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July 1, 2010

Mr. Robert E. Feldman  
Executive Secretary  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429

Re: RIN 3064-AD53

Dear Mr. Feldman:

The Independent Community Bankers of America<sup>1</sup> (ICBA) welcomes the opportunity to comment on the notice of proposed rulemaking, 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.

ICBA recommends that the FDIC review the proposal in light of the related asset securitization provisions of the pending Dodd-Frank Wall Street Reform and Consumer Protection Act, which is expected to become law in the coming weeks. The FDIC may need to withdraw the proposal for this purpose. Also, to ensure regulatory consistency, we recommend that the FDIC work with the other financial regulators who have authority over aspects of securitizations to ensure that there are consistent rules across the industry. Many aspects of the securitization market are still very fragile and it would benefit by increased regulatory consistency.

There is one particular aspect of the proposed rule that ICBA offers specific comments on. In the proposal, the FDIC has pointed out that concerns have been raised about non-proportionate participation arrangements, such as LIFO participations, entered into after September 30, 2010, that do not satisfy the criteria for “participating interests” under the 2009 GAAP Modifications. As proposed, these would no longer qualify for sale treatment because the safe harbor is available only to participations which satisfy sale accounting treatment. The FDIC states that it believes

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<sup>1</sup> *The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

*With nearly 5,000 members, representing more than 20,000 locations nationwide and employing over 300,000 Americans, ICBA members hold \$1 trillion in assets, \$800 billion in deposits, and \$700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at [www.icba.org](http://www.icba.org).*

that because the vast majority of participations are expected to satisfy the sale accounting requirement, the proposed rule need only include participations that satisfy the sale accounting requirements. The proposal goes on to say that the FDIC recognizes that this formulation may exclude certain types of participations from eligibility for the safe harbor and requests comments on how the FDIC could address these types of participations in a manner that does not expand the safe harbor inappropriately.

ICBA remains concerned that the accounting changes have placed an undue restriction on many community banks that operate in rural areas and that have historically relied on loan participations, such as LIFO participations to provide seasonal credit to their agricultural borrowers through overlines. To stay within lending limits and capital constraints, community bank agricultural lenders have long used LIFO loan participations to serve customers who draw on credit lines and periodically repay them. This legitimate, long-standing business practice has been put at risk by the recent accounting changes and will result in reduced credit to the agricultural sector. ICBA urges the FDIC to include these (generally shorter-term) participations used by agricultural community banks in the safe harbor.

We appreciate the opportunity to comment on the proposed rule. If you wish to discuss our comments further, please contact the undersigned at 202-659-8111 or email at [ann.grochala@icba.org](mailto:ann.grochala@icba.org).

Sincerely,

/s/

Ann M. Grochala  
Vice President  
Lending and Accounting Policy