

**Statutory Accounting Principles (E) Working Group  
Maintenance Agenda Submission Form  
Form A**

**Issue: New Market Tax Credits**

**Check (applicable entity):**

	P/C	Life	Health
Modification of Existing SSAP	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
New Issue or SSAP	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Interpretation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Description of Issue:** The New Market Tax Credits (NMTC) Program was established by Congress in December 2000 and permits individual and corporate taxpayers to receive a non-refundable tax credit against federal income taxes for making equity investments in financial intermediaries known as Community Development Entities (CDEs). CDEs that receive the tax credit allocation authority under the program are domestic corporations or partnerships that provide loans, investments, or financial counseling in low-income urban and rural communities. The tax credit provided to the investors total 39% of the total cost of the investment and is claimed over a seven-year period. The CDEs in turn use the capital raised to make investments in low-income communities. CDEs must apply annually to the CDFI Fund to compete for NMTC allocation authority. The NMTC program is currently subject to expiration but has been extended to Dec. 31, 2025. The NMTC Extension Act of 2021 (introduced February 2021) would make the NMTC program permanent, modify the credit to provide for an inflation adjustment to the limitation amount for the credit after 2021, and allow an offset against the alternative minimum tax for the credit.

The success of the federal NMTC program has led to states adopting their own NMTC legislation. Per one noted article, the majority of state NMTC programs follow the federal rules with some modifications that vary from state to state. State modifications have been noted to specifically target smaller businesses, simplifying the application process, prohibiting the use of real estate business, and capping the amount of tax credits that can be allocated to one project. The economic impact of the state NMTC programs is typically less than the impact of federal NMTC programs because the economic return to investors for state tax credits is generally lower than what they receive for federal credits. Some states require that state tax credits can only be used in conjunction with federal credits. Pairing federal and state programs is beneficial to the qualifying business as they keep more of the investment without an obligation to return as the investors receives more tax credits.

**Overview of Federal Program:**

- Federal government authorizes an annual credit authority for NMTCs (amount of tax credits available).
- The Community Development Fund Institutions (CDFI fund) is a division of the U.S. Treasury responsible for implementing the NMTC program. Since there are limited tax credits each year, the CDFI fund has a competitive application process for the right to grant tax credits to investors and to make qualified NMTC investments.
- The right to grant tax credits is referred to as “NMTC Allocation” and is awarded to Community Development Entities (CDEs) that invest in low-income communities. The CDEs offer the tax credits to cash investors, and then use the cash to make investments (typically loans to a qualifying project – a “Qualifying Active Low-Income Community Business” - QALICB) that further the mission and objectives of the NMTC program.

- The program specifies that the investor must provide cash as an equity investment (qualified equity investment – QEI) and it must stay invested in the CDE and the resulting NMTC qualifying project (QALICB) for a period of seven years.
  - The restrictions are specific that the investment is an equity investment as stock (other than nonqualified preferred) in an entity that is a corporation for federal tax purposes or any capital interest in an entity that is a partnership for federal tax purposes. (The investor is generally a 99.99% or 100% equity owner.)
- NMTC investments must remain in a qualified business for a seven-year period. Any principal amount repaid during that period must be reinvested by the CDE until the seven-year period expires. Most CDEs and investors avoid the reinvestment requirement and structure interest-only loans that prohibit principal repayment within the seven-year timeframe.
  - The 39% tax credit is provided as 5% of the investment in the first 3 years and then 6% of the investment for the next 4 years.
  - For tax purposes, the basis adjustment in the qualified equity investment is reduced by the amount of any new market tax credits on each credit allowance date.
  - Programs that cease to qualify are subject to tax credit recapture.
- Investors enter these transactions recognizing that the original investment amount will not be fully returned. Rather, a portion (or perhaps all) of the equity investment will be unpaid without an obligation to return from the borrowing business. NMTC investments with these terms have specific maturing terms / actions. One approach could be that an option (put/call) is held by the investor that gives them the right to sell its equity investment to the borrower for a nominal price.
- The designs are often complex and introduce leverage lenders to maximize tax credits to the equity investor:
  - Equity investor provides \$3M to acquire 100% equity interest in an investment fund.
  - Investment fund borrows \$7M from a leverage lender.
  - This results with a \$10M qualifying NMTC transaction, resulting with the equity investor receiving \$3.9M in tax credits over 7 years from an initial \$3M investment.
  - The investment fund provides two loans to the qualified low-income business (QALICB). The first loan is for the \$7M leverage loan, the second is for the \$3M equity investment.
  - Both loans only pay interest for the seven-year period to meet the NMTC terms.
  - At the conclusion of the 7 years, the project sponsor purchases the second loan via a ‘put/call’ agreement, converting the \$3M into a permanent subsidiary for the project.
  - The borrower / project sponsor refinances the \$7M loan to repay the leverage lender.
  - The ultimate result is that the equity investor received \$3.9M over 7 years in tax credits for \$3M.
- Example without leverage lender:
  - Investor provides a \$10M NMTC Investment
  - Investor receives \$3.9M in tax credits over seven years.
  - Investor receives \$7.4M of original investment at the end of the seven years.
  - Borrower keeps \$2.6M of the original investment to further their low-income qualifying activities.
  - Investor receives a net return of \$1.3M. (\$10M less \$3.9M tax credits less return of 7.4M principal.)

