January 16, 2024

Chief Counsel's Office
Attn: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218
Washington, DC 20219

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
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Washington, DC 20551

James P. Sheesley
Assistant Executive Secretary
Attn: Comments/Legal OES (RIN 3064–AF29)
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Submitted via Regulations.gov and comments@FDIC.gov

RE: "Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity" 88 Fed. Reg. 64,028 (September 18, 2023): OCC Docket ID OCC–2023–0008; Board Docket No. R-1813; FDIC RIN 3064-AF29

Dear Ladies and Gentlemen,

I write to you today in my capacity as Chair of the Historic Tax Credit Coalition (www.historiccredit.com; "HTCC") to comment on the joint proposed rule, "Regulatory Capital Rule: Large Banking Organizations and organizations With Significant Trading Activity," 88 Fed. Reg. 64,028 (September 18, 2023) ("Proposed Rule"), proposed by the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the "Agencies").

The HTCC represents a wide range of stakeholders in historic preservation, with nonprofit and for-profit developers, investors, lenders, attorneys, and other professionals with the common goal of facilitation the preservation of historic properties in urban, suburban, and rural town center across the nation through federal and state historic tax credits ("HTCs").

In our collective experience we find that HTC equity investments are significantly less risky than traditional lending. This experience is backed up by historical data showing the rate of recapture of HTC projects is well below one percent and through the Internal Revenue Service's data on investment credits, generally. As such, we believe investment credits should receive special consideration in the final regulations. On the HTC specifically, the National Park Service (NPS), which administers the program jointly with the IRS, finds that more than 50% of HTC investments are in low- and moderate-income census tracts, which have historically been a focus of public welfare investments. Nearly 75% of all HTC projects are in economically distressed communities.

The HTCC urges you to change the proposed risk-weighting of investments by banks in transactions involving the HTC to 50%. We understand other organizations involved in other community development credits provided by the Code (i.e., the Low-Income Housing Tax Credit provided by Section 42 of the Code , or "LIHTC," and the New Markets Tax Credit provided by Section 45D of the Code, or "NMTC"; together with the HTC, the "Community Development Credits") may request the same or similar treatment and we believe that all of the Community Development Credits should be treated similarly.

We support the Agencies' joint goal of maintaining and improving the soundness of our banking system and prioritizing safety in the system. At the same time, we want to ensure the proposed rules take into consideration all of the potential impacts on programs like the HTC.

As you may know, some bank HTC equity investments qualify as community development or public welfare investments, and those investments have the same risk weighting as LIHTC and NMTC investments, or 100%, which the proposed rule does not change. However, if the bank HTC equity investment does not qualify as a community development or public welfare investment, then it would be subject to the same 400% risk weighting as Basel III proposes for equity investments that are not community development or publicly traded, such as renewable energy equity investments, which would be very damaging to the continued use of the HTC for the worthy purpose it now serves.

The HTC originated in the late 1970s as one of America's first community development "investment tax credits.[1]" The HTC facilitates the rehabilitation of historic buildings and structures by providing a tax incentive based on a percentage of "qualified rehabilitation expenditures" (or "QREs"). The OCC has prepared a fact sheet on the HTC; it can be found at https://www.occ.gov/publications-and-resources/publications/community-affairs/community-developments-fact-sheets/pub-fact-sheet-historic-tax-credits-oct-2019.pdf.

The HTC incentive has proven to be a powerful tool for preserving our nation's historic properties while generating community redevelopment and reinvestment and ultimately economic growth. The HTC has preserved tens of thousands of historic buildings, facilitated the creation of a nearly 200,000 low- and moderate-income homes and supported the rehabilitation and reuse of almost 50,000 buildings, many blighted, from the country's urban core to its small-town main

[1] An "investment tax credit" (ITC) is an incentive for business investment. An ITC allows a taxpayer to claim a credit against its federal tax liability for a percentage of the investment. In the case of the HTC, a tax credit is taken over five years equal to 20% of the "qualified rehabilitation expenditures," as explained later in this report.

streets[2]. It has been utilized in the redevelopment of former factories, airport terminals, office buildings, mills, schools, community centers, theaters, and any number of other building types. It has accomplished all these worthy goals while creating hundreds of thousands of jobs and advancing environmental protection through reuse of existing structures and materials.

