

115TH CONGRESS
2D SESSION

S. 2405

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8, 2018

Mr. COTTON (for himself and Mr. JONES) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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”.

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

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

6 **“SEC. 51. CAPITAL REQUIREMENTS FOR CERTAIN ACQUISITION,**
 7 **DEVELOPMENT, OR CONSTRUCTION**
 8 **LOANS.**

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

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

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

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

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

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

12 “(2) does not include a credit facility financ-
13 ing—

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

16 “(i) one- to four-family residential
17 properties;

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

21 “(iii) agricultural land;

22 “(B) the acquisition or refinance of exist-
23 ing income-producing real property secured by
24 a mortgage on such property, if the cash flow
25 being generated by the real property is suffi-

1 cient to support the debt service and expenses
2 of the real property, as determined by the de-
3 pository institution, in accordance with the in-
4 stitution's applicable loan underwriting criteria
5 for permanent financings;

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

15 “(D) commercial real property projects in
16 which—

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

22 “(ii) the borrower has contributed
23 capital of at least 15 percent of the real
24 property's appraised, ‘as completed’ value
25 to the project in the form of—

1 “(I) cash;

2 “(II) unencumbered readily mar-
3 ketable assets;

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

6 “(IV) contributed real property
7 or improvements; and

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

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

20 “(4) does not include a credit facility reclassi-
21 fied as a Non-HVCRE ADC loan under subsection
22 (d).

23 “(c) VALUE OF CONTRIBUTED REAL PROPERTY.—
24 For purposes of this section, the value of any real property
25 contributed by a borrower as a capital contribution shall

1 be the appraised value of the property as determined
 2 under standards prescribed pursuant to section 1110 of
 3 the Financial Institutions Reform, Recovery, and Enforce-
 4 ment Act of 1989 (12 U.S.C. 3339), in connection with
 5 the extension of the credit facility or loan to such bor-
 6 rower.

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

10 “(1) the completion of the development or con-
 11 struction of the real property being financed by the
 12 credit facility; and

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

16 in either case to the satisfaction of the depository institu-
 17 tion, in accordance with the institution’s applicable loan
 18 underwriting criteria for permanent financings, the credit
 19 facility may be reclassified by the depository institution
 20 as a Non-HVCRE ADC loan.”.

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