S–3

* * * * *

GENERAL INSTRUCTIONS

I. * * *

B. * * *

5. This Form shall not be used to register offerings of asset-backed securities, as defined in 17 CFR 229.1101(c).

* * * * *

■ 48. Add § 239.44 to read as follows:

§ 239.44 Form SF–1, registration statement under the Securities Act of 1933 for offerings of asset-backed securities.

This Form shall be used for registration under the Securities Act of 1933 of all offerings of asset-backed securities, as defined in 17 CFR 229.1101(c).

■ 49. Add Form SF–1 (referenced in § 239.44) to read as follows:

Note: The text of Form SF–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM SF-1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

_____

(Exact name of registrant as specified in its charter)

_____

Commission File Number of depositor: _____

Central Index Key Number of depositor: _____

_____

(Exact name of depositor as specified in its charter)

Central Index Key Number of sponsor (if applicable): _____

_____

(Exact name of sponsor as specified in its charter)

_____

(State or other jurisdiction of incorporation or organization)

_____

(I.R.S. Employer Identification Number)

_____

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

_____

(Name, address, including zip code, and telephone number, including area code, of agent for service)

_____

(Approximate date of commencement of proposed sale to the public)

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities

Act registration statement number of the earlier effective registration statement for the same offering: [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: [ ]

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table. If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form SF–1

This Form shall be used for the registration under the Securities Act of 1933 (''Securities Act'') of asset-backed securities of all registrants for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political subdivisions thereof.

II. Application of General Rules and Regulations

A. Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C (17 CFR 230.400 to 230.499) thereunder. That Regulation contains general requirements regarding the preparation and filing of the registration statement.

B. Attention is directed to Regulation S–K and Regulation AB (17 CFR part 229) for the requirements applicable to the content of registration statements under the Securities Act.

C. Terms used in this Form have the same meaning as in Item 1101 of Regulation AB.

III. Registration of Additional Securities

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number and CIK number of the issuer, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 439(b) under the Securities Act.

IV. Incorporation of Certain Information by Reference

A. With respect to all registrants required to provide asset-level information pursuant to Item 1111(h) of Regulation AB (17 CFR 229.1111(h)):

1. The disclosures filed as exhibits to Form ABS–EE in accordance with Items 601(b)(102) and 601(b)(103) of Regulation S–K (17 CFR 229.601(b)(102) and 601(b)(103)) must be incorporated by reference into the prospectus that is part of the registration statement.

2. If the pool assets include asset-backed securities of a third-party, registrants may reference the third-party's filings of asset-level data pursuant to Item 1100(c)(2) of Regulation AB (17 CFR 229.1100(c)(2)), except that the third-party is not required to meet the definition of significant obligor in Item 1101(k) of Regulation AB (17 CFR 229.1101(k)).

3. Incorporation by reference must comply with Item 10 of this Form.

B. Registrants may elect to file the information required by Item 1105 of Regulation AB (17 CFR 229.1105), Static Pool, pursuant to Item 6.06 of Form 8–K (17 CFR 249.308), provided that the information is incorporated by reference into the prospectus that is part of the registration statement. Incorporation by reference must comply with Item 10 of this Form.

PART I
INFORMATION REQUIRED IN PROSPECTUS

Item 1. Forepart of the Registration Statement and Outside Front Cover Pages of Prospectus.

Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S–K (17 CFR 229.501) and Item 1102 of Regulation AB (17 CFR 229.1102).

Item 2. Inside Front and Outside Back Cover Pages of Prospectus.

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S–K (17 CFR 229.502).

Item 3. Transaction Summary and Risk Factors

Furnish the information required by Item 503 of Regulation S–K (17 CFR 229.503) and Item 1103 of Regulation AB (17 CFR 229.1103).

Item 4. Use of Proceeds.

Furnish the information required by Item 504 of Regulation S–K (17 CFR 229.504).

Item 5. Plan of Distribution.

Furnish the information required by Item 508 of Regulation S–K (17 CFR 229.508).

Item 6. Information With Respect to the Transaction Parties.

Furnish the following information:

(a) Information required by Item 1104 of Regulation AB (17 CFR 229.1104), Sponsors;

(b) Information required by Item 1106 of Regulation AB (17 CFR 229.1106), Depositors;

(c) Information required by Item 1107 of Regulation AB (17 CFR 229.1107), Issuing entities;

(d) Information required by Item 1108 of Regulation AB (17 CFR 229.1108), Servicers;

(e) Information required by Item 1109 of Regulation AB (17 CFR 229.1109), Trustees;

(f) Information required by Item 1110 of Regulation AB (17 CFR 229.1110), Originators;

(g) Information required by Item 1112 of Regulation AB (17 CFR 229.1112), Significant obligors of pool assets;

(h) Information required by Item 1117 of Regulation AB (17 CFR 229.1117), Legal Proceedings; and

(i) Information required by Item 1119 of Regulation AB (17 CFR 229.1119), Affiliations and certain relationships and related transactions.

Item 7. Information with Respect to the Transaction.

Furnish the following information:

(a) Information required by Item 1111 of Regulation AB (17 CFR 229.1111), Pool Assets and Item 1125 of Regulation AB (17 CFR 229.1125), Schedule AL—Asset-level information;

(b) Information required by Item 202 of Regulation S–K (17 CFR 229.202), Description of Securities Registered and Item 1113 of Regulation AB (17 CFR 229.1113), Structure of the Transaction;

(c) Information required by Item 1114 of Regulation AB (17 CFR 229.1114), Credit Enhancement and Other Support;

(d) Information required by Item 1115 of Regulation AB (17 CFR 229.1115), Certain Derivatives Instruments;

(e) Information required by Item 1116 of Regulation AB (17 CFR 229.1116), Tax Matters;

(f) Information required by Item 1118 of Regulation AB (17 CFR 229.1118), Reports and additional information; and

(g) Information required by Item 1120 of Regulation AB (17 CFR 229.1120), Ratings.

