June 17, 2013

Via email: director@fasb.org

Ms. Susan M. Cosper
Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: File Reference No. EITF-13B – Investments – Equity Method and Joint Ventures (Topic 323): Accounting for Investments in Qualified Affordable Housing Projects, a consensus of the FASB Emerging Issues Task Force

Dear Ms. Cosper:

U.S. Bancorp (USB) appreciates the opportunity to comment on the Proposed Accounting Standards Update – Investments – Equity Method and Joint Ventures (Topic 323): Accounting for Investments in Qualified Affordable Housing Projects, a consensus of the FASB Emerging Issues Task Force (the “Exposure Draft” or “ED”). USB has provided significant investment in community development projects across the country using a variety of federally sponsored tax credit programs. These programs stimulate capital investment in underserved communities and contribute to creation of new jobs, construction of needed affordable housing, generation of commercial economic activity, development of renewable energy facilities, and rehabilitation of historic buildings.

USB supports the FASB’s objective of improving financial reporting for investments in affordable housing projects that qualify for low income housing tax credits, and believes investors will benefit if preparers are permitted to elect the same accounting for other types of tax credit investments meeting the qualifying conditions specified in the ED. For investments whose returns are substantially all related to tax credits and other tax benefits, accounting methods that bifurcate the recognition of the cost of the investment from the benefits received result in confusing information to financial statement users, because pre-tax losses are generally reported on investments that are economically profitable in the aggregate. Addressing the accounting for tax credit investments that meet the conditions specified in the ED, regardless of the particular legislative program under which the tax credits are authorized, would align information provided to financial statement users with how those investments are typically evaluated and managed.
We encourage the Task Force to consider the following comments on the ED to ensure the proposal provides transparent and decision-useful financial reporting to investors.

- **Apply the Accounting Framework Consistently for Similar Investments** – Other types of tax credit investments have characteristics similar to investments in Qualified Affordable Housing Projects. Certain of these tax credit investments today include New Markets Tax Credits, Historic Tax Credits, and Renewable Energy Tax Credits. USB recommends the Task Force allow preparers to elect the specialized accounting for all tax credit investments that meet the conditions specified in the ED.

- **Amortization of Investment in Proportion to Tax Credits and Other Tax Benefits** – Though we believe combining the income statement geography for recognition of the cost and benefits of these types of investments is appropriate and important to financial statements users, we believe there are shortcomings associated with using the effective yield method and therefore it may not be the best measurement method for these investments. A proportional amortization approach would better match the recognition of the cost of the investment with the recognition of the related tax credits and other tax benefits.

- **Conditions Required to Elect Net Presentation** – We believe the proposed conditions to elect accounting for the investment using the effective yield method are an improvement over the current criteria and are appropriate in principle. However, we believe clarifications to the conditions related to operational influence and the structure of the investments would be helpful to fully achieve the Task Force objectives and mitigate questions preparers will likely have in interpreting and applying the guidance on a consistent basis.

The following sections further describe our comments on these topics:

**Presentation of All Components of the Investment Performance in Income Taxes, and Applying the Framework Consistently for Similar Types of Investments**

USB believes the most important impact of the ED is to promote consistent accounting and decision-useful reporting information by providing financial statement users with better information about the returns from tax credit investments. Current accounting guidance for equity investments, other than the effective yield method, requires reporting of the investment amortization, operating losses and/or impairment within pre-tax income and the positive returns from the investment (the tax credits and other tax benefits) within income taxes. We believe this presentation for tax credit investments is confusing and potentially misleading to financial statement users because the positive after-tax net benefit of the investment performance is not evident within the income statement. The ED provides an accounting policy election to account for certain types of tax credit investments using the effective yield method if specified conditions are met. The most significant advantage to financial statement users of the effective yield method is presentation of the tax credit investment’s net performance results on an after-tax basis. Presenting all components of the performance results on an after-tax basis in the income
taxes line of the income statement aligns with how the investment is evaluated and managed. Specifically, this presentation would allow for the recognition of the cost of the investment to be presented together with the tax credits and tax benefits.

Therefore, we strongly support the Task Force’s tentative decision to modify the conditions (principally to remove the guarantee requirement) required to elect the use of an accounting method that results in more Affordable Housing Project investments qualifying for the presentation of all components of the return within income taxes. However, we believe this improved financial reporting should be allowed for other types of tax credit investments in addition to Affordable Housing Projects.

