RESCINDED

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# High Volatility Commercial Real Estate: Final Rule

### To

Chief Executive Officers of All National Banks and Federal Savings Associations, Department and Division Heads, All Examining Personnel, and Other Interested Parties

## Summary

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) are publishing a final rule, in accordance with section 214 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), to revise the capital rule to make the definition of high volatility commercial real estate (HVCRE) exposure consistent with the statutory definition. The final rule is effective on April 1, 2020.

**Note for Community Banks**

The final rule will apply to all national banks and federal savings associations (collectively, banks), including community banks, except for qualifying community banking organizations electing to use the Community Bank Leverage Ratio Framework.

## Highlights



- The agencies are revising the HVCRE exposure definition to make it consistent with the statutory definition. The statutory definition excludes any loan made before January 1, 2015.
- The revised HVCRE exposure definition differs from the previous definition primarily in two ways:
  - First, the previous definition applied to loans that financed acquisition, development, or construction (ADC) activities, whereas the new definition only applies to loans that "primarily" finance ADC activities and that are secured by land or improved real estate. This change excludes multipurpose credit facilities that primarily finance the purchase of equipment or other non-ADC activities.
  - Second, the new definition permits the full appraised value of borrower-contributed land (less the total amount of any liens on the real property securing the HVCRE exposure) to count toward the 15 percent capital contribution of the real property's appraised "as completed" value, which is one of the criteria for an exemption from the heightened risk weight.
- The final rule includes a grandfathering provision, which will provide banking organizations with the option to maintain their current capital treatment for ADC loans originated on or after January 1, 2015, and before April 1, 2020. Banking organizations also will have the option to reevaluate any or all of their ADC loans originated on or after January 1, 2015, using the revised HVCRE exposure definition.

- The final rule adds language to the definition of HVCRE exposure to clarify that the one- to four-family residential properties exclusion does not include credit facilities that solely finance land development activities, such as the laying of sewers, water pipes, and similar improvements to land. Thus, to qualify for this exclusion, a credit facility must finance the construction of one- to four-family residential structures. Under the final rule, a facility that finances land development but does not finance the construction of one- to four-family residential structures will be categorized as an HVCRE exposure, unless the exposure meets another exclusion.
- The agencies are also clarifying that condominium and cooperative construction loans will qualify for the one- to four-family residential property exclusion, as long as the repayment of the loans comes from the sale of individual condominium dwelling units or individual cooperative housing units.



## Background

On May 24, 2018, the EGRRCPA became law. Section 214 of the EGRRCPA amends the Federal Deposit Insurance Act by adding a new section 51 to provide a definition of an HVCRE ADC loan. The statute states the agencies may only require a depository institution to assign a heightened risk weight to an HVCRE exposure, as defined under the capital rule, if such exposure is an HVCRE ADC loan under the EGRRCPA. The statutory HVCRE ADC loan definition excludes any loan made before January 1, 2015. Section 214 was effective upon enactment of the statute.

## Further Information

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## Related Link

- Regulatory Capital Treatment for High Volatility Commercial Real Estate (HVCRE) Exposures (PDF)

Topic(s): ▪ CAPITAL ▪ LAWS & REGULATIONS ▪ OCC REGULATIONS