

116TH CONGRESS
2D SESSION

H. R. 7809

To require the Secretary of the Treasury to establish a HOPE Preferred Equity Facility to guarantee certain financial investments of commercial borrowers affected by COVID–19, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2020

Mr. TAYLOR (for himself, Mr. LAWSON of Florida, and Mr. BARR) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To require the Secretary of the Treasury to establish a HOPE Preferred Equity Facility to guarantee certain financial investments of commercial borrowers affected by COVID–19, and for other purposes.

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 the “Helping Open Prop-
5 erties Endeavor Act of 2020” or the “HOPE Act of
6 2020”.

1 **SEC. 2. HOPE PREFERRED EQUITY FACILITY.**

2 (a) ESTABLISHMENT.—The Secretary of the Treas-
3 ury shall establish a HOPE Preferred Equity Facility to
4 provide financial assistance to borrowers of commercial
5 mortgages in the form of a guarantee of a purchase by
6 a financial institution of a preferred equity instrument
7 issued by a borrower. The Secretary shall guarantee 100
8 percent of any such purchase made under this section.

9 (b) ELIGIBILITY OF BORROWERS.—A borrower is eli-
10 gible to receive financial assistance under this section if,
11 as determined by the financial institution—

12 (1) the borrower’s revenue during any consecu-
13 tive 3-month period between March 1, 2020, and
14 February 28, 2021, from the property securing the
15 commercial mortgage is at least 25 percent less than
16 the revenue from such property during the same
17 consecutive 3-month period in the previous year;

18 (2) the borrower had not received written notice
19 of monetary default on the commercial mortgage
20 within the previous year and failed to cure such no-
21 tice as of March 1, 2020;

22 (3) either—

23 (A) the debt service coverage ratio with re-
24 spect to the commercial mortgage was at least
25 1.3 times on an annual basis during 2019; or

1 (B) the debt service coverage ratio with re-
2 spect to the commercial mortgage was at least
3 1.3 times on an annual basis during both 2017
4 and 2018;

5 (4) the property securing the commercial mort-
6 gage is not owner-occupied, except to manage the
7 property or de minimis occupancy as otherwise pro-
8 vided by the Secretary;

9 (5) the borrower or a parent company of the
10 borrower has not acquired the subject property after
11 March 1, 2020, through a foreclosure process; and

12 (6) the borrower has not already received finan-
13 cial assistance under this section with respect to the
14 applicable property securing the commercial mort-
15 gage.

16 (c) REQUIREMENTS ON PREFERRED EQUITY IN-
17 STRUMENTS.—

18 (1) IN GENERAL.—With respect to a preferred
19 equity instrument purchased by a financial institu-
20 tion from a borrower, the purchase of which is guar-
21 anteed under this section—

22 (A) the instrument shall be subordinate to
23 perfected loans and unsecured debt;

24 (B) the amount paid for such instrument
25 shall be in an amount, as determined by the fi-

1 nancial institution, that does not exceed 10 per-
2 cent of the outstanding amount owed on the
3 commercial mortgage;

4 (C) the purchase amount of the instrument
5 shall be made available by the financial institu-
6 tion to the borrower in an account that the bor-
7 rower may draw down, in amounts and at times
8 to be determined by the borrower for any pur-
9 pose the borrower determines may help the
10 property, during the 1-year period following the
11 date such purchase is made;

12 (D) the instrument shall be unsecured by
13 the subject property securing the commercial
14 mortgage;

15 (E) the instrument shall provide no right
16 of foreclosure and no approval rights;

17 (F) the instrument shall, except as pro-
18 vided under paragraph (2), have an annual in-
19 terest rate of 3 percent calculated on a monthly
20 basis on all amounts that have been drawn from
21 the account described in subparagraph (B), of
22 which 0.5 percent shall be transferred to the
23 Secretary of the Treasury for purposes under
24 subsection (g)(4);

1 (G) any portion of the instrument may be
2 redeemed by the borrower at any time with the
3 financial institution, without penalty;

4 (H) the instrument shall require payments
5 to first be due after the end of the 2-year pe-
6 riod beginning on the earlier of—

7 (i) the date on which all funds in the
8 account described under subparagraph (B)
9 have been drawn down by the borrower; or

10 (ii) the end of the 1-year period begin-
11 ning on the date the purchase is made;

12 (I) the instrument shall fully amortize over
13 the 7-year period beginning on the date pay-
14 ments are first due;

15 (J) the instrument shall require immediate
16 redemption if there is more than a 50 percent
17 change in the ownership of the borrower, except
18 via death, compared to the date on which the
19 instrument is purchased;

20 (K) the instrument shall be approved in
21 advance by the Secretary; and

22 (L) the proceeds from such purchase may
23 be used for—

24 (i) expenses of the parent company re-
25 lated to the administration of oversight of

1 such borrower, ownership or operation of
2 such borrower, or to a subsidiary entity of
3 the parent company for same or similar ex-
4 penses;

5 (ii) the benefit and operation of the
6 property securing the commercial mort-
7 gage;

8 (iii) payments of the preferred equity
9 interest, including payments for principal,
10 interest, insurance, taxes, utilities, fees, op-
11 erating expenses, and payroll expenses; and

12 (iv) lender-required reserves such as
13 capital expenditure reserves.