EITF Issue No. 94-1\(^1\) was narrow in scope upon its original issuance primarily due to a lack of other legislated tax credit programs at the time. The success of the Affordable Housing Tax Credit program and its positive impacts on communities has led, at least in part, to the addition or expansion of other tax credit programs, including most notably and similarly: New Markets Tax Credits, Renewable Energy Tax Credits and Historic Tax Credits. The structures of these investments, investor objectives, and basis for returns are generally similar in substance to Affordable Housing Tax Credit investments.

USB recommends the Task Force expand the scope of the tentative consensus to include other tax credit investments in entities where the objective of the investor is to receive substantially all of the benefits through the receipt of tax credits and other tax benefits. This will improve financial reporting and promote consistent accounting for substantially similar investments, which will promote transparent and decision-useful information about the impacts these investments have on the preparer’s financial statements and ongoing results of operations.

Attachment A provides information about four major tax credit investment programs, including Qualified Affordable Housing Projects (“LIHTC”). Similar to investments in Qualified Affordable Housing Projects, substantially all of the returns on the other types of tax credit investments are from tax credits and other tax benefits. Although structured as an equity investment, the fundamental characteristics of all of these tax credit investments are different than traditional equity investments in corporations or partnerships. For example, voting privileges primarily reflect protective rights rather than participating rights, specified returns are based essentially on operational and compliance requirements rather than significant upside and/or downside variability tied to financial success or failure, and exit provisions typically result in the investor receiving nominal proceeds after the applicable tax credit compliance period has expired.

In summary, each of the investments described have the following common attributes:

- The tax credit programs are a result of public policy initiatives designed to encourage capital investment in public welfare and related community enhancement projects.
- Investor objectives are to provide capital investment into projects that might not otherwise attract capital and may meet qualifying Community Reinvestment Act

\(^1\) EITF Issue No. 94-1, “Accounting for Tax Benefits Resulting from Investments in Affordable Housing Projects” is codified in the FASB Accounting Standards Codification in Subtopic 323-740, “Investments – Equity Method and Joint Ventures – Income Taxes”.
requirements in exchange for returns substantially all in the form of tax credits and other tax benefits.

- Aggregate returns (tax credits and other tax benefits) are realized over a specified period of time and generally do not result in more than insignificant variability. Variability of tax credits and returns is generally timing related and attributable to meeting certain operational requirements.

Further, as noted in our letter dated May 14, 2013 (File Reference No. 2013-220) we believe the proposed accounting standards update on classification and measurement\(^2\) may require tax credit investments not included in the scope of a Task Force consensus on this EITF topic to be classified as held for sale, and thus carried at fair value through net income, because of the exit features of the investments after a specified time period (a feature that is also common in Qualified Affordable Housing Projects). We believe this inconsistent reporting of information to financial statement users about investments with similar economic and risk characteristics could be avoided by applying the principles and conditions proposed by the Task Force to all tax credit investments.

**Amortization of Investment in Proportion to Tax Credits and Other Tax Benefits**

We believe the Task Force should adopt the approach described in Question 3 of the ED whereby the cost of the investment would be amortized in proportion to the tax credits and other tax benefits received, and recognized as a component of income taxes. We believe there are shortcomings associated with the calculations under the effective yield method and therefore it may not be the best method for these investments. A proportional amortization approach would match the amortization of the investment with the recognition of the related tax credits and other tax benefits. We believe it would be acceptable to allow an election to use either a proportional amortization approach or the effective yield method with appropriate disclosure.

Because of the way the tax credit investments are structured, the variability of the aggregate cash flows realized during the holding period (tax credits and other tax benefits) generally is minimal. However, unlike the illustrative example in the ED, the timing of those cash flows may not be realized in a predictable pattern because they are not based on financial terms (e.g., principal and interest payments). The timing of the allocation of the tax credits is based on compliance requirements and the achievement of certain milestones like a placed in service date. As a result, there can be changes in the expected timing even though the aggregate amount of tax credits and other tax benefits to be received over the investment holding period has minimal variability.

Under the effective yield method, the focus is on recognizing net income based on a level yield over the investment’s holding period which inherently recognizes more net income in the early years of the investment regardless of the amount of tax credits and other tax benefits realized in those periods. In the later years, the net income recognized is significantly smaller as a result of increased amortization expense which is disproportionate to the tax credits and other tax benefits recognized in those periods. We believe a proportional approach would better match the amortization of the investment with the recognition of the related tax credits and other tax benefits.

benefits. In addition, the proportionate amortization method would be more operational for institutions to apply and may be less costly to implement upon transition.

**Conditions Required to Elect Net Presentation**

We believe the conditions as proposed in paragraph 323-740-25-1 are an improvement over the current conditions required for an entity to elect to account for an investment using the effective yield method. We also believe the conditions capture the most important objectives and features that should determine eligibility for the election and appropriately keep the application of specialized accounting narrow, excluding those investments where the returns are not substantially all from tax credits and other tax benefits, and therefore, should be accounted for consistent with a traditional equity or cost method investment.

