

Historic Tax Credits

What Is the Historic Tax Credit Program?

The Historic Tax Credit (HTC) program encourages private sector investment in the rehabilitation and re-use of historic buildings. The federal tax credit allows program participants to claim 20 percent of eligible improvement expenses against their federal tax liability. Since the Tax Reform Act of 1976, the HTC program has facilitated the rehabilitation of over 42,000 certified historic buildings and has attracted more than \$84 billion in new private capital to the historic cores of cities and towns across the nation. These funds have enhanced property values; created jobs; generated local, state, and federal tax revenues; and revitalized communities in need of economic development.

How Does the Program Work?

The HTC program is administered by the National Park Service (NPS) of the U.S. Department of the Interior and the Internal Revenue Service (IRS) of the U.S. Department of the Treasury, in partnership with the state historic preservation officers (SHPO) located in each state, the District of Columbia, and the U.S. territories. The HTC program encourages the rehabilitation of

certified historic buildings (those listed on the National Register of Historic Places or architecturally contributing to a National Register district) through the provision of tax credits equal to 20 percent of the qualified rehabilitation expenditures (QRE).¹ To receive the HTCs, property owners must complete the three-part application process for historic preservation certification managed by the NPS and the relevant SHPO.

Typically, if developers of HTC projects are not in a position to use the tax credits, they will offer the credits to third parties, including national banks and federal savings associations, to raise part of the equity funding for a project and thereby reduce the amount of debt financing needed for property rehabilitation.

Legal Authority

Under the powers granted by the National Bank Act, national banks have the authority to provide financing to HTC projects in return for the tax credits associated with the project.

National banks may make investments designed primarily to promote the public welfare (such as by providing housing,

building owners for personal tax purposes and does not typically include financial contributions from investors. This fact sheet focuses only on the 20 percent HTC.

¹ 26 USC 47 also provides for a 10 percent tax credit for the rehabilitation of non-historic, older (pre-1936) non-residential properties. Unlike the 20 percent HTC, the 10 percent tax credit is used primarily by

services, or jobs), including the welfare of low- and moderate-income (LMI) communities or families, under 12 USC 24(Eleventh). This statutory authority to make public welfare investments is implemented by OCC regulations at 12 CFR 24 (Part 24). Under 12 CFR 24.3, national banks may provide equity financing for historic property rehabilitation projects that promote the public welfare by taking ownership interests in entities that hold such properties for rehabilitation.

Depending on the specifics of the transaction, national banks may also finance an HTC project in such a manner as to make the bank eligible to receive the federal HTCs by acquiring an interest in an entity, such as a fund that invests in properties eligible for the HTC, under 12 USC 24(Seventh). The substance of the transaction must remain the provision of financing for the rehabilitation of historic property. See OCC Corporate Decision 9907 (March 26, 1999).

National banks seeking to provide financing to HTC projects under Part 24 must either request prior OCC approval or submit an after-the-fact notice to the OCC, depending on the bank's safety and soundness profile, Community Reinvestment Act (CRA) performance, and the nature of the project financing. See, generally, 12 CFR 24.2(e), 24.5, and 24.6.

Federal savings associations (FSA) may make a public welfare investment in an entity that receives HTCs under several investment authorities, including community development-related equity investments in real estate pursuant to section 5(c)(3)(A) of the Home Owners' Loan Act, investments in service corporations for community development pursuant to 12 CFR 5.59, and de minimis investments, generally equal to or less than the greater of 1 percent of

capital or \$250,000, pursuant to 12 CFR 160.36. For more information on the FSA public welfare investment authority, please consult the [Federal Savings Association Investment Authorities](#) web page.

Under these authorities, a national bank or FSA (hereafter referred to collectively as "banks") acquires an interest in an entity that holds the properties for rehabilitation, typically, a limited partnership (LP) or limited liability company (LLC). Using this structure, banks provide the funding for HTC projects in return for the associated tax credits.

It should be noted that the authorities referenced in the previous paragraphs are generally not affected by section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, known as the Volcker Rule and codified at 12 USC 1851, which generally prohibits financial institutions from owning, sponsoring, or having certain relationships with covered funds. The final regulations implementing section 619 exclude from the definition of covered fund issuers in the business of making investments that are (1) designed primarily to promote the public welfare of the type permitted under 12 USC 24(Eleventh) or (2) QRE with respect to a qualified rehabilitated building or certified historic structure, as such terms are defined in section 47 of the Internal Revenue Code or a similar state HTC program. See 12 CFR 44.10(c)(11)(ii).

How Are Tax Credits Calculated?

In order to qualify for HTCs, a building must be depreciable, so it must be income producing or used in a trade or business. In addition, a "substantial" amount must be spent rehabilitating the historic building,

meaning that the cost of rehabilitation must exceed the pre-rehabilitation cost of the building.