Item 8. Static Pool.

Furnish the information required by Item 1105 of Regulation AB (17 CFR 229.1105).

Item 9. Interests of Named Experts and Counsel.

Furnish the information required by Item 509 of Regulation S–K (17 CFR 229.509).

Item 10. Incorporation of Certain Information by Reference.

(a) The prospectus shall provide a statement that the following documents filed at or prior to the time of effectiveness shall be deemed incorporated by reference into the prospectus:

(1) Any disclosures pursuant to Item 1111(h) (17 CFR 229.1111(h)) and filed as exhibits to Form ABS–EE in accordance with Items 601(b)(102) or 601(b)(103) of Regulation S–K (17 CFR 229.601(b)(102) or 601(b)(103)); and

(2) all current reports filed pursuant to Item 6.06 of Form 8–K (17 CFR 249.308) pursuant to Sections 13(a), 13(c), or 15(d) of the Exchange Act.

Instruction. Attention is directed to Rule 439 (17 CFR 230.439) regarding consent to use of material incorporated by reference.

(b)(1) You must state:

(i) That you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(ii) that you will provide this information upon written or oral request;

(iii) that you will provide this information at no cost to the requester;

(iv) the name, address, and telephone number to which the request for this information must be made; and

(v) the registrant's Web site address, including the uniform resource locator (URL) where the incorporated information and other documents may be accessed.

Note to Item 10(b)(1). If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(b)(2) You must:

(i) Identify the reports and other information that you file with the SEC.

(ii) State that any materials you file with the SEC will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*). You are encouraged to give your Internet address, if available.

Item 11. Disclosure of Commission Position on Indemnification for Securities Act Liabilities.

Furnish the information required by Item 510 of Regulation S–K (17 CFR 229.510).

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 12. Other Expenses of Issuance and Distribution.

Furnish the information required by Item 511 of Regulation S–K (17 CFR 229.511).

Item 13. Indemnification of Directors and Officers.

Furnish the information required by Item 702 of Regulation S–K (17 CFR 229.702).

Item 14. Exhibits.

Subject to the rules regarding incorporation by reference, file the exhibits required by Item 601 of Regulation S–K (17 CFR 229.601).

Item 15. Undertakings.

Furnish the undertakings required by Item 512 of Regulation S–K (17 CFR 229.512).

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form SF–1 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 20 ____.

_____
(Registrant)
By

_____
(Signature and Title)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

_____
(Signature)

_____
(Title)

_____
(Date)

Instructions.

1. The registration statement shall be signed by the depositor, the depositor's principal executive officer or officers, its principal financial officer, and

controller or principal accounting officer and by at least a majority of its board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and to Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

■ 50. Add § 239.45 to read as follows:

§ 239.45 Form SF–3, for registration under the Securities Act of 1933 for offerings of asset-backed issuers offered pursuant to certain types of transactions.

This Form may be used for registration under the Securities Act of 1933 (''Securities Act'') of offerings of asset-backed securities, as defined in 17 CFR 229.1101(c). Any registrant which meets the requirements of paragraph (a) of this section may use this Form for the registration of asset-backed securities (as defined in 17 CFR 229.1101(c)) under the Securities Act which are offered in any transaction specified in paragraph (b) of this section provided that the requirements applicable to the specified transaction are met. Terms used have the same meaning as in Item 1101 of Regulation AB (17 CFR 229.1101).

(a) *Registrant requirements.* Registrants must meet the following conditions in order to use this Form for registration under the Securities Act of asset-backed securities offered in the transactions specified in paragraph (b) of this section:

(1) To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form required to comply with the transaction requirements in paragraphs (b)(1)(i) through (iv) of this section with respect to a previous offering of asset-backed securities involving the same asset class, the following requirements shall apply:

(i) Such depositor and each such issuing entity must have filed on a timely basis all certifications required by paragraph (b)(1)(i) of this section; and

(ii) Such depositor and each such issuing entity must have filed on a timely basis all transaction agreements containing the provisions that are required by paragraphs (b)(1)(ii) through (iv) of this section.

(iii) If such depositor or issuing entity fails to meet the requirements of paragraphs(a)(1)(i) and (ii) of this section, such depositor or issuing entity will be deemed to satisfy such requirements for purposes of this Form 90 days after the date it files the information required by paragraphs (a)(1)(i) and (ii) of this section; provided however that if the information is filed within 90 days of evaluating compliance with this paragraph (a) such depositor and issuing entity will be deemed to have been in compliance with such requirements for purposes of this Form 90 days after the date it files the information required by paragraphs (a)(1)(i) and (ii) of this section.

Instruction to paragraph (a)(1). The registrant must provide disclosure in a prospectus that is part of the registration statement that it has met the registrant requirements of paragraph (a)(1) of this section.

(2) To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form subject to the requirements of section 12 or 15(d) of the Exchange Act (15 U.S.C. 78*l* or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). In addition, such material must have been filed in a timely manner, other than a report that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 6.01, or 6.03 of Form 8–K (17 CFR 249.308). If § 240.12b–25(b) of this chapter was used during such period with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by § 240.12b–25(b) of this chapter. Regarding an affiliated depositor that became an affiliate as a result of a business combination transaction during such period, the filing of any material prior to the business combination transaction relating to asset-backed securities of an issuing entity previously established, directly or indirectly, by such affiliated depositor is excluded from this section, provided such business combination transaction was not part of a plan or scheme to evade the requirements of the Securities Act or the Exchange Act. See the definition of ''affiliate'' in § 230.405 of this chapter.

