



# PRESS RELEASE

Federal Deposit Insurance Corporation • Each Depositor insured to at least \$250,000

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## **FDIC Board Adopts Proposed Interim Final Rule To Provide A Transitional Safe Harbor For All Participations And Securitizations**

**FOR IMMEDIATE RELEASE**

On November 12, 2009, the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) adopted a proposed Interim Final Rule amending 12 C.F.R. § 360.6 to provide a transitional safe harbor effective immediately for all participations and securitizations in compliance with that rule as originally adopted in 2000. In summary, the Interim Final Rule confirms that participations and securitizations completed or currently in process on or before March 31, 2010 in reliance on the FDIC's existing regulation will be 'grandfathered' and continue to be protected by the safe harbor provisions of Section 360.6 despite changes to generally accepted accounting principles adopted by the Financial Accounting Standards Board.

"The Board's action provides needed clarity to the financial markets," said FDIC Chairman Sheila C. Bair. "With changing accounting rules, we need both to ensure that participations and securitizations that have relied on our existing regulation retain that protection and to consider needed reforms for securitization going forward."

At the meeting, Chairman Bair also announced that FDIC staff would propose to the Board at its December meeting a set of conditions that securitizations initiated after March 31st must meet to receive 'safe harbor' treatment. "We have seen the problems that the 'originate to distribute' model played in the build-up to the financial crisis," Chairman Bair concluded, "and we must ensure that future securitizations do not place the Deposit Insurance Fund and our financial system in jeopardy."

The safe harbor protection provided by the Interim Final Rule continues for the life of the participation or securitization if the financial assets were transferred into the transaction



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Congress created the Federal Deposit Insurance Corporation in 1933 to restore public confidence in the nation's banking system. It promotes the safety and soundness of these institutions by identifying, monitoring and addressing risks to which they are exposed. The FDIC receives no federal tax dollars — insured financial institutions fund its operations.

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or, for revolving securitization trusts, beneficial interests were issued on or before March 31, 2010 and the participation or securitization complied with Section 360.6. Under this transitional safe harbor, the participation or securitization will comply with the Section 360.6 requirement that any transfers into the transaction meet all conditions for sale accounting treatment under generally accepted accounting principles, other than the 'legal isolation' condition, if the transfers satisfied generally accepted accounting principles in effect for reporting periods prior to November 15, 2009.

For participations and securitizations that meet those requirements, the Interim Final Rule provides that the FDIC shall not, by exercise of its authority to disaffirm or repudiate contracts, seek to reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred in connection with the securitization or participation, even if the transaction does not satisfy all conditions for sale accounting treatment under generally accepted accounting principles as effective for reporting periods after November 15, 2009. As a result, any financial assets transferred into such securitizations or participations will not be treated as property of the institution or receivership, and consequently the consent requirement of 12 USC §1821(e)(13)(C) will not apply.

Attachment:

Amendments to 12 C.F.R. § 360.6 Defining Safe Harbor Protection for Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation <http://www.fdic.gov/news/board/2009nov12no6.pdf>