SUPPORTING STATEMENT
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
(OMB No. 3064-0177)

INTRODUCTION

The Federal Deposit Insurance Corporation (FDIC) is requesting a three-year renewal of the information collection for its rule on the 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 (OMB No. 3064-0177), which was approved by the FDIC Board on September 27, 2010. The rule continued through December 31, 2010, the safe harbor for transferred financial assets in connection with securitizations in which the financial assets are transferred under the existing section 360.6 (the "Securitization Rule"). And the rule clarified the conditions for a safe harbor for securitizations or participations issued after December 31, 2010. In addition, the rule set forth safe harbor protections for securitizations that do not comply with the then new accounting standards for off balance sheet treatment by providing for expedited access to the financial assets that are securitized if they meet the conditions defined in the rule**.** The conditions contained in the rule serve to protect the Deposit Insurance Fund ("DIF") and the FDIC's interests as deposit insurer and receiver by aligning the conditions for the safe harbor with better and more sustainable lending practices by insured depository institutions ("IDIs").

The current clearance for the collection expires on February 28, 2018. There is no change to the FDIC's Part 360.6 affecting this information collection.

A. JUSTIFICATION

The FDIC, as deposit insurer and receiver for failed IDIs, has a unique responsibility and interest in ensuring that residential mortgage loans and other financial assets originated by IDIs are originated for long-term sustainability. The FDIC's responsibilities to protect insured depositors and resolve failed insured banks and thrifts and its responsibility to the DIF require it to ensure that, where it provides a safe harbor consenting to special relief from the application of its receivership powers, it must do so in a manner that fulfills these responsibilities.

It would be imprudent for the FDIC to provide consent or other clarification of its application of its receivership powers without imposing requirements designed to realign the incentives in the securitization process to avoid the effects of the misalignment of incentives described below. The FDIC's adoption of 12 C.F.R. § 360.6 in 2000 provided clarification of "legal isolation" and facilitated legal and accounting analyses that supported securitization. In view of the accounting changes and the effects they have upon the application of the Securitization Rule, it is crucial that the FDIC provide clarification of the application of its receivership powers in a way that reduces the risks to

the DIF by better aligning the incentives in securitization to support sustainable lending and structured finance transactions.

1. Circumstances and Need

The Securitization Rule provided a "safe harbor" by confirming "legal isolation" if all other standards for off balance sheet accounting treatment, along with some additional conditions focusing on the enforceability of the transaction, were met by the transfer in connection with a securitization or a participation. Satisfaction of "legal isolation" was vital to securitization transactions because of the risk that the pool of financial assets transferred into the securitization trust could be recovered in bankruptcy or in a bank receivership. Generally, to satisfy the legal isolation condition, the transferred financial assets must have been presumptively placed beyond the reach of the transferor, its creditors, a bankruptcy trustee, or in the case of an IDI, the FDIC as conservator or receiver. Since its adoption, the Securitization Rule has been relied on by securitization participants, including rating agencies, as assurance that investors could look to securitized financial assets for payment without concern that the financial assets would be interfered with by the FDIC as conservator or receiver.

The FDIC had to address the evident defects in many subprime and other mortgages originated and sold into securitizations in order to fulfill its responsibilities as deposit insurer and receiver. 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. While many of the troubled mortgages were originated by non-bank lenders, insured banks and thrifts also made many troubled loans as underwriting standards declined under the competitive pressures created by the returns achieved by lenders and service providers through the "originate to distribute" model.

Defects in the incentives provided by securitization through immediate gains on sale for transfers into securitization vehicles and fee income directly led to material adverse consequences for insured banks and thrifts. Among these consequences were increased repurchase demands under representations and warranties contained in securitization agreements, losses on purchased mortgage and asset-backed securities, severe declines in financial asset values and in mortgage- and asset-backed security values due to spreading market uncertainty about the value of structured finance investments, and impairments in overall financial prospects due to the accelerated decline in housing values and overall economic activity. These consequences, and the overall economic conditions, directly led to the failures of many IDIs and to significant losses to the DIF.

To ensure that IDIs are sponsoring securitizations in a responsible and sustainable manner, the rule imposes certain conditions on securitizations that are not "grandfathered" in under the transition provision of the rule and additional

conditions on non-grandfathered securitizations that include residential mortgages ("RMBS"), including those that qualify as true sales, as a prerequisite for the FDIC to grant consent to the exercise of the rights and powers listed in 12 U.S.C. § 1821(e)(13)(C) with respect to such financial assets. To qualify for the safe harbor provision of the rule, the rule generally requires that conditions must be satisfied for any securitization for which transfers of financial assets were made after December 31, 2010. The rule has special provisions that may extend the deadline for securitizations from certain types of trusts and from certain open commitments to beyond December 31, 2010.

In the context of a conservatorship or receivership, the conditions applicable to all securitizations will improve overall transparency and clarity through disclosure and documentation requirements along with ensuring effective incentives for prudent lending by requiring that the payment of principal and interest be based primarily on the performance of the financial assets and by requiring retention of a share of the credit risk in the securitized loans.

The conditions applicable to RMBS are more detailed and explicit and require additional capital structure changes, disclosures, and documentation, the establishment of a reserve and deferral of compensation. These standards are intended to address the factors that caused significant losses in RMBS securitization structures in the recent crisis. These standards were intended to restore confidence in RMBS markets only through greater transparency and other structures that support sustainable mortgage origination practices and requiring increased disclosures. These standards respond to investor demands for greater transparency and alignment of the interests of parties to the securitization. In addition, when the regulation was adopted they were generally consistent with industry efforts while taking into account legislative initiatives.

