



Insights

FDIC Board Approves Revisions to Securitization Safe Harbor Rule

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At a meeting on October 22, 2015 of the Board of Directors for the Federal Deposit Insurance Corporation, the FDIC Board approved a final rule regarding Treatment of Financial Assets Transferred in Connection with a Securitization or Participation (the “Final Rule”).

The Final Rule revises certain provisions of 12 C.F.R. 360.6 (the “Securitization Safe Harbor”). The Securitization Safe Harbor sets forth criteria under which, in its capacity as a 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.

The Final Rule clarifies certain requirements of the Securitization Safe Harbor with respect to the retention of an economic interest in securitized financial assets in connection with the effectiveness of the credit risk retention regulations adopted under Section 15G of the Securities Exchange Act (published at 79 FR 77602, the “Section 15G Regulations”).

- The Final Rule clarifies that upon and following the applicable effective date under Section 15G Regulations (October 24, 2015 for residential mortgage securitizations and December 24, 2016 for all other securitizations), the Securitization Safe Harbor requirements for risk retention are satisfied if the securitization transaction documents require retention of an economic interest in accordance with Section 15G Regulations.
- In order to benefit from the Securitization Safe Harbor, the documents governing the issuance of asset backed securities must require retention of an economic interest in compliance with Section 15G Regulations if the issuance occurs on or after the date on which compliance with Section 15G Regulations is required.
- The Securitization Safe Harbor does not require inquiry as to whether any party actually complies with the risk retention requirements of the transaction documents.
- The Final Rule clarifies that no action need be taken with respect to issuances of asset-backed securities that close prior to the Section 15G Regulations applicable compliance date.

- The Final Rule permits early adoption by permitting securitization sponsors to comply with the credit risk retention requirements of the Securitization Safe Harbor by opting to comply with Section 15G Regulations earlier than the mandatory compliance date dictated in the Section 15G Regulations.

For a copy of the Final Rule, please [click here](#).