### FASB Discussion

The FASB has a current Emerging Issues Task Force project to assess whether the proportional amortization method of accounting, which is used for Low-Income Housing Tax Credits (LIHTC), should be expanded to investments in tax credit structures beyond LIHTC. The proportional amortization method results in the tax credit investment being amortized in proportion to the allocation of tax credits in each period and allows the investment amortization and tax credits to be presented on a net basis within the income tax line item. Currently, investments in other tax credit structures are typically accounted for using the equity method or the cost method. Under the equity and cost methods, investment gains/losses and tax credits are presented on a gross basis on an entity's income statement. The FASB has received two requests asking that the proportional amortization method be made applicable to New Market Tax Credit Structures as well as other investment structures that are made primarily for the purpose of receiving tax credits and other tax benefits. The FASB added a project to the Emerging Issues Task Force agenda on Sept. 22, 2021. The FASB Task Force reached a consensus-for-exposure on June 16, 2022, that the proportional amortization method can be elected on a tax credit program by tax credit program basis. This proposed ASU was exposed in August 2022, with comments due Oct. 6, 2022. A final ASU is expected later in 2022 or early in 2023 (ASU 2023-02 was issued in March of 2023).

IRS Provisions – The NMTC is captured as a nonrefundable ‘general business credit’ and is limited to tax liability. If tax liability is not sufficient to take the credit, then the tax credit is subject to carryforward / carryback provisions. Per instructions from the *2021 Instructions for Form 3800 – General Business Credit*, general business credits that cannot be used because of a tax liability limit are first carried-back 1 year through an amended return. If there are unused credits after carrying back 1 year, the tax credit can be carried forward to each of the 20 tax years after the year of the credit.

Inflation Reduction Act Provisions – The Inflation Reduction Act was signed by President Biden on Aug. 16, 2022. Although there are several elements within the Act, it includes a 15% corporate minimum tax rate for corporations with at least \$1 billion in income and includes numerous investments in climate protection, clean energy production and tax credits aimed at reducing carbon emissions. Although the Act has been signed, several elements are pending further application guidance. From preliminary information, the act allows for general business credits, such as the low-income housing tax credit (LIHTC), new markets tax credit (NMTC), historic tax credit (HTC) and renewable energy tax credits (RETCs) to be taken against the minimum tax. **However, further monitoring of application / interpretation guidance that is still forthcoming is required to assess the actual application and impact of tax credits on companies subject to the minimum tax.**

### Statutory Accounting Considerations:

- Although the design is an equity investment of stock or interest in a corporation or partnership, which would normally be subject to *SSAP No. 48—Joint Ventures, Partnerships and Limited Liability Companies*, the intent of NMTC investments is for tax credits and not equity returns. As such, this structure is closer to the existing low-income housing tax credits guidance in *SSAP No. 93* than the partnership / LLC guidance in *SSAP No. 48*.
- Although *SSAP No. 93—Low Income Housing Tax Credit Property Investments* provides guidance for an equity investment, that provides tax credits with a limited (or zero) residual investment value, the guidance in *SSAP No. 93* is specific to LIHTC programs.
- It has been identified that there are structures that have been designed to resemble fixed-income notes that do not pay regular cash interest, but rather provide NMTC tax credits as interest returns. These structures are in substance that same as other investments in NMTC, with an underlying equity interest in the CDE that generates tax credits. However, they have been structured with a guarantee for compensatory interest in the form of cash for the amount of the tax credit expected to have been received that year. These structures are also being considered within scope of this agenda item. Such structures have to meet specific criteria to qualify for tax credits under the IRS rules.

**Existing Authoritative Literature:*****SSAP Authoritative Guidance:***

- **SSAP No. 93—Low Income Housing Tax Credit Property Investments**

This statement establishes accounting principles for investments in federal certain state sponsored Low Income Housing Tax Credit (LIHTC) properties owned through limited liability entities that are flow-through entities for tax purposes. The guidance requires LIHTC investments to be initially recorded at cost and carried at proportional amortized cost unless the investment is identified as impaired. Under the proportional amortization method, amortization of the LLC investment is recognized in the income statement as a component of net investment income/expense and the current tax credit is accounted for as a component of income tax expense:

- Federal tax credits are recognized in the income statement as an offset to federal taxes in the tax reporting year in which the tax credit is utilized in accordance with *SSAP No. 101—Income Taxes*.
- State tax credits shall be recognized in the income statement as an offset to state premium tax or state income tax, whichever is applicable, in the tax-reporting year in which the credit is utilized.
- Tax benefits received, other than tax credits, shall be accounted for pursuant to SSAP No. 101.

SSAP No. 93 indicates that immediate recognition of the entire benefit of the tax credit to be received during the term of the investment in a low-income housing project is not appropriate. It also indicates that low-income housing tax credits shall not be recognized in the financial statements before their inclusion in the investor's tax return.

