

## ***Statement of Position 21-1***

### ***Performing Agreed-Upon Procedures Related to Rated Exchange Act Asset-Backed Securities Third-Party Due Diligence Services as Defined by SEC Release No. 34-72936***

**June 2021**

***Issued Under the Authority of the Auditing Standards Board***

#### **NOTE**

This AICPA Statement of Position (SOP) has been developed by the Asset-Backed Securities Agreed-Upon Procedures Task Force of the AICPA Auditing Standards Board (ASB) to provide guidance to practitioners regarding the application of Statements on Standards for Attestation Engagements (SSAEs) to agreed-upon procedures (AUP) attestation engagements related to third-party due diligence services performed in connection with rated asset-backed securities (ABS) issued in accordance with the Securities Exchange Act of 1934, as amended (Exchange Act), as those services are defined in the SEC rules as amended or adopted by SEC Release No. 34-72936, *Nationally Recognized Statistical Rating Organizations*, and the accompanying text (the release).

An attestation SOP is recognized as an interpretive publication as described in AT-C section 105, *Concepts Common to All Attestation Engagements*.<sup>1</sup> Interpretive publications are recommendations on the application of SSAEs in specific circumstances, including engagements for entities in specialized industries. An interpretive publication is issued under the authority of the ASB after all ASB members have been provided an opportunity to consider and comment on whether the proposed interpretive publication is consistent with the SSAEs, commonly referred to as the attestation standards. The members of the ASB have found this SOP to be consistent with the attestation standards. Although interpretive publications are not attestation standards, AT-C section 105 requires the practitioner to consider applicable interpretive publications in planning and performing an attestation engagement because interpretive publications are relevant to the proper application of the SSAEs in specific circumstances.

When applying SSAE No. 19, *Agreed-Upon Procedures Engagements*, in an agreed-upon procedures engagement that addresses rated Exchange Act asset-backed securities third-party due diligence services as defined by SEC Release No. 34-72936, this SOP supersedes SOP 17-1, *Performing Agreed-Upon Procedures Related to Rated Exchange Act Asset-Backed Securities Third-Party Due Diligence Services as Defined by SEC Release No. 34-72936*.

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<sup>1</sup> All AT-C sections can be found in AICPA *Professional Standards*.

## Why SOP 17-1 Has Been Superseded

In December 2019, the AICPA Auditing Standards Board issued Statement on Standards for Attestation Engagements (SSAE) No. 19, *Agreed-Upon Procedures Engagements* (SSAE No. 19), which supersedes AT-C section 215 of SSAE No. 18, *Attestation Standards, Clarification and Recodification*, and amends certain provisions of AT-C section 105, *Concepts Common to All Attestation Engagements*. SSAE No. 19 is effective for agreed-upon procedures reports dated on or after July 15, 2021, with early implementation permitted. SOP 17-1 has been revised to reflect the changes to agreed-upon procedures engagements introduced by SSAE No. 19, and is now being issued as SOP 21-1.



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## Introduction and Background

1. This Statement of Position (SOP) provides practitioners with guidance and considerations for performing agreed-upon procedures (AUP) engagements related to rated asset-backed securities (ABS) issued in accordance with the Securities Exchange Act of 1934, as amended (Exchange Act), when those AUP engagements fall within the definition and scope of *third-party due diligence services* (hereinafter referred to as “covered services”) as defined in the SEC rules as amended or adopted by SEC Release No. 34-72936, *Nationally Recognized Statistical Rating Organizations*, and the SEC Release No. 34-72936 accompanying text (the release). The release adopts SEC Rules 17g-10 and 15Ga-2; amends Form ABS-15G, *Asset-Backed Securitizer Report Pursuant to Section 15G of the Securities Exchange Act of 1934*; provides nonauthoritative narrative on the rule changes; and adds Form ABS Due Diligence-15E, *Certification of Provider of Third-Party Due Diligence Services for Asset-Backed Securities* (Form 15E).

2. This SOP addresses the following topics when the practitioner is engaged to perform covered services in accordance with Statements on Standards for Attestation Engagements (hereinafter referred to as “the attestation standards”):

- a. AUP engagements and related professional standards
- b. Applicability of this SOP
- c. ABS terminology
- d. Preconditions for an agreed-upon procedures engagement
- e. Agreeing on the terms of the engagement
- f. Subject matter and procedures to be performed
- g. Reporting considerations
- h. Written representations
- i. Effective date

3. Practitioners have commonly performed AUP engagements related to securitization transactions. Generally, securitization transactions are structured financings in which the cash flows and related risks (for example, credit, prepayment, and liquidity risk) of a pool of financial assets are redistributed by the issuance of new securities backed by the same financial asset or pool of financial assets. The securities are commonly referred to as ABS.

4. In 2014, the SEC issued the release with an effective date of June 15, 2015, for third-party due diligence services. In response to the SEC’s initial proposal, commenters noted that relevant AUP engagements performed by practitioners generally include one or more of the following procedures:

- a. Comparing a loan tape (data file) to the loan file, other sources, or both
- b. Recalculating projected future cash flows of the securitized assets and the ABS
- c. Performing procedures that address other information included in the ABS offering document(s)

5. In the release, the SEC states that “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 in Rule 17g-10 because the work undertaken involves reviewing the accuracy of the information or data about the assets provided, directly or indirectly, by the securitizer or originator of the assets.” In this SOP, these procedures are referred to as “covered services” and the practitioner’s AUP report that includes these covered services is referred to as the “covered services report.”

6. In the release, the SEC indicates that the procedures set forth in items (b) and (c) in paragraph 4 of this SOP performed as part of an AUP engagement and for the purpose referenced in the release are not commonly understood as being due diligence services. Accordingly, such services are not covered services and, therefore, are not within the scope of this SOP.

7. When a practitioner performs covered services and issues a covered services report, Rule 17g-10 and the related release identify the following requirements and conditions:

- a. The issuer, sponsor, or underwriter of any rated ABS will make publicly available the findings and conclusions of any covered services report obtained by the issuer, sponsor, or underwriter. The release indicates that the disclosure of the findings and conclusions includes, but is not limited to, disclosure of the criteria against which the assets were evaluated, and how the evaluated assets compare to those criteria, along with the basis for including any assets not meeting those criteria. This is accomplished by the issuer, sponsor, or underwriter including such information in a Form ABS-15G, which the issuer, sponsor, or underwriter is required to furnish to the SEC through the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system at least five business days before the first sale of the rated ABS (assumed to be the pricing date).
- b. Any provider of covered services is required to complete Form 15E. Form 15E requires information about the covered services performed (Item 4 of Form 15E) and a summary of findings and conclusions that resulted from the covered services (Item 5 of Form 15E). The instructions for completing Form 15E allow the practitioner to provide the requested items on the form or by referring to the attached practitioner’s report. Therefore, practitioners may be submitting either Form 15E as a stand-alone form with its contents completed, or Form 15E with the attached practitioner’s report as a combined submission.
- c. The release indicates that the covered services provider will have been deemed to have met its obligation by providing Form 15E in the following ways: (a) in response to a written request from a nationally recognized statistical rating organization (NRSRO), if received; or (b) to the issuer, sponsor, or underwriter of the securitization maintaining the Rule 17g-5 website, as described in paragraph (a)(3)(iii) of Rule 17g-5 (Rule 17g-5 website). The issuer, sponsor, or underwriter of the securitization is then required to post Form 15E to the Rule 17g-5 website. The purpose of the Rule

17g-5 website is to make information related to rated ABS transactions accessible to all NRSROs.

- d. When the NRSRO produces a credit rating, it must publicly disclose each Form 15E that was posted to the Rule 17g-5 website for the related ABS.

8. A practitioner is not permitted to prohibit, or require consent for, the inclusion of the procedures or findings, or both, contained in the covered services report that will be disclosed in Form ABS-15G and Form 15E. In this situation, such information must be provided to the SEC through the EDGAR system (for Form ABS-15G) and posted to the Rule 17g-5 website for access by the NRSROs (for Form 15E). In this regard, paragraph .A68 of AT-C section 215<sup>2</sup> recognizes that law or regulation may require that a practitioner's report be made available to the public as a matter of public record. In addition, the report may be distributed in other scenarios as described in the release (for example, upon a written request by an NRSRO).

