

October 21, 2019

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

Attention: Comments

RE: Notice of Proposed Rulemaking: Revisions to Securitization Safe Harbor Rule 12 CFR §360 [RIN 3064–AF09]¹

Dear Mr. Feldman:

The American Bankers Association (ABA)² appreciates the opportunity to respond to the Federal Deposit Insurance Corporation's proposal (Proposal) to streamline its rule (Safe Harbor Rule)³ concerning the treatment of financial assets transferred in connection with certain securitizations and participation transactions issued by an insured depository institution (IDI). If an IDI that sponsored one or more securitization transactions is subsequently placed in conservatorship or receivership, the Safe Harbor Rule specifies the criteria under which the Federal Deposit Insurance Corporation (FDIC), as receiver or conservator of the IDI, will not recover or reclaim financial assets transferred in such transactions. The Proposal would eliminate a requirement that the securitization documents require compliance with Regulation AB of the Securities and Exchange Commission (SEC)⁴ in circumstances where Regulation AB by its terms would not apply to the issuance of obligations backed by such financial assets.

ABA strongly supports and appreciates the FDIC's desire to streamline IDIs' participation in prudent securitization transactions, as reflected in the Proposal. Regulation AB, as finally adopted by the SEC,⁵ does not require that securitization transactions offered in private placements (*i.e.*, not registered for public sale under the Federal securities laws) comply with the disclosure standards of the regulation. In aligning the requirements of the Safe Harbor Rule with those of Regulation AB as adopted and eliminating the requirement for Regulation AB disclosures in private placements, the Proposal notes that, "such a requirement is no longer necessary in view of regulatory developments relating to residential mortgages since 2010."⁶ ABA concurs in FDIC's view that this step is an appropriate balance of protection of the Deposit Insurance Fund and facilitation of insured institutions' prudent participation in the private

¹ [84 Fed. Reg. 43,732 \(August 22, 2019\)](#).

² The American Bankers Association is the voice of the nation's \$18 trillion banking industry, which is composed of small, regional, and large banks that together employ more than two million people, safeguard over \$14 trillion in deposits, and extend more than \$10 trillion in loans.

³ 12 CFR §360.6.

⁴ 17 CFR, Subpart 229.1100.

⁵ See SEC Release Nos. 33-9638; 34-72982 (September 4, 2014), 79 *Fed. Reg.* 57,184 (September 24, 2014).

⁶ Proposal at 43,734. The Proposal notes also that significant additional disclosure requirements remain as part of the Safe Harbor Rule. See Proposal at 43,735.

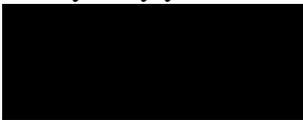
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securitization markets. The Proposal is a reasonable step to improve the flow of credit in the residential mortgage market and other financial sectors appropriate for securitization funding.

ABA notes that, given numerous changes in the asset-backed securities markets and the regulatory environment for IDIs since the financial crisis, a number of barriers remain to IDIs' increased participation in those markets. Capital requirements and other constraints, among other effects, restrict the options IDIs have in raising funds to meet the credit needs of their business and consumer customers. ABA looks forward to working with FDIC to address these additional requirements to enhance the flow of credit to meet vital credit needs.

If you have any questions, please do not hesitate to contact the undersigned via electronic mail at hbenton@aba.com.

Very truly yours,



Hu A. Benton
Vice President, Banking Policy