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July 28, 2004

TA&I Director-Setoff and Isolation Financial Accounting Standards Board 401 Merritt 7 P. O. Box 5116 Norwalk, CT 06856-5116 Letter of Comment No:

File Reference: 1200-SRI

Date Received: 7/28/04

RE: FASB Statement 140 - Setoff Rights and Isolation

## Dear Director:

The Accounting and Tax Committee ("Committee") of the New Jersey League of Community Bankers\* is pleased to respond to your staff's request for information on loan participations and setoffs. While the Committee understands FASB's intent of guaranteeing that an asset is accounted for as transferred only when it has been legally isolated so that the entity that transfers the asset and its creditors will have no recourse to it, the committee is concerned that the revisions being considered will negatively impact loan participations.

Many New Jersey League member community banks have relied upon the loan participation process to enhance liquidity, manage interest rate and credit risk, help meet capital and earnings goals, and meet regulatory restrictions on loans to one borrower. Mandating the use of a qualified special-purpose entity (QSPE) to isolate these transactions from the bank's books would place unnecessary burdens and costs on community banks to hire and train personnel to properly structure QSPEs, putting them at a competitive disadvantage to larger banks that have greater resources to accomplish this.

The Committee is also concerned that FASB may determine that the existence of setoff defenses would preclude accounting for a loan participation as a sale of an asset. The Committee believes that the existence of setoff rights, especially on the part of the FDIC as receiver, is so remote as to make it more hypothetical than real. First, the institution in which the FDIC has intervened must be insolvent and then, the loan sold as a participation would have to be in default or contractually matured. The Committee understands that since the early 1980's, only once has the FDIC encountered a situation in which setoff reduced the value of a

<sup>\*</sup>The New Jersey League of Community Bankers, founded in 1908, is a trade association representing 69 of New Jersey's savings banks, savings & loan associations and commercial banks with total assets of over \$60 billion. The League's wholly-owned subsidiary, the Thrift Institutions Community Investment Corporation ("T.I.C.I.C.") assists League members in forming consortia to make loans on low-to-moderate income housing and economic development projects throughout New Jersey. Since its founding in September 1991, T.I.C.I.C. has facilitated loans on over 4,300 affordable housing units and has loans in process on over 600 more affordable housing units. Loans made and loans in process total over \$300 million.

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participant's interest in a loan. As such, the Committee would offer that the exercise of setoff rights, either by the Borrower or by the FDIC as receiver is highly unlikely and remote.

It is the Committee's concern that loans being made today because of the ability to participate them out, might not be made in the future if accounting rules for loan participations are changed. These are loans that enhance communities and create economic growth in New Jersey and throughout the nation.

Thank you for this opportunity to provide this information and share our concerns. If there are any questions or a need for clarification, please contact me at 908 272 8500, ext. 614, or jmeredith@njleague.com.

Sincerely,

James M. Meredith Senior Vice President