



LETTER OF COMMENT NO. 34

November 14, 2008

VIA EMAIL

Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, Connecticut 06856-5116

File Reference No. 1610-100
Re: Proposed FASB Statement, *Accounting for Transfers of Financial Assets – An Amendment of FASB Statement No. 140*

Dear Mr. Golden:

United Western Bancorp, Inc. appreciates the opportunity to comment on the proposed Statement of Financial Accounting Standards, FASB No. 140, *Accounting for Transfers of Financial Assets – An Amendment of FASB Statement No. 140* (the “Proposed Statement”).

We support the Board’s efforts to improve financial reporting. However, we do not support the issuance of the Proposed Statement as currently drafted because we do not believe the Board has sufficiently considered the impact the Proposed Statement will have on participating interests. And we are thus concerned that the proposed accounting treatment may not be consistent with the underlying economics of the transaction.

If the Board determines that it must issue the Proposed Statement, we believe the Board should consider revising the Proposed Statement in accordance with our comments and suggestions below.

Participating Interests (Paragraph 8B)

“(a.) It represents a proportionate ownership interest in an entire individual financial asset other than an equity instrument, a **derivative financial instrument**, or a hybrid financial instrument with an embedded derivative that is not clearly and closely related as described in Statement 133.”

“(b.) All cash flows received from the asset are divided among the participating interests (including any interest retained by the transferor, its **consolidated affiliates** included in the financial statements being presented, or its **agents**) in proportion to the share of ownership represented by each. Cash flows allocated to a servicer as compensation for servicing activities, if any, shall not be included in that determination. The transferor’s ownership shares must remain pro rata over the life of the original financial asset. Participating interests may be further apportioned by the transferor as long as the resulting portions meet the definition of a participating interest.”

(c.) The rights of each participating interest holder (including the transferor if it retains a participating interest) have the same priority, and that priority does not change in the event of bankruptcy or other receivership of the transferor, the original debtor, or any participating interest holder. Participating interest holders have no recourse, other than standard representations and warranties, to the transferor (or its consolidated affiliates included in the financial statements being presented or agents) or to each other, and no participating interest holder is subordinated to another. That is, no participating interest holder is entitled to receive cash before any other participating interest holder in its role as a participating interest holder.

“(d.) No party has the right to pledge or exchange the entire financial asset.”

We believe a transfer of a financial asset between a willing buyer and a willing seller should stand on its own merits. Our ability to originate a loan to a borrower at one rate, should have no impact on whether we would then participate this loan at a different rate. Obviously, if the participating rate were greater, a loss would need to be recognized, however, if the participating rate were less than the loan note rate, that would be profit to us on sale of the portion sold. We believe the language in paragraph (b) above, could require all cash flows over the life of the original asset to be participated proportionately, even if the sale of the participation was well after the origination date of the loan, we also believe because of the language “all cash flows received..” that this might require us to share loan documentation fees, appraisal fees, and other loan origination fees that were received prior to the sale of the participating interest. As written, this paragraph would seem to preclude sale accounting.

We also support other respondents that have commented that the sale of a participation of a senior or junior portion of a financial asset should not preclude sale accounting.

Like other community banks, we originate Small Business Administration (“SBA”) 7(a) loans. Under the SBA’s 7(a) program, the SBA guarantees a portion (generally 75%) of the loan. Generally, we sell the guaranteed portion in the loan, to reduce industry concentrations, to manage interest rate risks, and as part of our normal business practice. The sale of an SBA 7(a) loan is governed by SBA forms and includes the involvement of a fiscal transfer agent of the SBA. A portion of the coupon is retained by the originating bank as required by the SBA rules. In addition, these guaranteed portions are always sold above par, and often with an interest rate below the coupon rate of the note. These facts should not preclude sale accounting.

After the loan participation the payments received from the borrower are split based on a pro-rata basis, which generally is equal to the percent of the SBA guaranty. However, the Buyer's interest is reduced by SBA fees and any amount that was negotiated in an arms length transaction at the time of the sale of the guaranteed portion. In the event of default the SBA purchases the Buyer's interest in the loan, and the Lender and SBA share in the liquidation proceeds and expenses on a pro-rata basis.

We do point out, if the guaranteed portion was sold for a premium, the lender is subject to two warranties. The first warranty is "If the borrower prepays the loan for any reason with 90 days of the Warranty Date," (date of loan sale) "the Lender must refund any premium received." The second warranty is "If the borrower fails to make the first three monthly payments due after the Warranty Date and the borrower enters uncured default within 275 calendar days from the Warranty Date. Lender shall refund any premium received."

We believe, that other accounting guidance including FAS 5, adequately addresses the need to consider whether a warranty claim needs to be accrued. Also, as we continue to service the loan, we are aware if there is a payment default. We do not believe these warranties should preclude sale treatment of the participating interest.

We echo the comments of Mr. McGaughey, of Excel National Bank, that if the participations of SBA 7(a) guaranteed portions fail to meet sales treatment under the new requirements of paragraph 8B of the Proposed Statement, many lenders will abandon the guaranty programs. The result of lenders abandoning the SBA programs will reduce the credit available to small businesses. Providing credit to small businesses is critical to our economy.

United Western Bancorp, Inc. appreciates the opportunity to comment on the Proposed Statement. If you have any questions or comments please call me at 720-956-6503.

Yours truly,

UNITED WESTERN BANCORP, INC.



Benjamin C. Hirsh
Chief Accounting Officer