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By Electronic Mail

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: RIN #3064–AD53
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 after September 30, 2010
75 *Federal Register* 27471, May 17, 2010

Dear Mr. Feldman:

The American Bankers Association (ABA)[1] and the ABA Securities Association (ABASA)[2] appreciate the opportunity to comment on the notice of proposed rulemaking (NPR) issued by the Federal Deposit Insurance Corporation (FDIC) concerning the treatment by the FDIC as conservator or receiver of financial assets transferred by an insured depository institution in connection with a securitization or participation after September 30, 2010 (Securitization Rule). The NPR seeks input on changes to FDIC's legal isolation safe harbor in its Securitization Rule as a result of changes to accounting rules adopted by the Financial Accounting Standards Board in Financial Accounting Statements No. 166 and 167 (FAS 166 and 167). These Statements require balance sheet consolidation of special purpose entities used in securitization transactions or participations. In addition to addressing these accounting changes, the NPR would impose as a condition of eligibility for the safe harbor, substantive structural changes to the issuance and servicing of bank-sponsored securitizations. Our members engage in all aspects of the securitization process, including serving as originators, sponsors, underwriters, servicers, corporate trustees and in other securities processing capacities.

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[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its 2 million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. Learn more at www.aba.com.
[2] ABASA is a separately chartered affiliate of the ABA that represents those holding company members of the ABA that are actively engaged in capital markets, investment banking, and broker-dealer activities.

The Securitization Rule adopted in 2000 clarified that the FDIC as conservator or receiver would not use its statutory authority to disaffirm or repudiate contracts to reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by a bank in connection with a securitization or in the form of a participation, provided the transfer met all conditions for sale accounting treatment under generally accepted accounting principles (safe harbor). The safe harbor has provided investors readily ascertainable and reliable assurance that in the event of a failure of a bank securitization sponsor, they could look to securitized financial assets for payments without interference by the FDIC. With implementation of FAS 166 and 167, however, most such transactions will not be able to satisfy the requirement for sale accounting treatment and, therefore, would not meet the current criteria for the FDIC safe harbor.

To provide a transition period to address changes to the safe harbor, in November 2009, the FDIC adopted an interim final rule[3] effectively grandfathering transactions consummated prior to March 31, 2010, or for revolving trusts for which obligations were issued prior to that date, so long as they complied with the accounting rules in effect prior to implementation of FAS 166 and 167. On March 18, 2010, FDIC published a final rule extending that transition period to September 30, 2010.[4] In the interim, in December 2009, FDIC issued an advance notice of proposed rulemaking (ANPR) seeking comment on eligibility requirements for the safe harbor that would, in effect, substantively transform the manner in which asset-backed securities sponsored by banks are issued and serviced.[5]

SUMMARY OF ABA–ABASA POSITION

At the outset, ABA and ABASA would like to express our appreciation for FDIC's willingness to accommodate the needs of investors in securitizations and participations by retaining a form of the safe harbor and by the adoption of transition periods which have provided continued investor comfort during the ongoing Congressional deliberations to restructure the U.S. financial system generally and the securitization process in particular.

However, as we stated in our comments on the ANPR, we continue to believe that the proposal is inappropriate at this time—not because changes to the securitization process are not warranted, but rather because significant changes to the securitization process are under active consideration by Congress as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). In addition, the Securities and Exchange Commission (SEC) on May 3, 2010, published for comment a proposal substantially amending the process for the issuing of, and disclosure with respect to, publicly and privately offered asset-backed securities (ABS).[6] The SEC's proposal, which has an August 1st comment deadline, is designed to both modernize and reform the asset-backed securities market in the wake of the economic crisis. The FDIC published its NPR on May 17, 2010, addressing, albeit differently, many of the same issues covered in the SEC's proposal.

The FDIC's NPR is thus the third of various initiatives, all intended to effect changes to the securitization market. ABA and ABASA strongly believe that these initiatives must be integrated into a single uniform standard before they are implemented. The securitization market, and

[3] 74 *Fed. Reg*. 59066.
[4] 75 *Fed. Reg*. 12961.
[5] 75 *Fed. Reg*. 934.
[6] 75 *Fed. Reg*. 23328.

ultimately consumers and small businesses, will be ill served by staggered, fragmented and conflicting regulations that purport to solve the very same problems.

