March 30, 2015

Via E-Mail: Comments@FDIC.gov

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

Re: Proposed Rulemaking To Revise a Section Relating to the Treatment of Financial Assets Transferred in Connection With a Securitization or Participation (RIN 3064-AE32)

Ladies and Gentlemen:

The Structured Finance Industry Group ("SFIG")[1] submits this letter to the Federal Deposit Insurance Corporation (the "FDIC") in response to the rule proposed by the FDIC on January 21, 2015 (the "Proposed Rule")[2] that would clarify the requirements of its Securitization Safe Harbor Rule[3] regarding risk retention of an economic interest in the credit risk of securitized financial assets upon and following the effective date of the risk retention regulations adopted under Section 15G of the Securities Exchange Act ("Section 15G")[4].

---

[1] Structured Finance Industry Group, Inc. is a member-based, trade industry advocacy group focused on improving and strengthening the broader structured finance and securitization market. SFIG provides an inclusive network for securitization professionals to collaborate and, as industry leaders, drive necessary changes, be an advocate for the securitization community, share best practices and innovative ideas, and educate industry members through conferences and other programs. Members of SFIG represent all sectors of the securitization market including issuers, investors, financial intermediaries, law firms, accounting firms, technology firms, rating agencies, servicers and trustees. Further information can be found at www.sfindustry.org.

[2] Proposed Rulemaking To Revise a Section Relating to the Treatment of Financial Assets Transferred in Connection with a Securitization or Participation, 80 Fed. Reg. 5076 (January 30, 2015) (to be codified at 12 CFR 360).

[3] The FDIC's Securitization Safe Harbor Rule, codified at 12 CFR 360.6 (the "Securitization Safe Harbor Rule"), sets forth criteria under which, in its capacity as receiver or conservator of an insured depository institution, the FDIC will not, in the exercise of its authority to repudiate contracts, recover or reclaim financial assets transferred in connection with securitization transactions.

[4] 15 U.S.C. 78a *et seq.* Section 15G was added to the Securities Exchange Act by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Paragraph (b)(5)(i) of the Securitization Safe Harbor Rule sets forth the conditions relating to credit risk retention that apply to transfers of financial assets in connection with securitizations that are not grandfathered by the Securitization Safe Harbor Rule. Clause (A) of that paragraph requires that, prior to the "effective date" of the final regulations under Section 15G (the "Section 15G Regulations"), the documents governing such a securitization contain a requirement that the sponsor retain an economic interest in not less than five (5) percent of the credit risk of the financial assets in such securitization. The Securitization Safe Harbor Rule specifies two types of credit risk retention that satisfy that requirement prior to the "effective date" of the Section 15G Regulations.[5] Clause (B) of paragraph (b)(5)(i) provides that upon the "effective date" of the Section 15G Regulations, such regulations shall exclusively govern the requirement as to credit risk retention in a securitization transaction.

Upon publication in the Federal Register of the Section 15G Regulations,[6] confusion arose over the "effective date" of those regulations for the purpose of satisfying the credit risk retention requirement of the Securitization Safe Harbor Rule.[7] In addition, industry participants expressed to the FDIC uncertainty as to when compliance with paragraph (b)(5)(i)(B) of the Securitization Safe Harbor Rule is required and what actions, if any, are required by sponsors of securitization transactions that close prior to the "effective date" of the Section 15G Regulations. In our view, the Proposed Rule provides clarity as to each of these issues and meets with market expectations regarding these issues. Consequently, we fully endorse the clarifications provided by the FDIC.

Our members have raised one additional issue relating to the credit risk retention requirements in the Securitization Safe Harbor Rule on which we would appreciate receiving guidance in the final rule. As you know, the credit risk retention requirements in the Securitization Safe Harbor Rule differ from those in the Section 15G Regulations. The Section 15G Regulations were adopted jointly by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the FDIC, the Federal Housing Finance Agency, the Securities and Exchange Commission and the Department of Housing and Urban

---

[5] The two types of credit risk retention that satisfy that requirement prior to the effective date of the Section 15G Regulations are: (i) a vertical slice in each of the credit tranches sold or transferred to investors and (ii) a representative sample of the securitized financial assets.

[6] 79 Fed. Reg 77602 (December 24, 2014).

[7] The Federal Register specifies February 23, 2015 as the "effective date" of the Section 15G Regulations, and also specifies the dates on which the Section 15G Regulations become effective with respect to residential mortgage securitizations (December 24, 2015) and all other securitizations (December 24, 2016). The FDIC has proposed to define the dates on which the Section 15G Regulations become effective as the "applicable compliance date" to differentiate them from the February 23, 2015 "effective date" and to make the "applicable compliance date" the date on and after which the financial institution sponsors must satisfy the applicable credit risk retention requirements of the Section 15G Regulations as a condition to satisfying the Securitization Safe Harbor Rule.

Development following proposed regulations published in April 2011,[8] re-proposed regulations published in September 2013,[9] and extensive review and consideration by the joint regulators of industry comments. As a result, those regulations are more comprehensive and provide more tailored requirements for different types of securitization transactions.

We believe that our members should have the option (but not the obligation) to become early adopters of the credit risk retention requirements in the Section 15G Regulations on a transaction-specific basis (or, in the case of a revolving asset securitization, on a platform-specific basis) before the applicable compliance date. We feel confident that any securitization transaction documents requiring the sponsor to retain credit risk that satisfies either the standard risk retention rule (e.g., an eligible vertical interest, an eligible horizontal residual interest or a combination of the two) or one of the special rules for particular market sectors under the Section 15G Regulations would effectuate the principle underlying the credit risk retention condition of the Securitization Safe Harbor Rule. And we can see no compelling policy reason why the FDIC would object to early adoption of the credit risk requirements in the Section 15G Regulations.

We, therefore, respectfully request that the FDIC include in the final rules with respect to the credit risk retention condition in the Securitization Safe Harbor Rule not only the clarifications included in the Proposed Rule but also a further clarification that gives the sponsors the option (but not the obligation) to comply with the credit risk retention requirements of the Section 15G Regulations prior to the applicable compliance date of the Section 15G Regulations.

Should you wish to discuss any matters addressed in this letter further, please contact me at (202) 524-6301 or richard.johns@sfindustry.org, or Sairah Burki at (202) 524-6302 or sairah.burki@sfindustry.org.

Respectfully submitted,

Richard Johns
Executive Director

[8] 76 Fed. Reg. 24090 (April 29, 2011).

[9] 78 Fed. Reg. 57928 (September 20, 2013).