

National Association of State Credit Union Supervisors NASCUS Credit Union Advisory Council National Institute for State Credit Union Examination

Letter of Comment No: File Reference: 1225-001

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Director of Major Projects and Technical Activities Financial Accounting Standards Board 401 Merritt 7 Norwalk, Connecticut 06856-5116

Sent via email to director@fasb.org

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FASB 140: Accounting for Transfers of Financial Assets

Dear Technical Director:

The National Association of State Credit Union Supervisors (NASCUS)1 is pleased to submit comments in response to the Financial Accounting Standards Board's (FASB) request for comments on proposed changes to FASB Statement 140: Accounting for Transfers of Financial Assets.

We believe the revisions made to the August 11, 2005 Exposure Draft address our concerns expressed in earlier comments made to FASB. The purpose of this letter is to note our understanding of changes to the provisions in the latest Exposure Draft of FASB 140.

Defining a Participating Interest

Provision 8A. The requirements of this Statement apply to transfers of individual financial assets in their entirety, transfers of groups of financial assets in their entirety, and transfers of participating interests in individual financial assets.

This provision defines a participating interest as:

(a) An ownership instrument in an individual financial asset, not classified as an equity instrument, a derivative financial instrument, or a hybrid financial instrument with an embedded derivative.

¹ NASCUS is the professional association of the 48 state and territorial credit union regulatory agencies that charter and supervise the nation's 3,800 state-chartered credit unions.

- (b) All cash flows received from the instrument are divided in proportion to the ownership share owned by each participant.
- (c) Recourse is not available from the transferor and priority in ownership remains constant for each participating interest holder.
- (d) Neither the transferor, nor any participating interest, has the right to pledge or exchange the entire financial asset in which they own a participating interest.

NASCUS is pleased that the language changes in this amendment define a "Participating Interest" and that the revisions to FAS 140 provide that transfers which meet the above provisions can qualify for sale treatment. As we noted in a previous comment letter, most credit unions engage solely in individual loan participations and it is not practicable or cost efficient for a credit union to obtain a Qualified Special Purpose Entity (QSPE) status for loans which are non-complex loan participations.

The addition of Paragraph 8A in the August 11, 2005 Exposure Draft defines how transfers of assets, groups of assets or participating interests in assets are to be handled under FAS 140. It defines how to accord sale treatment for participations and should result in sufficient flexibility to credit unions, provided that participations are properly structured in accordance with these provisions. This is an important improvement to Statement 140 for credit unions that use loan participations as a tool to diversify risk.

Requirements for Surrender of Control of Transferred Loan Participations

Paragraph 9. A transfer of a financial asset, a group of financial assets, or a participating interest in an individual financial asset shall be accounted for as a sale if the transferor surrenders control over the transferred financial asset(s).

Paragraph 9 has been amended to explicitly state when a transferor has surrendered control over transferred financial assets. It is our understanding that a transferor has surrendered control over a transferred financial asset when all of the following conditions are met:

- (a) The assets have been isolated from the transferor, specifically beyond the reach of the transferor and its creditors. In bankruptcy or receivership actions, available evidence may be used to provide reasonable assurance that transferred financial assets are beyond the reach of the powers of a bankruptcy trustee or other receivers of the transferor.
- (b) When the transferee is a QSPE, it has the right to pledge or exchange the transferred financial assets received and no condition may constrain the transferee from taking advantage of this right to pledge or exchange the financial asset, and it provides more than a trivial benefit to the transferor.
- (c) Neither the transferor or its consolidated affiliates or agents maintains effective control over the transferred financial assets through either (1) an agreement that entitles and obligates the transferor to repurchase or redeem them before their maturity; or (2) the ability to unilaterally cause the holder to return specific assets, other than through a cleanup call.
- (d) The isolation analysis must consider any arrangement or agreement made in connection with a transfer even if it was not entered into at the time of the transfer.

(e) When the transferee is a QSPE, there can be no arrangement or agreement between any holder or beneficial interests issued by that QSPE and the transferor, or affiliates that would cause the assets not to be isolated as required when the same arrangement or agreement involves the QSPE instead of its beneficial interest holders.

NASCUS supports the changes to the language of Paragraph 9 of FASB Rule 140. We believe this language provides reasonable assurance of when a financial asset qualifies as a loan sale. It also provides more latitude for credit unions when using loan participations as a tool to diversify risk.

NASCUS' Role in Communicating Requirements to State-Chartered Credit Unions

NASCUS understands that credit unions must meet the requirements outlined in the provisions above before a transfer of financial assets may be considered a loan sale. This may require additional outreach efforts on the part of regulatory and industry groups to alert the credit union industry of structural issues included within the exposure draft.

State-credit union regulators will play an important role educating and informing credit unions using loan participations of the provisions in FASB Rule 140. We believe state regulators can serve as an effective conduit, helping to ensure that credit unions understand the requirements.

NASCUS would welcome an opportunity to discuss the state regulator perspective on Statement 140. If you require more information in your analysis, please do not hesitate to contact me at (703) 528-8354.

Sincerely,

Sandra Troutman

Executive Vice President, Government Relations