We recognize and understand the concerns that have been raised about the role that securitization and, in particular, securitization of residential mortgages, played in the current economic downturn. We do not disagree that the additional transparency and appropriate alignment of interests will benefit ABS investors, and we generally support efforts to effect those changes. Indeed, we support the FDIC's goal of encouraging a strong securitization market that will not jeopardize the Deposit Insurance Fund.

Nonetheless, ABA and ABASA believe that any action by the FDIC on its own to change substantively the securitization process is inappropriate at this time. If signed into law, the Dodd-Frank legislation will have a significant impact on how securitization transactions are structured and the extent of disclosures provided to investors both at issuance and on an ongoing basis. Structural changes adopted by the FDIC in advance of implementation of that legislation may unnecessarily conflict with Congressional intent.

Importantly, the Dodd-Frank legislation directs the FDIC to participate in interagency rulemaking with respect to changes in the securitization process rather than act unilaterally in imposing standards on the securitization market. We believe that the FDIC's goals should and will be achieved through this interagency implementation process as Congress intended. Accordingly, we strongly urge FDIC to limit the changes to the Securitization Rule to those necessary to maintain a meaningful and reliable safe harbor that takes into account the implications of FAS 166 and 167.

ABA and ABASA also believe that to be effective, sponsors and investors must be able to determine with finality that an asset-backed transaction qualifies for the safe harbor *at the time of issuance.* The NPR would include in the eligibility requirements a number of conditions which are outside of the control of the sponsor that could operate during the lifetime of the transaction to invalidate the eligibility for the safe harbor. For the safe harbor to provide any measurable comfort to investors, there must be certainty that once a transaction qualifies for the safe harbor that determination cannot be invalidated by subsequent events.[7]

DISCUSSION

I. A unified regulatory regime for all participants is necessary for efficient operation of the securitization market.

That securitization has become a critical source of funding and liquidity for mortgage and consumer credit markets is widely accepted.[8] Both the FDIC and the Obama Administration have affirmed the need to "restart" the securitization market because of its importance to our economy and, as a funding mechanism, to the housing market. At present, participants in the capital markets generally face substantial uncertainty about the future of the securitization market due to current accounting

[7] ABA and ABASA generally support the comments submitted by the American Bar Association and the American Securitization Forum.

[8] American Bar Association, *Securitization in the Post-Crisis Economy: An ABA Business Law Section White Paper,* November 20, 2009, pg. 7, available at http://meetings.abanet.org/webupload/commupload/CL116000/newsletterpubs/BusinessLaw_AssetSecuritizationReforms.pdf.

changes, the impact of legislative changes, and the possibility of regulatory rulemakings. Much of the uncertainty in the securitization market derives from the different schemes for risk retention and disclosure, among other things, being raised by the bill, the FDIC and the SEC. Of necessity, however, for the securitization market to serve its function as a robust, economically feasible source of funding, a single set of standards must be in place for all of its participants. ABA and ABASA strongly believe that imposing differing regulatory regimes on securitization market participants, whether for bank versus nonbank sponsors, publicly versus privately offered asset-backed securities, or government agency markets will increase costs to originators, sponsors and ultimately to investors.[9] To the extent that the market contracts and/or that transactions become significantly more expensive, the costs of conflicting regulatory regimes will necessarily decrease the availability of credit, which would harm consumers and small businesses, among others.

A. Legislative Changes

At this writing, a House–Senate conference committee has just completed reconciling the differences between the House and Senate versions of regulatory reform legislation into the Dodd-Frank bill. If enacted, the legislation will require the SEC and the banking agencies to develop through interagency rulemaking regulations to require securitizers to retain credit risk ranging from zero percent for "qualified residential mortgages" to not less than five percent for other assets depending in part on the quality of the underwriting.

The legislation specifically directs the bank regulators and the Federal Housing Finance Agency to establish underwriting standards for "qualified residential mortgages" that must take into account documentation and verification of borrowers' financial resources, their debt to income ratios broken down by housing payments, other monthly installments and residual income after all monthly obligations, the potential for payment shock on adjustable rate mortgages, the existence of mortgage insurance and prohibitions or restrictions on the use of balloon payments, negative amortization, prepayment penalties, interest-only payments, and other loan features that may lead to a higher rate of default. In addition, the banking agencies and the SEC have authority to grant exemptions to the risk retention and hedging requirements of the legislation based on, among other things, ensuring high-quality underwriting standards, encouraging appropriate risk management practices and improving the access of consumers and businesses to credit on reasonable terms.