(b) *Transaction Requirements.* If the registrant meets the registrant requirements specified in paragraph (a) of this section, an offering meeting the following conditions may be registered on this Form SF–3:

(1) Asset-backed securities (as defined in § 229.1101(c) of this chapter) to be offered for cash where the following have been satisfied:

(i) *Certification.* The registrant files a certification in accordance with Item 601(b)(36) of Regulation S–K (§ 229.601(b)(36) of this chapter) signed by the chief executive officer of the depositor with respect to each offering of securities that is registered on this Form.

(ii) *Asset review provision.* With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must provide for the following:

(A) The selection and appointment of an asset representations reviewer that is not:

(*1*) Affiliated with any sponsor, depositor, servicer, or trustee of the transaction, or any of their affiliates; or

(*2*) The same party or an affiliate of any party hired by the sponsor or the underwriter to perform pre-closing due diligence work on the pool assets;

(B) The asset representations reviewer shall have authority to access copies of any underlying documents related to performing a review of the pool assets;

(C) The asset representations reviewer shall be responsible for reviewing the underlying assets for compliance with the representations and warranties on the pool assets, and shall not otherwise be the party to determine whether noncompliance with representations or warranties constitutes a breach of any contractual provision. Reviews shall be required under the transaction documents, at a minimum, when the following conditions are met:

(*1*) A threshold of delinquent assets, as specified in the transaction

agreements, has been reached or exceeded; and

(*2*) An investor vote to direct a review, pursuant to the processes specified in the transaction agreements, provided that the agreement not require more than:

(*i*) 5% of the total interest in the pool in order to initiate a vote and

(*ii*) A simple majority of those interests casting a vote to direct a review by the asset representations reviewer;

(D) The asset representations reviewer shall perform, at a minimum, reviews of all assets 60 days or more delinquent when the conditions specified in paragraph (b)(1)(ii)(C) of this section are met; and

(E) The asset representations reviewer shall provide a report to the trustee of the findings and conclusions of the review of the assets.

Instruction to paragraph (b)(1)(ii). The threshold of delinquent assets shall be calculated as a percentage of the aggregate dollar amount of delinquent assets in a given pool to the aggregate dollar amount of all the assets in that particular pool, measured as of the end of the reporting period. If the transaction has multiple sub-pools, the transaction agreements must provide that:

1. The delinquency threshold shall be calculated with respect to each sub-pool; and

2. The investor vote calculation shall be measured as a percentage of investors' interest in each sub-pool.

(iii) *Dispute resolution provision.* With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must provide for the following:

(A) If an asset subject to a repurchase request, pursuant to the terms of the transaction agreements, is not resolved by the end of a 180-day period beginning when notice of the request is received, then the party submitting such repurchase request shall have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase must agree to the selected resolution method.

(B) If the party submitting the request elects third-party arbitration, the arbitrator shall determine the allocation of any expenses. If the party submitting the request elects mediation, the parties shall mutually determine the allocation of any expenses.

(iv) *Investor communication provision.* With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must contain a provision requiring that the party responsible for making periodic filings on Form 10–D (§ 249.312 of this chapter) include in the Form 10–D any request received during the reporting period from an investor to communicate with other investors related to investors exercising their rights under the terms of the transaction agreements. The disclosure regarding the request to communicate is required to include no more than the name of the investor making the request, the date the request was received, a statement to the effect that the party responsible for filing the Form 10–D has received a request from such investor, stating that such investor is interested in communicating with other investors with regard to the possible exercise of rights under the transaction agreements, and a description of the method other investors may use to contact the requesting investor.

Instruction to paragraph (b)(1)(iv). If an underlying transaction agreement contains procedures in order to verify that an investor is, in fact, a beneficial owner for purposes of invoking the investor communication provision, the verification procedures may require no more than the following:

1. If the investor is a record holder of the securities at the time of a request to communicate, then the investor will not have to provide verification of ownership, and

2. If the investor is not the record holder of the securities, then the person obligated to make the disclosure may require no more than a written certification from the investor that it is a beneficial owner and one other form of documentation such as a trade confirmation, an account statement, a letter from the broker or dealer, or other similar document.

(v) *Delinquent assets.* Delinquent assets do not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date.

(vi) *Residual value for certain securities.* With respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

(2) Securities relating to an offering of asset-backed securities registered in accordance with paragraph (b)(1) of this section where those securities represent an interest in or the right to the payments of cash flows of another asset pool and meet the requirements of § 230.190(c)(1) through (4) of this chapter.

■ 51. Add Form SF–3 (referenced in § 239.45) to read as follows:

Note: The text of Form SF–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM SF-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

_____

(Exact name of registrant as specified in its charter)

_____

(State or other jurisdiction of incorporation or organization)

_____

(I.R.S. Employer Identification Number)

Commission File Number of depositor: _____

Central Index Key Number of depositor: _____

_____

(Exact name of depositor as specified in its charter)

Central Index Key Number of sponsor (if applicable): _____

_____

(Exact name of sponsor as specified in its charter)

_____

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

_____

(Name, address, including zip code, and telephone number, including area code, of agent for service)

_____

(Approximate date of commencement of proposed sale to the public)

If any of the securities being registered on this Form SF–3 are to be offered pursuant to Rule 415 under the Securities Act of 1933, check the following box: [ ]

If this Form SF–3 is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: [ ]

If this Form SF–3 is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: [ ]

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered.	Amount to be registered ...	Proposed maximum offering price per unit.	Proposed maximum aggregate offering price.	Amount of registration fee.

Notes to the "Calculation of Registration Fee" Table ("Fee Table"):

1. Specific details relating to the fee calculation shall be furnished in notes to the Fee Table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the Fee Table.