## **AUP Engagements and Related Professional Standards**

9. Paragraph .09 of AT-C section 215 states, "In performing an agreed-upon procedures engagement, the practitioner should comply with this section, AT-C section 105, and any subject-matter section that is relevant to the engagement." This SOP includes guidance and considerations to assist practitioners in applying certain aspects of AT-C sections 105 and 215 to covered services engagements. Although not all of the provisions of AT-C sections 105 and 215 are discussed in this SOP, all of the provisions of those AT-C sections are applicable to such engagements.

## **Applicability of this SOP**

10. This SOP has been developed to provide practitioners with guidance and considerations regarding the application of the attestation standards to engagements in which a practitioner is engaged to issue or does issue an AUP covered services report.

11. Nothing in this SOP precludes the practitioner from performing other attestation services for the same ABS transaction, for example, performing an AUP engagement that is not considered to be covered services (hereinafter referred to as "noncovered services"). An example of a noncovered service is performing AUP related to the ABS offering document that are not related to due diligence.

12. Although a practitioner may be engaged to perform both covered services and noncovered services, and report on each type of service separately, the guidance in this SOP is only required to be considered by a practitioner for the covered services portion of the engagement. Although not required, a practitioner may consider the guidance in this SOP and its applicability when performing a noncovered services AUP engagement in connection with an ABS transaction.

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<sup>2</sup> All AT-C sections can be found in AICPA *Professional Standards*.

## **ABS Terminology**

13. Appendix C, “Glossary,” of this SOP contains definitions of common terms used in AUP engagements related to covered services.

## **Preconditions for an Agreed-Upon Procedures Engagement**

14. In order to establish that the preconditions for an AUP engagement are present, the practitioner should determine that the following preconditions, in addition to the preconditions identified in paragraphs .26–.30 of AT-C section 105, are present:

- The practitioner determines that procedures can be designed, performed, and reported on in accordance with AT-C section 215.
- The engaging party agrees, or will be able to agree, to the procedures and acknowledges that the procedures are appropriate for the intended purpose of the engagement.
- The procedures to be applied to the subject matter are expected to result in reasonably consistent findings.
- When applicable, the practitioner agrees to apply a threshold for reporting exceptions established by the engaging party.

For engagements related to covered services, certain additional conditions, such as the following, are relevant to the engagement:

- Whether the engaging party and the practitioner have the appropriate knowledge of the relevant SEC rules and regulations (for example: Form ABS-15G, Form 15E)
- Whether the engaging party, or another appropriate party, will agree to have Form 15E posted on the applicable Rule 17g-5 website after the practitioner completes and signs Form 15E and provides it to the engaging party or another appropriate party
- Whether adequate time will be provided to perform the procedures and promptly provide Form 15E<sup>3</sup>

15. Additionally, the practitioner is required to be independent of the responsible party in the performance of professional services as required by standards promulgated by bodies designated by [AICPA] Council, under the “Independence Rule” (ET sec. 1.200.001) of the AICPA’s Code of

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<sup>3</sup> Page 350 of the release states, “a person employed to provide third-party due diligence services can meet its statutory obligation to provide the written certification relating to those services to any NRSRO that produces a credit rating to which such services relate by promptly responding to a written request from an NRSRO for the executed Form ABS Due Diligence-15E and promptly delivering the Form ABS Due Diligence-15E to the issuer, sponsor, or underwriter of the security or money market instrument that maintains the relevant Internet website pursuant to Rule 17g-5.”



Professional Conduct,<sup>4</sup> and its interpretations, as modified by the “Application of the Independence Rule to Engagements Performed in Accordance With Statements on Standards for Attestation Engagements” interpretation (ET sec. 1.297.010), and in accordance with the “Agreed-Upon Procedure Engagements Performed in Accordance With SSAEs” interpretation (ET sec. 1.297.020). If the engaging party is not the responsible party, the practitioner need not be independent of the engaging party. However, the practitioner is required to consider the “Conflicts of Interest for Members in Public Practice” interpretation (ET sec. 1.110.010) of the “Integrity and Objectivity Rule” (ET sec. 1.100.001), with regard to any relationships that may exist with the engaging party.

## **Agreeing on the Terms of the Engagement**

**16.** Paragraph .14 of AT-C section 215 requires that the practitioner agree upon the terms of the engagement with the engaging party in sufficient detail in an engagement letter or other suitable form of written agreement. Paragraph .15 of AT-C section 215 identifies the matters that are required to be included in the written agreement.

**17.** Paragraph .22 of AT-C section 215 requires the practitioner to obtain, prior to the issuance of the practitioner’s AUP report, a written agreement of the procedures, and acknowledgment from the engaging party that the procedures performed are appropriate for the intended purpose of the engagement. Paragraph .A35 of AT-C section 215 indicates that this agreement may be documented in the engagement letter, an addendum to the engagement letter, a representation letter, or some other form of written communication. Paragraphs .A13–.A14 of AT-C section 215 identify a situation in which all intended users of the practitioner’s report ordinarily would be asked to agree to the procedures and acknowledge that the procedures performed are appropriate for their purposes (see paragraph 23 of this SOP).

**18.** A factor to consider in determining whether to accept an ABS AUP engagement is whether the practitioner will have sufficient time to complete the covered services. The release requires an issuer, sponsor, or underwriter to furnish Form ABS-15G to the SEC through the EDGAR system at least five business days prior to the first sale of the offering.<sup>5</sup> Because the findings of the practitioner’s AUP (for procedures determined to be covered services performed prior to the first sale of the offering) are to be included within Form ABS-15G, the practitioner may determine from the engaging party during engagement acceptance when the engaging party expects the covered services report to be provided by the practitioner.

**19.** Although AT-C section 215 does not require the practitioner to enumerate the procedures in an engagement letter or other suitable form of written agreement, in a covered services engagement, it may be efficient to do so because

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<sup>4</sup> All ET sections can be found in AICPA *Professional Standards*.

<sup>5</sup> Page 649 of the release describes Rule 15Ga-2, which states, in part, “... the Commission has decided to adopt, as proposed, the requirement that an issuer or underwriter must furnish Form ABS-15G at least five business days prior to the first sale in the offering.”

- the engagement is performed quickly due to the nature of security issuance as described in paragraph 18 of this SOP.
- it is unlikely that there will be a significant evolution of, or change to, the procedures because they are based on market practice for the type of asset being securitized and are therefore fairly standardized.
- obtaining agreement to the procedures before the work has begun helps to eliminate misunderstanding regarding the procedures to be performed.

**20.** In addition to the items listed in paragraph .12 of AT-C section 215, other matters that may be relevant when agreeing on the terms of the engagement with the engaging party may include the following:

- The securitized assets, other ABS characteristics, or both, subject to the covered services (the characteristics) and the source documents against which the practitioner will compare such characteristics
- Whether the procedures are limited to a sample of assets and, if so,
  - the number of assets to be selected for testing,
  - how the assets are to be selected, and
  - who will select the assets
- That the covered services report does not include an expression of an “opinion” or “conclusion,” as described in items (o)–(p) of paragraph .34 of AT-C section 215
- The type of information to be provided to the specified parties, other than the covered services report, if any, that would be considered an “interim report” (for which the implications of use are described in the release)
- That the covered services report and practitioner may not be referred to in an unauthorized manner (for example, referred to in the ABS offering document)
- The party responsible for posting Form 15E on the applicable Rule 17g-5 website or equivalent (for example, Electronic Municipal Market Access [EMMA] for municipal securities; see paragraph 63 of this SOP regarding municipal issuers of rated ABS) (the underwriter, rather than the engaging party or responsible party, as appropriate, may be responsible for Form ABS-15G and Form 15E requirements)
- How the description of the procedures performed and any related findings will be included in Form ABS-15G

- Identification by the engaging party or responsible party, as applicable, of personally identifiable information and other information that is deemed to be confidential in nature (collectively referred to as “sensitive information” for the purpose of this SOP) and how, or if, such information will be disclosed in the covered services report, Form ABS-15G, or Form 15E
- If applicable, that any covered services are not intended to satisfy any criteria for due diligence published by an NRSRO
- The amount of time that will be necessary to complete the covered services and the date the practitioner expects to deliver the covered services report to the engaging party
- If applicable, that the covered services report is not intended for distribution to parties other than those specified in the report, when the report is included or referenced in Form ABS-15G or Form 15E (see paragraph 52 of this SOP)
- If applicable, that the covered services report is intended solely for the information and use of the specified parties and is not intended to be, and should not be, used by anyone other than the specified parties that may have access to the covered services report (for example, a rating agency or investor) (see paragraph 50 of this SOP)
- If applicable, which of the AUP performed by the practitioner are considered covered services (see paragraph 12 of this SOP)
- If the engaging party is not the responsible party, that the responsible party will provide any written representations requested by the practitioner