In addition, the legislation requires the Federal Reserve Board in consultation with the FDIC and the other banking agencies as well as the SEC to study and report to Congress within 90 days of enactment on the combined impact on each class of asset-backed securities of the bill's risk retention provisions and FAS 166-167. The report is to include statutory and regulatory recommendations for eliminating any negative impacts on the viability of the securitization market and the availability of credit for new lending.

These provisions clearly reflect Congressional intent that high-quality underwriting of mortgages obviates or diminishes the need for risk retention. Moreover, the Dodd-Frank bill requires joint rulemaking with the federal bank regulators and the SEC, which we view as a clear reflection of the legislators' intent that there should be uniform regulation of the asset-backed securities market. In

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[9] We also note that the Federal Housing Finance Administration has proposed new disclosure requirements for mortgages sold to or guaranteed by Fannie Mae and Freddie Mac. Our members originate loans for sale or securitization to agency markets as well as public and private asset-backed securities markets. Because originators will be the parties that ultimately provide the loan level data to all these channels, it is critical that the disclosure requirements be uniform.

addition, the bill entrusts the SEC with sole authority to determine the scope and content of disclosures for asset-backed securities.

We believe it critical to point out that the legislation will address directly the perceived problems with the "originate to distribute" model of securitization—i.e., the question of incentives for originators to engage in robust screening and underwriting practices where their financial interests in loans are extinguished upon sale or transfer. In the preamble to the NPR, FDIC states,

> The evident defects in many subprime and other mortgages originated and sold into securitizations requires attention by the FDIC to fulfill its responsibilities as deposit insurer and receiver in addition to its role as supervisor. The defects and misalignment of incentives in the securitization process for residential mortgages were a significant contributor to the erosion of underwriting standards throughout the mortgage finance system. [10]

It is clear that the Dodd-Frank legislation will address directly one of the goals sought to be effectuated by FDIC through the NPR – to cure the defects in residential mortgages. Although the FDIC indicates that regulatory standards alone cannot ensure quality underwriting, we note that Title IV of Dodd-Frank mandates specified underwriting standards for residential mortgages including verification and documentation of the borrower's ability to repay the loan, underwriting of adjustable rate and nonstandard mortgages at the fully indexed rate, and prohibitions on steering and yield spread premiums. ABA and ABASA believe that trying to address lax underwriting practices through burdensome conditions for eligibility for the safe harbor is both imprecise and ineffective. Accordingly, we strongly recommend that, rather than resort to an indirect method of addressing mortgage underwriting reforms, the FDIC exercise the authority granted to it in the legislation to effect such changes.

B. SEC Proposal Revising Issuance of and Disclosure for Asset-Backed Securities

As noted above, the SEC has published for comment a proposal substantially amending the process for the issuing of, and disclosure with respect to, publicly and privately offered asset-backed securities (ABS). The proposed rule would, among other things, condition the use of the shelf offering process for publicly offered asset-backed securities on 1) providing investors with more time to make investment decisions, 2) requiring issuers to retain a 5 percent vertical slice of each tranche of the transaction, and 3) delivering certain third-party opinions with regard to repurchase requests. The proposal would also include a substantial overhaul of the current ABS disclosure requirements with regard to both cash flows (waterfalls) and asset pool composition. In addition, the use of two key regulatory exemptions for privately placed ABS would be conditioned on providing the same disclosure as is required for publicly issued ABS.

FDIC followed on May 17, 2010, with publication of the NPR which, in addition to the safe harbor component, addresses many of the same issues as the SEC's proposal. Although FDIC describes its proposal as "consistent" with the SEC proposal, there are in fact significant differences between the two proposals.

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[10] 75 *Fed. Reg*. 27471 at 27474.

C. Differences Among Dodd-Frank, the SEC Proposal, and the FDIC Proposal

1. Risk Retention

Scope. The NPR requires that not less than 5 percent of the credit risk of all "financial assets" be retained in all securitizations by bank sponsors. By contrast, Dodd-Frank includes a complete exemption from risk retention for certain "qualified mortgages," a term to be defined jointly by the banking agencies within set limits. Nor does the SEC proposal impose risk retention requirements so broadly. The SEC proposal would require 5 percent risk retention *only* as a condition to shelf eligibility. The Dodd-Frank legislation provides exemptive authority for the regulators to lower the required amount of retained risk based on underwriting standards for the underlying assets. It also reflects concern on the part of Congress about the impact of risk retention on the availability and cost of credit.

