

# RESCINDED

OCC Bulletin 2019-35| July 23, 2019

## High Volatility Commercial Real Estate (HVCRE): Notice of Proposed Rulemaking

Replaced-See OCC 2019-64

### Summary

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) are issuing a notice of proposed rulemaking to seek comment on the treatment of land development loans for purposes of the one- to four-family residential properties exclusion in the definition of high volatility commercial real estate (HVCRE) exposure in the agencies' regulatory capital rule. This proposal expands on the notice of proposed rulemaking (HVCRE NPR) issued on September 28, 2018, which proposed to amend the definition of HVCRE exposure in the regulatory capital rule to conform to the statutory definition of "high volatility commercial real estate acquisition, development, or construction (HVCRE ADC) loan," in accordance with section 214 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). Comments must be received by August 22, 2019.

### To

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

### Note for Community Banks

The proposed rule would apply to all national banks and federal savings associations (collectively, banks), including community banks.

### Highlights

- After reviewing the comments related to land development loans, the agencies believe that the regulatory capital treatment of such loans warrants further consideration and clarification before finalizing the definition of an HVCRE exposure.
- The agencies are issuing a proposal to revise the definition of HVCRE exposure to provide that the exclusion for one- to four-family residential properties does not include credit facilities that solely finance land development activities, such as the laying of sewers, water pipes, and similar improvements to land. Therefore, under the proposed rule, a facility that solely finances land development would be categorized as an HVCRE exposure, unless the exposure meets another exclusion from the definition of HVCRE exposure.
- Until the agencies take further action, banks are advised to reference the July 6, 2018, interagency statement for purposes of the HVCRE exposure definition and regulatory reporting.

### Background

In 2013, the agencies adopted a revised regulatory capital rule (capital rule) that, among other things, defined HVCRE to better capture the risk of certain kinds of real estate exposures. Those exposures consisted of certain ADC loans shown to have increased risk characteristics relative to other ADC exposures and thus were assigned a heightened risk weight under the capital rule.

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.

On July 6, 2018, the agencies issued a statement (interagency statement) advising banking organizations that, when determining which loans should be subject to a heightened risk weight, they may choose to continue to apply the current regulatory definition of HVCRE exposure, or they may choose to apply the heightened risk weight only to those loans they reasonably believe meet the definition of “HVCRE ADC loan” set forth in section 214 of the EGRRCPA.

On September 28, 2018, the agencies published the HVCRE NPR to revise HVCRE exposure definition in the capital rule to conform to the statutory definition of an HVCRE ADC loan in accordance with section 214 of the EGRRCPA.

### Further Information

Please contact Benjamin Pegg, Risk Expert, Capital Policy Division, at (202) 649-6370; or Carl Kaminski, Special Counsel, or Rima Kundnani, Senior Attorney, Chief Counsel's Office, at (202) 649-5490.

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### Related Link

- [“Regulatory Capital Rules: Treatment of Land Development Loans for the Definition of High Volatility Commercial Real Estate Exposure”](#)