**21.** In ABS transactions covered by this SOP, the determination of the responsible party can be complex and may require professional judgment. ABS transactions include different asset classes, different structural arrangements, and multiple parties participating in the transaction, commonly a sponsor, loan seller, depositor, issuing entity, and underwriter. In addition, such parties may be acting as a principal or agent on behalf of other parties to the transaction based on the transaction agreements. When the engaging party may not be the responsible party, careful consideration is needed in determining who will be deemed the responsible party. Gaining an understanding of the roles and responsibilities of the parties to the transaction may be helpful in identifying the responsible party. Reading draft legal agreements and ABS offering document(s), holding discussions with relevant parties, and considering the roles and responsibilities of the responsible party identified in paragraph .08 of AT-C Preface, “Preface to the Attestation Standards,” may further assist in identifying the responsible party. Furthermore, the definition of *responsible party* in AT-C section 105 indicates that the responsible party is the party responsible for the subject matter, which is a party other than the practitioner. If the nature of the subject matter is such that no such party exists, a party who has a reasonable basis for making a written assertion about the subject matter may be deemed to be the responsible party. Therefore, although the practitioner is not required to obtain an assertion from the responsible party, requesting or obtaining an assertion may assist the practitioner in determining who the responsible party is. For example, the responsible party (the appropriate party to make an assertion, if an assertion were requested) may be the party who owns the

loans at the time of the performance of the procedures (e.g., loan seller, sponsor) or the depositor or issuer of the securities or purchaser of the loans. Practitioners may come to different conclusions as to which party is deemed to be the responsible party, based on the particular circumstances and the practitioner's professional judgment.

## **Subject Matter and Procedures to Be Performed**

**22.** Paragraph .02 of AT-C section 215 states in part, "Because the needs of an engaging party may vary widely, the nature, timing, and extent of the agreed-upon procedures and findings may vary, as well." Paragraph .03 of AT-C section 215 states in part, "Because the engaging party best understands its own needs, the engaging party is required to agree to the procedures and acknowledge that the procedures performed are appropriate for the intended purpose of the engagement prior to issuance of the practitioner's agreed-upon procedures report. Engagement circumstances may be such that it is appropriate for parties in addition to the engaging party to agree to the procedures and acknowledge that the procedures performed are appropriate for their purposes."

**23.** AT section 215 does not require that any users of the practitioner's report in addition to the engaging party agree to the procedures performed and acknowledge the appropriateness of the procedures for the purpose of the engagement (or for their purposes). However, paragraph .A13 of AT-C section 215 indicates that if a contract requires that an AUP engagement be performed to satisfy the obligations or expectations of the parties to the contract, unless the procedures, or a detailed description of the nature of the procedures, are included in the contract, all intended users of the practitioner's AUP report ordinarily would agree to the procedures and acknowledge that the procedures performed are appropriate for their purposes. Paragraph .A14 of AT-C section 215 indicates that an example of this situation is a practitioner engaged to perform procedures relating to a securitization transaction. Paragraph .A14 goes on to state that, in such circumstances, the practitioner and engaging party may identify other parties, such as underwriters, to request to agree to the procedures and acknowledge that the procedures performed are appropriate for their purposes. Based on paragraphs .A13–.A14 of AT-C section 215, when performing covered services, the practitioner ordinarily would request that all intended users of the practitioner's AUP report also agree to the procedures and acknowledge that the procedures performed are appropriate for their purposes. The following are examples of factors to consider in determining whether and which parties other than the engaging party would be asked to agree to the procedures in a covered services engagement:

- The fact that it is market practice to do so
- The role of the other parties — for example, an underwriter, asset contributor, or trustee — such that it is appropriate and expected to obtain agreement from other intended users
- The nature and extent of the procedures
- The nature of the subject matter; for example, type or source of loan attributes included in the data file

**24.** Covered services are typically performed as of a specified date on either a sample or on the entire pool of financial assets that will be securitized. The specifics of date and population are to be determined by the engaging party and, if applicable, the other specified parties.

**25.** The characteristics subjected to the covered services procedures are agreed upon by the engaging party and, if applicable, other specified parties. In a covered services engagement, the practitioner has no responsibility to determine whether the characteristics have implications for the future performance of the assets, underwritten value of the assets, credit quality of the assets, likelihood of return to investors, or any other implications related to the assets or the related asset-backed securities.

**26.** In most cases, the intended purpose of covered services is principally to assist users of the report in assessing the accuracy of the data file. The procedures performed by the practitioner generally consist of comparing information about the assets contained in a data file provided by, or on behalf of, the responsible party, to the corresponding information contained in, or calculated using information contained in, copies of various third-party documents relating to the assets including, but not limited to, contracts, mortgages, notes, appraisals, and lease agreements also provided by, or on behalf of, the responsible party (the source documents). The practitioner is not required to perform any procedures on, and is not responsible for, the accuracy, completeness, or reasonableness of the information contained in the source documents and the data file, except as it relates to procedures described as having been performed in the covered services report. However, as explained in paragraph .40 of AT-C section 215, the practitioner is responsible for appropriately responding to matters that come to the practitioner's attention by means other than the application of the procedures that significantly contradict the subject matter — for example, a source document that appears to be fictitiously developed. As indicated in paragraph .43 of AT-C section 105, the practitioner is required to maintain professional skepticism.

**27.** Under certain circumstances, the engaging party and, if applicable, other specified parties may agree on the use of specified thresholds for reporting exceptions when performing the covered services. Such thresholds are the responsibility of the engaging party and, if applicable, the other specified parties, and if applicable should be included in the covered services report, as required by paragraph .34m of AT-C section 215.

## **Written Representations**

**28.** Written representations primarily provide confirmation of the appropriate party's oral representations obtained during the engagement and are intended to reduce the possibility of a misunderstanding. Paragraph .27 of AT-C section 215 requires the practitioner to request from the engaging party written representations in the form of a letter addressed to the practitioner. Such written representations are requested for each covered services report issued. Paragraph .29 of AT-C section 215 requires that the date of the written representations be as of the date of the practitioner's covered services report.

**29.** When the engaging party is not the responsible party, paragraph .28 of AT-C section 215 requires the practitioner to consider requesting the relevant written representations in paragraph .27 of AT-C section 215 from the responsible party. For example, if the practitioner is relying on certain

representations made by the responsible party and does not have a contract or written agreement with the responsible party, the practitioner may find it appropriate to require the responsible party to provide written representations prior to issuing the practitioner's report. The practitioner may conclude that written representations from the responsible party are necessary, for example, when the practitioner is relying on documentation and oral representations made by the responsible party during the engagement. Written confirmation of oral representations reduces the possibility of misunderstandings between the practitioner and the responsible party.

**30.** As indicated in paragraph .30 of AT-C section 215, when one or more of the written representations that the practitioner has requested are not provided, or the practitioner concludes there is sufficient doubt about the competence, integrity, ethical values, or diligence of those providing the written representations, or the practitioner concludes that the written representations are otherwise not reliable, the practitioner is required to do the following:

- a. Discuss the matter with the engaging party or responsible party, as applicable.
- b. Reevaluate the integrity of those from whom the representations were requested or received and evaluate the effect that this may have on the reliability of representations and evidence in general.
- c. If any of the matters are not resolved to the practitioner's satisfaction, take appropriate action, including determining the possible effect on the practitioner's covered services report.

Paragraph .A45 of AT-C section 215 indicates that appropriate actions the practitioner may consider in the circumstances described in paragraph .30c include

- determining the effect on the practitioner's report, including whether to restrict the use of the practitioner's report or whether to disclose in the practitioner's report that the engaging party or the responsible party did not provide one or more of the requested written representations
- withdrawing from the engagement

**31.** The representations that a practitioner deems appropriate will depend on the specific nature of the engagement. In addition to the required representations in paragraph .27 of AT-C section 215, the practitioner may consider requesting the following representations from the appropriate party:

- a. The information included in the data file provided related to the characteristics of the securitized assets is complete and accurate.
- b. The covered services are not intended to satisfy any criteria for due diligence published by an NRSRO, if applicable.
- c. The responsible party or another appropriate party is responsible for compliance with the regulations under Rule 15Ga-2 and Rule 17g-10, as appropriate.