Form. The NPR mandates that the retained risk be in the form of either a vertical slice or a 5 percent representative sample of the securitized assets equal to not less than 5 percent of the principal amount of the financial assets transferred at closing. The Dodd-Frank legislation defers to the regulators jointly to specify the form of risk retention and the minimum duration of risk, and directs them to develop separate rules for each class of assets

ABA and ABASA strongly urge the FDIC to provide flexibility as to the form risk retention may take. The securitized residential mortgages that played a significant role in the economic crisis were structured in a manner that isolated parties in the securitization parties from the consequences of their underwriting or due diligence decisions. However, securitization structures for other asset classes routinely incorporate a significant amount of retained risk for the sponsor, and there may be ongoing relationships between originators/sponsors and investors. For example, sponsors of credit card or automobile securitizations currently retain a first loss position in the form of excess spread, overcollateralization, and/or early amortization, among other features.[11] Indeed, the Dodd-Frank legislation directs the agencies to review the risk retention structures in securitizations of commercial mortgages. An across-the board requirement to hold an additional five or more percent of the credit risk will increase capital requirements leading, in turn, to increased transaction costs for bank sponsors but not for their nonbank or foreign bank competitors.

Risk held by affiliates. The NPR would mandate that the bank sponsor itself hold 100 percent of the risk retention required. The SEC proposal, by contrast, would permit retention by the bank sponsor or its affiliates. The SEC proposal reflects business practices common in the markets currently. For example, affiliated broker-dealers often serve as underwriters or make markets in the assets securitized by the bank. Accordingly, ABA and ABASA urge that a final rule permit the risk to be retained either by the bank or its affiliate(s) or a combination thereof.

Hedging. The NPR would also prohibit hedging of the retained risk. By contrast, Dodd-Frank prohibits hedging only of credit risk, and the SEC proposal would permit hedging of interest rate, currency exchange rate and certain other risks. We urge FDIC to adjust this hedging provision in a manner similar to that of the SEC proposal.

[11] American Bar Association, *infra note 8* at Appendix A, pg. 44.

Cash reserve. We appreciate that FDIC has eliminated the requirement that to be eligible for the safe harbor, residential mortgages underlying bank-sponsored securitizations be seasoned for a year, the goal of which was to assure that the loans were performing as expected. ABA and ABASA object, however, to replacing that requirement with a required cash reserve equal to 5 percent of issuance proceeds, to be used to provide a dedicated funding source for repurchase obligations arising out of possible breaches of representations and warranties during the first year of the transaction. No such reserve is part of either the Dodd-Frank legislation or the SEC proposal. Indeed, the SEC proposal addresses concerns about repurchase requests through various disclosures.

Moreover, the reserve provision would impact only bank-sponsored securitizations and not those of their nonbank and foreign bank competitors. In addition, the reserve provisions (along with requirements concerning RMBS servicer incentive fee income) may have implications for the calculation of risk-based capital for securitizations as well as for GAAP sale and consolidation conclusions. We believe this provision reflects FDIC's fundamental concern about proper underwriting of residential mortgages and has been addressed directly in Dodd-Frank and its implementing interagency rulemaking, of which FDIC will be a part. Accordingly, there is no need for a cash reserve which will only serve to increase costs for bank-sponsored securitizations and ultimately for consumers and small businesses.

2. Scope of Disclosure

The NPR would apply the disclosure requirements to all bank-sponsored securitizations whether publicly offered or privately offered in reliance on regulatory or statutory exemptions. By contrast, the SEC proposal would apply the disclosure requirements to publicly issued asset-backed securities and privately issued asset-backed securities relying on Rule 144A and Rule 506 under the Securities Act of 1933. We do not know at this writing whether the SEC will adopt disclosure requirements for private offerings relying on these regulatory exemptions, but even their proposal does not apply to private offerings relying on statutory exemptions.

