

Message

Letter of Comment No: 9  
File Reference: 1225-001

---

**Subject:** FW: Independent Bankers Association of Texas--FW: File Reference 1225-001

---

**From:** Leslie Smathers  
**Sent:** Friday, October 07, 2005 10:29 AM  
**To:** 'director@fasb.org'  
**Cc:** Karen Neeley; 'bkankel@ibat.org'  
**Subject:** File Reference 1225-001

Technical Director  
Financial Accounting Standards Board  
Of the Financial Accounting Foundation  
P.O. Box 5116  
Norwalk, CT 06856-5116

Dear Technical Director:

The Independent Bankers Association of Texas ("IBAT") would like to take this opportunity to comment very briefly on the proposed the Exposure Draft referenced above relating to *Qualifying Special-Purpose Entities and Isolation of Transferred Assets*, which would amend FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*. This statement will have far-reaching implications for banks and their activities relating to sale and purchase of loan participations. The use of loan participations is particularly vital to community banks, the major constituency of IBAT. IBAT is a trade association representing approximately 600 independent community banks domiciled in Texas.

Small banks in particular have a need to sell loan participations in order to remain in compliance with lending limit rules and rules relating to insider transactions as well as banking affiliate act transactions. In each of these cases, loans may not exceed a specified percent of capital. Any amount that would exceed that must be sold and put out of the control of the transferring institution. To that extent, we believe that the proposed statement in many ways should comport with existing practices.

This proposed statement requires that the transfer of participating interest convey proportionate ownership rights with no entitlement to receive cash before any other participating interest. It is not uncommon for current participations to include "last in, first out" (LIFO) or "first in, first out" (FIFO) arrangements. These are used to provide a more attractive instrument for sale and the elimination of this flexibility may have an adverse impact on pricing. More significantly, banks often sell the government guaranteed portion of a guaranteed loan. These transactions cannot meet the proportionality test and will be limited to qualified SPE arrangements. This will significantly increase the cost of these transactions. We do not believe that a strict adherence to absolute proportionality is necessary in order to assure that interests are put beyond the reach of the selling or transferring party. We would ask that you reevaluate this aspect of the proposal.

Next, it appears that the isolation analysis would require that any arrangement or agreement made in connection with the transfer be considered even if it was not entered into at the time of the transfer. In some situations, a bank will sell a participation and completely dispose of a fractional

10/7/2005

interest of a particular loan. Later, circumstances will change so that the bank's reason for selling that participation is no longer valid. Perhaps the bank's lending limit has increased or the party has paid off other indebtedness bringing this particular transaction within the bank's lending limit. In any event, there are legitimate business reasons why the bank then might seek to reacquire a fractional interest of a loan that it has sold either for interest of earnings or to facilitate management of its relationship with that particular customer. In addition, a right of first refusal may have valid business purposes and should not prevent a transaction from being considered a transfer at the time that the sale of a participation occurs. It is our understanding that none of these subsequent transactions will defeat the transfer treatment.

Finally, it is our understanding that a lender may obtain a "true sale" opinion on a standard transaction, use the same documentation on a subsequent transaction, and rely on the initial opinion. This is a critical management tool and should contain the otherwise significant new cost of compliance with this proposal.

Thank you for this opportunity to comment.

Sincerely,  
Chris Williston  
President & CEO