



**Federal Deposit Insurance Corporation**  
550 17th Street NW, Washington, DC 20429

Division of Supervision

## SECURITIZATIONS AND PARTICIPATIONS

FIL-57-2000  
August 29, 2000

TO: CHIEF EXECUTIVE OFFICER

SUBJECT: *Final Rule on the Treatment of Securitizations and Participations Following the FDIC's Appointment as Conservator or Receiver*

The Federal Deposit Insurance Corporation (FDIC) Board of Directors has adopted the attached final rule on the FDIC's treatment of financial assets that are transferred by an insured depository institution in connection with a securitization or a participation following the FDIC's appointment as conservator or receiver. The rule responds to certain legal and accounting issues affecting asset-backed securitizations and participations entered into by insured depository institutions.

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 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 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).

James L. Sexton  
Director

Attachment: Federal Register, August 11, 2000, pages 49189-49192  
[HTML](#) or [PDF](#) (129 KB File - [PDF Help](#) or [Hard Copy](#))

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