- d.* The responsible party or another appropriate party is responsible for the accuracy, completeness, and furnishing of Form ABS-15G, if applicable, and the posting of Form 15E to the Rule 17g-5 website, as appropriate.
- e.* The appropriate party has disclosed to the practitioner any knowledge of any actual, suspected, or alleged noncompliance with the laws and regulations affecting the data file.
- f.* Whether the procedures include those performed for the purpose of reporting findings with respect to the following:
  - i.* The conformity of the origination of the assets to, or derivation from, stated underwritings or credit extension guidelines, standards, criteria, or other requirements
  - ii.* The value of the collateral securing the assets
  - iii.* Compliance by the originator of the collateral obligations with federal, state, or local laws or regulations
  - iv.* Any other factor or characteristic of the assets that would be material to the likelihood that the issuer of the ABS will pay interest and principal in accordance with the applicable terms and conditions
- g.* Whether any information is deemed to be sensitive information by the responsible party or another appropriate party based on the provisions specified in the engagement letter or other suitable form of written agreement.
- h.* The responsible party is responsible for any assumptions, methodologies, and instructions provided by the responsible party or another appropriate party on behalf of the responsible party.
- i.* The appropriate party has disclosed to the practitioner any known events subsequent to the practitioner receiving the data file that would have a material impact on the data file.

**32.** The release indicates both that

- the issuer, sponsor, or underwriter of any rated ABS will make publicly available the findings and conclusions of any covered services report obtained by the issuer, sponsor, or underwriter; and that
- the disclosure of the findings and conclusions includes, but is not limited to, disclosure of the criteria against which the assets were evaluated, and how the evaluated assets compare to those criteria, along with the basis.

For that reason, the practitioner may obtain a written representation from the appropriate party that the evaluated assets are in accordance with the criteria against which the assets were evaluated.

## **Reporting Considerations**

### **Content of the Practitioner's Agreed-Upon Procedures Report**

**33.** Paragraph .34 of AT-C section 215 identifies the required elements of a practitioner's AUP report. Appendix A of this SOP contains an illustrative covered services report and paragraphs 34–39 of this SOP provide further guidance with respect to a covered services report.

### **General**

**34.** SEC Rules 15Ga-2 and 17g-10 require the disclosure in Form 15E and Form ABS-15G, as applicable, of the procedures or findings, or both, of the practitioner's covered services. As described in items (k) and (l) of paragraph .34 of AT-C section 215, the practitioner's report is required to include a description of the procedures performed (or referenced thereto) and related findings.

### **Findings**

**35.** Paragraphs .24–.25 of AT-C section 215 require a practitioner to present the results of applying procedures in the form of findings, and to report all findings from the application of the procedures. For certain covered services engagements, particularly for AUP engagements in which the practitioner performs procedures on a sample of assets in the pool that will be securitized, it is common practice for the practitioner to report all individual findings in the AUP report, regardless of whether the data file was later revised. For certain other covered services engagements, such as those in which procedures are performed on the entire pool of financial assets that will be securitized, it is common practice for the practitioner to perform procedures on a preliminary data file, which would then be updated based on the differences identified. For these engagements, the findings reported in the AUP report would be the results of performing procedures on the final data file.

**36.** It would not be appropriate for the practitioner to modify the agreed-upon procedures to circumvent reporting a finding. However, including disclosure in the report when the responsible party has revised the subject matter as a result of initial differences identified from procedures performed by the practitioner may prevent information in the report from being misleading. As addressed in paragraph .A47 of AT-C section 215, in such instances, the report may indicate that the subject matter was revised as a result of initial differences identified from the procedures performed and that the practitioner reported findings based on the final subject matter. See paragraph 54 of this SOP for illustrative language for this disclosure.

### **Dating of the Report**

**37.** As stated in paragraph .34w of AT-C section 215, the attestation standards require that the date of the practitioner's report be no earlier than the date on which the practitioner completed the procedures and determined the findings, including that



- a. the attestation documentation has been reviewed;<sup>6</sup> and
- b. if applicable, the written presentation of the subject matter has been prepared.

**38.** Paragraph .42a of AT-C section 105 also requires that the covered services report not be released prior to the completion of the engagement quality control review, if applicable.

**39.** The practitioner is permitted to reference other dates in the report, such as in the report title or subject line (if different from the date of the covered services report; for example, the date of the pricing for the transaction).

### **Form 15E and Covered Services Reports**

**40.** Paragraph .34 of AT-C section 215 describes the required elements of the practitioner's covered services report, which includes the procedures performed (or reference thereto) and related findings. The instructions on Form 15E allow the practitioner to address the requested items on the form or by referring to the attached practitioner's report. To the extent that the practitioner intends to refer to the practitioner's report when completing Form 15E, the practitioner is responsible for determining that the procedures and findings described in the covered services report include, where relevant, the topics identified in Item 4 of Form 15E, which are described in the release as follows:<sup>7</sup>

- a. The type of assets that were reviewed
- b. The sample size of the assets reviewed
- c. How the sample size was determined and, if applicable, computed
- d. Whether the accuracy of information or data about the assets provided, directly or indirectly, by the securitizer or originator of the assets was reviewed and, if so, how the review was conducted
- e. Whether the conformity of the origination of the assets to stated underwriting or credit extension guidelines, standards, criteria, or other requirements was reviewed and, if so, how the review was conducted
- f. Whether the value of collateral securing such assets was reviewed and, if so, how the review was conducted
- g. Whether the compliance of the originator of the assets with federal, state, and local laws and regulations was reviewed and, if so, how the review was conducted

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<sup>6</sup> Documentation requirements for an agreed-upon procedures engagement are included in paragraph .42 of AT-C section 215.

<sup>7</sup> Pages 410–411 of the release outline these Item 4 requirements.

*h.* Any other type of review that was part of the due diligence services conducted by the person executing this form

**41.** Item 5 of Form 15E requires that the practitioner provide a summary of findings and conclusions that is sufficiently detailed. When referring to the attached practitioner’s report, the covered services report should include all findings that resulted from the covered services, which fulfills the practitioner obligation under Item 5.<sup>8</sup>

**42.** If the practitioner does not intend to refer to the covered services report in Form 15E, then all the information required under Item 4 of Form 15E (see paragraph 41 of this SOP) should be included in the covered services report. Item 4 of Form 15E indicates that the description of the scope and manner of the covered services performed should be sufficiently detailed to provide an understanding of the steps taken in performing the engagement.

**43.** Item 5 of Form 15E requires that the person providing covered services provide a summary of the findings that resulted from the covered services that is sufficiently detailed to provide an understanding of the findings that were conveyed to the engaging party.<sup>9</sup>

**44.** In the release,<sup>10</sup> the SEC acknowledges that 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. Additionally, the SEC acknowledges in the release that 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 SEC would not object to the inclusion of the same description in the written certifications on Form 15E required under Rule 17g-10.

**45.** Based on the SEC guidance described in paragraph 44 of this SOP, a practitioner may clarify on Form 15E that the procedures performed did not constitute an examination or review conducted under the attestation standards, as described in paragraph 49 of this SOP.

**46.** The practitioner may also consider whether to include additional information in Form 15E that could assist the reader in understanding the scope of procedures performed and any corresponding

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<sup>8</sup> Page 412 of the release states that “As proposed, Item 5 of the form would require the provider of third-party due diligence services to provide a summary of the findings and conclusions that resulted from the due diligence services that is sufficiently detailed to provide an understanding of the findings and conclusions that were conveyed to the person identified in Item 2 (that is, conveyed to the issuer, underwriter, or NRSRO that employed the third party to perform due diligence services).”

<sup>9</sup> See footnote 8.

<sup>10</sup> Page 400 of the release states that “[t]he 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 Form ABS Due Diligence-15E required under Rule 17g-10.”

limitations of services. This may be accomplished by including certain elements of the covered services report in Form 15E or by attaching the complete covered services report to Form 15E.