2. If the filing fee is calculated pursuant to Rule 457(s) under the Securities Act, the Fee Table must state that it registers an unspecified amount of securities of each identified class of securities and must provide that the issuer is relying on Rule 456(c) and Rule 457(s). If the Fee Table is amended in a post-effective amendment to the registration statement or in a prospectus filed in accordance with Rule 456(c)(1)(ii) (§ 230.456(c)(1)(ii) of this chapter), the Fee Table must specify the aggregate offering price for all classes of securities in the referenced offering or offerings and the applicable registration fee.

3. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 457 under the Securities Act.

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form SF–3.

This instruction sets forth registrant requirements and transaction requirements for the use of Form SF–3. Any registrant which meets the requirements of I.A. below ("Registrant Requirements") may use this Form for the registration of asset-backed securities (as defined in 17 CFR 229.1101(c)) under the Securities Act of 1933 ("Securities Act") which are offered in any transaction specified in I.B. below ("Transaction Requirements") provided that the requirements applicable to the specified transaction are met. Terms used in this Form have the same meaning as in Item 1101 of Regulation AB.

A. Registrant Requirements. Registrants must meet the following conditions in order to use this Form SF–3 for registration under the Securities Act of asset-backed securities offered in the transactions specified in I.B. below:

1. To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form required to comply with the transaction requirements in General Instructions I.B.1(a), I.B.1(b), I.B.1(c), and I.B.1(d) of this Form with respect to a previous offering of asset-backed securities involving the same asset class, the following requirements shall apply:

(a) Such depositor and each such issuing entity must have filed on a timely basis all certifications required by I.B.1(a);

(b) Such depositor and each such issuing entity must have filed on a timely basis all transaction agreements containing the provisions that are required by I.B.1(b), I.B.1(c), and I.B.1(d); and

(c) If such depositor or issuing entity fails to meet the requirements of I.A.1(a) and I.A.1(b), such depositor or issuing entity will be deemed to satisfy such requirements for purposes of this Form SF–3 90 days after the date it files the information required by I.A.1(a) and I.A.1(b).

Instruction to General Instruction I.A.1: The registrant must provide disclosure in a prospectus that is part of the registration statement that it has met the registrant requirements of I.A.1.

2. To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form SF–3 subject to the requirements of section 12 or 15(d) of the Exchange Act (15 U.S.C. 78*l* or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). In addition, such material must have been filed in a timely manner, other than a report that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 6.01, or 6.03 of Form 8–K (17 CFR 249.308). If Rule 12b–25(b) (17 CFR 240.12b–25(b)) under the Exchange Act was used during such period with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that rule. Regarding an affiliated depositor that became an affiliate as a result of a business combination transaction during such period, the filing of any material prior to the business combination transaction relating to asset-backed securities of an issuing entity previously established, directly or indirectly, by such affiliated depositor is excluded from this section, provided such business combination transaction was not part of a plan or scheme to evade the requirements of the Securities Act or the Exchange Act. See the definition of "affiliate" in Securities Act Rule 405 (17 CFR 230.405).

B. Transaction Requirements. If the registrant meets the Registrant Requirements specified in I.A. above, an offering meeting the following conditions may be registered on Form SF–3:

1. Asset-backed securities (as defined in 17 CFR 229.1101(c)) to be offered for cash where the following have been satisfied:

(a) Certification. The registrant files a certification in accordance with Item 601(b)(36) of Regulation S–K (§ 229.601(b)(36)) signed by the chief executive officer of the depositor with

respect to each offering of securities that is registered on this Form.

(b) Asset Review Provision. With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must provide for the following:

(A) The selection and appointment of an asset representations reviewer that is not (i) affiliated with any sponsor, depositor, servicer, or trustee of the transaction, or any of their affiliates, or (ii) the same party or an affiliate of any party hired by the sponsor or the underwriter to perform pre-closing due diligence work on the pool assets;

(B) The asset representations reviewer shall have authority to access copies of any underlying documents related to performing a review of the pool assets;

(C) The asset representations reviewer shall be responsible for reviewing the underlying assets for compliance with the representations and warranties on the pool assets, and shall not otherwise be the party to determine whether noncompliance with representations or warranties constitutes a breach of any contractual provision. Reviews shall be required under the transaction documents, at a minimum, when the following conditions are met:

(1) A threshold of delinquent assets, as specified in the transaction agreements, has been reached or exceeded; and

(2) an investor vote to direct a review, pursuant to the processes specified in the transaction agreements, provided that the agreement not require more than: (a) 5% of the total interest in the pool in order to initiate a vote and (b) a simple majority of those interests casting a vote to direct a review by the asset representations reviewer;

(D) The asset representations reviewer shall perform, at a minimum, reviews of all assets 60 days or more delinquent when the conditions specified in paragraph C are met; and

(E) The asset representations reviewer shall provide a report to the trustee of the findings and conclusions of the review of the assets.

Instruction to I.B.1(b). The threshold of delinquent assets shall be calculated as a percentage of the aggregate dollar amount of delinquent assets in a given pool to the aggregate dollar amount of all the assets in that particular pool, measured as of the end of the reporting period. If the transaction has multiple sub-pools, the transaction agreements must provide that (i) the delinquency threshold shall be calculated with respect to each sub-pool and (ii) the investor vote calculation shall be measured as a percentage of investors' interest in each sub-pool.

(c) Dispute Resolution Provision. With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must provide for the following:

(A) If an asset subject to a repurchase request, pursuant to the terms of the transaction agreements, is not resolved by the end of a 180-day period beginning when notice of the request is received, then the party submitting such repurchase request shall have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase must agree to the selected resolution method.

(B) If the party submitting the request elects third-party arbitration, the arbitrator shall determine the allocation of any expenses. If the party submitting the request elects mediation, the parties shall mutually determine the allocation of any expenses.

