Letter of Comment No: 13

File Reference: 1225-001



October 7, 2005

## By Federal Express and E-Mail

Ms. Suzanne Bielstein Technical Director Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Re:

File Reference 1225-001

Accounting for Transfers of Financial Assets – An Amendment of FASB Statement No. 140

Dear Ms. Bielstein:

The Illinois Bankers Association ("IBA") appreciates the opportunity to comment on the Financial Accounting Standards Board ("FASB") August 11, 2005, Exposure Draft (Revised) of the Proposed Statement of Financial Accounting Standards, "Accounting for Transfers of Financial Assets – an amendment of FASB Statement No. 140" (the "Revised Draft").

The IBA is a full-service trade association representing financial institutions of all sizes in Illinois, including state and national community banks, regional banks, money center banks, savings banks, and savings and loan associations, which together account for over 85 percent of all banking assets in our state. We appreciate this opportunity to comment on the Revised Draft.

We believe that the Revised Draft would negatively impact the ability of the Federal Home Loan Bank of Chicago'("FHLBC") to support the housing finance needs of its member financial institutions. Specifically, a primary mission of the FHLBC, as established by Congress, is to promote housing finance in partnership with its member financial institutions, many of which are also members of the IBA. The FHLBC achieves its housing finance mission in significant part through its Mortgage Partnership Finance® Program ("MPF Program").

The MPF Program is a unique financing structure under which nine participating Federal Home Loan Banks (the "MPF Banks") serve as a source of liquidity for their member financial institutions. Under the program, the MPF Banks either buy existing mortgage loans from their participating members, or alternatively, provide the funding for the mortgage loans through their members at the time of closing. Either way, the mortgage loans purchased or funded are held on an MPF Bank's balance sheet while the participating members record these loans off-balance sheet. Off-balance sheet treatment is critical to participating financial institutions ("PFIs") in regard to liquidity, reducing credit concentrations, and obtaining appropriate risk-based capital treatment.

The MPF Program has proven very popular with FHLBC members. More than 1.1 million MPF loans, worth more than \$156 billion, have been purchased or funded by the MPF Banks since the program began in 1997. Participation in the program has grown rapidly to more than 930 financial institutions, the vast majority of which (83%) are "community financial institutions" with assets of less than \$567 million. The program's structure has allowed many community lenders to be able to offer their customers the long-term fixed-rate mortgages preferred by most American homebuyers.

We are concerned that the Revised Draft would require PFIs that sell mortgage loans to MPF Banks to use a qualifying special purpose entity ("QSPE") in order to obtain true sale accounting treatment. The requirement of a QSPE would significantly impede these lenders' access to the MPF Program, particularly for small and mid-sized institutions, by unnecessarily raising the cost of selling loans to an MPF Bank and adding an additional layer of complexity to these transactions. The use of a QSPE would add no further accounting clarity to what already is a straightforward sale transaction. In addition, the economic substance of the transaction would be unaffected by the artificial insertion of a "QSPE" vehicle in the transaction structure. Furthermore, the requirement of a QSPE would raise regulatory issues for the MPF Banks, which may not be allowed to create or have a residual interest in a QSPE.

In short, without further modifications, the Revised Draft may severely impede access to a valuable secondary mortgage market alternative currently used by over 900 mortgage lenders across the country, thereby limiting the ability of the FHLBC and other MPF Banks to perform the housing finance mission established for them by Congress.

Additionally, we strongly endorse the dissenting opinion of Board members provided in paragraphs A51 and A52. Specifically, we agree with their view that it is inappropriate to amend Statement 140 to impose QSPEs for simple disproportionate transfers of portions of financial assets when an entity and its legal advisors have concluded that it is not necessary to achieve legal isolation under applicable law. We also object to the implication that the insertion of a QSPE somehow changes the economics and enhances isolation of the assets beyond what would be achieved through a well-executed contractual sales agreement.

In summary, we request the FASB to clarify paragraph 8a of the Revised Draft, such that the requirement to utilize a QSPE only pertains to cases where a "legal" ownership interest in an individual financial asset does not qualify as a participating interest, and we strongly endorse the dissent by Board members discussed in paragraphs A51 and A52.

Thank you for your consideration of our comments.

Sincerely,

**Bruce Jay Baker Executive Vice President** 

and General Counsel

Illinois Bankers Association