Tax credit equity is enormously important in certified rehabilitations of historic buildings. While the ultimate value of the tax credit has oscillated over the years, very few if any projects would move forward without the support of equity investors who help fund the rehabilitation of the projects. Developers count on the tax credit equity to close significant financing gaps between rehabilitation and new construction and to make up for rent differentials in the neighborhoods where historic properties tend to be located.

The HTC's relative efficiency is also demonstrated by its exceedingly low recapture rate. Recapture can result from mortgage foreclosure, if the building's architectural character is altered, if the building is lost because of a natural disaster, or if there is a transfer of ownership within the 5-year compliance period, following the building being placed in service. The firm Novogradac & Company LLP undertook an HTC recapture survey ("Novogradac Study") for the National Trust. It can be found here: https://www.novoco.com/products/historic-rehabilitation-tax-credit-recapture-survey .

The Novogradac Study found a cumulative recapture rate of the HTC over the period 2001-2011 measuring period was just 0.73%, reflecting a better than 99% project success rate. We call to your attention that the study's measuring period includes the years of the recession in the 2008-2009. While HTC recapture data is not separated from data on recapture of Internal Revenue Code section 48 investment tax credits in the Internal Revenue Service Statistics of Income (SOI) Corporation Line Estimates – Publication 5108 for tax years 2008-20, the combined rate of recapture remains low.

In 2014, the Internal Revenue Service published Revenue Procedure 2014–12[3]. It provides a large number of conditions and safeguards associated with investing in projects which benefit from the HTC. These conditions, which bring a consistent structure to HTC projects and their investments, and generally result in the parties obtaining a "reasonableness opinion" as to the fees being paid, enhance the safety of making HTC investments, in part by satisfying many Internal Revenue Service requirements, so as to significantly limit the causes and likelihood of an audit of the transaction or tax credit recapture. In our experience, bank investors consistently require compliance with Revenue Procedure 2014–12, and almost always require a tax opinion from a recognized firm with experience with the HTC.

With the HTC proving itself to be a low-risk investment, in large part because of the amount of diligence that goes into the projects and the safeguards that are in place throughout the process

[2] Data from the National Park Service's most recent annual report available at https://www.nps.gov/subjects/taxincentives/upload/report-2022-annual.pdf
[3] https://www.irs.gov/pub/irs-drop/rp-14-12.pdf

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with multiple federal agencies as well as developer guarantees for investors, it should not be treated as a risky investment.

The LIHTC and the NMTC consistently qualify for CRA credit, while not all HTC properties do, this distinction should not result in a different bank capital treatment for purposes of Basel III. At the end of the day, the Agencies should not be in a position to encourage winners and losers among similarly situated equity investments. A careful, thoughtful, and comprehensive review of the implications should be undertaken to ensure these proposed rules do not end up changing the playing field for the HTC, or any other credit.

We understand that some in the renewables industries (which also place substantial reliance on tax credits) would have you add two new categories under the 100% risk weighting category:

- An equity exposure that qualifies as a tax equity finance investment under 12 CFR 7.1025 or has substantially similar attributes.
- An equity exposure to a tax credit structure that meets the criteria to be accounted for under the proportional amortization method as described in ASC 323 of the FASB's Accounting Standards Codification.

Recognizing that some HTC investments might not be considered community development investments under section 24 (Eleventh) of the National Bank Act, the HTCC recommends that if these new categories are adopted, your rule make clear that they apply to transactions involving the HTC projects that are not community development investments.

Thank you for considering these comments and I or the Coalition's leadership stand ready to discuss any issues related to the credit and these regulations or any other issues you may have in the future.

Sincerely,

[redacted]

Forrest David Milder
Chair, Historic Tax Credit Coalition