(d) Investor Communication Provision. With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must contain a provision requiring that the party responsible for making periodic filings on Form 10–D (§ 249.312) include in the Form 10–D any request received during the reporting period from an investor to communicate with other investors related to investors exercising their rights under the terms of the transaction agreements. The disclosure regarding the request to communicate is required to include no more than the name of the investor making the request, the date the request was received, a statement to the effect that the party responsible for filing the Form 10–D has received a request from such investor, stating that such investor is interested in communicating with other investors with regard to the possible exercise of rights under the transaction agreements, and a description of the method other investors may use to contact the requesting investor.

Instruction to I.B.1(d). If an underlying transaction agreement contains procedures in order to verify that an investor is, in fact, a beneficial owner for purposes of invoking the investor communication provision, the verification procedures may require no more than the following: (1) If the investor is a record holder of the securities at the time of a request to communicate, then the investor will not have to provide verification of ownership, and (2) if the investor is not the record holder of the securities, then the person obligated to make the disclosure may require no more than a written certification from the investor that it is a beneficial owner and one other form of documentation such as a trade confirmation, an account statement, a letter from the broker or dealer, or other similar document.

(e) Delinquent assets. Delinquent assets do not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date.

(f) Residual value for certain securities. With respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

2. Securities relating to an offering of asset-backed securities registered in accordance with General Instruction I.B.1. where those securities represent an interest in or the right to the payments of cash flows of another asset pool and meet the requirements of Securities Act Rule 190(c)(1) through (4) (17 CFR 230.190(c)(1) through (4)).

II. Application of General Rules and Regulations.

A. Attention is directed to the General Rules and Regulations under the Securities Act, particularly Regulation C thereunder (l7 CFR 230.400 to 230.499). That Regulation contains general requirements regarding the preparation and filing of registration statements.

B. Attention is directed to Regulation S–K (17 CFR Part 229) for the requirements applicable to the content of the non-financial statement portions of registration statements under the Securities Act. Where this Form SF–3 directs the registrant to furnish information required by Regulation S–K and the item of Regulation S–K so provides, information need only be furnished to the extent appropriate. Notwithstanding Items 501 and 502 of Regulation S–K, no table of contents is required to be included in the prospectus or registration statement prepared on this Form SF–3. In addition to the information expressly required to be included in a registration statement on this Form SF–3, registrants also may provide such other information as they deem appropriate.

C. Where securities are being registered on this Form SF–3, Rule 456(c) permits, but does not require, the registrant to pay the registration fee on a pay-as-you-go basis and Rule 457(s) permits, but does not require, the registration fee to be calculated on the basis of the aggregate offering price of the securities to be offered in an offering or offerings off the registration statement. If a registrant elects to pay all or a portion of the registration fee on a deferred basis, the Fee Table in the initial filing must identify the classes of securities being registered and provide that the registrant elects to rely on Rule 456(c) and Rule 457(s), but the Fee Table does not need to specify any other information. When the registrant amends the Fee Table in accordance with Rule 456(c)(1)(ii), the amended Fee Table must include either the dollar amount of securities being registered if paid in advance of or in connection with an offering or offerings or the aggregate offering price for all classes of securities referenced in the offerings and the applicable registration fee.

D. Information is only required to be furnished as of the date of initial effectiveness of the registration statement to the extent required by Rule 430D. Required information about a specific transaction must be included in the prospectus in the registration statement by means of a prospectus that is deemed to be part of and included in the registration statement pursuant to Rule 430D, a post-effective amendment to the registration statement, or a periodic or current report under the Exchange Act incorporated by reference into the registration statement and the prospectus and identified in a prospectus filed, as required by Rule 430D, pursuant to Rule 424(h) or Rule 424(b) (§ 230.424(h) or § 230.424(b) of this chapter).

III. Registration of Additional Securities Pursuant to Rule 462(b).

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 439(b) under the Securities Act.

IV. Registration Statement Requirements.

Include only one form of prospectus for the asset class that may be securitized in a takedown of asset-backed securities under the registration statement. A separate form of prospectus and registration statement must be presented for each country of origin or country of property securing pool assets that may be securitized in a discrete pool in a takedown of asset-backed securities. For both separate asset classes and jurisdictions of origin or property, a separate form of prospectus is not required for transactions that principally consist of a particular asset class or jurisdiction which also describe one or more potential additional asset classes or jurisdictions, so long as the pool assets for the additional classes or jurisdictions in the aggregate are below 10% of the pool, as measured by dollar volume, for any particular takedown.

PART I
INFORMATION REQUIRED IN PROSPECTUS

Item 1. Forepart of the Registration Statement and Outside Front Cover Pages of Prospectus.

Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S–K (17 CFR 229.501) and Item 1102 of Regulation AB (17 CFR 229.1102).

Item 2. Inside Front and Outside Back Cover Pages of Prospectus.

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S–K (17 CFR 229.502).

Item 3. Transaction Summary and Risk Factors.

Furnish the information required by Item 503 of Regulation S–K (17 CFR 229.503) and Item 1103 of Regulation AB (17 CFR 229.1103).

Item 4. Use of Proceeds.

Furnish the information required by Item 504 of Regulation S–K (17 CFR 229.504).

Item 5. Plan of Distribution.

Furnish the information required by Item 508 of Regulation S–K (17 CFR 229.508).

Item 6. Information with Respect to the Transaction Parties.

Furnish the following information:

(a) Information required by Item 1104 of Regulation AB (17 CFR 229.1104), Sponsors;

(b) Information required by Item 1106 of Regulation AB (17 CFR 229.1106), Depositors;

(c) Information required by Item 1107 of Regulation AB (17 CFR 229.1107), Issuing entities;

(d) Information required by Item 1108 of Regulation AB (17 CFR 229.1108), Servicers;

(e) Information required by Item 1109 of Regulation AB (17 CFR 229.1109), Trustees and other transaction parties;

(f) Information required by Item 1110 of Regulation AB (17 CFR 229.1110), Originators;

(g) Information required by Item 1112 of Regulation AB (17 CFR 229.1112), Significant obligors of pool assets;

(h) Information required by Item 1117 of Regulation AB (17 CFR 229.1117), Legal Proceedings; and

(i) Information required by Item 1119 of Regulation AB (17 CFR 229.1119), Affiliations and certain relationships and related transactions.