- **SSAP No. 94R—Transferable and Non-Transferable State Tax Credits**

This statement establishes accounting principles for investments transferable and non-transferable state tax credits, with an explicit exclusion for LIHTCs (or similar tax credits) captured in scope of SSAP No. 93.

Guidance for admittance of state tax credits under this statement varies based on whether it is transferable or non-transferable:

Transferable – Per the SSAP, all the following criteria must be met for admittance:

- 1) The holder of the transferable state tax credit may sell or otherwise transfer the transferable state tax credit to another entity, which can likewise sell or transfer the credit;
- 2) The transferable state tax credit will expire is not used by a predetermined date; and
- 3) The transferable state tax credit can be applied against either state income tax or state premium tax.

Non-Transferable – Per the SSAP, all the following criteria must be met for admittance:

- 1) Successive holder of a state tax credit must redeem the credit by April 15 of the subsequent year to the entity's acquisition of the state tax credit and is not permitted to carry-over, carry-back, obtain a refund, sell or assign the credit;
- 2) The non-transferable state tax credit will expire if not used by the predetermined date; and
- 3) The non-transferable state tax credits can be applied against either state income tax or state premium tax.

Review of Existing Statutory Accounting Guidance for NMTC and Overall Application:

- Existing statutory accounting guidance does not encompass federal NMTC (or other federal tax credits), as SSAP No. 93 is limited to LIHTC and SSAP No. 94 is specific to state tax credits.
- Provisions in SSAP No. 93 do not fully address earned (received) tax credits that carryforward for future use.
- The admittance criteria in SSAP No. 94 are applied to characteristics that perhaps may not be factors that would impact admittance:
  - A tax credit that does not expire would be precluded as an admitted asset under the guidance.
  - A non-transferable tax credit that can be carried-forward, carried-back, able to be refunded or that can be sold or assigned is precluded as an admitted asset under the guidance.

***Statutory Accounting Reporting Guidance:***

Guaranteed and non-guaranteed federal low-income housing tax credits have separate reporting lines on Schedule BA along with an “all other” low-income housing tax credit line. The guidance is specific that these lines are only for low-income tax credits (or tax credits for affordable housing) that are in the form of a partnership or limited liability company. Non-qualifying LIHTC are to be reported in the “All Other” category. With this current guidance, there is no explicit reporting provision for tax credits that are not captured in LIHTC.

Reporting Lines and Instructions:

Guaranteed Federal Low Income Housing Tax Credit	
Unaffiliated .....	3599999
Affiliated .....	3699999
Non-Guaranteed Federal Low Income Housing Tax Credit	
Unaffiliated .....	3799999
Affiliated .....	3899999
Guaranteed State Low Income Housing Tax Credit	
Unaffiliated .....	3999999
Affiliated .....	4099999
Non-Guaranteed State Low Income Housing Tax Credit	
Unaffiliated .....	4199999
Affiliated .....	4299999
All Other Low Income Housing Tax Credit	
Unaffiliated .....	4399999
Affiliated .....	4499999

Low Income Housing Tax Credit

- Include: All Low-Income Housing Tax Credit Investments (LIHTC or affordable housing) that are in the form of a Limited Partnership or a Limited Liability Company including those investments that have the following risk mitigation factors:
- A. Guaranteed Low Income Housing Tax Credit Investments. There must be an all-inclusive guarantee from a CRP-rated entity that guarantees the yield on the investment.
  - B. Non-guaranteed Low Income Housing Tax Credit Investments.

- I. A level of leverage below 50%. For a LIHTC Fund, the level of leverage is measured at the fund level.
- II. There is a Tax Credit Guarantee Agreement from General Partner or managing member. This agreement requires the General Partner or managing member to reimburse investors for any shortfalls in tax credits due to errors of compliance, for the life of the partnership. For a LIHTC Fund, a Tax Credit Guarantee is required from the developers of the lower tier LIHTC properties to the upper tier partnership and all other LIHTC investments.
- III. There are sufficient operating reserves, capital replacement reserves and/or operating deficit guarantees present to mitigate foreseeable foreclosure risk at the time of the investment.

Non-qualifying LIHTCs should be reported in the “All Other” category.

***Statutory Accounting RBC Impact:***

Life: The RBC factors for LIHTC are captured as part of the real estate on LR007:

(17)	Federal Guaranteed Low Income Housing Tax Credits	AVR Equity Component Column 1 Line 75	0.0014
(18)	Federal Non-Guaranteed Low Income Housing Tax Credits	AVR Equity Component Column 1 Line 76	0.0260
(19)	State Guaranteed Low Income Housing Tax Credits	AVR Equity Component Column 1 Line 77	0.0014
(20)	State Non-Guaranteed Low Income Housing Tax Credits	AVR Equity Component Column 1 Line 78	0.0260
(21)	All Other Low Income Housing Tax Credits	AVR Equity Component Column 1 Line 79	0.1500
(22)	Total Schedule BA Real Estate	Lines (16) + (17) + (18) + (19) + (20) + (21)	

P/C and Health: The RBC factors for LIHTC are captured as components of other long-term assets. The reporting lines and factors are the same as they are for life (as shown above).