2. Use of Information Collected

The conditions are designed to provide greater clarity and transparency to allow a better ongoing evaluation of the quality of lending by banks and reduce the risks to the DIF from the opaque securitization structures and the poorly underwritten loans that led to the onset of the financial crisis. In addition, these conditions were designed to address the difficulties provided by the then existing model of securitization. However, greater transparency is not solely for investors but will serve to more closely tie the origination of loans to their long-term performance by requiring disclosure of that performance.

3. Use of Technology to Reduce Burden

Compliance with disclosure provisions and other requirements of the rule may be facilitated by whatever technology is available.

4. Efforts to Identify Duplication

The information collection contained in the rule is related to, but not duplicated by, other previously approved collections of information. It cannot be readily acquired from other sources.

5. Minimizing the Burden on Small Entities

The information is collected only from a limited group of IDIs who engage in securitization transactions. Small entities are not affected.

6. Consequences of Less Frequent Collection

The conditions are designed to provide greater clarity and transparency to allow a better ongoing evaluation of the quality of lending by banks and reduce the risks to the DIF from the opaque securitization structures and the poorly underwritten loans that led to the onset of the financial crisis. Less frequent disclosure would render the information stale and unable to be used by investors to evaluate the credit risk of a given securitization.

7. Special Circumstances

None.

8. Consultation with Persons Outside the FDIC

A notice seeking public comment for a 60-day period was published in the *Federal Register* on November 28, 2017 (82 FR 56240). One comment was received and was generally supportive of the requirements in the rule but did not address the paperwork burden for this information collection.

9. Payment or Gift to Respondents

None.

10. Confidentiality

Any information collected by the FDIC that is deemed to be of a confidential nature would be exempt from public disclosure under the Freedom of Information Act (5 U.S.C. 552).

11. Information of a Sensitive Nature

No information of a sensitive nature is requested.

12. Estimate of Hour Burden and Annual Costs[1]

2018 Summary of Annual Burden and Internal Cost (3064-0177)								
	Type of Burden	Estimated Number of Respondents	Estimated Number of Responses (average number)	Estimated Time per Response	Estimated Frequency	Frequency of Response	Total Annual Estimated Burden	Total Cost of Annual Estimated Burden (Internal)*
Disclosures								
360.6(b)(2)(i)(A), (D) - Ongoing								
Private Transactions - Non Reg AB Compliant	Disclosure	19	1.895	37	12.0	Monthly	15,984	$1,674,124
360.6(b)(2)(i)(D)	Disclosure	35	1.971	3	1.0	On Occasion	207	$21,681
360.6(b)(2)(ii)(B) - Initial/One-Time	Disclosure	1	6.000	1	1.0	On Occasion	6	$628
360.6(b)(2)(ii)(C)	Disclosure	1	6.000	1	1.0	On Occasion	6	$628
Total Disclosure Burden							16,203	
Recordkeeping								
360.6(c)(7)	Recordkeeping	35	1.971	1	1.0	On Occasion	69	$4,215
Total Recordkeeping Burden							69	
TOTAL BURDEN							16,272	$1,701,277

*	
Occupation	Total Estimated Hourly Compensation
Management Occupations(110000)	$118.86
Financial Analysts(132051)	$81.08
Legal Occupations(230000)	$137.93
Compliance Officers(131041)	$61.09

13. Capital, Start-up, and Operating Costs

[1] Total Estimated Hourly Compensation estimates are based on hourly compensation data for Management Occupations ($74.48), Financial Analysts ($50.81), Legal Occupations ($86.43), and Compliance Officers ($38.28). The estimate includes September 2017 75th percentile hourly wage rates reported by the BLS, National Industry-Specific Occupation Employment and Wage Estimates. The reported hourly wage rate is adjusted for change in the CPI-U between September 2017 to December 2017 (0.5 percent) and grossed up by 154.3 percent to account for non-monetary compensation as reported by the December 2017 Employer Costs for Employee Compensation Data.

Summary of Capital/Start-Up Costs (3064-0177)						
360.6(b)(2)(i)(A), (B) - Initial/One-Time - Capital/Start-Up Costs - # of sponsors that have never done a registered transaction in particular asset class since November 23, 2016 - effective date for compliance with new Reg AB - and prior to doing a private transaction		Estimated Number of Respondents (sponsors)	Estimated Hours Per Respondent [(a + b) * c]	Total Start Up Hours	Cost Per Hour	Total Cost of Annual Estimated Burden (Internal)
Private Transactions - Auto	Disclosure	1	2,760	2,760	$133	$367,529
Private Transactions - CMBS	Disclosure	17	3,040	51,680	$133	$6,881,838
Private Transactions - RMBS*	Disclosure	1	5,400	5,400	$133	$719,078
					Total	**$7,968,444**
(a) Existing systems and procedures for each required data point for all three asset classes = 10					# of sponsors	19
(b) The number of hours required to adjust systems to provide asset level data in XML format for each required data point = 10					cost / sponsor	$419,391.79
(c) Estimated number of data points (per SEC Reg AB Rule PRA) = for auto 138, for CMBS 152, for RMBS 270						
* For RMBS transactions, the sponsors will also incur an external cost in connection with securing a third-party due diligence report on compliance with 360.6(b)(2)(ii)(B). This cost is estimated to be $500,000 per transaction.						

14. Estimated Annual Cost to the Federal Government

None.

15. Reason for Change in Burden

There is no change to the FDIC's Part 360.6 affecting this information collection. The 3,422 increase in burden hours and addition of roughly $8,000,000 of initial start-up costs are mostly attributed to the SEC's changes to Regulation AB in its September 24, 2014 final rule.

16. Publication

Not applicable.

17. Display of Expiration Date

Not applicable.

18. Exceptions to Certification

None.

B. Statistical Methods

Not applicable.