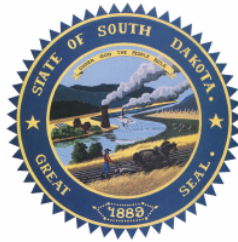


MEMORANDUM



SOUTH DAKOTA
DIVISION OF BANKING

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Pierre, SD 57501
(605) 773-3421 / FAX (866) 326-7504

NUMBER: 01- 008
DATE: 01/05/2010
TO: CHIEF EXECUTIVE OFFICER
ALL STATE CHARTERED BANKS
FROM: ROGER NOVOTNY
DIRECTOR OF BANKING
RE: FINANCIAL ACCOUNTING STANDARD 166

On January 1, 2010, Financial Accounting Standard 166 (FAS 166), which revises FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, will be implemented. All participations sold after January 1, 2010, will need to be sold on a pro-rata basis, instead of the commonly used LIFO or FIFO bases, in order to qualify as a participating interest. All participations not meeting the requirements for consideration as a participating interest under GAAP will remain on the bank's balance sheet, with the cash received from the sale accounted for as a secured borrowing. As a result, non pro-rata participations, under the guidance of FAS 166, will impact the bank's capital and **could** affect the bank's ability to use specific participations for legal lending limit relief. The purpose of this guidance is to clarify the effects of this standard on the aggregation of certain participations towards the bank's legal lending limit.

Participations not considered a participating interest for FAS 166, **will be aggregated** towards the bank's legal lending limit. Participations that include "*pro-rata sharing upon default*" provisions will continue to receive legal lending limit relief, despite the changes to GAAP; however, those participations originated under LIFO or FIFO will still need to be accounted for under FAS 166, which will impact the bank's capital.

The South Dakota Division of Banking encourages all banks to contact their accountants for further clarification regarding the implications of FAS 166. Additional clarification can also be found in the December 31, 2009 update to the Federal Financial Institutions Examination Council's call report instructions and supplemental instructions - <http://www.fdic.gov/news/news/financial/2009/FIL-76-2009a.pdf>.

Any questions regarding this *Guidance* may be directed to your institution's Contact Examiner in the Division of Banking at 605-773-3421.