

AT Section 9201

Agreed-Upon Procedures Engagements: Attest Engagements Interpretation of Section 201

1. Third-Party Due Diligence Services Related to Asset-Backed Securitizations: SEC Release No. 34-72936

.01 SEC Release No. 34-72936, *Nationally Recognized Statistical Rating Organizations* (the release¹), acknowledges that certain procedures often performed by practitioners as agreed-upon procedures (AUP) engagements related to asset-backed securitizations (ABS) are considered third-party *due diligence services* (as defined in the release). These include due diligence services that relate to checking the accuracy of the information or data about the assets provided by the securitizer or originator of the assets. For example, comparing the information on a loan tape with the information contained on the hard-copy documents in a loan file is an activity that falls within the definition of due diligence services.

.02 For an AUP engagement performed that is considered due diligence services, as defined in the release, the specified parties are typically only the issuer or the underwriter(s), or both.

.03 The release requires the following:

- The issuer or underwriter of any ABS to make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter. The release further describes that the disclosure of the findings and conclusions includes disclosure of the criteria against which the loans were evaluated, and how the evaluated loans compared to those criteria, along with the basis for including any loans not meeting those criteria. This is accomplished by including such information in Form ABS-15G, "Asset-Backed Securitization Report Pursuant to Section 15G of the Securities Exchange Act of 1934," which is required to be furnished by the issuer or underwriter to the SEC through the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.
- Any third-party due diligence service provider to complete Form ABS Due Diligence-15E, "Certification of Provider of Third-Party Due Diligence Services for Asset-Backed Securities" (the prescribed form). The prescribed form elicits information about the due diligence performed, including a description of the work performed (Item 4 of the prescribed form) and a summary of findings and conclusions of the third party (Item 5 of the prescribed form).

¹ For purposes of this interpretation, the term *release* refers to the SEC rules amended by SEC Release No. 34-72936, *Nationally Recognized Statistical Rating Organizations*, and the accompanying release text.

.04 The release states the following:

The Commission understands there may be particular considerations that would need to be taken into account under applicable professional standards that govern certain services provided by the accounting profession. The requirements and limitations resulting from relevant professional standards generally are described within the reports issued and, to the extent such requirements or limitations are based upon professional standards, the Commission would not object to the inclusion of the same description in the written certifications on [the prescribed form].

.05 The prescribed form is required to be signed by the due diligence provider. The prescribed form is also required to be provided to any nationally recognized statistical rating organization (NRSRO) that produces a credit rating for an ABS to which such due diligence services relate. The release describes that the due diligence provider will be deemed to have met this obligation by providing the prescribed form to the issuer, sponsor, or underwriter of the securitization that maintains the Rule 17g-5 website. The purpose of the Rule 17g-5 website is to make information related to ABS transactions accessible to all NRSROs. Additionally, the release requires the prescribed form to be provided to any NRSRO that specifically requests it.

.06 When the NRSRO produces a credit rating, the release requires that it publicly disclose each prescribed form that was posted to the Rule 17g-5 website. Such information is expected to be posted on the website of the specific NRSRO, not on the EDGAR system. The release indicates that the decision to allow the NRSRO to disclose the prescribed form in the manner previously described, instead of through the EDGAR system, was to limit additional cost that would be incurred from having the NRSRO submit the prescribed forms through the EDGAR system.

.07 In most instances, Form ABS-15G will be furnished through the EDGAR system either prior to or at the same time as the prescribed form is posted to the Rule 17g-5 website.

.08 Therefore, the procedures or findings, or both, of due diligence services (as defined in the release) conducted as AUP engagements are made public via Form ABS-15G through the EDGAR system or via the prescribed form through the process by which the NRSRO publishes its credit ratings, or both.

.09 Question—The release requires the public disclosure of the procedures or findings, or both, of the practitioner's due diligence services in the prescribed form and Form ABS-15G, as applicable. Is the distribution of such procedures or findings, or both, prohibited under section 201, *Agreed-Upon Procedures Engagements*, when such services are performed as an AUP engagement?

