March 23, 2022

Ms. Marla Lewis
Practice Fellow
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Re: Comments on EITF 21-A, Accounting for Investments in Tax Credit Structures Using the Proportional Amortization Method

Dear Ms. Lewis:

On behalf of the members of the GAAP Accounting for Tax Credits Working Group ("GAAP Working Group"), we submit the following comments, considerations and recommendations in connection with the pending Emerging Issues Task Force ("EITF") project–EITF 21-A, Accounting for Investments in Tax Credit Structures Using the Proportional Amortization Method. We believe that correcting the accounting treatment for investments in tax credits is of vital importance to increase the effectiveness and accuracy of the financial reporting for investments such as those made in the Low-Income Housing Tax Credit ("LIHTC"), New Markets Tax Credit ("NMTC"), Historic Rehabilitation Tax Credit ("HTC"), Renewable Energy Tax Credit ("RETC") and others.

The members of the GAAP Working Group are participants in the tax credits listed above, as well as other similar state tax credits, who work together to help resolve technical generally accepted accounting principles ("GAAP") issues and provide recommendations to make GAAP accounting for tax credit investments even more efficient so that the maximum amount of benefits can be delivered to the intended beneficiaries and communities around the country.

We fully support and commend the FASB's efforts to revisit the accounting treatment for tax credit investments and the proportional amortization method. With so many similarities between the different types of tax credits, we believe it is time to allow **ALL** of the different tax credit investments to be accounted similarly. By broadening the proportional amortization method availability beyond just LIHTC investments, investors and users of the financial statements will be able to more easily assess and understand the impact of tax credit investments. Different accounting principles should not exist for tax credit investments with similar attributes as is the case now. These tax credits mentioned above were established to increase the supply of affordable rental housing, improve the economic conditions of low-income communities and/or its residents, increase the production and consumption of renewable energy and to preserve certain historically significant structures. As such, how investments in these tax credits are accounted for should not drive investment decisions. However, the proportional amortization method is only available for LIHTC investments, creating an unlevel playing field that distorts the economics of different tax credit investments. By allowing the proportional amortization method to be used for other tax credit investments, the playing field would be leveled between the different tax credit investments and users of the financial statements would be able to have a more accurate understanding of the true economic impact of such investments.

There is a wide variety of tax credit investors and structures and it is fair to say that the majority of investors are made up of large financial institutions and large corporations. The majority of investors generally prefer to use a small number of commonly accepted partnership structures to make their tax credit investments. While each type of tax credit program is unique in terms of the types of underlying businesses that receive benefit from the tax credit investments, the majority of investors that seek these types of tax credits consider them to be similar as it relates to their investment goals and objectives. Instead, the differences that the investors tend to focus on more are along the lines of whether or not the investment qualifies for Community Reinvestment Act ("CRA") credit, other types of community benefits derived from the investment (i.e. in the form of increasing diversity, equity and inclusion ("DEI") or environmental, social and governance ("ESG") types of initiatives), the intended holding period of the investment, the after-tax internal rate of return ("IRR") on the investment, the tax credit recapture risk of the investment, the credit profile of the project sponsor and/or the credit quality of the underlying business collateral. In addition to all of these factors that impact an investor's decision to invest in various tax credits, the one creating the greatest concern is the manner in which the investment is accounted for under GAAP. The investments are structured where the tax credit investor does not have any significant rights to receive benefits resulting from operations or from residual values. Outside of these investment differences, tax credit investors view the different types of tax credits somewhat equally in that each program focuses on the types of initiatives they would like to promote, provides an effective tool to help address societal needs, and to more efficiently manage their federal tax liability.

In many cases, the largest investors have made investments in more than one tax credit, if not all four of these federal tax credits. Many of these investors seek tax credit investment opportunities with the attributes similar to the five criteria currently included in the proportional amortization method:

1. Investments where the investor feels reasonably assured that the tax credits they are investing in will be available to them.

2. The investor seeks limited partnership investments that do not require them to exercise significant influence other than to ensure they get the tax credits they have invested. Tax credit investors generally do not want to have significant influence over the operations of the underlying recipient of the tax credit subsidy. After all, large financial institutions usually do not employee personnel with the skill and/or expertise to operate affordable housing properties, power plants or the other types of operating businesses that generate these types of federal tax credits. As such, it is counter intuitive to think they would want to be in a position to exercise significant influence and any perceived influence is purely the result of certain partnership rights to ensure the intended tax credit benefits materialize.

3. Investments into limited partnerships or limited liability companies controlled by a sponsor who is qualified to operate and manage the underlying business that generated the tax credits and in a manner that limits their exposure to their equity commitment.

4. A positive return on their tax credit investment that is based on the tax credits and related tax benefits. However, some of these tax credit programs are subject to particular tax rules imposed by the Internal Revenue Service ("IRS") that require partners in tax credit partnerships to also receive a certain amount of the operating business cash flow economics in order to satisfy the economic substance rules imposed by the IRS. The one tax credit that is not subject to these economic substance rules is the LIHTC. In other words, the majority of tax credit investors generally invest for the primary purpose of receiving tax credits.

5. GAAP accounting rules for their investment that can be applied across a portfolio of tax credit investments that are considered to be fundamentally similar in order to help investors make informed decisions.