Item 7. Information With Respect to the Transaction.

Furnish the following information:

(a) Information required by Item 1111 of Regulation AB (17 CFR 229.1111), Pool Assets and Item 1125 of Regulation AB (17 CFR 229.1125), Schedule AL—Asset-level information;

(b) Information required by Item 202 of Regulation S–K (17 CFR 229.202), Description of Securities Registered and Item 1113 of Regulation AB (17 CFR 229.1113), Structure of the Transaction;

(c) Information required by Item 1114 of Regulation AB (17 CFR 229.1114), Credit Enhancement and Other Support;

(d) Information required by Item 1115 of Regulation AB (17 CFR 229.1115), Certain Derivatives Instruments;

(e) Information required by Item 1116 of Regulation AB (17 CFR 229.1116), Tax Matters;

(f) Information required by Item 1118 of Regulation AB (17 CFR 229.1118), Reports and additional information; and

(g) Information required by Item 1120 of Regulation AB (17 CFR 229.1120), Ratings.

Item 8. Static Pool.

Furnish the information required by Item 1105 of Regulation AB (17 CFR 229.1105).

Instruction: Registrants may elect to file the information required by this item pursuant to Item 6.06 of Form 8–K (17 CFR 249.308). Incorporation by reference must comply with Item 10 of this Form.

Item 9. Interests of Named Experts and Counsel.

Furnish the information required by Item 509 of Regulation S–K (17 CFR 229.509).

Item 10. Incorporation of Certain Information by Reference.

(a) The prospectus shall provide a statement that the following documents filed by the date of the filing of a preliminary prospectus filed in accordance with Rule 424(h) (17 CFR 230.424(b)) or a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)) are incorporated by reference into the prospectus that is part of the registration statement:

(1) The disclosures filed as exhibits to Form ABS–EE in accordance with Items 601(b)(102) and Item 601(b)(103) of Regulation S–K (17 CFR 601(b)(102) and 601(b)(103)); and

(2) except that if the pool assets include asset-backed securities of a third-party, then registrants may reference the third-party's filings of asset-level data pursuant to Item 1100(c)(2) of Regulation AB (17 CFR 229.1100(c)(2)). The third-party is not required to meet the definition of significant obligor in Item 1101(k) of Regulation AB (17 CFR 229.1101(k)).

Instruction. Attention is directed to Rule 439 (17 CFR 230.439) regarding consent to use of material incorporated by reference.

(b) Registrants may elect to file the information required by Item 1105 of Regulation AB (17 CFR 229.1105), Static Pool, pursuant to Item 6.06 of Form 8–K (17 CFR 249.308), provided that the information is incorporated by reference into the prospectus that is part of the registration statement.

(c) If the registrant is structured as a revolving asset master trust, the documents listed in (1) and (2) below shall be specifically incorporated by reference into the prospectus by means of a statement to that effect in the prospectus listing all such documents:

(1) The registrant's latest annual report on Form 10–K (17 CFR 249.310) filed pursuant to Section 13(a) or 15(d) of the Exchange Act that contains financial statements for the registrant's latest fiscal year for which a Form 10–K was required to be filed;

(2) all other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in (1) above.

(d) The prospectus shall also provide a statement regarding the incorporation of reference of Exchange Act reports prior to the termination of the offering pursuant to one of the following two ways:

(1) A statement that all reports subsequently filed by the registrant pursuant to Sections 13(a), 13(c) or 15(d) of the Exchange Act, prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus; or

(2) a statement that all current reports on Form 8–K filed by the registrant pursuant to Sections 13(a), 13(c) or 15(d) of the Exchange Act, prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus.

Instruction. Attention is directed to Rule 439 (17 CFR 230.439) regarding consent to use of material incorporated by reference.

(e)(1) You must state:

(i) That you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(ii) that you will provide this information upon written or oral request;

(iii) that you will provide this information at no cost to the requester;

(iv) the name, address, and telephone number to which the request for this information must be made; and

(v) the registrant's Web site address, including the uniform resource locator (URL) where the incorporated information and other documents may be accessed.

Note to Item 10(d)(1). If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(2) You must:

(i) Identify the reports and other information that you file with the SEC.

(ii) State that any materials you file with the SEC will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*). You are encouraged to give your Internet address, if available.

Item 11. Disclosure of Commission Position on Indemnification for Securities Act Liabilities.

Furnish the information required by Item 510 of Regulation S–K (17 CFR 229.510).

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 12. Other Expenses of Issuance and Distribution.

Furnish the information required by Item 511 of Regulation S–K (17 CFR 229.511).

Item 13. Indemnification of Directors and Officers.

Furnish the information required by Item 702 of Regulation S–K (17 CFR 229.702).

Item 14. Exhibits.

Subject to the rules regarding incorporation by reference, file the exhibits required by Item 601 of Regulation S–K (17 CFR 229.601).

Item 15. Undertakings.

Furnish the undertakings required by Item 512 of Regulation S–K (17 CFR 229.512).

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form SF–3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 20____.

_____

(Registrant)

By

_____

(Signature and Title)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature)

(Title)

(Date)

Instructions.

1. The registration statement shall be signed by the depositor, the depositor's principal executive officer or officers, its principal financial officer, and controller or principal accounting officer and by at least a majority of its board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and to Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 52. The general authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.;* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376, (2010), unless otherwise noted.

