



Letter of Comment No: 6
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File Reference Nos. EITF0405 and SOP 78-9-a

We appreciate this chance to comment on the above referenced EITF and SOP. The National Equity Fund, Inc. (NEF) is a not-for-profit low-income housing tax credit (LIHTC) syndicator that earns syndication and asset management fees from investors for services provided to acquire and asset manage 99.99% limited partnership interests in LIHTC project limited partnerships. The LIHTC projects provide the investors with tax credits over a ten year period and passive losses over a 15 year period. The projects acquired must operate in compliance with section 42 of the Internal Revenue Code for a 15 year period. Limited partnerships are formed to acquire the LIHTC project partnership investments, hold them for 15 years (compliance period) and then dispose of them. These limited partnerships have NEF acting as the sole general partner with a .01% interest and have anywhere from one to fifteen investor limited partners collectively owning 99.99% of the limited partnership interests. The Investor limited partners in these limited partnerships receive 99.99% of all income, losses, tax credits and distributions that flow-up from the LIHTC project partnerships.

Both the proposed FSP SOP 78-9 *Accounting for Investments in Real Estate Ventures* and EITF 04-5, "Investor's Accounting for an Investment in a Limited Partnership When the Investor Is the Sole General Partner and the Limited Partners Have Certain Rights" indicate that NEF would be required to consolidate all of its GP interests in these limited partnerships depending on whether the limited partners have "protective rights" versus "participating rights" in the limited partnerships in question.

NEF feels strongly that both the Proposed FSP SOP 78-9 and EITF 04-5 overlook many critical points that are specific to NEF's particular situation that would make consolidation non-sensible and misleading to its financial statement users. The following briefly describes our concerns:

Four Primary Concerns

➤ **Economic Interests of the general partner and limited partners**



- NEF holds only a .01% interest in the limited partnerships. Virtually all the benefits of the limited partnership are received by the limited partners. The small ownership percentage raises questions as to NEF's "presumed control" over the limited partnership. Proposed FSP SOP 78-9-a paragraph 19 (a) in Attachment A (EITF abstract of Issue No. 04-5) mentions that a small ownership percentage is a factor to consider. As stated in paragraph 19 (a) "Similarly, although the general partner is presumed to control the limited partnership, the level of skepticism about such ability should increase as the sole general partner's economic interest in the limited partnership decreases." This suggests that the EITF acknowledges small general partner interests may lack the "presumed control" which the EITF 04-5 is using as its basis for consolidation to begin with. Other than saying that a small general partner ownership percentage is a "factor to consider", no further guidance is provided in EITF 04-5 as to what the impact of having a .01% general partner interest has on the consolidation rules.

➤ **Distortion of the general partners true business if required to consolidate limited partnership-**

- NEF holds .01% sole general partnership interests in over 60 limited partnerships comprising approximately \$2 billion in total assets. If required to consolidate, NEF's financial statements will no longer clearly reflect NEF's true business, which is deriving income from the syndication of low-income tax credits projects. With only a .01% general partner interest, the minority interest reflected in the consolidated statements would be comprised of the equity of all the 99.99% limited partners' interests combined. These consolidated statements would do little to reflect reality, in fact, they would have the opposite effect, distorting the financial statements, making NEF appear like it owns assets that in reality it only owns .01% (.0001) of. As NEF's primary business is earning syndication fees, the consolidated presentation would provide no benefit to the financial statement users.

➤ **Protective versus Participating rights**

- As indicated in EITF 04-5 and Proposed FSP SOP 78-9, a limited partner's right to block the acquisition of an asset greater than 20% of the partnerships total assets is a Protective right and a limited partner's right to block the acquisition of an asset less than 20% of the partnership total assets being a participating right :
- There inherently is subjectivity that comes into play in determining the distinction between a protective right and a participating right. By placing a 20% bright line as the cut-off, many situations exist where the 20% rule won't make sense.
 - NEF is the .01% general partner in many Limited Partnerships where only a single 99.99% investor limited partner exists. Many of these limited partnerships invest in 5 or less LIHTC project limited partnerships.



- In limited partnerships with only a single investor limited partner (Single Investor Funds), the investor plays an active role in most decisions made by the partnership. The investor participates in the identification of projects; they also review all project investments to ensure they fit their investment criteria, location needs and return needs. That said, the investor is not necessarily involved in day to day operations of the partnership.
 - In Single Investor Funds, asset acquisitions are only made with the consent of the limited partner. Many times the acquisitions of the LIHTC projects will take place over the course of a year or more. The acquisition of the first asset is clearly more than 20% of the fair value of the LP's total assets. As additional investments are made however, the 20% threshold may not be met, thereby making the acquisition of the 3rd, 4th or 5th asset under the 20% threshold. As a result, the 20% threshold becomes arbitrary.
 - Intuitively, consolidation of this limited partnership by the sole general partner doesn't appear proper, however, if following the EITF's 20% bright line threshold the sole general partner appears to be required to consolidate this limited partnership.
- Lastly, NEF's ability to produce audited, consolidated financial statements on a timely basis would be virtually impossible. The audited financial statements of the 60+ limited partnerships needed to consolidate are themselves not completed until May 31st of each year. This delay would inevitably delay the NEF, Inc. consolidated audit completion to sometime in June or July of each year. This is extremely problematic due to NEF, inc. having reporting requirements with our lenders and investors prior to March 31st of each year.

We appreciate your time in considering our specific situation and concerns as they relate to the policies currently being discussed. If you have any questions about our comments or wish to discuss any of the matters addressed herein, please don't hesitate to call me at the number below.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Huber', written in a cursive style.

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