

115TH CONGRESS  
1ST SESSION

# H. R. 2148

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 2017

Received; read twice and referred to the Committee on Banking, Housing, and  
Urban Affairs

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## 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, DEVELOPMENT, OR CONSTRUCTION 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, DEVELOPMENT, OR CONSTRUCTION LOANS.**

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

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

3 “(I) cash;

4 “(II) unencumbered readily mar-  
5 ketable assets;

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

8 “(IV) contributed real property  
9 or improvements; and

10 “(iii) the borrower contributed the  
11 minimum amount of capital described  
12 under clause (ii) before the depository in-  
13 stitution advances funds under the credit  
14 facility, and such minimum amount of cap-  
15 ital contributed by the borrower is contrac-  
16 tually required to remain in the project  
17 until the credit facility has been reclassi-  
18 fied by the depository institution as a Non-  
19 HVCRE ADC loan under subsection (d);

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

22 “(4) does not include a credit facility reclassi-  
23 fied as a Non-HVCRE ADC loan under subsection  
24 (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:

KAREN L. HAAS,

*Clerk.*