American Bankers Association
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Leslie Seidman
Chairman
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
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Via email: director@fasb.org

RE: File Reference No. EITF-13B: *Accounting for Investments in Qualified Affordable Housing Projects*

Dear Chairman Seidman:

The American Bankers Association (ABA) appreciates the opportunity to comment on the Exposure Draft *Accounting for Investments in Qualified Affordable Housing Projects (ED)*. ABA represents banks of all sizes and charters and is the voice for our nation's $14 trillion banking industry and its two million employees.

The objective of the ED is to provide guidance on accounting for investments in affordable housing projects that qualify for the low income housing tax credit (LIHTC). The ED establishes four criteria that must be met in order in order to qualify for the effective yield method, which will be an accounting policy decision. The four criteria are:

1. It is probable that the tax credits allocable to the investor will be available.
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 (for example, tax benefits generated from the operating losses of the investment).
3. The investor's projected yield based solely on the cash flows from the tax credits and other tax benefits is positive.
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.

Under the effective yield method, the net benefits attained by the investor are recorded as a component of income taxes, as opposed to current guidance, which records the investor's pro rata portion of the total entity's net income (loss) as investment income under the equity method. Current guidance restricts the use of the effective yield method because it requires that tax credit benefits be guaranteed by a creditworthy entity and a positive yield be attained solely from the cash flows from tax credits. ABA supports the FASB's efforts to align LIHTC partnership accounting with how decisions in such investments are made, and we believe the proposed changes represent a big improvement over current standards.

Banking institutions are significant investors in LIHTC partnerships, as well as other similar tax credit partnerships, and, if approved, we believe the proposed guidance will likely result in a significant expansion of investments that may be accounted for using the effective yield method, as opposed to the current standard that requires equity method accounting for the vast majority of these investments. Bankers generally view such investments as a way to encourage capital investment for housing in the local community, meet Community Reinvestment Act requirements, and to lower their effective income tax rate. They also make specific investment decisions from a total cash flow perspective (which includes not only tax credits, but also the benefits of tax losses).

The Changes Align Accounting with How Business Decisions are Made

We believe the proposed changes provide a big improvement over current standards in two major ways. The proposed criteria to qualify for the effective yield method (namely, that it is probable, and not guaranteed, that the tax credits will be available, and that the projected yield includes other tax benefits in addition to the tax credits) reflects how management evaluates such an investment. In addition, the presentation of all components of the net return from and these tax credit investments within income taxes, as opposed to including some components within investment income and other components within income taxes, will improve financial reporting.[1] Both financial statement users and management will be well-served, as disclosures related to income taxes will have a clearer connection to amounts reported as income tax expense.

In the normal course of business, banks may also provide loans to the partnerships or to entities that manage the projects. We do not believe that lending in the normal course of business was intended to prevent a limited partner investor in an LIHTC partnership from meeting the criteria to qualify for the effective yield method of accounting. However, without further clarification, we believe that confusion may result when analyzing whether "substantially all of the projected benefits are from tax credits and other tax benefits…" would include or exclude interest income earned on the loan. As a result, ABA recommends that the final standard specify that an analysis of whether the criteria have been met focus on cash flows related to the equity investment, and it would exclude arm's length lending transactions made in the normal course of business.

Further, we believe that qualification for the effective yield method should not be subject to subsequent or periodic reevaluation on whether the criteria have been met, with the exception of a change in the overarching purpose and design of an entity (e.g., modification of the legal agreement that changes the characteristics of the cash flows of the investment). As any unforeseen change in circumstances (e.g., the availability of tax credits is no longer probable)

[1] When equity method accounting is used, bankers believe investment income and pre-tax income are distorted because the negative components of the investment return are included in those lines while the positive components are included income taxes.