**47.** A practitioner engaged to provide covered services will be deemed to have satisfied its obligations under Section 15E(s)(4)(B) of the Exchange Act (*Commerce and Trade, U.S. Code* [USC] 15, Section 78o-7(s)(4)(B)) if the practitioner promptly delivers an executed Form 15E after completion of the covered services to the following:

- a. An NRSRO that provided a written request for Form 15E either prior to or after the completion of the covered services stating that the services relate to a credit rating the NRSRO is producing, as applicable
- b. The issuer, sponsor, or underwriter of the ABS for which the covered services relate that maintains the Rule 17g-5 website with respect to the ABS pursuant to Section 240.17g-5(a)(3) of the Exchange Act

**48.** Form 15E is required to be certified, as defined in the release.<sup>11</sup> The certification will include the person/firm providing the third-party due diligence services in Item 1 of Form 15E (in most cases, the firm), the printed name of an individual who is duly authorized by the person/firm identified in Item 1 of Form 15E to make such a certification on the covered services, and the signature of such person. The individual identified on Form 15E need not be the same individual authorizing the firm signature on the covered services report.

**49.** Paragraph .18 of AT-C section 105 states that if the practitioner is required by law or regulation to use a specific layout, form, or wording of the practitioner's report and the prescribed form of report is not acceptable or would cause a practitioner to make a statement that the practitioner has no basis to make, the practitioner should reword the prescribed form of report or attach an appropriately worded separate report. In this instance, Form 15E includes a section for "Summary of findings and conclusions of review" that is not consistent with paragraph .34p of AT-C section 215, which requires that the practitioner's report include a statement that the practitioner does not express an opinion or conclusion in an agreed-upon procedures engagement. This statement is not included in Form 15E. Therefore, rather than rewording the prescribed SEC form, a practitioner may consider stating on Form 15E that there are no conclusions that resulted from the covered services performed, and that the procedures performed did not constitute an examination or review in accordance with paragraph .34o of AT-C section 215. An illustrative Form 15E is presented in appendix B, "Illustrative Form ABS Due Diligence-15E," of this SOP.

### **Restricted Use**

**50.** Although AT-C section 215 does not require the practitioner to restrict the use of a practitioner's AUP report, paragraph .35 of AT-C section 215 requires the practitioner to consider restricting the use of

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<sup>11</sup> Section 240.17g-10(b) of the Securities Exchange Act of 1934, as amended, states that "the written certification must be signed by an individual who is duly authorized by the person providing the third-party due diligence services to make such a certification."

the report after taking into account the intended purpose of the engagement and the intended users of the practitioner's AUP report. Because a covered services report, when attached to Form ABS-15G, will be available to the general public under the SEC EDGAR system, but is intended solely for use by the parties specified in the report and is not intended to be used by any other parties (for example, NRSROs and investors), the practitioner ordinarily would restrict the use of the report. This is consistent with the application guidance in paragraph .A65 of AT-C section 215, which provides examples of situations in which the practitioner, using professional judgment, may decide to include an alert that restricts the use of the report. One such example is when procedures are performed on subject matter that is intended to be used by, or is only available to, a limited number of parties, which generally is the nature of the subject matter in a covered services engagement. When restricting the use of the practitioner's AUP report, an alert is included in a separate paragraph of the report. As required by paragraph .36 of AT-C section 215, the alert should

- a. state that the practitioner's report is intended solely for the information and use of the specified parties.
- b. identify the specified parties for whom use is intended.
- c. state that the report is not intended to be, and should not be, used by anyone other than the specified parties.

The following is an example of the alert that would be added to the practitioner's covered services report:

This report is intended solely for the information and use of the specified parties identified in this report. It is not intended to be and should not be used by anyone other than the specified parties, including investors and rating agencies, who are not specified parties but who may have access to this report as required by law or regulation.

### **Statement in the Report That the Practitioner Did Not Agree to the Appropriateness of the Procedures**

**51.** In addition, because the covered services report will be available to the general public under the SEC EDGAR system via Form ABS-15G and from the NRSROs via Form 15E, and to address the risk that report users may incorrectly conclude that the practitioner has determined that the procedures performed are appropriate for the intended purpose of the engagement or for any other purpose, paragraph .A54 of AT-C section 215 indicates that a practitioner may make an explicit statement in the report that the practitioner makes no representation regarding the appropriateness of the procedures either for the purpose for which the practitioner's report has been requested or for any other purpose. The following is an example of such a statement:

The appropriateness of these procedures for the intended purpose is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the appropriateness of the procedures enumerated in [*location of procedure description*] either for the purpose for which this report has been requested or for any other purpose.

## Explanatory Language

**52.** Because the covered services report will be available to the general public under the SEC EDGAR system via Form ABS-15G and from the NRSROs via Form 15E, the practitioner may consider adding language to further clarify what the covered services report does not address. For example, the practitioner may indicate any or all of the following:

- The covered services report is not intended to address one or more of the following items (if applicable):
  - The conformity of the origination of the assets to stated underwriting or credit extension guidelines, standards, criteria, or other requirements
  - The value of collateral securing such assets
  - The compliance of the originator of the assets with federal, state, and local laws and regulations
  - Any criteria for due diligence published by an NRSRO
- Any other asset factor or characteristic, not subjected to procedures, that would be material to the likelihood that the issuer of the ABS will pay interest and principal in accordance with applicable terms and conditions.
- The practitioner is not responsible for, and has not agreed to, the appropriateness of the procedures for the intended purpose.
- The practitioner has no responsibility to update the covered services report for events and circumstances occurring after the [*issuance*] or [*as of*] [*period-end date*].
- Procedures were not performed to determine whether the originator of the assets complied with federal, state, or local laws or regulations.
- The responsible party is responsible for the source documents,<sup>12</sup> and as such, the practitioner has not performed procedures, or made any representation as to, the accuracy, completeness, or reasonableness of the source documents.

The practitioner may add other items to the report that are not precluded by the attestation standards (for example, that the practitioner used a nonstatistical sampling approach and that there is a risk that the items selected were not representative of the population).

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<sup>12</sup> The glossary of this SOP defines *source documents* as various documents provided by or on behalf of the responsible party for the purpose of comparing or calculating information related to asset characteristics selected by the responsible party. The documents typically include, but are not limited to, copies of contracts, mortgages, notes, appraisals, and lease agreements.

## **Distribution of the Report**

**53.** Paragraph .A69 of AT-C section 215 indicates that a practitioner is not responsible for controlling, and cannot control, the distribution of the practitioner's report after its release. A practitioner may consider informing the engaging party or other specified parties that the practitioner's report is not intended for distribution to parties other than those specified in the practitioner's report. The practitioner may, in connection with establishing the terms of the engagement, reach an understanding with the engaging party that the intended use of the practitioner's report will be restricted and may obtain the engaging party's agreement that the engaging party and specified parties will not distribute such practitioner's report to parties other than those identified therein.

## **Disclosure That Practitioner Performed Procedures on Preliminary Subject Matter**

**54.** As discussed in paragraphs 35 and 36 of this SOP, in instances in which procedures are performed on the entire pool of financial assets that will be securitized, the practitioner may initially perform certain procedures on preliminary subject matter (for example, the data file) prior to performing the agreed-upon procedures on the final subject matter. In some situations, performing procedures on the preliminary subject matter identifies differences that are communicated to the appropriate party, resulting in changes to the subject matter. In such situations, in meeting the requirement to disclose the procedures performed, the practitioner may determine it is appropriate to disclose the practitioner's involvement with the preliminary subject matter in order for the practitioner's report to not be misleading. If such a determination is made, the following are examples of language that could be included in the report: Prior to performing the procedures [*identify the procedures; for example, set forth below / in attachment X / in this report*] on the data file, we performed certain procedures on earlier versions of the data file and provided the identified differences to the [*identify the appropriate party*], who then provided us with the final data file on which the above procedures were performed.

- a. In performing this engagement, we received one or more preliminary data files related to procedures [*identify the procedures; for example, procedures 1–5, 9, 17, and 24*] and performed the procedures [*identify the procedures; for example, as set forth below / in attachment X / in this report*]. The procedures identified differences, which were communicated to [*identify the appropriate party*]. [*Identify the appropriate party*] revised one or more of the [*data files*] based on such communicated differences, where they determined it to be appropriate. We performed the procedures on the final data file, and the results of those procedures are reflected herein.
- b. Between [*identify the date of the first data file*] and [*identify the date of the last data file*], we received one or more data files on which to perform our procedures. In performing a comparison of the attributes in the preliminary data file(s) to the corresponding information set forth in the source documents, we identified differences, which were communicated to [*identify the appropriate party*]. The final data file reflects the resolution of differences communicated as determined appropriate by [*identify the appropriate party*]. We performed the procedures on the final data file, and the results of those procedures are reflected herein.