As indicated in the ED, the Task Force believes the proposed amendments would enable more entities to elect the effective yield method to account for investments in Qualified Affordable Housing Projects. We believe the conditions are appropriate in principle, however, we believe two of the conditions need clarification to ensure the ED fully achieves its objectives.

**No Operational Influence**

We believe the condition that states “the investor retains no operational influence over the investment other than protective rights…” may be confusing and could be misinterpreted in practice in a manner such that few investments meet the condition. Because other guidance exists that relates ownership interest to operational influence (such as the equity method and limited partnership literature), and because the objective of the accounting in this topic is to distinguish the accounting for qualifying tax credit investments from other types of equity investments, practitioners may not be able to determine when ownership interests override the nature of the limited protective rights. We recommend the Task Force clarify the objectives behind this condition so it can be applied as intended in practice. If the purpose of this condition was to prohibit the election of the effective yield method when an entity determines it has a controlling financial interest through its investment or other interest, and therefore, should consolidate the investment, we recommend the Task Force modify the condition to indicate the investor does not retain operational influence that could provide it with a controlling interest over the investee.

**Investor is a Limited Liability Investor in the Affordable Housing Project**

We recommend the fourth condition be modified to clarify the investor is a limited liability investor for both legal and tax purposes, and the investor’s liability is limited to its capital investments; and specifically deleting the words that reference a “project” – (i.e., “in the affordable housing project.”) In many circumstances, the investment is not made directly into the project, but rather into a fund or other entity that combines other sources of capital to make the investments into the project. Although the rights, obligations, and most importantly the limited liability aspects of the indirect investment are the same as a direct investment, we believe there could be unintended interpretation issues when the investment is not directly into the project. We believe these indirect investments meet the objective of the condition and therefore the guidance should be clarified to not preclude them from meeting the condition.
USB appreciates the opportunity to submit views and would be pleased to discuss our comments with you at your convenience. Please contact me at (612) 303-5238 with questions or if you need additional information.

Sincerely,

/s/ Craig E. Gifford

Craig E. Gifford
Controller
### ATTACHMENT A

#### Table 1 - EITF Issue 13B Proposed Criteria and Application to Tax Credit Investments

<table>
<thead>
<tr>
<th>Program</th>
<th>Affordable Housing Tax Credit (LIHTC)</th>
<th>New Market Tax Credit (NHTC)</th>
<th>Renewable Energy Tax Credit (RETC)</th>
<th>Historic Tax Credit (HTC)</th>
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<tbody>
<tr>
<td><strong>Proposed Criteria</strong></td>
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<tr>
<td>1. It is probable that the tax credits allocable to investor will be available.</td>
<td>Tax credits are subject to recapture if certain defined criteria (differs depending on tax credit type) are not achieved. Tax credit recapture is the only way a tax credit will not be available to the investor. • Industry recapture rates are not made public but based on our own experience, we believe them to be very low (1% or less).</td>
<td>Tax credit availability same as LIHTC. • Industry recapture rates are not made public but based on our own experience, we believe them to be very low (1% or less).</td>
<td>Tax credit availability same as LIHTC. • Industry recapture rates are not made public but based on our own experience, we believe them to be very low (1% or less).</td>
<td>Tax credit availability same as LIHTC. • Industry recapture rates are not made public but based on our own experience, we believe them to be very low (1% or less).</td>
</tr>
<tr>
<td>2. The investor retains no operational influence over the investment other than protective rights, and substantially all of the projected benefits are from tax credits and other tax benefits.</td>
<td>Structures set up with the following investor rights: • Investor acts as the limited partner and the developer is the general partner. • Investor contributes the majority of the equity at risk and receives the majority of the tax benefits. • Investor has no significant voting rights other than protective rights. • Key decisions that have a significant impact on the success of the entity are made by the general partner.</td>
<td>Note: Investor rights are similar to LIHTC structures; however, different parties are involved as noted below. Structures set up with the following investor rights: • Investor receives tax credits through an Investment Fund that invests in a Community Development Entity (CDE). Investor is typically the Non-Managing Member. • Investor has no significant voting rights, other than protective rights. • Key decisions that have a significant impact on the success of the entity are typically made by the Manager and are not controlled by the Investor.</td>
<td>Note: Investor rights are similar to LIHTC structures; however, different parties are involved as noted below. Structures set up with the following investor rights: • Investor is the 99.99% equity investor in project or master tenant. • Investor is Non-Managing Member and Developer/Sponsor serves as the Managing Member of the project entity responsible for development, installation and operations of the property. • Investor has no significant voting rights, other than protective rights. • Key decisions that have a significant impact on the success of the entity are made by the Managing Member.</td>
<td>Note: Investor rights are similar to LIHTC structures; however, different parties are involved as noted below. Structures are set up with the following investor rights: • Investor is the 99.99% equity investor in project or master tenant. • Investor is Non-Managing Member and Developer/Sponsor serves as the Managing Member of the project entity responsible for development, installation and operations of the property. • Investor has no significant voting rights, other than protective rights. • Key decisions that have a significant impact on the success of the entity are made by the Managing Member.</td>
</tr>
<tr>
<td>3. The investor’s projected yield based solely on the cash flows from the tax credits and other tax benefits is positive.</td>
<td>Investment tax credits are structured so that the projected yield, including tax credits and other tax benefits is positive.</td>
<td>Same as LIHTC</td>
<td>Same as LIHTC</td>
<td>Same as LIHTC</td>
</tr>
<tr>
<td>4. The investor is a limited liability investor in the affordable housing project for both legal and tax purposes, and the investor’s liability is limited to its capital investment.</td>
<td>• The structure provides for the Investor to act as the limited partner and its risk is limited to its equity investment. • The general partner or managing member is responsible for operating deficits or cost overruns and may also provide a guarantee for recapture of the tax credits for certain stated circumstances.</td>
<td>Same as LIHTC</td>
<td>Same as LIHTC</td>
<td>Same as LIHTC</td>
</tr>
</tbody>
</table>
Table 2 - Key Characteristics for Tax Credit Investments