14 (2) FAILURE TO MAKE PAYMENTS.—

15 (A) IN GENERAL.—If a borrower fails to
16 make payments due on a preferred equity in-
17 strument, the purchase of which is guaranteed
18 under this section—

19 (i) during the first year in which pay-
20 ments are due, the interest rate on the in-
21 strument shall increase to 3.5 percent for
22 the remainder of the loan, beginning at the
23 end of the first year;

24 (ii) during the second year in which
25 payments are due, the interest rate on the

1 instrument shall increase to 4.5 percent for
2 the remainder of the loan, beginning at the
3 end of the second year;

4 (iii) during the third year in which
5 payments are due, the interest rate on the
6 instrument shall increase to 5.5 percent for
7 the remainder of the loan, beginning at the
8 end of the third year;

9 (iv) during the fourth year in which
10 payments are due, the interest rate on the
11 instrument shall increase to 6.5 percent for
12 the remainder of the loan, beginning at the
13 end of the fourth year;

14 (v) during the fifth year in which pay-
15 ments are due, the interest rate on the in-
16 strument shall increase to 7.5 percent for
17 the remainder of the loan, beginning at the
18 end of the fifth year;

19 (vi) during the sixth year in which
20 payments are due, the interest rate on the
21 instrument shall increase to 8.5 percent for
22 the remainder of the loan, beginning at the
23 end of the sixth year;

24 (vii) during the seventh year in which
25 payments are due, the interest rate on the

1 instrument shall increase to 9.5 percent for
2 the remainder of the loan, beginning at the
3 end of the seventh year; and

4 (viii) after the last year in which pay-
5 ments are due under the amortization
6 schedule, the interest rate on the instru-
7 ment shall increase to 13 percent perma-
8 nently, beginning at the end of such year.

9 (B) CURE PERIOD.—Before any interest
10 rate increase required under subparagraph (A),
11 the financial institution shall provide notice to
12 the borrower within five calendar days. The
13 borrower shall have a 30-day cure period before
14 such increase takes effect, beginning on the
15 date of such notice.

16 (C) INCREASED INTEREST OWED TO
17 TREASURY.—With respect to any interest owed
18 on a preferred equity instrument under sub-
19 paragraph (A) above 2.5 percent, such interest
20 shall be owed to the Department of the Treas-
21 ury.

22 (D) TREATMENT OF FINANCIAL INSTITU-
23 TION FAILURE TO ASSESS INTEREST.—If the fi-
24 nancial institution fails to assess interest re-
25 quired under this paragraph on the borrower,

1 or fails to notify the borrower of such required
2 interest for a period of 3 months or more, the
3 financial institution shall only be eligible to re-
4 ceive half of the service fee described under
5 subsection (d)(1) for the period of such failure.

6 (d) PAYMENTS TO FINANCIAL INSTITUTIONS.—

7 (1) SERVICING FEE.—The Secretary shall pay
8 each financial institution that purchases a preferred
9 equity instrument, the purchase of which is guaran-
10 teed under this section, an annual servicing fee in an
11 amount equal to 1 percent of the outstanding
12 amount on such instrument, paid annually.

13 (2) PAY FOR ORIGINATION.—

14 (A) IN GENERAL.—The Secretary shall pay
15 a financial institution described under para-
16 graph (1) at a rate, based on the covered
17 amount, of—

18 (i) 5 percent for a covered amount of
19 not more than \$350,000;

20 (ii) 3 percent for a covered amount of
21 more than \$350,000 and less than
22 \$2,000,000; and

23 (iii) 1 percent for a covered amount of
24 not less than \$2,000,000.

1 (B) EXCEPTION IN CASES OF LOSS.—If
2 the borrower defaults on 90 percent or more of
3 the amount drawn down, the financial institu-
4 tion shall repay any reimbursement amount
5 paid pursuant to subparagraph (A).

6 (C) COVERED AMOUNT DEFINED.—In this
7 paragraph, with respect to a preferred equity
8 instrument, the term “covered amount” means
9 the full amount made available to the borrower
10 at the time the instrument is purchased, re-
11 gardless of whether the borrower has drawn
12 down the entire amount.