Despite the similarities between the various tax credits and the tax credit investors that invest in them, there is one significant difference that stymies Congress' goal of stimulating private investments into these community development initiatives–the manner in which tax credit investors are required to account for them under GAAP. The guidance around the proportional amortization method is widely accepted as clearly understood and, as a result, is consistently applied by LIHTC investors. Furthermore, based on how the proportional amortization method rules are designed, essentially all of the investment profit or loss results are accounted for "below the line". Because these investments are primarily for tax credits and related tax benefits, this makes sense to tax investors, and therefore, the proportional amortization method is well received as an accurate presentation of a tax credit investment by the tax investor community.

The GAAP accounting guidance available to the other federal tax credit programs is widely viewed as too complex and difficult to apply. This leads to inconsistent interpretations and applications and ultimately generates accounting results that are not useful in terms of allowing tax credit investors to make informed business decisions. Furthermore, the GAAP guidance currently available to the other federal tax credit programs often results in a material amount of the profit and loss activity being accounted for "above the line" which, because tax credit investors view these as tax credit investments, is perceived as inaccurate, inappropriate and can lead to tax credit investors choosing not to invest in certain tax credits that Congress has sought to promote. This becomes even more confusing to the users of the financial statements when the same investor invests in the LIHTC and other tax credits since they are accounted for differently.

We are encouraged by the efforts of the EITF board to consider making proportional amortization available to other tax credits as was recommended originally by FASB staff in ASU 2014-01. We believe that a recommendation by the board to remove the LIHTC limitation so that **ALL** tax credit investments have an opportunity to use the proportional amortization method would be recognized as a positive step forward to simplifying the accounting treatment for various tax credits. However, in order for the guidance to be applied broadly, we recommend the EITF and FASB boards also consider reviewing and making changes to the current criteria.

We believe that if the proportional amortization method was made available to all tax credits today without changing any of the current five criteria, that only some tax credit investments would qualify. While this would be an improvement and one that would be welcomed by those that are able to meet the existing criteria, many investors, especially those that invest in multiple credits, would see it as falling short of what is needed to truly level the playing field for all tax credit investments.

Of the five criteria, we believe that the following three will need to be re-examined to determine ways that they can be changed to allow more tax credit investments to be eligible for the proportional amortization method:

- The investor does not have the ability to exercise significant influence over the operating and financial policies of the limited liability entity.

- 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).

- The investor's projected yield based solely on the cash flows from the tax credits and other tax benefits is positive.

We recommend that the EITF or FASB include the re-examination of these criteria in its current project. Or, if the EITF doesn't believe that it's in the scope of the current project to make changes to the criteria, we would recommend a follow-up project that performs a deeper dive into reviewing the existing criteria so that proportional amortization may be applied equitably.

For example, if the substantially all threshold remains at greater than or equal to 90 percent, many transactions, especially RETCs, will fail to meet this criterion and won't be able to use the proportional amortization method, regardless of whether the LIHTC limitation is removed. If changed to a lower percentage or different measurement, we believe a majority of RETC transactions will be able to meet the substantially all criteria if structured in a manner similar to existing tax credit investments.

It should also be noted that it is not uncommon for some tax credit investors to make investments into a tax credit partnership that generates more than one type of federal tax credit. For example, you may have a tax credit investor that invests into a business that qualifies for the NMTC as well as the HTC or ITC. Current GAAP guidance requires the tax credit investor to apply different accounting rules for each different type of federal tax credit even though the tax credit investors usually think of this as one overall investment into one tax credit partnership. Maybe even more common are situations that involve LIHTC partnerships that also qualify for HTCs and/or ITCs. In these scenarios, the tax credit investor uses proportional amortization for the LIHTC portion of their investment and a combination of different methodologies (e.g. Deferral method for accounting for accounting for the ITC and Hypothetical Liquidation at Book Value method ("HLBV")/Impairment or fair value option for equity method of accounting) for the HTC and/or ITC portion. Tax credit investors in these situations generally think of this as one investment in one tax credit partnership. However, in order to comply with GAAP, they are forced to apply two sets of accounting rules.

Tax credit investors have been deterred from investing in certain tax credits due to the complexity or inconsistent application of existing GAAP guidance that produces disparate results which includes pre-tax losses and earnings volatility. We don't believe Congress anticipated that tax credit investors would decide which community development initiative programs to support based on GAAP guidance. Unfortunately, this is reality and it occurs despite the net positive impact these investments are known to have on the entity's overall financial performance. We believe the GAAP accounting treatment for all tax credit investments that meet certain criteria should be the same. If the accounting treatment was the same, it would be fairly consistent across all of the four major federal tax credit programs so that tax credit investors can evaluate their tax credit investments on their intended merits.

We believe in and support any effort to make the proportional amortization method available to tax credit investments in general (including tax credits created in the future) and not limited to just LIHTC investments. We believe a principles-based approach is necessary so that the proportional amortization method can be applied to investments in existing tax credits as well as those that will be created in the future. We also recommend that FASB allow early adoption to allow investors to timely reflect the nature of their tax credit investments. We appreciate the opportunity to submit these comments and recommendations. We believe the time and effort FASB is spending on this issue is vitally important to the overall impact that tax credit investments can have on communities across the country, many of which are low-income. Thank you for your time and consideration. Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance.

Yours very truly,
Novogradac & Company LLP

by

Brad Elphick