THE HISTORIC TAX CREDIT COALITION

August 30, 2010

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219
Re: Docket ID OCC-2010-0011

Robert E. Feldman
Executive Secretary
Attention: Comments, Federal Deposit
Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Re: RIN 3064-AD60

Jennifer J. Johnson
Secretary, Board of Governors of the Federal
Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Re: Docket No. R-1386

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: OTS-2010-0019

Dear Sir or Madam:

The Historic Tax Credit Coalition respectfully submits the following recommendation to insure greater clarity for financial institutions as to whether federal Historic Tax Credit ("HTC") equity investments qualify for CRA credit.

The Historic Tax Credit Coalition ("HTCC") is a national membership organization representing investors, syndicators, tax attorneys, accountants and preservation consultants whose work involves qualifying, underwriting, financing and closing real estate transactions that utilize the HTC. The federal Historic Tax Credit was first enacted in its present form in 1981 by Congress as an economic stimulus for an economy then deep in recession.

Similar to the Low-Income Housing ("LIHTC") and New Markets Tax Credits ("NMTC"), the HTC market has been highly dependent on CRA-motivated bank investors. Over the last 29 years, financial institutions such as Bank of America, Wachovia, US Bank, Key Bank, National City Bank and many more community banks have distinguished themselves as the leading investors in HTC financed projects in both urban and rural areas. In its November 2008 edition of *Community Development Insights,* the Office of the Comptroller of the Currency featured the Historic Tax Credit as a way for national banks to help stabilize communities in need of economic development, receive CRA credit and earn an attractive rate of return.

However, HTCC members report that there is often confusion at these institutions between what qualifies for Part 24 (OCC) "public welfare" treatment of an HTC equity investment and what counts for CRA credit purposes. This confusion seems to persist even among those institutions that engage in HTC equity investments as an on-going line of business. Before making a specific recommendation to rectify this situation, some background on the community development potential of the HTC would be helpful.

The Community Development Record of the Historic Tax Credit

In March 2010, the HTCC published a report by the Rutgers University Center for Urban Policy Research that studied the economic impact of the federal HTC over the life of the program. The study, *The First Annual Report on the Economic Impact of the Federal Historic Tax Credit,* made the following key findings:

- $16.6 billion in credits helped put over 35,000 vacant buildings back into economic use;
- A 5-1 leverage ratio resulted in $85 billion in total investment;
- These projects generated over $1.8 million jobs; $197.6 billion in output, $71.7 billion in income, $97.6 billion in Gross Domestic Product, and $28.7 billion in taxes;
- Over 75% of the economic benefits of the HTC benefited the localities and states where the projects were located, a very high capture rate;
- Dollar-for-dollar, historic rehab is a more efficient generator of jobs than new construction and most other stimulative activities such as manufacturing, highway construction, agriculture and telecommunications;
- The $16.6 billion in tax expenditures were more than offset by the $21.1 billion in federal taxes generated.

What was surprising about the data was the fact that, while the HTC is not statutorily limited to use in low-income communities or to uses that benefit low and moderate income households, *it is to a large degree self-targeting to these locations and benefits*. The Rutgers study's analysis of National Park Service statistics shows that between 2002 and 2008, two-thirds of all HTCs allocated were to real estate projects in Qualified Low-Income Census Tracts ("QCT"). The study also points to statistics that show, for the first four rounds of the NMTC program, 20% of all Qualified Equity Investments and 10% of all NMTC transactions "twinned" the HTC with the NMTC subsidy. Anecdotal information on the twinning of the LIHTC and HTC suggests that about 15% of all LIHTC transactions are historic properties that also qualify for the HTC. That would explain why about $216,000 or 54% of the 415,000 housing units produced with the HTC have been affordable. A copy of the Rutgers study can be found on the home page at www.ntcicfunds.com.

What is behind this historic synergy between the HTCs, NMTCs and LIHTCs is the fact that historic properties tend to be found in low-income, disinvested residential and commercial districts of urban areas where the need for community development investment is the greatest. While in the 1970s this may have been a cause for concern over gentrification, today nearly all HTC transactions involve entirely vacant commercial and industrial buildings where no one currently lives. In 2009, about 46% of these investments were in northeastern "weak market" towns and cities where gentrification is no longer a credible threat to most low-income households.

Current Regulations

The OCC's *Insights* article explains the authority banks have to make HTC investments under 12 CFR 24, known by bankers as "Part 24." HTC investments are always in the form of equity that, with the exception of a 5-10% buyout at the end of the 5-year compliance period, stays with the project. To qualify for the "public welfare" exception, HTC investments need to be located in a low-income area or a designated economic development district, or primarily benefit low-income households. Banks regulated by the Federal Reserve have similar rules and can opt to follow the OCC's more expansive Part 24 criteria.

The OCC's November 2008 article goes on to state that some HTC investments that qualify under the public welfare definition may also qualify for CRA credit by "meeting the definition of community development under the CRA regulation." It further states that many HTC properties are adaptively re-used for affordable housing or services that target low- and moderate-income individuals. These conclusions are corroborated by the findings of the Rutgers report. CRA credit is of course limited to projects in a bank's assessment areas or to its broader state or regional market area if it has already satisfied the community development needs in its assessment areas.

Recommendation
As stated above, HTCC members who regularly bring prospective HTC equity investments to financial institutions report that reconciling the differences between the Part 24 and CRA eligibility criteria causes confusion among banking staff who are evaluating these investment prospects. It is not unusual for the same institution to articulate these definitions differently from one staff person to the next. When syndicators get involved in making the case for either Part 24 or CRA qualifications, delays can impact the decision-making process. Only those projects that fit squarely in both "boxes" receive easy approval. Those that require more thought and documentation tend to be passed over.

The economic development impact of the federal Historic Tax Credit is well-documented. Its use to bolster the feasibility of NMTC and LIHTC eligible properties is also well understood. But the HTC is not statutorily limited to low-income areas or uses that provide direct low-income benefit, so it *can*, for instance, provide subsidy to a high-end multifamily rental property in an upscale part of town. Because of this there is hesitation in the market place under today's regulations about its eligibility for CRA credit. Does a bank HTC equity investment in a boutique hotel in a low-income census tract that provides hundreds of entry level jobs to residents in the surrounding community and a hospitality career training program for its housekeepers qualify for CRA credit? Today, institution by institution, the answer differs.

The Historic Tax Credit Coalition respectfully proposes that CRA regulations be amended to state that federal historic tax credit transactions qualify for CRA credit if the investment qualifies under the public welfare definition of 12 CFR 24. This would create a clearer picture for financial institutions and promote greater bank investments in the HTC. As stated above, year-by-year, statistics show that about 2/3 of all HTC transactions are located in QCTs. The experience of our members indicates that the vast majority of the projects in QCTs are also located in officially designated state and local economic development districts. Because of these locations, it can be inferred that two out of three HTC investments provide community revitalization benefits to low-income areas. Many also respond directly to the needs of LMI households through the provision of affordable housing, jobs, badly needed retail facilities or the delivery of social services. They also provide many of the construction and permanent jobs generated to residents of the surrounding QCTs.

Thank you for considering this suggested amendment. Please do not hesitate to contact me for further information on 202 588 6064 or at jleith@ntcicfunds.com.

Sincerely,

John Leith-Tetrault

John Leith-Tetrault
Chairman
Historic Tax Credit Coalition