* * * * *

§ 240.3a68–1a [Amended]

■ 53. Amend § 240.3a68–1a, paragraphs (a)(1)(iv)(D), (a)(1)(iv)(G), (a)(1)(iv)(H)(*1*) through (*3*), (c)(1), (c)(3)(ii), (c)(4), and (c)(5) by removing references to ''3(a)(77) of the Act (15 U.S.C. 78c(a)(77))'' and adding in their place ''3(a)(79) of the Act (15 U.S.C. 78c(a)(79))''.

§ 240.3a68–1b [Amended]

■ 54. Amend § 240.3a68–1b, paragraphs (a)(1)(iv)(D), (a)(1)(iv)(G), (a)(1)(iv)(H)(*1*) through (*3*), (c)(1), (c)(3)(ii), (c)(4), and (c)(5) by removing references to ''3(a)(77) of the Act (15 U.S.C. 78c(a)(77))'' and adding in their place ''3(a)(79) of the Act (15 U.S.C. 78c(a)(79))''.

■ 55. Amend § 240.15c2–8 by:

■ a. In paragraph (b) revising the last sentence; and

■ b. Removing paragraph (j).

The revisions read as follows:

§ 240.15c2–8 Delivery of prospectus.

* * * * *

(b) * * * Provided, however, this paragraph (b) shall apply to all issuances of asset-backed securities (as defined in § 229.1101(c) of this chapter) regardless of whether the issuer has previously been required to file reports pursuant to sections 13(a) or 15(d) of the Securities Exchange Act of 1934, or exempted from the requirement to file reports thereunder pursuant to section 12(h) of the Act (15 U.S.C. 78l).

* * * * *

§ 240.15d–22 [Amended]

■ 56. Amend § 240.15d–22, amend paragraphs (a) introductory text and (b)(1) by removing the reference ''230.415(a)(1)(x)'' and adding in its place ''230.415(a)(1)(xii)''.

* * * * *

§ 240.15Ga–1 [Amended]

■ 57. Amend § 240.15Ga–1, paragraph (a) by removing the reference to ''Section 3(a)(77) of the Securities Exchange Act of 1934)'' and adding in its place ''Section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79))''.

§ 240.17g–7 [Amended]

■ 58. Amend § 240.17g–7, introductory text by removing the reference to ''Section 3(a)(77) of the Securities Exchange Act of 1934'' and adding in its place ''Section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79))''.

PART 243—REGULATION FD

■ 59. The authority citation for Part 243 continues to read as follows:

Authority: 15 U.S.C. 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a–29, unless otherwise noted.

§ 243.103 [Amended]

■ 60. Amend § 243.103, paragraph (a) by removing the phrase ''and S–8 (17 CFR 239.16b)'' and adding in its place '', S–8 (17 CFR 239.16b) and SF–3 (17 CFR 239.45)''.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 61. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 62. Amend Form 8–K (referenced in § 249.308) by:

■ a. Adding a checkbox to the end of the cover page;

■ b. Revising General Instruction G.2.; and

■ c. Adding Item 6.06.

The revision and addition read as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8–K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

G. Use of This Form by Asset-Backed Issuers. * * *

2. *Additional Disclosure for the Form 8–K Cover Page.* Immediately after the name of the issuing entity on the cover page of the Form 8–K, as separate line items, identify the exact name of the depositor as specified in its charter and the exact name of the sponsor as specified in its charter. Include a Central Index Key number for the depositor and the issuing entity, and if available, the sponsor.

* * * * *

INFORMATION TO BE INCLUDED IN THE REPORT

* * * * *

Item 6.06 Static Pool

Regarding an offering of asset-backed securities registered on Form SF–1 (17 CFR 239.44) or Form SF–3 (17 CFR 239.45), in lieu of providing the static pool information as required by Item 1105 of Regulation AB (17 CFR 229.1105) in a form of prospectus or prospectus, an issuer may file the required information in this report or as an exhibit to this report. The static pool disclosure must be filed by the time of effectiveness of a registration statement on Form SF–1, by the same date of the

filing of a form of prospectus, as required by Rule 424(h) (17 CFR 230.424(h)), and by the same date of the filing of a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)).

Instructions.

1. Refer to Item 601(b)(106) of Regulation S–K (17 CFR 229.601(b)(106)) regarding the filing of exhibits to this Item 6.06.

2. Refer to Item 10 of Form SF–1 (17 CFR 239.44) or Item 10 of Form SF–3 (17 CFR 239.45) regarding incorporation by reference.

* * * * *

■ 63. Amend Form 10–K (referenced in § 249.310) by:

■ a. Adding a checkbox on the cover page before the paragraph that starts ''Indicate by check mark whether the registrant (1) has filed all reports . . .''; and

■ b. Revising General Instruction J(2)(a).

The revision reads as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10–K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

J. Use of this Form by Asset-Backed Issuers.

(2) * * *

(a) Immediately after the name of the issuing entity on the cover page of the Form 10–K, as separate line items, the exact name of the depositor as specified in its charter and the exact name of the sponsor as specified in its charter. Include a Central Index Key number for the depositor and the issuing entity, and if available, the sponsor.

* * * * *

FORM 10–K

* * * * *

■ 64. Amend Form 10–D (referenced in § 249.312) by:

■ a. Revising General Instruction C(3);

■ b. Revising the beginning of the cover page above the line that reads ''(State or other jurisdiction of incorporation or organization of the issuing entity)'';

■ c. Adding a checkbox to the cover page before the paragraph that starts ''Indicate by check mark whether the registrant (1) has filed . . .'';

■ d. Revising General Instruction D;

■ e. Revising Item 1 in Part I;

■ f. Adding Item 1A in Part I;

■ g. Adding Item 1B in Part I;

■ h. Redesignating Items 7, 8, and 9 as Items 8, 9, and 10 in Part II; and

■ i. Adding new Item 7 in Part II.