**Activity to Date (issues previously addressed by the Working Group, Emerging Accounting Issues (E) Working Group, SEC, FASB, other State Departments of Insurance or other NAIC groups):** None.

**Information or issues (included in *Description of Issue*) not previously contemplated by the Working Group:** None

**Convergence with International Financial Reporting Standards (IFRS):** NA

**Recommendation:**

NAIC staff recommend that the Working Group expose additional revisions described below to SSAP No. 93 and SSAP No. 94R. Staff also recommends that the Working Group expose changes to SSAP No. 34—*Investment Income Due and Accrued* and SSAP No. 48—*Joint Ventures, Partnerships and Limited Liability Companies*, which detail miscellaneous changes which update the scope of each statement for the proposed updates to SSAP No. 93 and SSAP No. 94R. The following are key revisions to SSAP No. 93R and 94R are proposed for exposure:

- *SSAP No. 93R—Investments in Tax Credit Structures* – NAIC staff recommends the following revisions in response to comments, from interested parties, public comments and NAIC staff internal review:
  - Various editorial changes to the admittance test described in paragraph 18 to clarify technical aspects of the assessment.
  - Addition of a Glossary of key terms at the end of the SSAP.
  - Revised guidance effective date to be 1/1/2025, applied prospectively without option to early adopt.

- Added a new paragraph to the Impairment of Tax Credit Investments section to provide guidance on tax credit programs which allocate variable amounts of tax credits.
  - Clarified in footnote 4 that tax credit strips derived from tax equity investments are not an example of an investment structure exempt from the audit requirement.
  - Added disclosures for unused tax credits allocated from tax credit investments as these tax credits would not be within the scope of SSAP No. 94R disclosures.
- SSAP No. 94R—State and Federal Tax Credits – NAIC staff recommends the following revisions in response to comments, from interested parties, public comments and NAIC staff internal review:
    - Revised guidance effective date to be 1/1/2025 with early adoption permitted.
    - Added language to clarify that awarded tax credits (neither purchased nor allocated from an investment) are not within the scope of SSAP No. 94R.
    - Added commitment and contingency guidance to the Accounting and Disclosure sections.
  - Other SSAPs – In response to the proposed revisions to SSAP Nos 93 and 94R, NAIC staff recommends the following:
    - SSAP No. 34—Investment Income Due and Accrued – Staff proposes revisions to clarify that tax credits earned or purchased are not within the scope of SSAP No. 34.
    - SSAP No. 48—Joint Ventures, Partnerships and Limited Liability Companies – Staff proposes revisions which update paragraph 2 for the new tax credit investment language.

**Interested parties’ comment letter recommended revisions which would narrow the scope of the paragraph 18 admittance test to only tax credit investments which allocate non-transferable tax credit and prohibit the sale of ownership interests. NAIC staff did not revise the SSAP No. 93R draft for these recommendations but intends to continue working with industry to address their concerns that the new guidance may nonadmit previously admitted tax credit investments.**

**Additionally, NAIC staff requests comments on the annual statement reporting categories for tax credit investment RBC. The current RBC categories are LIHTC Investment specific and are mapped to the real estate grouping.**

**Staff Review Completed by:** William Oden and Julie Gann - NAIC Staff, May 2023

**Status:**

**December 13, 2022 - Fall National Meeting Recommendation:**

NAIC staff recommends that the Working Group direct NAIC staff to draft statutory accounting guidance in the form of a new or revised SSAP that expands the current LIHTC guidance for equity investments that general federal business tax credit and state premium tax credits. Although this agenda item is focusing on NMTC, it is recommended that consideration be given to guidance that does not name specific designs, such as NMTC or other specific tax credits, so that it can be applicable for all qualifying tax equity investments. This guidance will consider the proposed FASB guidance as well as admittance and impairment provisions, recognizing that tax credits cannot be used to provide direct payment to policyholders, but rather are utilized to impact a reporting entity’s tax liability. This agenda item also recommends a review of SSAP No. 94—Transferable and Non-Transferable State Tax Credits to ensure the guidance properly reflects items that should be captured in scope and appropriate admittance provisions. With the proposal of a new or revised SSAP, this agenda item is proposed to be captured as a ‘New SAP Concept’ with a corresponding issue paper. Along with statutory accounting revisions, a resulting blanks proposal and a potential RBC referral are anticipated to update blanks reporting and RBC references accordingly. As detailed within, all Schedule BA reporting lines and RBC instructions (for both federal and state) only reference Low-Income Housing Tax Credits. The BA instructions also need to be updated as the concept for ‘guaranteed’ provisions from a CRP-rated entity seems to only be applicable to limited NMTC designs, as a guarantee may disqualify an entity from being able to use tax credits under IRS provisions.

On December 13, 2022, the Statutory Accounting Principles (E) Working Group moved this agenda item to the active listing, categorized as a new SAP concept, and exposed a discussion document to expand current statutory accounting guidance for low-income housing tax credits to capture all tax equity investments that provide general federal business tax credit and state premium tax credits if they meet specified criteria.