.10 Interpretation—No. The distribution of the procedures or findings, or both, of the practitioner's due diligence services in the prescribed form or Form ABS-15G is not prohibited. A practitioner is not required to prohibit the distribution of the procedures or findings, or both, contained in the AUP report that may be disclosed in the prescribed form or Form ABS-15G because the distribution of that information is required by regulation to be made available to the public, as described in paragraphs .01–.08 of this interpretation.

.11 Footnote 16 of section 101, *Attest Engagements*, states, "In some cases, restricted-use reports filed with regulatory agencies are required by law or regulation to be made available to the public as a matter of public record. Also, a regulatory agency as part of its oversight responsibility for an entity may require access to restricted-use reports in which they are not named as a specified party."

.12 Question—The prescribed form contains certain language that is inconsistent with language commonly used in AUP reports and could be misinterpreted by those who have access to the prescribed form (for example, the term *review* is included in the prescribed form). In addition, the prescribed form does not include all elements of an AUP report required by paragraph .31 of section 201.

.13 What are the practitioner's responsibilities when due diligence services (as defined in the release) have been performed as an AUP engagement and the practitioner is required to complete the prescribed form, which includes language that is inconsistent with the practitioner's function or responsibility, or is incomplete with respect to the reporting requirements of the professional standards?

.14 Interpretation—Paragraph .67 of section 9101, *Attest Engagements: Attest Engagements Interpretations of Section 101*, addresses such a situation in the context of reporting on the suitability of the design of an entity's internal control under section 101 and indicates that the practitioner should either reword the prescribed form of report or attach an appropriately worded separate report that conforms with the practitioner's function or responsibility and professional standards. Therefore, when completing the prescribed form for due diligence services that have been performed as an AUP engagement, the practitioner should include all of the elements in paragraph .31 of section 201 and any clarifying wording to avoid any misinterpretation. This may be accomplished by either adding wording to the prescribed form or attaching an appropriately worded separate report to the prescribed form, or both.

.15 Question—How might the practitioner modify the illustrative report wording in section 201 in order to clarify the requirements and limitations of AUP engagements and reports as it relates to due diligence services as defined in the release?

.16 Interpretation—Paragraph .79 of section 101 states the following:

The need for restriction on the use of a report may result from a number of circumstances, including the purpose of the report, the criteria used in preparation of the subject matter, the extent to which the procedures performed are known or understood, and the potential for the report to be misunderstood when taken out of the context in which it was intended to be used. A practitioner should consider informing his or her client that restricted-use reports are not intended for distribution to non-specified parties, regardless of whether they are included in a document containing a separate general-use report.^{16, 17} However, a practitioner is not responsible for controlling a client's distribution of restricted-use reports. Accordingly, a restricted-use report should alert readers to the restriction on the use of the report by indicating that the report is not intended to be and should not be used by anyone other than the specified parties.

^{16, 17} Footnotes omitted for purposes of this interpretation.

.17 As noted in paragraph .31 of section 201 and paragraph .79 of section 101, a practitioner does have a responsibility to disclose certain limitations of AUP engagements in the AUP report. However, the modifications can be made only to meet the requirements of the professional standards.

.18 Because distribution of procedures or findings, or both, to non-specified parties may cause those non-specified parties to misunderstand the restricted use limitations of AUP reports, the practitioner may modify the illustrative language in paragraph .32 of section 201, consistent with the requirements

in paragraph .31*l* of section 201, to clarify in the AUP report or prescribed form that the information with respect to the procedures or findings, or both, contained therein is not intended to be used by non-specified parties that may have access to the procedures or findings, or both, as required by the release (for example, NRSROs and investors).

.19 Because the prescribed form utilizes the term *review*, the practitioner may also add language in the prescribed form that the practitioner did not conduct a review in accordance with the AICPA attestation standards.

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