## **Sensitive Information**

**55.** The “Confidential Client Information Rule” (ET sec. 1.700.001) of the AICPA Code of Professional Conduct states that a member in public practice shall not disclose any confidential client information without the specific consent of the client. Because engagement documentation and, in certain cases, the covered services report prepared by a practitioner often contain sensitive information, the practitioner should adopt reasonable procedures to maintain the confidentiality of that information, as stated in paragraph .39 of AT-C section 105. The following are examples of procedures the practitioner may perform to mitigate the risk that such sensitive information is publicly disclosed:

- Writing the covered services report in a manner that does not disclose sensitive information
- Summarizing the information where appropriate so that sensitive information is not disclosed
- Creating two versions of the exhibit of findings: one detailed version that includes sensitive information, which is provided only to the specified parties for their purposes; and a more summarized version that excludes any sensitive information and is available for Form ABS-15G and Form 15E postings (the practitioner cautiously summarizes the information to avoid altering the meaning of the finding)
- Redacting sensitive information contained in the covered services report attached to Form ABS-15G and Form 15E (cautious redaction of the information is needed to avoid altering the meaning of the findings)

## **Reissuing a Covered Services Report**

**56.** Practitioners do not have responsibilities subsequent to the issuance of the covered services report. However, practitioners may be requested to reissue a covered services report for various reasons. For example, the composition of the portfolio has changed, requiring additional procedures; or an item needing a correction may be identified after the covered services report has been issued. In this instance, the practitioner may agree to a new or amended covered services report that would be provided to the engaging party and, if applicable, other specified parties. Practitioners may consider whether the changes to the covered services report would require that a new Form 15E be completed. In determining whether to complete a new Form 15E along with the reissued covered services report, some considerations include whether

- the information that the practitioner provided in Form 15E remains correct and complete (for example, if a subsequently discovered fact is brought to the practitioner’s attention that if known at the time of the issuance of Form 15E would have affected the information required by Form 15E, it will likely result in a reissued Form 15E);
- there are changes to the procedures, findings, or any of the attributes in Item 4 of Form 15E that need to be reflected in an updated covered services report; and

- the issuer, sponsor, or underwriter will furnish a new Form ABS-15G with the reissued covered services report, resulting in two versions of the practitioner's report being publicly available.

**57.** If the practitioner determines that a new or amended covered services report is to be issued, the practitioner may consider communicating the rationale in writing to the engaging party and, if applicable, other specified parties. Such communication would make it clear that the new or amended covered services report supersedes the initial covered services report. The practitioner may provide the engaging party with another Form 15E that will have the new or amended covered services report attached. Such Form 15E would include wording that Form 15E is being submitted for the amended report, which supersedes the covered services report submitted with the previously issued Form 15E. Both Form 15E and the new or amended covered services report may include wording that states the reason that the new or amended covered services report has been issued, and that the previously issued covered services report should no longer be used or relied upon.

The following is an example of the wording for the new or amended covered services report:

On *[date of previously issued covered services report being rescinded]*, we issued an independent accountants' report on applying agreed-upon procedures relating to certain information with respect to a portfolio of *[describe the assets being securitized; for example, consumer loans, commercial real estate loans, auto leases]*. *[Responsible party]* informed us that *[describe the circumstances that are causing the reissuance of the practitioner's report; for example, the composition of the portfolio changed, the deal name changed, the cutoff date changed]* and requested that a new report be issued. The independent accountants' report on applying agreed-upon procedures described herein supersedes the report issued on *[date of previously issued covered services report being rescinded]*. Furthermore, the specified parties have been instructed to no longer use or rely upon the report issued on *[date of previously issued covered services report being rescinded]*.

The following is an example of the wording for Form 15E with the new or amended report:

This Form ABS Due Diligence-15E supersedes our Form ABS Due Diligence-15E dated *[date of previously issued covered services report being rescinded]* pertaining to *[full deal name]*. Since Form ABS Due Diligence-15E dated *[date of previously issued covered services report]* was issued, *[describe the reasons that are causing the report to be reissued]*. Therefore, we have issued the attached independent accountant's report on applying agreed-upon procedures dated *[date of new covered services report]* pertaining to *[full deal name]*. The previously issued independent accountants' report on applying agreed-upon procedures should no longer be used or relied upon by the specified parties.

### **Adding a Specified Party**

**58.** When the practitioner issues a covered services report that includes an alert restricting the use of the practitioner's report to certain specified parties, and the engaging party subsequently requests the practitioner to add an additional party as a specified party, paragraph .37 of AT-C section 215 requires the practitioner to determine whether to add the additional party as a specified party. As part of this determination, the practitioner is required to consider whether



- a. the proposed additional specified party has acknowledged or will be requested to acknowledge that the procedures performed are appropriate for their purpose. If the practitioner determines that the acknowledgment is necessary, the practitioner should either obtain such acknowledgment directly from the additional specified party or obtain a representation from the engaging party that the additional specified party has agreed to the procedures and acknowledged that the procedures performed are appropriate for their purposes and
- b. the report will be reissued to identify the additional specified party.

The practitioner may agree to add the other party as a specified party based on the practitioner's consideration of factors such as the identity of the other parties and the intended use of the practitioner's report.

**59.** The practitioner is not required to reissue the covered services report to identify any additional specified parties included in the alert that restricts the use of the report or, if applicable, to indicate that the additional specified party agreed to and acknowledged the appropriateness of the procedures for their purposes. If the practitioner's report is reissued, the practitioner is not required to change the date of the report. If the practitioner provides a written acknowledgment to the engaging party and the additional party that such party has been added as a specified party, paragraph .38 of AT-C section 215 requires the practitioner to state in the acknowledgment that no procedures were performed subsequent to the original date of the practitioner's AUP report.

## **Form ABS-15G**

**60.** The issuer, sponsor, or underwriter's Form ABS-15G must contain the "findings and conclusions" of any covered services report obtained by the issuer, sponsor, or underwriter, as well as the criteria against which the assets were evaluated and how the evaluated assets compare to those criteria. As such, the practitioner and the engaging party may consider the following:

- a. Reaching agreement that the issuer, sponsor, or underwriter will attach the practitioner's covered services report to Form ABS-15G, and that the issuer, sponsor, or underwriter may not alter in any way or summarize the covered services report provided by the practitioner (except in certain cases with respect to the removal or redaction of sensitive information in the covered services report attached to Form ABS-15G, when agreed to by the practitioner). (See paragraph 55 of this SOP for a discussion of sensitive information.)
- b. If the issuer, sponsor, or underwriter will not attach the practitioner's covered services report to Form ABS-15G and instead references the practitioner's covered services or summarizes the covered services report, the practitioner and engaging party may agree that the practitioner will be provided with an opportunity to review the issuer, sponsor, or underwriter's Form ABS-15G prior to submission in order to determine whether it accurately describes the covered services and related findings, if any.

**61.** Consistent with the attestation standards, procedures and findings of the practitioner are not considered part of any report until all such standards are met and the report is signed and released. Therefore, draft, unsigned versions of the covered services report provided to the issuer, sponsor, or underwriters prior to the issuance of the final, signed covered services report are not typically considered “interim” reports and should not be attached to Form ABS-15G.<sup>13</sup>

**62.** Typically, Form ABS-15G will be furnished through the EDGAR system either prior to or at the same time Form 15E is posted to the Rule 17g-5 website.

### **Exception Related to Municipal Issuers**

**63.** Form ABS-15G is not required to be furnished to EDGAR by municipal issuers of rated ABS. Municipal issuers are required to make such information available through any means reasonably accessible to the public, including, for example, by posting the information on an issuer-, sponsor-, or underwriter-sponsored website, by voluntarily furnishing Form ABS-15G on EDGAR, or by voluntarily submitting a Form ABS-15G on EMMA.<sup>14</sup> Practitioners follow the same guidelines herein for Form ABS-15G, regardless of the type of securitized assets.