Certain members of the ABA Accounting Committee favor presenting the net effective yield, including all tax benefits associated with the investments, as other noninterest income. Both this presentation and the proposed presentation represent an improvement over the current standard.

would be recognized immediately through impairment under the effective yield method of accounting, ABA believes that a change in the method of accounting would be unnecessary and confusing for financial statement users. With this in mind, we recommend specific language to clarify that the criteria to qualify for the effective yield method should be assessed only at the time of initial purchase of the investment or upon the occurrence of an event that changes the purpose and design of the entity.

Other Tax Credit Investments Should be Included in the Scope

We recommend that the FASB consider expanding the scope of this project to include investments in entities whereby substantially all of the projected benefits are from tax credits and other tax benefits. During the almost 20 year period[2] since the current standard was issued, the market for such investments has grown significantly and includes entities and funds investing in, among other things, new markets, historic properties, and certain environmental projects (e.g. wind, solar). Such entities are often similar in structure and subject to similarly available tax advantages.

We believe accounting for tax credit investments should be consistently applied and driven by a principle-based approach and not by the specific type of tax credit program. We understand that investment in the other tax credit investment entities may, in certain circumstances, include financial benefits other than the realization of tax credits and tax benefits; however, we believe the proposed criteria effectively address this and would exclude such investments from qualifying for the effective yield method. We recommend that criterion 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” be modified so the criterion is not limited to affordable housing projects.

Considering that the current outstanding exposure draft, *Recognition and Measurement of Financial Assets and Financial Liabilities*, would potentially significantly change the accounting for equity method investments, we believe it is critical to consider the expansion of scope of EITF 13-B prior to finalizing the *Recognition and Measurement* Accounting Standards Update. We believe the Emerging Issues Task Force can address all types of tax credit investments by expanding the scope as discussed above. However, if the Board feels that significant time is needed to perform a comprehensive review as to how investments in other entities that qualify for tax credits and other tax benefits should be addressed, then we recommend proceeding strictly with the current scope and commencing a separate project addressing investments in those entities.

Cost-based Amortization Should be Permitted

ABA recommends that, as an accounting policy decision, cost-based amortization should be permitted in accounting for these investments. While the aggregate cash flow/benefit stream (the tax credits and benefits) received over the life of the investment is not generally subject to

[2] The current guidance was issued in 1994.

significant variability, the timing of the cash flows may not be steady like a debt instrument, and therefore, it makes sense to amortize the investment proportionate to the benefits being realized. For these reasons, ABA supports the cost-based method, as it will often more closely match amortization to the credits and benefits received over time, provide more transparent information to financial statement users, and will be less costly to operationalize.

Similarly, we believe the example provided in the ED is not necessarily reflective of how specific investors think about the economics of such investments. In fact, bankers in our working group noted various acceptable techniques in how the economics of these investments are analyzed. In addition to cost-based methods, these techniques include the effective yield method, analyzing returns based on pre-tax versus post-tax basis, as well as whether returns are earned over the tax credit period, as opposed to including additional tax benefit years. Therefore, we recommend that the tables be omitted from the Accounting Standards Update and that rational and systematic allocation of the expected benefits include both effective yield and cost-based amortization.

Early Adoption Should be Permitted

ABA supports an early adoption of the standard upon issuance. We believe that, while it may take time to comply with a retrospective transition, a significant number of entities will desire to adopt upon issuance.

Technical Wording Recommendation

The wording changes proposed in 323-740-35-2 may be misunderstood, with the result being that cash and benefits must be received (realized) in order to recognize such benefits. We recommend, therefore, that the first sentence be amended so that "the investor recognizes tax credits and other tax benefits as they are *realizable*…"

Overall, ABA supports the general changes proposed in the ED. If the Board feels that significant time is needed to examine how investments in other tax credit entities should be addressed, then we recommend proceeding strictly with the current scope and commencing a separate project addressing investments in those entities.

Thank you for your attention to these matters. Please feel free to contact me (mgullette@aba.com; 202-663-4986) if you would like to discuss our views.

Sincerely,

Michael L. Gullette