The revisions and additions read as follows:

Note: The text of Form 10–D does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10–D

* * * * *

GENERAL INSTRUCTIONS

* * * * *

C. Preparation of Report. * * *

(3) Any item which is inapplicable or to which the answer is negative may be omitted and no reference need be made in the report. If substantially the same information has been previously reported by the asset-backed issuer, an additional report of the information on this Form need not be made. Identify the form or report on which the previously reported information was filed. Identifying information should include a Central Index Key number, file number and date of the previously reported information. The term ''previously reported'' is defined in Rule 12b–2 (17 CFR 240.12b–2).

D. Incorporation by Reference. * * *

(3) With respect to all registrants required to provide asset-level information pursuant to Item 1111(h) of Regulation AB (17 CFR 229.1111(h)):

(a) The disclosures filed as exhibits to Form ABS–EE in accordance with Item 601(b)(102) and Item 601(b)(103) of Regulation S–K (17 CFR 229.601(b)(102) and 601(b)(103)) must be incorporated by reference into the Form 10–D.

(b) If the pool assets include asset-backed securities of a third-party, registrants may reference the third-party's filings of asset-level data pursuant to Item 1100(c)(2) of Regulation AB (17 CFR 232.1100(c)(2)), except that the third-party is not required to meet the definition of significant obligor in Item 1101(k) of Regulation AB (17 CFR 232.1101(k)).

* * * * *

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10–D

ASSET-BACKED ISSUER DISTRIBUTION REPORT PURSUANT TO SECTION 13 OR 15(d) OF

THE SECURITIES EXCHANGE ACT OF 1934

For the [identify distribution frequency (*e.g.,* monthly/quarterly)] distribution period from _____, 20____ to _____, 20____

Commission File Number of issuing entity: _____

Central Index Key Number of issuing entity: _____

_____

(Exact name of issuing entity as specified in its charter)

Commission File Number of depositor:

_____

Central Index Key Number of depositor:

_____

(Exact name of depositor as specified in its charter)

Central Index Key Number of sponsor (if applicable): _____

_____

(Exact name of sponsor as specified in its charter)

_____

(Name and telephone number, including area code, of the person to contact in connection with this filing)

* * * * *

PART I—DISTRIBUTION INFORMATION

Item 1. Distribution and Pool Performance Information.

Provide the information required by Item 1121(a) and (b) of Regulation AB (17 CFR 229.1121(a) and (b)), and attach as an exhibit to this report the distribution report delivered to the trustee or security holders, as the case may be, pursuant to the transaction agreements for the distribution period covered by this report. Any information required by Item 1121(a) and (b) of Regulation AB that is provided in the attached distribution report need not be repeated in this report. However, taken together, the attached distribution report and the information provided under this Item must contain the information required by Item 1121(a) and (b) of Regulation AB.

Item 1A. Asset-Level Information.

Provide the information required by Item 1111 of Regulation AB (17 CFR 229.1111), Pool Assets and Item 1125 of

Regulation AB (17 CFR 229.1125), Schedule AL—Asset-level information.

Item 1B. Asset Representations Reviewer and Investor Communication.

For any transaction that included the provisions required by General Instructions I.B.1(b) and I.B.1(d) on Form SF–3 (referenced in § 239.45), provide the information required by Item 1121(d) and (e) of Regulation AB (17 CFR 229.1121(d) and (e)), as applicable.

* * * * *

PART II—OTHER INFORMATION

* * * * *

Item 7. Change in Sponsor Interest in the Securities.

Provide the information required by Item 1124 of Regulation AB (17 CFR 229.1124) with respect to the reporting period covered by this report.

* * * * *

■ 65. Revise the heading of Subpart O of Part 249 to read as follows:

Subpart O—Forms for Asset-Backed Securities

■ 66. Add § 249.1401 to Subpart O to read as follows.

§ 249.1401 Form ABS–EE, for submission of the asset-data file exhibits and related documents.

This Form shall be used by an electronic filer for the submission of information required by Item 1111(h) (§ 229.1111(h) of this chapter).

■ 67. Add Form ABS–EE (referenced in § 249.1401) to read as follows:

Note: The text of Form ABS–EE does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM FOR SUBMISSION OF ELECTRONIC EXHIBITS FOR ASSET-BACKED SECURITIES

Commission File Number of the issuing entity: _____

Central Index Key Number of the issuing entity: _____

(Exact name of issuing entity as specified in its charter)

Commission File Number of the depositor: _____

Central Index Key Number of the depositor: _____

_____

(Exact name of depositor as specified in its charter)

Central Index Key Number of sponsor (if applicable): _____

(Exact name of sponsor as specified in its charter) _____

_____

(Name and telephone number, including area code, of the person to contact in connection with this filing)

INFORMATION TO BE INCLUDED WITH THIS FORM

Item 1. File an Asset Data File in accordance with Exhibit 601(b)(102) (17 CFR 229.601(b)(102)).

Item 2. File an Asset Related Document in accordance with Exhibit 601(b)(103) (17 CFR 229.601(b)(103)).

SIGNATURES

The depositor has duly caused this Form to be signed on its behalf by the undersigned hereunto duly authorized.

_____

(Depositor)

_____

(Signature)*

Date: _____

[OR]

_____

(Issuing Entity)

By: _____

(Servicer)*

_____

(Signature)*

Date: _____

*Print name and title of the signing officer under his signature.

Instruction. The report on this Form must be signed by the depositor. In the alternative, if the form is being filed to satisfy the disclosure requirements of Form 10–D (17 CFR 249.312) this Form may be signed on behalf of the issuing entity by a duly authorized representative of the servicer.

If multiple servicers are involved in servicing the pool assets, a duly authorized representative of the master servicer (or entity performing the equivalent function) must sign if a representative of the servicer is to sign the report on behalf of the issuing entity.

By the Commission.

Dated: September 4, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21375 Filed 9–23–14; 8:45 am]

BILLING CODE 8011–01–P