<table>
<thead>
<tr>
<th>Program</th>
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<tr>
<td><strong>Credit</strong></td>
<td>Tax credit is equivalent to 4% or 9% of qualified basis. Qualified basis = Eligible basis (depreciable costs) * % of low-income tenancy.</td>
<td>Tax credit is equal to 39% of the qualified investment into a Community Development Entry (CDE) which has been provided an allocation of tax credits. The CDE makes an investment into a Qualified Active Low Income Community Business (QALICB).</td>
<td>Tax credit is equal to 30% of the project expenditures.</td>
<td>10% or 20% of qualified project expenditures.</td>
</tr>
<tr>
<td><strong>Public Policy</strong></td>
<td>Legislated tax credit program designed for constructing and renovating affordable rental housing for people facing financial challenges in urban and rural areas.</td>
<td>Legislated tax credit program designed for growing businesses, creating jobs and spurring economic development in designated underserved communities.</td>
<td>Legislated tax credit program for designing, financing, installing and monitoring renewable energy technologies that generate electricity.</td>
<td>Legislated tax credit program designed to rehabilitate certified historic buildings into income-generating properties that create jobs and revitalize communities.</td>
</tr>
<tr>
<td><strong>Community Reinvestment Act (CRA) Qualifying</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Credit Period</strong></td>
<td>10 years, beginning in the year the property has been leased to a certain occupancy.</td>
<td>7 years, beginning when the investment is made to the CDE.</td>
<td>1 year, in the year the property is placed in commercial operation.</td>
<td>1 year, in the year the property is placed into service.</td>
</tr>
<tr>
<td><strong>Recapture Period</strong></td>
<td>Tax credits are earned over 10 years but recapture period is 15 years:  • In years one through 10 - one-third of the total credit amount claimed has the potential for recapture.  • In years 11 through 15 - the potential for recapture (1/3 of the credits) decreases by one-fifth so by the end of year 15, the potential for recapture is zero.</td>
<td>Tax credits are earned equally over 7 years but fully recaptureable the entire 7-year period.</td>
<td>Tax credits are earned over 5 years; recapture risk burns off by 20% each year.</td>
<td>Tax credits are earned over 5 years; recapture risk burns off by 20% each year</td>
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<tr>
<td><strong>Inception/Status</strong></td>
<td>• 1986  • Permanent</td>
<td>• 2000  • Currently extended through 2013  • Permanent status being considered</td>
<td>• 30% ITC credit started in 2005  • 30% Currently extended through 2016, reduces to 10% thereafter.</td>
<td>• 1976  • Permanent</td>
</tr>
<tr>
<td><strong>Tax credits and tax benefits associated</strong></td>
<td>• Tax credits  • Deductions - Equity investor's share of operating income/losses (i.e. depreciation and rental expenses).</td>
<td>• Tax credits  • Deductions - Equity investor's share of operating income/loss (primarily fees and net interest income).</td>
<td>• Tax credits  • Deductions - Equity investor's share of operating income/loss (primarily depreciation).  Note: may include non-tax benefits such as cash returns (priority returns structured in the transaction.)</td>
<td>• Tax credits  • Deductions - Equity investor's share of operating income/loss (primarily depreciation).  Note: may include non-tax benefits such as cash returns (priority returns structured in the transaction.)</td>
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<tr>
<td><strong>Cash flow variability</strong></td>
<td>The investor return is based solely on the cash flows from tax credits and other tax benefits. Cash flows rarely vary from projected amounts.</td>
<td>The investor return is based solely on the cash flows from tax credits and other tax benefits. Cash flows rarely vary from projected amounts.</td>