While we understand the need for better disclosure to help restore investor confidence in securitizations, we believe it is wholly inappropriate for FDIC to establish any securities disclosure requirements, an area long within the purview of the SEC. Although Dodd-Frank requires interagency rulemaking with respect to risk retention and underwriting standards, as noted above, the authority to mandate disclosures for asset-backed securities is vested solely in the SEC. Indeed, the banking agencies have long deferred to the SEC with respect to securities disclosures. ABA and ABASA believe that FDIC should recognize and conform to this clear Congressional intent and defer to the SEC with respect to both the scope and content of disclosures for asset-backed securities.

3. Definition of "Servicer"

The definition of "servicer" in the NPR appears to be modeled on the SEC's definition in Regulation AB. However, the NPR definition is extremely broad and would seemingly cover entities that make allocations or distributions, prepare reports or serve in other agency capacities. Although trustees often provide such services, those functions alone are not sufficient to make trustees "servicers" under Regulation AB.

As used in the NPR, the term "servicer" appears to mean the party that directly deals with invoicing and collections from borrowers and has the authority to modify loans or take action with respect to delinquencies—the "primary servicer" under Regulation AB. Trustees seldom undertake those roles absent a default by the primary servicer because invoicing of and collections from borrowers are typically well outside of the defined contractual obligations of trustees (whose duties are explicitly set forth in governing documents). Rather, the trustee's duties are "ministerial in nature and do not require the trustee to verify, investigate or monitor the actions of the seller or the servicer . . . [i]n tacit recognition that the trustee's duties are so circumscribed, asset-backed securities transaction documents usually provide for expert input from independent accountants or others in circumstances where information needs to be audited or verified. Trustees are virtually never required or invited to exercise independent discretion in the transaction documents.[12] Accordingly, ABA and ABASA request that FDIC clarify the definition of "servicer" expressly to exclude trustees, and we offer the following proposed text in conjunction with a definition of "primary servicer."

> The term "servicer"' does not include a trustee for the issuing entity of the asset-backed securities that makes allocations or distributions to holders of the asset-backed securities if the trustee receives the related funds and asset performance information from a servicer, issuer, another trustee, paying agent, bank agent or similar entity, and the trustee does not otherwise perform the functions of a primary servicer.

D. Bank-sponsored securitizations should not be competitively disadvantaged by FDIC's regulations.

In the NPR, FDIC states that "securitization as a viable liquidity tool in mortgage finance will not return without greater transparency and clarity because investors have experienced the difficulties provided by the existing model of securitization."[13] ABA and ABASA do not disagree with that statement. We believe, however, that without a single unified regulatory structure for asset-backed securities, banks may likely incur substantial costs to comply with the safe harbor as proposed. Only bank sponsors of securitizations would be subject to FDIC's regulations in the near term. Thus, bank sponsors will be at a competitive disadvantage with domestic nonbank and foreign securitizers that would not have to comply with new FDIC restrictions. Each of the specific requirements in the NPR comes with costs in terms of dollars and personnel. As these costs mount for bank sponsors, banks are likely to pass the increased costs on to their customers, diminish their securitization activities, or exit the business altogether. None of these possible outcomes would further the goal of restarting the securitization markets or serving bank customers' home and other consumer financing needs.

II. Eligibility for the safe harbor must be readily determinable and irrevocable at inception.

From an investor perspective, it is critical to know at the time of inception whether a particular transaction qualifies for the safe harbor. Investors will want to know with certainty that the safe

[12] American Bankers Association, Corporate Trust Committee, *The Role of the Trustee in Asset-Backed Securities,* July 2010, at 7, available at http://www.aba.com/aba/documents/trust/TrusteeAssetBackedSecuritiesJuly2010.pdf.
[13] 75 *Fed. Reg.* 27471 at 27475.

harbor will apply from issuance of securities through maturity. Alternatively, if the safe harbor clearly does not apply, the investor will likely demand an investment premium to assure that the price properly reflects the additional risks.

If the safe harbor determination may be invalidated at some later point because of vague eligibility requirements or improper disclosure or recordkeeping, its usefulness is illusory. If bank sponsors cannot assure investors that the safe harbor will continue for the life of the securitizations, the investors will divert funds into alternative investments or seek risk premiums in the pricing of securities, to the detriment of consumers seeking credit.

We appreciate the efforts FDIC has made to make eligibility for the safe harbor more readily determinable. However, the NPR still contains a number of vague or subjective requirements that may yet give rise to concerns about the availability of the safe harbor for the life of the transaction.

