



Securitized and Participations

FIL-95-99  
October 15, 1999

TO: CHIEF EXECUTIVE OFFICER  
SUBJECT: *Proposed Rule on the Treatment of Securitized and Participations Following the FDIC's Appointment as Conservator or Receiver*

The FDIC Board of Directors is seeking comment on the attached "Notice of Proposed Rulemaking Regarding the Treatment of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation Following Appointment of the FDIC as Conservator or Receiver." The FDIC will accept comments on the proposal through November 8, 1999.

The proposed rule responds to certain legal and accounting issues affecting asset-backed securitizations and participations entered into by insured depository institutions. The rule is designed to accomplish the same goals as the FDIC's proposed Statement of Policy on this subject, published in the *Federal Register* on December 30, 1998 (see FIL-1-99, dated January 7, 1999), and incorporates many of the suggestions received in response to that publication. With publication of the proposed rule, the proposed Statement of Policy has been withdrawn (withdrawal notice is attached).

Under generally accepted accounting principles (GAAP), one of the criteria 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 securitizations and participations when the FDIC, as conservator or receiver, has the statutory power to repudiate or disaffirm the transfers under 12 U.S.C. § 1821(e). 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 rule 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 as property of the institution or the receivership financial assets transferred by the institution in connection with a securitization or participation. Accordingly, the proposed rule should resolve the legal isolation issue for insured depository institutions. The rule confirms existing FDIC practice in dealing with securitization and participation transactions.

For more information, please contact Michael H. Krimminger, Manager, Policy Analysis, Division of Resolutions and Receiverships (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).

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Attachment: Federal Register, (Volume 64, Number 174)  
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