QREs are the development expenses on which HTC's can be claimed. Examples of QREs include, but are not limited to, the costs related to the repair or replacement of walls, floors, ceilings, windows, doors, air conditioning/heating systems, kitchen cabinets and appliances, plumbing and electrical fixtures, architects' fees, construction loan interest, and environmental reports. The dollar value of tax credits is calculated by multiplying the value of the QREs by the 20 percent HTC rate. Banks can earn a return on these investments by offering discounted pricing for the credits.

How Can HTC's Benefit a Bank?

Banks participate in the HTC program for a number of reasons. Among them, banks may

- Earn an attractive rate of return, when properly managed.
- Receive CRA consideration as discussed in this fact sheet and clarified in the [Interagency Questions and Answers on Community Reinvestment](#).
- Combine HTC investments with other bank bridge, construction, or permanent loan products on the same project to improve returns or reduce overall risk.
- Diversify existing bank products for rehabilitating retail, office, and institutional properties in historic communities, many of which are located in LMI geographies, designated disaster areas, or designated distressed or underserved non-metropolitan middle-income geographies.

Community Reinvestment Act

Some projects that receive HTC's may meet the definition of community development in the CRA regulation and, therefore, may receive CRA consideration. Community development includes affordable housing (including multifamily rental housing) for LMI individuals and community services targeted to LMI individuals. The definition also includes community development activities that help to revitalize or stabilize LMI geographies, designated disaster areas, or designated distressed or underserved non-metropolitan middle-income geographies.

Banks that finance or invest in HTC properties located within the bank's assessment area(s) may receive CRA consideration, to the extent that the activities meet the definition of community development. In addition, financing or investing in HTC properties located in the broader statewide or regional area that includes the bank's assessment area(s) and that meet the definition of community development may also be eligible for consideration. Examiners consider these activities even if they do not benefit the bank's assessment area(s), as long as the institution has been responsive to community development needs and opportunities in its assessment area(s).

What Are the Risks to Bank Investors?

A primary economic benefit from financing an HTC project is the opportunity to claim the full amount of federal HTC's in the year that the building is placed in service instead of over seven or 10 years, as is the case for the new markets and low-income housing tax credits, respectively. However, a participating bank risks the potential recapture of the credit by the IRS if there is a transfer of ownership during the five-year

compliance period (including a transfer triggered by foreclosure). In addition to underwriting risks, a bank should consider the tax planning and compliance risks associated with any tax credit investment and the reputational risks of investing in a high-profile community project that may fail.

The IRS issued guidance on HTCs in Revenue Procedure 2014-12, which establishes a “safe harbor” for investors in HTCs. If HTC transactions are structured in accordance with this guidance, the IRS will respect the allocation of tax credits to the investors. As such, banks considering an investment in HTCs should become familiar with this guidance because it affects how current HTC transactions are structured in order to eliminate the potential for credit disallowance.

Banks, as limited partners/members of LP/LLC subsidiaries, must retain ownership of the property for a five-year compliance period following the year the property is placed in service to avoid tax credit recapture. Once the five-year compliance period is over, the IRS cannot recapture the tax credit and a bank is free to exercise its right to sell its interest in the partnership.

This fact sheet does not constitute tax or legal advice. Banks should consult their own tax advisors about the tax treatments and consequences that may apply to their transactions.

For More Information

Office of the Comptroller of the Currency

[“Historic Tax Credits: Bringing New Life to Older Communities,”](#) *Community Developments Insights* Report, June 2017

[Community Affairs Historic Tax Credit Resource Directory](#): Historic tax credit resources are available to national banks, government agencies, and community organizations

[District Community Affairs Officers](#) contact information

[Part 24 Public Welfare Investments](#) Resource Directory

HTC program information—other agencies

[Internal Revenue Service: Revenue Procedure 2014-12](#)

[National Park Service, U.S. Department of the Interior](#)

[National Conference of State Historic Preservation Officers](#)

[National Trust for Historic Preservation](#)

[Historic Tax Credit Coalition](#)

Disclaimer

Community Developments Fact Sheets are designed to share information about programs and initiatives of interest to bankers and community development practitioners. These fact sheets differ from OCC bulletins and regulations in that they do not reflect agency policy and should not be considered definitive regulatory or supervisory guidance. Some of the information used in the preparation of this fact sheet was obtained from publicly available sources. These sources are considered reliable, but the use of this information does not constitute an endorsement of its accuracy by the OCC.

The Tax Cuts and Jobs Act (Pub. L. No. 115-97), signed into law on December 22, 2017, made numerous changes to the Internal Revenue Code. This document has NOT been updated to reflect these changes. Banks or other entities considering a tax credit equity transaction should consult with a tax professional with knowledge of how the changes in the tax code may affect specific tax equity transactions.