



May 10, 2004

TA&I Director-Setoff and Isolation
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116
director@fasb.org

Letter of Comment No: 6
File Reference: 1200-SRI
Date Received: 5/10/04

Re: Request for Information Regarding Setoff Rights and Isolation
FASB Statement No. 140

Dear Director:

America's Community Bankers ("ACB")¹ is pleased to respond to the request by the Financial Accounting Standards Board ("FASB") for information about setoff rights as well as other factors or conditions affecting isolation of transferred assets. This request is in connection with the FASB's current project to amend FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*. The FASB has requested information from members of the legal community, regulatory agencies, and rating agencies about setoff rights and ways to eliminate these rights in a manner that would satisfy the isolation requirements of Statement 140.

The FASB specifically referred to loan participations and the potential impact on these transactions from any rights that the Federal Deposit Insurance Corporation ("FDIC") or another receiver of a bank would have to set off the loans and deposits of a single customer. As a preliminary comment, ACB notes that common law setoff rights are, by their definition, not new, and we know of no recent case where an exercise of these rights created issues for a participating lender that would call into question the accounting treatment of a loan participation as a sale of assets.

Any determination that loan participations should be treated as financings unless they are completed through a qualifying special purpose entity would be of significant concern to our members. Many community banks engage in loan participations to enhance liquidity, to manage

¹ ACB represents the nation's community banks. ACB members, whose aggregate assets total more than \$1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

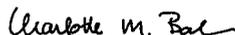
interest rate risk, to help meet capital and earnings goals, to diversify loan portfolios, and/or to meet statutory and regulatory restrictions on loans to one borrower. Moreover, the practice of loan participations is specifically examined by the federal banking regulators for compliance with applicable laws and regulations. The agencies historically have viewed such practices, when conducted in accordance with regulatory guidelines, as safe and sound, and helping to provide more opportunities for credit without incurring an undue concentration in risk.

Any change in the accounting treatment for loan participations would have an adverse affect on community banks. In particular, requiring small community banks to form qualifying special purpose entities in order to receive sale treatment would be unnecessarily burdensome and prohibitively expensive. It also would put them at a distinct competitive disadvantage to larger competitors who have greater resources to engage in more sophisticated transactions and have larger loan to-one borrower limits. Most importantly, an adverse change in the ability to engage in loan participations could limit the ability of community banks to lend money to certain customers, restricting the availability of credit in certain communities.

We understand the FASB's concern that assets are not being sufficiently isolated in transfers. However, we encourage the FASB to explore practical alternatives that would allow for continuation of loan participations that meet the sales criteria without the excessive cost of establishing a qualifying special purpose entity. The FDIC and other bank regulators will be providing a response to the FASB with regard to the FDIC's setoff rights. We are hopeful that FASB's review and analysis of the issues will lead to a conclusion that loan participations continue to represent a sale of assets for financial reporting purposes.

We appreciate the opportunity to participate in the discussion of this issue and look forward to attending the upcoming roundtable. If you have any questions about our interest in this matter, please contact the undersigned at (202) 857-3121 or via e-mail at cbahin@acbankers.org, or Diane Koonjy at (202) 857-3144 or via e-mail at dkoonjy@acbankers.org.

Sincerely,



Charlotte M. Bahin
Senior Vice President, Regulatory Affairs