

Union Calendar No.

115TH CONGRESS
1ST SESSION

H. R. 2148

[Report No. 115-]

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

OCTOBER --, 2017

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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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:

11 **“SEC. 51. CAPITAL REQUIREMENTS FOR CERTAIN ACQUI-**
12 **SION, DEVELOPMENT, OR CONSTRUCTION**
13 **LOANS.**

14 “(a) IN GENERAL.—The appropriate Federal bank-
15 ing agencies may only subject a depository institution to
16 higher capital standards with respect to a high volatility
17 commercial real estate (HVCRE) exposure ~~(as defined~~
18 ~~under section 324.2 of title 12, Code of Federal Regula-~~
19 ~~tions, as in effect on the day before the date of the enact-~~
20 ~~ment of this section)~~ *(as such term is defined under section*
21 *324.2 of title 12, Code of Federal Regulations, as of October*
22 *11, 2017, or if a successor regulation is in effect as of the*
23 *date of the enactment of this section, such term or any suc-*
24 *cessor term contained in such successor regulation) if such*
25 *exposure is an HVCRE ADC loan.*

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

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

8 “(A) ~~finances or has financed~~ *primarily fi-*
9 *nances, has financed, or refinances* the acquisi-
10 tion, development, or construction of real prop-
11 erty;

12 “(B) has the purpose of providing financ-
13 ing to acquire, develop, or improve such real
14 property into income-producing real property;
15 and

16 “(C) is dependent upon future income or
17 sales proceeds from, or refinancing of, such real
18 property for the repayment of such credit facil-
19 ity;

20 “(2) does not include a credit facility financ-
21 ing—

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

24 “(i) one- to four-family residential
25 properties;

1 “(ii) real property that would qualify
2 as an investment in community develop-
3 ment; or

4 “(iii) agricultural land;

5 “(B) the acquisition or refinance of exist-
6 ing income-producing real property secured by
7 a mortgage on such property, *if the cash flow*
8 *being generated by the real property is sufficient*
9 *to support the debt service and expenses of the*
10 *real property, as determined by the depository*
11 *institution, in accordance with the institution’s*
12 *applicable loan underwriting criteria for perma-*
13 *nent financings;*

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

23 “(D) commercial real property projects in
24 which—

1 “(i) the loan-to-value ratio is less than
2 or equal to the applicable maximum super-
3 visory loan-to-value ratio as determined by
4 the appropriate Federal banking agency;
5 and

6 “(ii) the borrower has contributed
7 capital of at least 15 percent of the real
8 property’s appraised, ‘as completed’ value
9 to the project in the form of—

10 “(I) cash;

11 “(II) unencumbered readily mar-
12 ketable assets;

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

15 “(IV) contributed real property
16 or improvements; and

17 “(iii) the borrower contributed the
18 minimum amount of capital described
19 under clause (ii) before the depository in-
20 stitution advances funds under the credit
21 facility, and such minimum amount of cap-
22 ital contributed by the borrower is contrac-
23 tually required to remain in the project
24 until the credit facility has been reclassi-

1 fied by the depository institution as a Non-
2 HVCRE ADC loan under subsection (d);

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

5 “(4) does not include a credit facility reclassi-
6 fied as a Non-HVCRE ADC loan under subsection
7 (d).

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

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

20 “(1) the completion of the development or con-
21 struction of the real property being financed by the
22 credit facility; and

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

1 in either case to the satisfaction of the depository institu-
2 tion, in accordance with the institution's applicable loan
3 underwriting criteria for permanent financings, the credit
4 facility may be reclassified by the depository institution
5 as a Non-HVCRE ADC loan.”.