<td>Same as LIHTC, plus the following:  • Priority Return - represent the cash returns noted above. Certain transactions may include returns from cash which are above and beyond the tax benefits from operating losses/income and tax credits. These returns may be variable and if significant, the investment structure should not qualify for this treatment.  • Put - Nominal stated value to be paid to the investor at exit/maturity (i.e. end of compliance period). The put is the investor controlled withdrawal option and provides for the structure to be &quot;put&quot; to the developer/sponsor for this nominal value.</td>
<td>Same as LIHTC, plus the following:  • Priority Return - represent the cash returns noted above. Certain transactions may include returns from cash which are above and beyond the tax benefits from operating losses/income and tax credits. These returns may be variable and if significant, the investment structure should not qualify for this treatment.  • Put - Nominal stated value to be paid to the investor at exit/maturity (i.e. end of compliance period). The put is the investor controlled withdrawal option and provides for the structure to be &quot;put&quot; to the developer/sponsor for this nominal value.</td>
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<td>Program</td>
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<td><strong>Operating - Note, if these events cause variability, it typically impacts the timing and potential amount of the tax credit - not the ultimate receipt of it.</strong></td>
<td>• Basis from certain developmental costs&lt;br&gt;• Percentage of the project set-aside for low-income housing&lt;br&gt;• Applicable tax credit percentage&lt;br&gt;• To mitigate this variability, structures typically include a guarantee and its purpose is to restore the investor’s return in the event that the expected amount of tax credits is not realized.</td>
<td>• The amount of the tax credit is driven by the Qualified Equity Investment into the CDE, not the operations of the underlying project/business. Therefore, operating risk with NMTC is very low.</td>
<td>• Expenditures which determine tax credit amount&lt;br&gt;• Placed in service date&lt;br&gt;• Project must produce energy but the amount of energy produced, and cash flows from operations do not impact the amount of the tax credit.</td>
<td>• Expenditures which determine tax credit amount&lt;br&gt;• Placed in service date</td>
</tr>
<tr>
<td><strong>Compliance</strong></td>
<td>Amount of tax credits projected at close typically do not vary. If tax credits are not received, a recapture event has occurred. Recapture is caused by the following pre-defined criteria: &lt;br&gt;• Non-compliance with Section 42 of the Code&lt;br&gt;• 10% carryover&lt;br&gt;• Placement-in-service&lt;br&gt;• Qualified lease-up/Minimum set-aside&lt;br&gt;• 50% bond test&lt;br&gt;• Recording LURA&lt;br&gt;• Foreclosure</td>
<td>Amount of tax credits projected at close typically do not vary. If tax credits are not received, a recapture event has occurred. Recapture is caused by the following pre-defined criteria: &lt;br&gt;• Substantially all (Sub-all) compliance criteria: &lt;br&gt;• Substantially all, defined as 85 percent, of the qualified investment proceeds must be deployed by the CDE to a project during the compliance period&lt;br&gt;• The QALICB must maintain QALICB status during the compliance period&lt;br&gt;• The CDE must maintain certified status</td>
<td>Amount of tax credits projected at close typically do not vary. If tax credits are not received, a recapture event has occurred. Recapture is caused by the following pre-defined criteria: &lt;br&gt;• Failure of the project to constitute &quot;investment property&quot; within the meaning of Section 50(a) of the Internal Revenue Code&lt;br&gt;• Failure to be in continuous operation (caused by vandalism, maintenance issue or equipment malfunction). If repair is required, a cure period is allowed.</td>
<td>Amount of tax credits projected at close typically do not vary. If tax credits are not received, a recapture event has occurred. Recapture is caused by the following pre-defined criteria: &lt;br&gt;• Disposition of the property/Change in ownership&lt;br&gt;• Disposition of at least 1/3 partnership interest&lt;br&gt;• National Park Service Certification Revoked&lt;br&gt;• Conversion to Tax Exempt Use Property</td>
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