On February 10, 2023, NAIC staff received Interested Parties' comment letter on the exposed discussion document which were presented to the Working Group:

Interested parties agree with having uniformity in accounting and reporting for equity investments for which the return is earned primarily through tax credits. Interested parties agree that the proportional amortization method is an appropriate method to use for any type of investment (debt or equity) where the return is primarily earned through tax credits. We are providing responses to the questions exposed in the Discussion Paper in this document. There are two key take aways from our responses:

1. Interested parties ask the Working Group to consider allowing for the reporting of both the amortization of the investments and the use of the tax credits themselves in the same income statement line similar to what is required under U.S. GAAP.
2. Interested parties have concerns regarding tax credit investments that are issued in debt form and requiring those investments to be reported on Schedule BA instead of Schedule D. Interested parties believe that tax credit investments issued in debt form are better suited for Schedule D reporting.

#### **March 22, 2023 – Spring National Meeting Recommendation:**

NAIC staff recommends that the Working Group direct NAIC staff to proceed with drafting revised statutory accounting guidance and a related issue paper to expand the guidance in SSAP No. 93 for tax credits, as well as to draft revisions to SSAP No. 94—Transferable and Non-Transferable State Tax Credits for future Working Group discussion. NAIC staff proposes to consider the feedback from interested parties on the discussion document as well as the revised FASB guidance, which is expected to be issued in the near future, in updating the proposed revised statutory accounting guidance for subsequent exposure consideration.

On March 22, 2023, the Statutory Accounting Principles (E) Working Group directed NAIC staff to draft statutory accounting guidance in the form of a new or revised SSAP that expands the current LIHTC guidance for equity investments that general federal business tax credit and state premium tax credits.

#### **May 16, 2023 – Interim Meeting Recommendation:**

NAIC staff recommend that the Working Group include this item on their maintenance agenda as a new SAP concept and expose the draft revisions to SSAP No. 93 and SSAP No. 94R, which intend to capture all tax equity investments that provide federal business tax credit and state premium tax credits if they meet specified criteria.

On May 16, 2023, the Statutory Accounting Principles (E) Working Group exposed revisions to SSAP No. 93 and 94R. The revisions to SSAP No. 93 propose adoption with modification of *ASU 2023-02—Accounting for Investments in Tax Credit Structures Using the Proportional Amortization Method* and expansion of the SSAP scope to include all tax credit programs and tax investment structures. The revisions to SSAP No. 94R expand the scope of the SSAP to include all state and federal tax credits whether purchased or allocated, and that tax received should be recorded at face value with losses realized immediately and gains deferred.

On June 20, 2023, NAIC staff received Interested Parties' comment letter on the exposed revisions to SSAP Nos. 93 and 94R. Interested Parties provided several comments on both SSAPs which are summarized below along with NAIC Staff responses.

The comments provided on SSAP No. 93 were:

1. Interested Parties noted that paragraph 3 does not provide specific direction for which SSAPs would be applicable for tax credit investment which do not fall within SSAP No. 93.
  - a. NAIC Staff agreed with the recommendation and updated paragraph 3 to provide readers with specific SSAPs which could apply to non-qualifying equity or debt structure tax credit investments.
2. Interested Parties noted that the current draft directed readers to refer to SSAP 94R for how to account for tax credits allocated from tax credit investments. They felt that this cross-reference was confusing and could potentially lead to conflicting interpretations.
  - a. To reduce confusion, NAIC Staff opted to remove the paragraph directing readers to SSAP 94R and instead pulled in the specific paragraphs from SSAP 94R which would be applicable to tax credits allocated from tax credit investments.
3. Interest Parties noted that they were unclear on whether the tax credits earned, or the tax credit investments were subject to the admittance criteria detailed in Paragraphs 18(a)-(c). Interested Parties feels that admissibility concerns are adequately addressed by the tax opinion and audit requirements. Additionally, if NAIC Staff's concern is the admittance of tax credits carried forward to a future period, then this should be adequately addressed by the admittance rules detailed in *SSAP No. 101–Income Taxes for Deferred Tax Assets*. Interested Parties suggested that paragraphs 18(a)-(c) be deleted in full.
  - a. NAIC Staff noted that the admittance rules detailed in paragraphs 18(a)-(c) do NOT provide guidance on the admittance of allocated tax credits. For tax credit investment structures to fall within the scope of SSAP 93, substantially all benefits must be from tax credits or other tax benefits which essentially means that balance of a tax credit investment represents a future stream of tax credits and tax benefit. As such, the admittance rules in paragraph 18(a)-(c) would require a company to assess its ability to utilize that future stream of tax credits to what amount of the tax credit investment would be non-admitted. If the company's projections determine it will be unable to substantially utilize the future stream of tax credits (i.e., the tax credit investment balance) then potentially all or a portion of the tax credit investment would be considered non-admitted as the company is unable to utilize the future stream of tax credits to offset tax liabilities.
4. Interested Parties noted that GAAP requires retrospective adoption of ASU 2023-02 and that this would result in GAAP vs. Statutory accounting differences.
  - a. NAIC Staff noted that prospective adoptions of accounting updates are often simpler to implement than retrospective adoptions. However, since this would lead to unintended variance between GAAP and Stat NAIC Staff has updated SSAP 93 to be adopted on the retrospective basis to conform with the GAAP adoption requirements.

