Statement of

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On the FDIC's Securitization Proposal

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I supported the Advance Notice of Proposed Rulemaking on this issue, because I believed it was important to solicit comment on the important issue of trying to help re-start the securitization markets while at the same time establishing appropriate incentives for strong underwriting standards. I think the comments we received were very helpful. I am especially pleased that, since issuing the ANPR, we have learned from the accounting profession that it will likely be possible to retain a limited amount of risk and servicing rights in mortgage securitizations without preventing a "true sale" of the mortgages being securitized.

I also want to say that I support the concept of risk retention as one possible tool to enhance the incentives for sound underwriting of securitized loans, especially with respect to residential mortgages. My concern, however, has always been that, in attempting to address these and other securitization issues to revive the securitization market, we not make the problem worse by needlessly deterring the use of securitizations in the first instance -- because securitization remains a critically important vehicle to provide liquidity in mortgage markets. The many comments we received indicated that there are still a number of legitimate concerns about the workability of the approach that was outlined in the ANPR.

In this context, I cannot support today's Notice of Proposed Rulemaking, for several reasons.

First, Congress is on the verge of passing a provision that addresses the very issues addressed in the NPR, but in a different and more comprehensive way that would apply to all securitizers – not just bank securitizers – via a joint rulemaking that would reflect the views of all the bank regulators and the SEC, not just the FDIC. I strongly support such a comprehensive, coordinated approach. In addition, the substance of the NPR is not the same as in the legislative provision in important respects. Given how close Congress is to addressing this issue, I think the FDIC should wait to see what Congress directs the agencies to do before acting unilaterally – and frankly, I think the SEC should wait to finalize its proposed rule for the same reason.

Second, the NPR does not embrace the concept of directly improving underwriting standards for mortgages by establishing minimum standards by regulation – a concept that I strongly support. Both the House and Senate bills expressly recognize that the risk retention requirement, which is an <u>indirect</u> approach to improve the underwriting of securitized loans, can be lowered if regulators establish minimum underwriting standards directly. That direct approach is well worth embracing, but the NPR fails to do that. I think that omission is both unwise and inconsistent with the likely Congressional approach.

Third, the NPR's requirements apply only to banks, and not to companies affiliated with banks or to nonbank securitizers. By applying restrictions to only one group of securitizers, the rule would create an unlevel playing field that disadvantages banks, and it creates incentives for evasion by conducting securitizations outside of banks. I would not be especially sympathetic to this argument if there were no prospect for coordinated and comprehensive action that would apply to all securitizers – but again, Congress is considering just such a measure even as we speak. Again, we ought to defer acting until Congress acts.

Fourth, I do not think we should establish disclosure rules that are different from the SEC's disclosure rules, which the NPR does. If the FDIC's NPR and the SEC's NPR are adopted we will have three different securitization disclosure regimes: one for banks, one for nonbanks that engage in the type of securities offerings covered by the SEC's proposed rule, and one for nonbanks not covered by the SEC's proposed rule. We ought to have just one.

Finally, I am uncomfortable using the FDIC's safe harbor rule as the lever to regulate securitizations. Given the subjective requirements of the rule, it seems very possible that a determination of noncompliance could occur long after the initial securitization – with the result that the ownership of the underlying loans sold to investors could be clouded by ongoing FDIC authority to repudiate the sale. While the NPR tries to provide assurances regarding the impact of later determinations that subjective standards were not met, in crucial respects these assurances depend on how the FDIC will exercise its discretion in the future. The resulting uncertainty about possible future outcomes could be a significant deterrent to investor interest in buying securitized loans in the first instance – the very outcome we are trying to avoid. Far better to have a straightforward regulatory mechanism where failure to comply does not produce the risk of such draconian results – as would be the case with the regulatory regime that would be established by the Congressional provisions about to be passed.

There are other concerns with the substance of the proposal, but in sum, I believe the NPR's approach falls short, and there is no reason to rush forward given imminent Congressional action to embrace a more comprehensive approach. As a result, I cannot support issuing this NPR for another round of comment.