For example, who decides what constitutes "any available standardized documentation," or what all the "necessary" rights and responsibilities of the parties are, or when servicers have "full" authority to mitigate losses (and how do you verify "full" authority). With respect to continuing disclosure, does the failure of the servicer to give the required ongoing reports invalidate the safe harbor after issuance of the securities? Similarly, does the failure of incentives to perform as expected invalidate the safe harbor? The reluctance of investors to rely on the safe harbor because of such uncertainties will lead to fewer investors for bank securitization products and increased transaction costs.

III. The transition period to October 1, 2010, is not feasible.

As proposed, the revisions required by the NPR would apply to transfers of assets in connection with a securitization on or after October 1, 2010. ABA and ABASA believe that this period is wholly inadequate, and we strongly urge FDIC to provide an extended transition period to accommodate the significant changes that will be required for eligibility for the safe harbor. We understand that most banks will simply not be able to capture data and revise their systems to implement the necessary changes by that date, with the attendant result that investors deprived of reliance on the safe harbor may impose higher costs on their transactions, or banks may choose to leave the market for some time.

Both Dodd-Frank and the SEC's proposal provide substantially longer transition periods. The Dodd-Frank legislation sets an effective date for securitization of residential mortgages risk retention requirements of one year after final rules are published; for all other ABS, a two-year period is provided. The SEC proposal seeks input on an appropriate transition period. We note, however, that when Regulation AB was adopted the SEC generally provided a 12-month implementation period.

IV. Other Issues

Legal sales. ABA and ABASA endorse the position of the American Bar Association Business Law Section that financial assets transferred from a failed institution in a legal sale are not part of the receivership or conservatorship estate. FDIC has suggested in the NPR that assets transferred in connection with a securitization or participation that do not satisfy the conditions for accounting sale treatment and remain on the securitizer's books do not qualify as a legal sale for insolvency purposes. However, the attributes of a legal sale are determined by state law and cannot be affected by changes in accounting standards. Accordingly, we believe that the NPR should be revised to state clearly that assets that have been transferred in a legal sale and thus are no longer legally owned by the failed institution cannot be reached by FDIC as receiver or conservator.

Unfunded commitments. ABA and ABASA request FDIC to clarify that, with respect to securitizations using revolving trust structures, commitments made before September 30, 2010, but not fully drawn until after September 30, 2010, are covered by the current safe harbor. We believe that if the investment decision to make such a commitment is made prior to the expiration of the safe harbor, the later funding of that commitment should still qualify for safe harbor treatment.

CONCLUSION

For all of the above reasons, ABA and ABASA oppose the changes contemplated in NPR. FDIC's action is premature given Congressional consideration of substantive changes to securitizations. For securitization to return as a robust funding and liquidity mechanism in U.S. capital markets, there must be a single, unified regulatory scheme that applies equally to all participants in the securitization process. The Dodd-Frank legislation represents Congress' assessment of the changes that need to occur and mandates interagency rulemaking to implement much of its agreed-upon regulatory structure. Congress also entrusted to the SEC, long the primary regulator of securitizations, the authority to establish new disclosure requirements for ABS. In addition, the SEC has set forth in its proposal its initial conclusions as to the regulatory changes needed to make this market viable, transparent and functional in the wake of the economic crisis. The NPR represents yet a third, separate and conflicting construct for these changes. The failure to achieve a single, unified regulatory scheme will necessarily increase costs for bank securitization sponsors, impair the return of a robust securitization markets and, at least in the near term, put banks at a competitive disadvantage with nonbank and foreign securitizers.

ABA and ABASA believe that it is inappropriate for the FDIC on its own and apart from these other efforts to attempt to reform the securitization process through changes to its safe harbor rule. Indeed, we believe that most of the goals expressed in the NPR will be addressed directly, rather than indirectly as proposed, through the interagency rulemaking in which the FDIC will play a significant role. Accordingly, we urge the FDIC to limit any changes to the safe harbor to those necessary to address accounting changes and to have an effective safe harbor. The FDIC should leave substantive securitization reform to a broader forum. This could be achieved by simply extending the current safe harbor until the new rules implementing Congress' judgments become effective.

If you have any questions on the foregoing, please contact the undersigned.

Sincerely,

Cristeena G. Naser

Cristeena G. Naser