

115TH CONGRESS
1ST SESSION

H. R. 2148

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2017

Mr. PITTENGER (for himself and Mr. DAVID SCOTT of Georgia) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as “Clarifying Commercial
5 Real Estate Loans”.

6 **SEC. 2. CAPITAL REQUIREMENTS FOR CERTAIN ACQUI-**
7 **SION, DEVELOPMENT, OR CONSTRUCTION**
8 **LOANS.**

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

1 **“SEC. 51. CAPITAL REQUIREMENTS FOR CERTAIN ACQUISITION,**
2 **DEVELOPMENT, OR CONSTRUCTION**
3 **LOANS.**

4 “(a) IN GENERAL.—The appropriate Federal bank-
5 ing agencies may only subject a depository institution to
6 higher capital standards with respect to a high volatility
7 commercial real estate (HVCRE) exposure (as defined
8 under section 324.2 of title 12, Code of Federal Regula-
9 tions, as in effect on the day before the date of the enact-
10 ment of this section) if such exposure is an HVCRE ADC
11 loan.

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

15 “(1) means a credit facility secured by land or
16 improved real property that, prior to being reclassi-
17 fied by the depository institution as a Non-HVCRE
18 ADC loan pursuant to subsection (d)—

19 “(A) finances or has financed the acquisi-
20 tion, development, or construction of real prop-
21 erty;

22 “(B) has the purpose of providing financ-
23 ing to acquire, develop, or improve such real
24 property into income-producing real property;
25 and

1 “(C) is dependent upon future income or
2 sales proceeds from, or refinancing of, such real
3 property for the repayment of such credit facil-
4 ity;

5 “(2) does not include a credit facility financ-
6 ing—

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

9 “(i) one- to four-family residential
10 properties;

11 “(ii) real property that would qualify
12 as an investment in community develop-
13 ment; or

14 “(iii) agricultural land;

15 “(B) the acquisition or refinance of exist-
16 ing income-producing real property secured by
17 a mortgage on such property;

18 “(C) improvements to existing income-pro-
19 ducing improved real property secured by a
20 mortgage on such property, if the cash flow
21 being generated by the real property is suffi-
22 cient to support the debt service and expenses
23 of the real property, as determined by the de-
24 pository institution, in accordance with the in-

1 stitution’s applicable loan underwriting criteria
2 for permanent financings; or

3 “(D) commercial real property projects in
4 which—

5 “(i) the loan-to-value ratio is less than
6 or equal to the applicable maximum super-
7 visory loan-to-value ratio as determined by
8 the appropriate Federal banking agency;
9 and

10 “(ii) the borrower has contributed
11 capital of at least 15 percent of the real
12 property’s appraised, ‘as completed’ value
13 to the project in the form of—

14 “(I) cash;

15 “(II) unencumbered readily mar-
16 ketable assets;

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

19 “(IV) contributed real property
20 or improvements; and

21 “(iii) the borrower contributed the
22 minimum amount of capital described
23 under clause (ii) before the depository in-
24 stitution advances funds under the credit
25 facility, and such minimum amount of cap-

1 ital contributed by the borrower is contrac-
2 tually required to remain in the project
3 until the credit facility has been reclassi-
4 fied by the depository institution as a Non-
5 HVCRE ADC loan under subsection (d);

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

8 “(4) does not include a credit facility reclassi-
9 fied as a Non-HVCRE ADC loan under subsection
10 (d).

11 “(c) VALUE OF CONTRIBUTED REAL PROPERTY.—
12 For purposes of this section, the value of any real property
13 contributed by a borrower as a capital contribution shall
14 be the appraised value of the property as determined
15 under standards prescribed pursuant to section 1110 of
16 the Financial Institutions Reform, Recovery, and Enforce-
17 ment Act of 1989 (12 U.S.C. 3339), in connection with
18 the extension of the credit facility or loan to such bor-
19 rower.

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

23 “(1) the completion of the development or con-
24 struction of the real property being financed by the
25 credit facility; and

1 “(2) cash flow being generated by the real prop-
2 erty being sufficient to support the debt service and
3 expenses of the real property,
4 in either case to the satisfaction of the depository institu-
5 tion, in accordance with the institution’s applicable loan
6 underwriting criteria for permanent financings, the credit
7 facility may be reclassified by the depository institution
8 as a Non-HVCRE ADC loan.”.

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