### **Exception Related to Certain Foreign-Based ABS Issuances**

**64.** Certain foreign issuances (that is, certain non-U.S. transactions) are exempt from the release requirements related to Form ABS-15G and Form 15E if the following conditions are met:<sup>15</sup>

- a. The offering is not required to be, and is not, registered under the Securities Act of 1933, as amended (the Securities Act).
- b. The issuer of the rated security is not a U.S. person (as defined under Securities Act Rule 902(k)).
- c. The security issued by the issuer will be offered and sold upon issuance, and any underwriter or arranger linked to the security will effect transactions of the security after issuance, only in transactions that occur outside the United States.

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<sup>13</sup> Page 374 of the release states, in part, “... all third-party due diligence reports obtained by the issuer or underwriter, including interim reports, related to an offering of asset-backed securities should be made publicly available in order for users of credit ratings to more thoroughly evaluate the level of due diligence obtained by the issuer or underwriter as compared to the due diligence services used by an NRSRO rating the Exchange Act-ABS.” Reports that are not considered final due diligence reports or interim reports do not result in a Form ABS-15G filing.

<sup>14</sup> Page 382 of the release states that “Consequently, although municipal issuers and underwriters will not be required to furnish Form ABS-15G pursuant to Rule 15Ga-2, they are subject to the statutory requirement under Section 15E(s)(4)(A) to make publicly available the findings and conclusions of any third-party due diligence report they obtain. Municipal issuers and underwriters may make such information available through any means reasonably accessible to the public, including, for example, by posting the information on an issuer or underwriter sponsored Internet website, by voluntarily furnishing Form ABS-15G on EDGAR, or by voluntarily submitting a Form ABS-15G on EMMA.”

<sup>15</sup> Page 370 of the release.

### **Considerations Regarding EDGAR**

**65.** As noted previously, a covered services report may be attached to a Form ABS-15G furnished through the EDGAR system. The EDGAR system does not currently allow files in PDF format. A handwritten or electronic signature included in non-PDF format on EDGAR may be easily obtained by a third party from the publicly available report. Therefore, practitioners may consider using a conformed signature on the covered services report that is attached to Form ABS-15G (for example, /s/ Firm Name). Practitioners may consider implementing procedures to reconcile the final posted Form ABS-15G with the document provided to the responsible party to determine that the covered services report has not been modified.

### **Effective Date**

**66.** This SOP is effective for AUP reports dated on or after July 15, 2021. Early implementation is permitted.

## Appendix A — Illustrative Covered Services Report

The following is an illustrative practitioner’s report for the AUP engagement described in this SOP. It is illustrative only and is not intended to be applicable to, or comprehensive for, all engagements. Accordingly, it may not include items that are relevant to a specific engagement and therefore would be tailored to the facts and circumstances of the particular engagement.

Circumstances include the following:

- Use of the report is restricted to the specified parties (for example, underwriters).
- The report includes additional language acknowledging the appropriateness of the procedures for the intended purpose and the limitations of the procedures performed.
- Other parties have agreed to and acknowledged that the procedures performed are appropriate for their purposes.

### **Independent Accountant’s Report on Applying [Agreed-Upon] Procedures**

*[Appropriate Addressee]*

We have performed the procedures enumerated in Attachment A, on *[identify the subject matter; for example, certain information with respect to attributes of the (identify the asset type) relating to (name of transaction)]*. *[The responsible party, for example, XYZ Company]* is responsible for the data file accurately representing the information included in the underlying asset documents and the disclosed assumptions and methodologies.

*[The engaging party, for example, XYZ Fund]* has agreed to and acknowledged that the procedures performed are appropriate to meet the intended purpose of *[identify the intended purpose of the engagement, for example, assisting specified parties in evaluating]* *[identify the subject matter; for example, certain information with respect to attributes of the]* *[identify the asset type]* relating to *[name of transaction]*. This report may not be suitable for any other purpose. Additionally, *[identify the other parties that have agreed to and acknowledged that the procedures performed are appropriate for their purposes; for example, the Trustee of XYZ Company]* has agreed to and acknowledged that the procedures performed are appropriate for their purposes. The procedures performed may not address all the items of interest to a user of this report and may not meet the needs of all users of this report and, as such, users are responsible for determining whether the procedures performed are appropriate for their purposes.

Consequently, we make no representation regarding the appropriateness of the procedures enumerated in Attachment A either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are included in Attachment A.

We were engaged by *[identify the engaging party; for example, XYZ Fund]* to perform this agreed-upon procedures engagement and conducted our engagement in accordance with attestation standards established by the AICPA. We were not engaged to and did not conduct an examination or review, the objective of which would be the expression of an opinion or a conclusion, respectively, on *[identify the subject matter; for example, certain information with respect to the attributes of the]* *[identify asset type]* relating to *[name of transaction]*. Accordingly, we do not express such opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

*[The practitioner may include additional explanatory paragraphs to clarify the scope of the engagement, such as the following:*

Our agreed-upon procedures engagement was not conducted for the purpose of the following:

- Addressing the conformity of the origination of the assets to stated underwriting or credit extension guidelines, standards, criteria, or other requirements
- Addressing the value of collateral securing any such assets being securitized
- Addressing the compliance of the originator of the assets with federal, state, and local laws and regulations
- Satisfying any criteria for due diligence published by a nationally recognized statistical rating organization
- Addressing any other factor or characteristic of the assets that would be material to the likelihood that the issuer of the asset-backed security will pay interest and principal in accordance with applicable terms and conditions
- Forming any conclusions
- Any other terms or requirements of the transaction that do not appear in the report]

We are required to be independent of *[identify the responsible party; for example, XYZ Company]* and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of *[identify or state the specified parties]*. It is not intended to be and should not be used by anyone other than the specified parties, including investors and rating agencies who are not identified as specified parties but who may have access to this report as required by law or regulation.

*[Signature of the practitioner's firm]*

*[City and state where the practitioner's report is issued]*

*[Date of the practitioner's report]*

*[Include as an attachment an enumeration of the procedures and findings.]*

## **Attachment A — Illustrative Procedures and Findings**

Attachment A presents the procedures and findings referred to in the practitioner's AUP report. These are illustrative procedures a practitioner might perform and findings that a practitioner might report as part of the AUP engagement described in this SOP. They are not intended to be applicable to, or comprehensive for, all engagements.

1. As instructed by the sponsors, on behalf of the depositor, we randomly selected a sample of XXX mortgage loans listed on the loan file comparison data file (the data file). The sample subjected to the procedures described below are referred to as the "sample mortgage loans." For the purpose of this procedure, the sponsors, on behalf of the depositor, did not inform us as to the basis for how they selected the number of mortgage loans that we were instructed to randomly select from the data file.
2. For each sample mortgage loan, we compared the characteristics listed on Exhibit 1 (the characteristics), as shown on the data file, to the corresponding information located on the source documents listed on Exhibit 1 that were provided by the sponsors, on behalf of the depositor, subject to the qualifications, assumptions, and methodologies provided by the sponsors, on behalf of the depositor, that are stated in the notes to Exhibit 1. Except for the information shown on Exhibit 2, all such compared information was in agreement. Where recomputation was required, the recomputations are described in the notes to Exhibit 1.

## Appendix B<sup>16</sup> — Illustrative Form ABS Due Diligence-15E

The following is a Form ABS Due Diligence-15E that includes partial illustrative responses and instructions to the practitioner.

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**FORM ABS DUE DILIGENCE-15E**  
**CERTIFICATION OF PROVIDER OF THIRD-PARTY DUE DILIGENCE SERVICES FOR**  
**ASSET-BACKED SECURITIES**

Pursuant 17 CFR 240.17g-10, this Form must be used by a person providing third-party due diligence services in connection with an asset-backed security to comply with section 15E(s)(4)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(s)(4)(B)). Section 15E(s)(4)(B) of the Securities Exchange Act of 1934 requires a person providing the due diligence services to provide a written certification to any nationally recognized statistical rating organization that produces a credit rating to which such due diligence services relate.

**Item 1. Identity of the person providing third-party due diligence services**

Legal Name: *Firm legal name*

Business Name (if different):

Principal Business Address: *Firm business address*

**Item 2. Identity of the person who paid the person to provide third-party due diligence services**

Legal Name: *Engaging party legal name*

Business Name (if different):

Principal Business Address: *Engaging party business address*

**Item 3. Credit rating criteria**

If the due diligence performed by the third party is intended to satisfy the criteria for due diligence published by a nationally recognized statistical rating organization, identify the nationally recognized statistical rating organization and the title and date of the published criteria (more than one nationally recognized statistical rating organization may be identified).