The comments provided on SSAP No. 94R were:

1. Interest Parties requested that paragraph 1 of the scope of statement section be amended to clarify which types of tax credits are within scope of SSAP No. 94R. Interested Parties feel that the key difference between SSAP 94R and SSAP 93 is that the former is for purchased tax credits and the latter is for tax credits earned from investments.
  - a. NAIC Staff generally agree with the comments provided but opted to remove the term “certificate” from the requested changes. The intent of SSAP No. 94R is to provide guidance on all purchased state and federal tax credits, not just certificated tax credits. NAIC Staff also included language to clarify the scope of SSAP No. 94R for allocated tax credits, as detailed in the next bullet point.
2. Interested Parties noted that they do not believe allocated tax credits from SSAP No. 93 investments should be within the scope of SSAP No. 94R as the guidance was confusing and could potentially lead to conflicting interpretations. Additionally, Interested Parties believe that tax credits from investments vs. purchased tax credits are distinctly different assets. The only similarity in accounting for the tax credits relates to instances when the credits earned under a SSAP No. 93 investment cannot be utilized in the current year. Under that scenario, a DTA would be recorded, which would be subject to the admissibility rules under SSAP No. 101.
  - a. NAIC Staff elected to remove tax credits allocated from SSAP No. 93 investments from the scope of SSAP No. 94R to avoid confusion. However, NAIC Staff note that tax credits earned from

- investments bear many similarities to purchased tax credits. Irrespective of how the tax credit are acquired, they represent the same type of financial instruments which can be utilized as an offset to tax liabilities, sold, or redeemed for cash as a tax refund. Additionally, irrespective of how the tax credits are earned they are recorded at face value upon acquisition. The only significant difference is that tax credits purchased at a premium or discount may result in a recognized loss or deferred gain, respectively, whereas any premium or discount on an allocated tax credit is recognized as part of proportional amortization calculation.
- b. NAIC Staff amended the draft to exclude tax credits allocated from SSAP No. 93 investments in response to the Interested Party comments on SSAP No. 93. However, NAIC Staff did include language noting that allocated tax credits earned from tax credit investments NOT within the scope of SSAP No. 93 should refer to SSAP 94R for guidance on how to record allocated tax credits. NAIC staff noted that without this language there would be no guidance within Accounting Practices and Procedures Manual for allocated tax credits from investments which fall outside the scope of SSAP No. 93.
3. Interested Parties noted that most tax certificates reduce a reporting entity's tax liability and do not directly impact the income statement at the time they are used. In addition, interested parties believe that upon purchase, the tax credits should be reported as an other-than-invested asset since the asset represents a right to receive future benefits. As the tax credits become available for use, a reduction to the insurer's income tax payable or premium/state taxes payable should take place.
    - a. NAIC Staff disagrees with this proposed change as purchased federal tax credits would be reported as other-than-invested assets, versus allocated federal tax credits which would report as a deferred tax asset. This would result in the same type of asset being reported on two separate lines based on the manner in which it was acquired. As noted above, NAIC Staff's position is that allocated and purchased tax credits are substantially the same assets irrespective of the way in which they are acquired. Additionally, the Interested Parties also propose that if a tax credit cannot be utilized in the same period in which it was purchased it should be transferred to Deferred Tax Assets. NAIC Staff notes that this does not resolve the short-term reporting discrepancy noted previously and adds further complications to the accounting process by requiring a reporting line transfer if the asset is held for longer than a year.
  4. Interested Parties noted that the accounting for purchased tax credits in the SSAP No. 94R exposure is different from the current guidance in that the credits will be recorded at face value instead of at cost. This is not an issue perse but Interested Parties did want to point out this discrepancy as compared to the accounting treatment for other assets like bonds and mortgage loans.
    - a. NAIC Staff's position is that tax credits, whether received via purchase or allocation, do not represent investments, and has opted to propose accounting guidance that differs from bonds or mortgage loans. The position that tax credits do not represent investments was the main reason for the original SSAP No. 94R guidance which required state tax credits be recorded to Other Than Invested Assets and effectively required companies tax credits purchased at a discount at cost and effectively defer the gain off the balance sheet. NAIC Staff felt that it would be less confusing and provide a more accurate financial picture to record the tax credit at face value and defer any gains from discount purchases on the balance sheet.
  5. Interested Parties proposed changes to Exhibit B to reflect a pro-rata utilization of purchased tax credits in relation to the quarterly accrual of income tax liabilities. The main purpose of these changes were to reflect Interested Parties' proposed changes in item #2.
    - a. NAIC Staff made these changes to Exhibit B and believe that this method of recognizing tax credit utilization is applicable to exposed draft of SSAP No. 94R.

Outside of the changes made in response to Interested Parties' Comment Letter, both Exhibits in SSAP No. 93 were revised to provide example journal entries of the Proportional Amortization method. Additionally, the assumptions in Exhibit B were revised so it would provide a journal entry example for a residual sale at the end of the proportional amortization period. A new footnote was also added to SSAP No. 94R on page 2 based verbal comments received

from the public. The new footnote provides clarification on what processes constitute a purchase vs an allocation of tax credits.

