Community Developments

Fact Sheet

Historic Tax Credit Program

What is the Historic Tax Credit program?

Since the Tax Reform Act of 1976, the Historic Tax Credit (HTC) program has encouraged the rehabilitation of certified historic buildings through the provision of tax credits to property owners equal to 20 percent of the qualified renovation expenditures. This federal program is used to attract new private capital to the historic cores of cities and Main Street towns across the nation. These funds have enhanced property values; created jobs; generated local, state, and federal tax revenues; and revitalized communities.

How does the program work?

The HTC program is jointly administered by the U.S. Department of the Interior and the U.S. Department of the Treasury. The National Park Service (NPS) acts on behalf of the Secretary of the Interior, in partnership with the State Historic Preservation Officer (SHPO) in each state. The Internal Revenue Service (IRS) acts on behalf of the Secretary of the Treasury. This program encourages the rehabilitation of certified historic buildings through the provision of tax credits equal to 20 percent of the qualified renovation expenditure. To receive the HTCs, property owners must complete the three-part historic preservation certification application process administered by the NPS and the relevant SHPO.

National bank legal authority

Typically, if developers of HTC projects cannot use the tax credits, they will offer the credits to third parties, including banks, to raise the funding for a project and thereby reduce the financing costs for property rehabilitation. National banks have two sources of legal authority that permit them to provide financing to HTC projects in return for the tax credits associated with the project.

The first source of authority is 12 U.S.C. § 24(Eleventh). Section 24(Eleventh) authorizes national banks to make loans and investments, each of which is designed primarily to promote the public welfare, including the welfare of LMI communities or families (such as by providing housing, service, or jobs). OCC regulations at 12 CFR Part 24 (Part 24) implement this statutory authority. Under this authority, national banks may provide financing for historic property rehabilitation projects-related tax credits that promote public welfare by taking interests in entities that hold such properties for rehabilitation.

The second source of authority is 12 U.S.C. § 24(Seventh). Under section 24(Seventh), depending on the specifics of the transaction, national banks may be authorized to finance a HTC project in such a manner as to make the bank eligible to receive the federal HTCs by acquiring an interest in the entities that hold the properties for rehabilitation. The substance of the transaction must remain the provision of financing for the rehabilitation of historic property.

Under both authorities, a national bank acquires an interest in an entity that holds the properties for rehabilitation typically a limited partnership (LP) or limited liability corporation (LLC). Using this structure, national banks provide the funding for HTC projects in return for the associated tax credits.

How are tax credits calculated?

A certified historic building must be depreciable in terms of being held for the production of income for purposes such as a trade or business. The qualified rehabilitation expenditures (QREs) include the development costs on which HTCs can be claimed. QREs include, but are not limited to, the costs related to walls, partitions, floors, ceilings, windows, doors, air conditioning/heating systems, plumbing and plumbing fixtures, other related building construction, and specific fees. The dollar value of tax credits is calculated by multiplying the value of the QREs by the 20 percent HTC rate.

How can HTCs benefit a bank?

Banks participate in the HTC program for a number of reasons. Among them, are:

- Earning attractive economic rates of return.
- Leveraging other tax credit programs and increasing the possibility of receiving favorable CRA consideration.
- Contributing to the stabilization or revitalization of historic communities, many of which are located in LMI geographies, designated disaster areas, or designated distressed or underserved non-metropolitan middle-income geographies.
- Gaining opportunities to diversify into other credit products and services.

Community Reinvestment Act (CRA)

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

Banks that finance HTC properties located within the bank's assessment area would receive positive CRA consideration, to the extent that the community development definition is met. In addition, financing HTC properties located in the broader statewide or regional area that includes the bank's assessment area(s), may receive positive CRA consideration, provided the bank has otherwise adequately addressed the community development needs of its assessment area(s), even if these properties will not directly benefit the institution's assessment area(s).

National banks may make investments primarily to promote the public welfare under the community development investment authority in 12 USC 24(Eleventh) and its implementing regulation, 12 CFR 24 (Part 24). As discussed earlier in Section I, the OCC's Part 24 implements that section of the act, which authorizes national banks to make loans and investments to promote the public welfare by benefiting primarily LMI individuals, LMI areas or government targeted redevelopment areas. Eligible public welfare investments also include projects that would be "qualified investments" under CRA. Under this authority, national banks may provide financing for historic property rehabilitation projects, and gain the related tax credits, by taking interests in entities that hold such properties for rehabilitation if the projects are consistent with the public welfare requirements of Part 24.

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, CRA performance, and the nature of the project financing.

Housing and Economic Recovery Act of 2008 (HERA)

The Housing and Economic Recovery Act of 2008 (HERA), enacted on July 30, 2008, includes a provision that allows corporations to use historic tax credits to offset their AMT liabilities. Additional information about HERA can be obtained at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ289.110.

What are the risks to bank funders?

A primary economic benefit from financing a HTC project is the opportunity to claim the full amount of federal tax credits in the year that the building is placed in service. However, the potential loss of the tax credit and its recapture by the IRS represent a substantial risk to a bank. A bank also should consider the tax planning, compliance, underwriting and credit, collateral and repayment, as well as operational and reputation risk from financing a HTC project.

Banks, as members/limited partners of LP/LLC subsidiaries, must retain ownership of the property for a five-year compliance period following the year a 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 bank funders typically exit the LP/LLC. Banks should consult their own tax advisors about the tax treatments and consequences that may apply to their own transactions.

FOR MORE INFORMATION

Office of the Comptroller of the Currency

- HistoricTax Credits: Affordable Housing Investment Opportunities for Banks, *Community Developments Insights Report*, December 2008 (Revised March 2009) www.occ.treas.gov/cdd/Insights-HTC.pdf
- Community Affairs - Community development resources are available to national banks, government agencies, and community organizations at www.occ.treas.gov/cdd/resource.htm
- District Community Affairs Officers contact information can be obtained at: www.occ.treas.gov/cdd/commfoc.htm
- Part 24 Community Development Investments www.occ.gov/cdd/pt24toppage.htm#OCCsPt24Resources

Specific information about the HTC program at:

- Internal Revenue Service: Rehabilitation Tax Credit – Real Estate Tax Tips www.irs.gov/businesses/small/industries/article/0,,id=97599,00.html
- National Park Service, U.S. Department of the Interior www.nps.gov/history/hps/tps/tax/brochure1.htm
- National Conference of State Historic Preservation Officers www.ncshpo.org
- National Trust For Historic Preservation www.preservationnation.org/