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<sup>16</sup> Italicized material in this appendix is added for illustrative purposes.

*[Firm name] was not engaged to perform procedures that were intended to satisfy any criteria for due diligence published by a nationally recognized statistical rating organization.*

**Item 4. Description of the due diligence performed**

Provide a description of the scope and manner of the due diligence services performed in connection with the review of assets that is sufficiently detailed to provide an understanding of the steps taken in performing the review. Include in the description: (1) the type of assets that were reviewed; (2) the sample size of the assets reviewed; (3) how the sample size was determined and, if applicable, computed; (4) whether the accuracy of information or data about the assets provided, directly or indirectly, by the securitizer or originator of the assets was reviewed and, if so, how the review was conducted; (5) whether the conformity of the origination of the assets to stated underwriting or credit extension guidelines, standards, criteria, or other requirements was reviewed and, if so, how the review was conducted; (6) whether the value of collateral securing such assets was reviewed and, if so, how the review was conducted; (7) whether the compliance of the originator of the assets with federal, state, and local laws and regulations was reviewed and, if so, how the review was conducted; and (8) any other type of review that was part of the due diligence services conducted by the person executing this Form. This description should be attached to the Form and contain the heading “Item 4.” Provide this description regardless of whether the due diligence performed is intended to satisfy the criteria for due diligence published by a nationally recognized statistical rating organization.

*[Note to practitioner: You may either address the requested items here or as an attachment, depending on preference.]*

*The following numbered items are intended to address the numerically requested items of Item 4.*

- (1) See attached Independent Accountant’s Report on Applying Agreed-Upon Procedures dated \_\_\_\_\_ pertaining to [transaction name].*
- (2) See attached Independent Accountant’s Report on Applying Agreed-Upon Procedures dated \_\_\_\_\_ pertaining to [transaction name].*
- (3) See attached Independent Accountant’s Report on Applying Agreed-Upon Procedures dated \_\_\_\_\_ pertaining to [transaction name].*
- (4) See attached Independent Accountant’s Report on Applying Agreed-Upon Procedures dated \_\_\_\_\_ pertaining to [transaction name].*
- (5) Not applicable/addressed*
- (6) Not applicable/addressed*
- (7) Not applicable/addressed*
- (8) None*

**Item 5. Summary of findings and conclusions of review**

Provide a summary of the findings and conclusions that resulted from the due diligence services that is sufficiently detailed to provide an understanding of the findings and conclusions that were conveyed to the person identified in Item 2. This summary should be attached to the Form and contain the heading “Item 5.”

*The findings can be found in the attached Independent Accountant’s Report on Applying Agreed-Upon Procedures dated [date] pertaining to [transaction name]. Consistent with attestation standards established by the American Institute of Certified Public Accountants, there were no conclusions that resulted from the due diligence services. We were not engaged to, and did not conduct an examination to, express an opinion or a review to express a conclusion on [identify the subject matter of the engagement].*



**CERTIFICATION**

The undersigned has executed this Form ABS Due Diligence-15E on behalf of, and on the authority of, the person identified in Item 1 of the Form. The undersigned, on behalf of the person, represents that the person identified in Item 1 of the Form conducted a thorough review in performing the due diligence described in Item 4 attached to this Form and that the information and statements contained in this Form, including Items 4 and 5 attached to this Form, which are part of this Form, are accurate in all significant respects on and as of the date hereof.

*For purposes of this certification, consistent with attestation standards established by the American Institute of Certified Public Accountants, we were not engaged to, and did not conduct an examination to express an opinion or a review to express a conclusion on the [identify the subject matter of the engagement].*

Name of Person Identified in Item 1: [Firm name]

By: [Name of duly authorized person]  
(Print name of duly authorized person)

[Affix signature]  
(Signature)

Date: [Not earlier than date of the Covered Services Report]

## Appendix C — Glossary

The following is a glossary of common terms specifically relating to engagements described by this SOP.

**asset-backed security (ABS).** As defined by Section 3(a)(79) of the Securities Exchange Act of 1934, an asset-backed security (ABS) means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including the following:

- a.* A collateralized mortgage obligation
- b.* A collateralized debt obligation
- c.* A collateralized bond obligation
- d.* A collateralized debt obligation of asset-backed securities
- e.* A collateralized debt obligation of collateralized debt obligations
- f.* A security that the SEC, by rule, determines to be an asset-backed security

The definition of ABS does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company.

**characteristics.** The asset attributes selected by the responsible party on which the practitioner performs procedures. The characteristics may be subject to procedures for a sample of assets, or all, and specified in the covered services report.

**covered services.** For purposes of this SOP, procedures performed by the practitioner that are considered to be third-party due diligence services in accordance with the release. For example, comparing the information on a data file with the information contained in the hard-copy documents in a loan file is an activity that falls within the definition of due diligence services in the release.

**covered services report.** The agreed-upon procedures report issued by the practitioner resulting from covered services.

**data file.** An electronic file provided by, or on behalf of, the responsible party that comprises various characteristics of the asset(s) within the scope of the agreed-upon procedures.

**depositor.** Defined as either

- a. the entity that receives or purchases the underlying financial assets from the originator and subsequently transfers or sells the financial assets to the issuing entity;
- b. the sponsor, in the case of a securitization transaction where there is not an intermediate transfer of the assets from the sponsor to the issuing entity; or
- c. the entity that receives or purchases the underlying financial assets from the originator and subsequently transfers or sells the financial assets to the issuing entity in the case of a securitization transaction in which the entity transferring or selling the financial assets directly to the issuing entity is itself a trust.

**due diligence services.** Rule 17g-10 of the release defines due diligence services as a review of the assets underlying an asset-backed security (as defined in this glossary) for the purpose of making findings with respect to the following:

- a. The accuracy of the information or data about the assets provided, directly or indirectly, by the securitizer or originator of the assets
- b. Whether the origination of the assets conformed to, or deviated from, stated underwriting or credit extension guidelines, standards, criteria, or other requirements
- c. The value of collateral securing the assets
- d. Whether the originator of the assets complied with federal, state, or local laws or regulations
- e. Any other factor or characteristic of the assets that would be material to the likelihood that the issuer of the asset-backed security will pay interest and principal in accordance with applicable terms and conditions

**Form ABS-15G.** Asset-backed securitizer report pursuant to Section 15G of the Securities Exchange Act of 1934.

**Form ABS Due Diligence-15E.** Certification of third-party provider of due diligence services for asset-backed securities. For purposes of this SOP, this form is also referred to as Form 15E.

**issuer.** The entity that organizes and initiates the offering of the asset-backed security (for example, the sponsor or depositor).

**NRSRO.** Nationally recognized statistical rating organization.

**noncovered services.** For purposes of this SOP, procedures performed by the practitioner that are not considered to be third-party due diligence services in accordance with the release.

**originator.** An entity that

- a. through an extension of credit or otherwise, creates an asset that collateralizes an asset-backed security; and

- b. sells the asset directly or indirectly to a securitizer or issuing entity (Section 15G(a)(4) of the Securities Exchange Act of 1934 (15 USC 78o-9(a)(4))).

**release.** For purposes of this SOP, SEC Release No. 34-72936, *Nationally Recognized Statistical Rating Organizations*.

**securitizer.** With respect to a securitization transaction, this is either

- a. the depositor of the asset-backed securities (if the depositor is not the sponsor); or
- b. the sponsor of the asset-backed securities (Section 15G(a)(3) of the Securities Exchange Act of 1934 (15 USC 78o-9(a)(3))).

**sensitive information.** (1) Personally identifiable information and (2) other information that is deemed by the engaging party to be confidential in nature and does not materially alter the findings of the agreed-upon procedures engagement.

**source documents.** Various documents provided by, or on behalf of, the responsible party for the purpose of comparing or calculating information related to asset characteristics selected by the responsible party. The documents typically include, but are not limited to, copies of contracts, mortgages, notes, appraisals, and lease agreements.

**sponsor.** The entity that organizes and initiates the asset-backed securities transaction by transferring the assets underlying an asset-backed security directly or indirectly to the issuing entity.

**third-party due diligence report.** Any report containing findings and conclusions of any due diligence services performed by a practitioner.

**underwriter.** The entity that underwrites the offering of asset-backed securities and sells them to investors.

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(2021–2022)**

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