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Banking Regulators Clarify Application of the CRA to Historic Tax Credit Projects

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The banking industry has received long sought-after clarification as to whether Community Reinvestment Act (CRA) credit is available for Historic Tax Credit (HTC) financed projects. Recent regulatory guidance has clarified that HTC financed projects otherwise meeting CRA requirements are eligible for CRA credit, potentially making investments and loans to HTC financed projects more attractive to banks and other financial institutions.

On July 15, 2016, the Office of the Comptroller of the Currency, the Federal Reserve and the Federal Deposit Insurance Corporation (collectively, the Agencies) released a notice (the Notice) in connection with the Interagency Questions and Answers Regarding Community Investment (Q&As). In the view of the Agencies, appropriate HTC projects have always qualified for CRA credit provided such projects otherwise met CRA requirements. The Notice clarifies this approach in its introductory sections without modifying the existing text of the relevant Q&As in this respect.

The HTC program encourages private investment in the rehabilitation of eligible historic buildings through the provision of federal tax credits to the owners or lessees of eligible historic buildings. The HTC program has had a substantial impact on community and economic development by providing funding to projects that may not otherwise be able to attract the necessary investment for rehabilitation, resulting in the catalytic revitalization of neighborhoods as well as construction and permanent job creation. The catalytic impact of HTC projects can be seen in major cities throughout the United States and particularly in Ohio, which had the highest utilization of federal HTCs of any state in 2015.

The CRA, among other things, encourages bank investment in low- and moderate-income communities to help meet the credit needs of those communities. Banks can receive CRA credit by investing in activities that promote community development, making it easier for banks to meet their CRA obligations and enhance their public CRA ratings. Those ratings impact a bank's ability to receive regulatory approvals and engage in a number of industry activities. As bankers know, CRA-related activities are again at the forefront of agency and community activist interest, and problems in that area can result in significant regulatory concerns and complications for banks.

Historically there has been significant confusion as to whether investments in HTC projects would also be eligible for CRA credit. Because of this confusion, members of the HTC industry requested that the Agencies create a presumption that activities related to HTC projects qualify for CRA credit. The Agencies rejected granting a presumption, but provided that "in instances in which loans to, or investments in, projects that receive HTCs **do meet the regulatory definition of community development**, including the geographic restrictions, **the Agencies concur that CRA consideration should be provided**." (*emphasis added*).

The Notice provided specific examples of HTC projects eligible for CRA credit, including those that:

1. House small businesses that support permanent job creation, retention, or improvement for low- or moderate-income individuals, in low- or moderate-income areas, or in areas targeted for redevelopment by Federal, state, local or tribal governments
2. Provide affordable housing or community services for low- or moderate-income individuals
3. Revitalize or stabilize a low- or moderate-income geography, designated disaster area, or a designated distressed or underserved nonmetropolitan middle-income geography

Although not creating a presumption of CRA credit in all HTC transactions, the Notice provides more certainty to financial institutions that CRA credit is available for HTC projects that otherwise meet the CRA requirements. This certainty may provide new and additional opportunities for banks and financial institutions to lend to and invest in HTC financed projects.