October 7, 2005

Financial Accounting Standards Board
Technical Director – File Reference 1225-001
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

VIA E-MAIL: director@fasb.org (File Reference 1225-001)

RE: Accounting for Transfers of Financial Assets, an amendment of FASB Statement No. 140.

Gentlemen:

Western Corporate Federal Credit Union (WesCorp) appreciates the opportunity to comment on Financial Accounting Standards Board (FASB) Exposure Draft entitled Accounting for Transfers of Financial Assets, an amendment of FASB Statement No. 140.

WesCorp is a corporate credit union—a credit union for credit unions. We are $25 billion in assets and serve as a correspondent bank to more than 1,000 credit unions in our national field of membership; providing investments, credit, item processing, and electronic payment services.

WesCorp is an active player in the loan participation market for credit unions. In 2001, WesCorp received waiver authority from the National Credit Union Administration (NCUA) to engage in loan participation activity for the benefit of its member credit unions. This service is used as a balance sheet management tool to manage liquidity, interest rate risk, diversification of geographic and/or credit risk, and regulatory capital. Since our program’s inception, WesCorp has worked with 21 credit union sellers nationwide to purchase and resell nearly $700 million in "A-tier" quality loan assets. These participations have been resold to over 100 different credit union buyers nationwide. Our program has been successful in structuring participation transactions on a full-recourse, non-recourse, and non-recourse limited subordination basis. This service is reviewed annually by our NCUA regulatory examiners.

Also, as a matter of information and/or reference, WesCorp offers to FASB the following internet link to the section of WesCorp’s website that provides a commentary on the loan
participation market for credit unions and an overview of our own loan participation program.

http://www.wescorp.org/loans/commentary.asp?catid=46&cat_typeid=1

In general, WesCorp would favor solutions that promote the efficiency, effectiveness and fairness of the accounting treatment for all financial entities. Loan participation arrangements are an effective balance sheet management tool for credit unions to manage liquidity, diversification of geographic risk and regulatory capital constraints. A typical loan participation transaction that credit unions enter into is where the originating credit union sells a 90% participation in its loans and retains the servicing rights as well as a 10% interest in the loans. All the rights to the underlying loans are conveyed consistent with the ownership percentages of 90% and 10%. However, the originating credit union may retain a small subordinated interest, generally 5%, in the pool of loans against which losses are initially allocated and will provide reserves for the expected losses, which is usually significantly less than the limited subordination. WesCorp supports this structure for credit unions and urges FASB to reconsider its application of true-sale accounting treatment to this structure so that credit unions may enjoy the benefits of their higher credit quality loans, as well as their accustomed regulatory environment, as outlined in the following paragraphs.

There are several reasons why this structure is commonly used by credit unions. First, because credit unions are mutual-enterprise organizations and are owned by their members (borrowers), the credit quality of credit union loans often is much higher than similar loans of other financial institutions. While the general marketplace does not recognize this distinction, the credit union industry does. Therefore, the originating credit union is able to obtain significantly better pricing on participations sold within the industry. Originating credit unions would much rather retain credit risk (which they know to be low) and receive the higher selling price similar to loans sold with full recourse.

Another reason this structure is commonly used is because it meets the legal isolation test under National Credit Union Administration (NCUA) regulations. Section 709.10(6) of the NCUA regulations provides language that protects assets transferred in conjunction with a securitization or participation, provided that the transfer meets all conditions for sale accounting treatment under generally accepted principles, other than the legal isolation condition which is addressed by this regulation. While Section 709.10(4) of the NCUA regulations defines participations as loans sold without recourse, NCUA has issued a legal opinion letter (consistent with its Commentary to the Final Rule creating Section 709.10 - see 65 Federal Register 55349, September 14, 2000 – and the similar FDIC Commentary to its mirror-image Regulation at 12 CFR Section 360.6 - see 65 Federal Register 49189, August 11, 2000) that affirms that the retention of a limited subordinated interest against which losses are initially allocated will not, by itself, make the transfer a recourse participation for purposes of Section 709.10(a)(4). Therefore, credit unions using limited subordination have been able to receive more favorable pricing by retaining the credit risk while meeting the legal isolation test under SFAS No.
140 for sale accounting treatment within the regulatory environment in which they operate.

WesCorp strongly encourages FASB to note that receiving sale accounting treatment is a critical element of entering into loan participation transactions for credit unions because credit unions also operate under regulatory capital constraints. Thus, credit unions do not desire to retain the assets sold on their balance sheets as would be required to if they did not meet the criteria for sale accounting treatment because doing so would reduce their regulatory capital ratios and potentially put unnecessary strain on their balance sheets.

As such, WesCorp is concerned with FASB’s proposed approach that would require that a QSPE be used for all transfers of portions of financial assets except those transfers which meet the definition of a participating interest. While it is presently unclear as to whether credit unions would even have the legal authority to be able to create a QSPE through a credit union service organization—assuming they did—the requirement of such a legal structure would be out of reach for many credit unions from both a cost and complexity standpoint.

Equally concerning to us is the definition of a participating interest under FASB’s proposed approach. We do not believe the retention of a limited subordination as described in the transactions above, in any way mitigates the fact that an entity has surrendered control over the transferred financial assets. The subordination is limited contractually and results in the recognition of a separate liability by the transferor that is utilized under contractually defined circumstances. All other rights and obligations related to the transferred financial assets (loans) transfer to the transferee as required under sale accounting.

Finally, WesCorp finds unclear the transition provisions under the proposed statement. The Exposure Draft states that if the transferor has a continuing obligation or any remaining commitment related to the transferred financial assets to deliver cash or other assets, than that entity would be required to change its accounting for that transaction upon issuance of the final statement. (What about servicing of loans sold – does that constitute “a continuing obligation”?) It is unclear whether the existence of limited subordination against which losses are allocated constitutes a continuing obligation under the proposed statement. WesCorp strongly suggests that considering this structure to be a continuing obligation under the proposed statement, to be unduly burdensome and unfair to credit unions that have entered into transactions under previous guidance in good faith based upon existing accounting and regulatory rules. Without the ability to obtain true sale accounting treatment, credit unions would not have entered into loan participation sale transactions, and the requirement to record the effect of a cumulative accounting change could negatively impact the regulatory capital ratios of credit unions.

As stated previously, loan participations are commonly used as a balance sheet management tool for credit unions. Entering into loan participation transactions that qualify for sale accounting treatment has allowed credit unions to:

- more effectively serve their member needs, as well as
manage their balance sheets and liquidity needs without impairing their regulatory capital ratios as would be the case if they were to simply enter into borrowings for their liquidity needs.

The presence of a limited subordination feature that qualifies for sale accounting treatment has allowed credit unions to receive pricing more commensurate with the credit risk that exists in their portfolios rather than sell participations in what they believe to be below-market prices. In addition, these transactions have other benefits to the safety and soundness of credit unions as they result in diversification of credit risk and geographic risk inherent in loan portfolios. WesCorp respectfully suggests the exposure draft, as currently written, unfairly penalizes credit unions and other entities in its attempt to control practices that it deems to be outside of the original intent of SFAS No. 140.

Again, WesCorp appreciates the opportunity to comment on this Exposure Draft. We would be pleased to dialogue further with FASB on this proposal in support of these comments.

Regards,

Todd Lane
Executive Vice President and Chief Financial Officer
WesCorp