



Securitized and Participations

FIL-1-99
January 7, 1999

TO: CHIEF EXECUTIVE OFFICER
SUBJECT: *Proposed Policy Statement on the Treatment of Securitized and Loan Participations After Appointment of the FDIC as Conservator or Receiver*

The FDIC Board of Directors is seeking comment of the attached proposed "Statement of Policy Regarding the Treatment of Securitized and Loan Participations Following Appointment of the FDIC as Conservator or Receiver." The proposed policy statement responds to certain legal and accounting issues affecting asset-backed securitized and loan participations entered into by insured depository institutions. The FDIC will accept comments on the proposal through March 1, 1999.

Under generally accepted accounting principles (GAAP), one criterion for a transfer of financial assets to be accounted for as a sale is the "legal isolation" of the transferred assets. Financial assets are deemed to be legally isolated when they have been placed beyond the reach of the transferor and its creditors, even in the case of the bankruptcy of or the appointment of a receiver for the transferor. Insured depository institutions, accountants, and other parties have raised questions about whether this isolation test would be satisfied for securitized and participations when the FDIC, as conservator or receiver, has the statutory power to repudiate or disaffirm the transfers. If the transferred assets are not sufficiently isolated from the insured bank or thrift, its creditors, or the receiver, the transfers would not qualify for sale treatment under GAAP and the transferred assets would continue to be reported as assets on the institution's balance sheet.

The proposed Statement of Policy responds to those questions by reassuring interested parties that, subject to certain conditions such as fraud, the FDIC, as conservator or receiver, will not seek to reclaim, recover, or recharacterize securitized financial assets or loan participations for the conservatorship or receivership. Accordingly, the policy statement should resolve the legal isolation issue for insured depository institutions. The proposed Statement of Policy confirms existing FDIC practice in dealing with securitization and loan participation transactions.

For more information, please contact Michael H. Krimminger, Senior Policy Analyst in the FDIC's Office of Policy Development (202-898-8950); Thomas Bolt, Counsel in the Legal Division (202-736-0168); or Robert Storch, Chief, Accounting Section, Division of Supervision (202-898-8906).

William F. Kroener III
General Counsel

Attachment: December 30, 1998 Federal Register, pages 71926-71928
([HTML](#) or [PDF](#), 27 Kb - [PDF help](#) or [hard copy](#))

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