

115TH CONGRESS
1ST SESSION

H. R. 2148

AN ACT

To amend the Federal Deposit Insurance Act to clarify capital requirements for certain acquisition, development, or construction loans.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as “Clarifying Commercial
3 Real Estate Loans”.

4 **SEC. 2. CAPITAL REQUIREMENTS FOR CERTAIN ACQUISITION,**
5 **DEVELOPMENT, OR CONSTRUCTION**
6 **LOANS.**

7 The Federal Deposit Insurance Act is amended by
8 adding at the end the following new section:

9 **“SEC. 51. CAPITAL REQUIREMENTS FOR CERTAIN ACQUISITION,**
10 **DEVELOPMENT, OR CONSTRUCTION**
11 **LOANS.**

12 “(a) IN GENERAL.—The appropriate Federal bank-
13 ing agencies may only subject a depository institution to
14 higher capital standards with respect to a high volatility
15 commercial real estate (HVCRE) exposure (as such term
16 is defined under section 324.2 of title 12, Code of Federal
17 Regulations, as of October 11, 2017, or if a successor reg-
18 ulation is in effect as of the date of the enactment of this
19 section, such term or any successor term contained in such
20 successor regulation) if such exposure is an HVCRE ADC
21 loan.

22 “(b) HVCRE ADC LOAN DEFINED.—For purposes
23 of this section and with respect to a depository institution,
24 the term ‘HVCRE ADC loan’—

25 “(1) means a credit facility secured by land or
26 improved real property that, prior to being reclassi-

1 fied by the depository institution as a Non-HVCRE
2 ADC loan pursuant to subsection (d)—

3 “(A) primarily finances, has financed, or
4 refinances the acquisition, development, or con-
5 struction of real property;

6 “(B) has the purpose of providing financ-
7 ing to acquire, develop, or improve such real
8 property into income-producing real property;
9 and

10 “(C) is dependent upon future income or
11 sales proceeds from, or refinancing of, such real
12 property for the repayment of such credit facil-
13 ity;

14 “(2) does not include a credit facility financ-
15 ing—

16 “(A) the acquisition, development, or con-
17 struction of properties that are—

18 “(i) one- to four-family residential
19 properties;

20 “(ii) real property that would qualify
21 as an investment in community develop-
22 ment; or

23 “(iii) agricultural land;

24 “(B) the acquisition or refinance of exist-
25 ing income-producing real property secured by

1 a mortgage on such property, if the cash flow
2 being generated by the real property is suffi-
3 cient to support the debt service and expenses
4 of the real property, as determined by the de-
5 pository institution, in accordance with the in-
6 stitution's applicable loan underwriting criteria
7 for permanent financings;

8 “(C) improvements to existing income-pro-
9 ducing improved real property secured by a
10 mortgage on such property, if the cash flow
11 being generated by the real property is suffi-
12 cient to support the debt service and expenses
13 of the real property, as determined by the de-
14 pository institution, in accordance with the in-
15 stitution's applicable loan underwriting criteria
16 for permanent financings; or

17 “(D) commercial real property projects in
18 which—

19 “(i) the loan-to-value ratio is less than
20 or equal to the applicable maximum super-
21 visory loan-to-value ratio as determined by
22 the appropriate Federal banking agency;
23 and

24 “(ii) the borrower has contributed
25 capital of at least 15 percent of the real

property's appraised, 'as completed' value
to the project in the form of—

“(I) cash;

“(II) unencumbered readily marketable assets;

“(III) paid development expenses out-of-pocket; or

“(IV) contributed real property or improvements; and

“(iii) the borrower contributed the minimum amount of capital described under clause (ii) before the depository institution advances funds under the credit facility, and such minimum amount of capital contributed by the borrower is contractually required to remain in the project until the credit facility has been reclassified by the depository institution as a Non-HVCRE ADC loan under subsection (d);

“(3) does not include any loan made prior to January 1, 2015; and

“(4) does not include a credit facility reclassified as a Non-HVCRE ADC loan under subsection (d).

1 “(c) VALUE OF CONTRIBUTED REAL PROPERTY.—

2 For purposes of this section, the value of any real property
3 contributed by a borrower as a capital contribution shall
4 be the appraised value of the property as determined
5 under standards prescribed pursuant to section 1110 of
6 the Financial Institutions Reform, Recovery, and Enforce-
7 ment Act of 1989 (12 U.S.C. 3339), in connection with
8 the extension of the credit facility or loan to such bor-
9 rower.

10 “(d) RECLASSIFICATION AS A NON-HVCRE ADC
11 LOAN.—For purposes of this section and with respect to
12 a credit facility and a depository institution, upon—

13 “(1) the completion of the development or con-
14 struction of the real property being financed by the
15 credit facility; and

16 “(2) cash flow being generated by the real prop-
17 erty being sufficient to support the debt service and
18 expenses of the real property,

19 in either case to the satisfaction of the depository institu-
20 tion, in accordance with the institution’s applicable loan
21 underwriting criteria for permanent financings, the credit

- 1 facility may be reclassified by the depository institution
- 2 as a Non-HVCRE ADC loan.”.

Passed the House of Representatives November 7,
2017.

Attest:

Clerk.

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