**August 13, 2023 - Summer National Meeting Recommendation:**

NAIC staff recommend that the Working Group expose additional revisions described below to SSAP No. 93 and SSAP No. 94R. Additionally, NAIC staff recognizes that revisions to the annual statement Schedule BA reporting lines will need to be considered, as well as how those reporting lines flow through to the AVR. NAIC staff recommends that the Working Group direct staff to work with interested parties throughout the interim to discuss to allow subsequent (or interim) exposure.

On August 13, 2023, the Statutory Accounting Principles (E) Working Group exposed additional revisions made to SSAP No. 93 and SSAP No. 94R. Additionally, the Working Group directed NAIC staff to work with interested parties to draft revisions to the annual statement instructions and reporting updates.

On September 29, 2023, NAIC received Interested Parties' comment letter on the exposed revisions to SSAP No. 93 and 94R. Interested Parties provided several comments on both SSAPs which are summarized below along with NAIC Staff responses (effective October 11, 2023). The comments provided on SSAP No. 93 are below and have been summarized for brevity and clarity:

- 1) Interested Parties noted that SSAP 93 Paragraph 18 requires reporting entities to annually assess the future utilization of the unallocated tax credits associated with an entity's ownership interest in a tax credit investment project to determine if the investment can be admitted. However, Interested Parties suggest that this admittance criteria only be applicable to investments which do not allocate transferable or refundable tax credit and if the reporting entity is contractually restricted from selling its ownership interest. Additionally, Interested Parties suggest deleting paragraphs 18a and 18b as admissibility is adequately addressed through the impairment analysis required in paragraph 25; mainly that since both the tax credits and investment are saleable there is not a significant concern about the reporting entity's ability to utilize these investments and their tax credit returns for policyholder liabilities.
  - i. NAIC staff noted that Interested Parties' argument is twofold, first is that the usage of the investment fair value as a carve out in paragraphs 18a and 18b are confusing due to the requirement to test for impairment based on fair value. NAIC staff amended paragraph 18a to clarify that the carve out allows for admittance of the fair value of unallocated transferable/certificated tax credits rather than the fair value of the tax credit investment. The tax credit investment balance includes other tax benefits which cannot be sold apart from the investment ownership. The intent of paragraph 18a is to allow a reporting entity to at least admit the fair value of the tax credits which can be sold, which is potentially higher than the admitted amount calculated in paragraph 18.
  - ii. The second part of Interested Parties' argument is that since these investments may be sold, the admittance assessment of the reporting entity's ability to utilize the tax credits is not needed unless the reporting entity contractually restricted from the selling the investment. As part of this comment, it was noted that these investments may be actively managed and are readily saleable. NAIC staff noted that acquiring tax credit investments with the intent of re-sale puts an insurance company in a similar position as a syndicator in which tax credit investments are developed or acquired for the purpose of sale. SSAP 93 was revised under the assumption that tax credit investments are acquired for the purpose of obtaining returns through the receipt of tax credits and other tax benefits rather than through the sale of the tax credit investment. NAIC staff does not believe the paragraph 18 admittance criteria should be amended to provide a carve out for actively managed tax credit investments as it is not feasible to delineate between tax credit investments purchased for sale vs. purchased for generation of tax benefits without introducing some kind of

available-for-sale and held-to-maturity framework which is not compatible with statutory accounting concepts. NAIC staff noted that restrictions which prevent investors from selling their ownership represent a minority of tax credit programs. As such, limiting the scope of paragraph 18 to only tax credit investments which cannot be sold would effectively carve out the majority of tax credit investment structures from its scope. Additionally, the assertion that these investments are readily saleable does not change the fact that the balance sheet value of a tax credit investment is predicated on the assumption that the company can use the tax credits and benefits and if they company cannot use these tax credits then the investment returns have no value. Until the investment has been sold, its ability to satisfy future policyholder obligations is beholden to the company's ability to utilize the generated tax credits and benefits. Interested Parties noted that there are other investments which do not have as stringent admittance criteria as have been proposed in paragraph 18. NAIC staff note that other investments generate returns primarily through the receipt of fungible cash income or by providing a claim to the entity's earnings and assets (bonds, stocks, joint ventures, partnerships and LLCs). In comparison, the main purpose of a tax credit investment is to provide returns in the form of tax credits and other tax benefits, and this purpose is further borne out by the commonly used partnership flip structure for tax credit investments and that once the tax credits have been fully allocated the residual value of a tax credit investment is typically nominal.

