Banking and Finance Law Daily Wrap Up, TOP STORY—Change to high volatility commercial real estate loan rules proposed, (Sept. 19, 2018)

Banking and Finance Law Daily Wrap Up

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The banking regulatory agencies are proposing to change their rules on the capital treatment of high volatility commercial real estate loans to comply with the requirements of the Economic Growth, Regulatory Relief, and Consumer Protection Act. The proposed joint rule, from the Federal Reserve Board, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation, would change the definition of a "high volatility commercial real estate (HVCRE) exposure."

HVCRE exposures generally are considered to be riskier than other real estate loans and, as a result, are assigned a 150-percent risk weight for regulatory capital purposes. Other real estate loans usually are assigned a 100-percent risk weight. However, there was a concern that the higher risk-weight was unnecessarily restricting some real estate lending. To remedy that, EGRRCPA Section 214 added a section to the Federal Deposit Insurance Act that defined HVCRE exposures and provided that the agencies can require a higher risk weight only for HVCRE exposures that: qualify as acquisition, construction, or development loans; financed the acquisition, development, or improvement of property into income-producing property; and are to be repaid from revenue derived from the property or a future refinancing.

There are a number of exceptions. First, loans originated before Jan. 1, 2015, would be excepted as long as they were not 90 days or more past due. Beyond that, loans would not need to be treated as HVCRE exposures if they financed the purchase, acquisition, or development of:

- one-to-four family residential property;
- community development investments;
- agricultural land;
- property that produces enough income to pay the loan and all expenses; or
- commercial property in which the borrower has made a satisfactory capital investment.

Also, lender could reclassify a loan as a non-HVCRE exposure when the project was substantially complete and generating enough cash flow to cover the loan payments and all of the property's expenses.

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