- iii. Additionally, the requirement to assess tax credit investments by looking at the company's ability to realize future tax credits is not a new concept. Under existing OTTI guidance companies are required to record OTTI if the company determines it is probable that future tax benefits will not be received as expected (SSAP No. 93 paragraph 17, sentence 1). Per SSAP No. 93 paragraph 17, to determine if OTTI has occurred companies are required to assess whether the investment will continue to issue the tax credits as anticipated (see sentence 5) AND whether the company will be able to realize/utilize the future tax benefits to be received (see sentences 2 and 3). As part of the re-write of SSAP No. 93 Staff moved the requirement to assess the company's ability to utilize future tax credits out of impairment to admissibility. As currently revised, the impairment test specifically addresses the functionality of the investment whereas the paragraph 18 admittance test specifically addresses the ability of the company to realize/utilize the future tax benefits. This change intended to simplify the impairment analysis by focusing on investment functionality, but also because Staff felt that the company's ability to utilize/realize future tax benefits was more accurately characterized as an admittance concern rather than an impairment of the investment itself.
- 2) Interested Parties suggested a number of editorial changes to affect clearer guidance in paragraphs 18 and 18a. These included clarifying that the paragraph 18 assessment of unallocated tax credit utilization should be performed over the life of the tax credits rather than the life of the investments, including its carryforward periods. Interested Parties also suggested clarifying in paragraph 18 that tax planning strategies are to be used when assessing the utilization of unallocated tax credits, similar to the valuation allowance requirements under SSAP No. 101. In paragraph 18a Interested Parties suggested removing the sentence detailing what to do if fair value is not non-determinable.
- i. NAIC staff agreed with substantially all the editorial clarifications suggested by Interested Parties and updated accordingly.
- 3) Interested Parties suggested adding a definitions section to the guidance regarding the following terminology:

“unallocated tax credits” - the portion of tax credits expected to be earned and allocated to the reporting entity through the investment structure.

“current portion” - the credits to be allocated within one year of the reporting period.

- i. NAIC staff agreed with the suggestion by Interested Parties to add definitions and updated accordingly with some minor modifications. NAIC staff also added some additional definitions to provide clarifications on other terms used in SSAP 93.
- 4) Interested Parties suggested that the new SSAP 93 be applied prospectively effective 1/1/2025, but no early adoption.
- i. NAIC staff agreed with the changes suggested by Interested Parties and updated accordingly.

The comments provided on SSAP No. 94R are below and have been summarized for brevity:

- 5) Interested parties suggested that the revised SSAP 94R also be applied prospectively effective 1/1/2025 with early adoption permitted. Additionally, Interested Parties suggested a clarification of the scope of SSAP 94R by adding the following language to paragraph 1:

“This statement establishes statutory accounting principles for state and federal tax credits that are purchased by the reporting entity without being an bond or equity investor in the entity from which the tax credit were purchased.”

- i. NAIC staff agrees with prospective application of SSAP 94R with an effective date of 1/1/2025, however we have elected to not include the changes to the scope of SSAP 94R. The reasoning is that this guidance intends to exclude tax credits allocated from SSAP 93 investments, which does not specifically identify which tax credit investment structures are within scope of the guidance. However, NAIC staff did make other adjustments to the scope paragraph to better clarify that tax credits from SSAP No. 93 investments are not within scope of SSAP 94R.

On December 1, 2023, the Statutory Accounting Principles (E) Working Group exposed revisions made to SSAP Nos. 34, 48R, 93, and 94R as part of the new market tax credit project. Revisions to SSAP No. 93 include a glossary of key terms, impairment guidance on variable tax credit allocations, disclosures on unused tax credits, and editorial changes to paragraph 18. Revisions to SSAP No. 94R include guidance clarifying that awarded tax credits are not within scope and commitment/contingency language. The exposure includes new revisions to SSAP Nos. 34 and 48 which clarified that tax credits are not within the scope of investment income guidance and updated for new SSAP No. 93 language, respectively. Additionally, the Working Group requested comments from regulators and industry on new RBC reporting categories.

On January 29, 2024, the Statutory Accounting Principles (E) Working Group exposed, through an evote, further revisions made to SSAP Nos. 93R and 94R as part of the New Market Tax Credit project. Revisions to SSAP No. 93 and 94R included minor consistency and clarifying revisions. More substantial revisions were made to SSAP No. 93 in response to concerns raised by interested parties over the administrative burden of the paragraph 18 admittance tests (now referred to as the Prospective Utilization Assessment). The Prospective Utilization Assessment was revised to remove the initial assessment of the current portion of unallocated tax credits and replaced with language that required companies to perform the Prospective Utilization Assessment only if certain conditions exist.

On March 16, 2024, the Statutory Accounting Principles (E) Working Group adopted, as final, the exposed revisions to SSAP No. 93, updated for the corrections to example 2, and SSAP No. 34, SSAP No. 48, and SSAP No. 94R to expand and amend statutory guidance to include all tax credit investments regardless of structure and type of state or federal tax credit program, and all state and federal purchased tax credits. The effective date of the revisions is January 1, 2025.

The Working Group also directed staff to:

1. Sponsor a blanks proposal on the annual statement reporting categories for tax credit investment RBC by using the suggestion from the interested parties comment letter to maintain the same categories but without reference to LIHTC (bullet 1) and to also update/clarify the instructions accordingly.
2. Send a referral to the Life Risk-Based Capital (E) Working Group to inform them of the planned reporting line changes, which may indicate review of the RBC charges as different categories of tax credits will be reported in the form.
3. To draft an Issue Paper to document the discussions and revisions.

<https://naiconline.sharepoint.com/teams/FRSStatutoryAccounting/NationalMeetings/A.NationalMeetingMaterials/2024/03-16-24SpringNationalMeeting/Adoptions/22-14-NMTC.docx>