13 (e) PROTECTION OF GOVERNMENT INTERESTS.—
14 With respect to a borrower who issues a preferred equity
15 instrument, the purchase of which is guaranteed under
16 this section, until such time as the instrument is re-
17 deemed, the parent company of the borrower may not re-
18 move value from the borrower, including—

- 19 (1) by paying any dividend;
20 (2) with respect to any affiliated property of the
21 borrower for which there is a manager, if the man-
22 ager and the borrower are related, by increasing any
23 fee paid to the manager compared to the amount of
24 such fee before such instrument is purchased;

1 (3) with respect to an affiliate of the owner
2 property, by procuring the performance of services
3 or selling goods that are not ordinary, necessary,
4 and at market rates; or

5 (4) by lending money to any owner of the bor-
6 rower or to any related person.

7 (f) TREASURY AUTHORITY AND DUTIES.—

8 (1) APPROVAL DEADLINE.—The Secretary shall
9 approve or deny any preferred equity instrument
10 submitted under this section to the Secretary within
11 30 calendar days of such submission.

12 (2) PURCHASE AND SALE AUTHORITY.—With
13 respect to a preferred equity instrument, the pur-
14 chase of which is guaranteed under this section, the
15 Secretary may, at the Secretary’s discretion—

16 (A) purchase the preferred equity instru-
17 ment from the applicable financial institution
18 any time after the end of 7-year period begin-
19 ning on the date payments are first due with
20 respect to the instrument;

21 (B) sell any preferred equity instrument
22 purchased by the Secretary under subparagraph
23 (A); and

1 (C) contract with a private servicer to serv-
2 ice any preferred equity instrument purchased
3 by the Secretary under subparagraph (A).

4 (3) TRANSFER OF NOTES AND PAPERS.—When
5 the preferred equity instrument is redeemed by the
6 Secretary, a digital copy of all notes and papers
7 shall be provided to the Secretary upon request of
8 the Secretary. Upon request of the Secretary, an
9 original document shall be provided.

10 (4) ADMINISTRATIVE COSTS.—The Secretary
11 shall use amounts described under subsection
12 (c)(1)(E) for administrative costs of carrying out
13 this section.

14 (5) RULEMAKING.—Not later than 30 days
15 after the date of the enactment of this Act, the Sec-
16 retary shall issue such rules or guidance as the Sec-
17 retary determines necessary to carry out this sec-
18 tion.

19 (g) FINANCIAL INSTITUTION REQUIREMENTS AND
20 AUTHORITIES.—

21 (1) DEADLINE FOR MAKING FUNDS AVAIL-
22 ABLE.—A financial institution submitting a pre-
23 ferred equity instrument to the Secretary under this
24 section shall, if the Secretary approves such instru-
25 ment, make funds available to the borrower in con-

1 nection with such instrument not later than 14 cal-
2 endar days after such approval.

3 (2) SALE OF INSTRUMENT TO TREASURY.—A
4 financial institution may sell a preferred equity in-
5 strument to the Secretary after the end of the 10-
6 year period beginning on the date on which the fi-
7 nancial institution purchased the instrument at par
8 plus interest less origination fees.

9 (3) FORECLOSURE.—In the event of a fore-
10 closure on the subject property securing a commer-
11 cial mortgage relating to a preferred equity instru-
12 ment, a financial institution shall sell the preferred
13 equity instrument to the Secretary within 90 days
14 after the date of foreclosure at par plus interest and
15 origination fees.

16 (4) ADDITIONAL COLLATERAL.—A financial in-
17 stitution may require additional collateral from a
18 borrower, including personal recourse, corporate re-
19 course, a first lien on another encumbered property,
20 or a claim on business assets. The financial institu-
21 tion may not receive a lien on the subject property.

22 (h) OTHER REQUIREMENTS.—

23 (1) PUBLIC REPORTING.—A borrower that re-
24 ceives financial assistance under this Act shall issue
25 a public statement announcing such receipt imme-

1 diately after such receipt. The Secretary periodically
2 shall make publicly available a list of such bor-
3 rowers, along with the amount each such borrower
4 received.

5 (2) INDEMNIFICATION.—A preferred equity in-
6 strument issued under this section shall require that
7 an approved guarantor (as determined by the finan-
8 cial institution) provide a guarantee to the financial
9 institution and to the Secretary that provides for in-
10 demnification of such financial institution if the bor-
11 rower, a parent company of the borrower, or any af-
12 filiate of the borrower, with respect to the property
13 securing the commercial mortgage, does the fol-
14 lowing:

15 (A) Commits fraud, or misappropriates or
16 misapplies any amounts received from the pur-
17 chase of such instrument.

18 (B) Fails to apply such amounts in accord-
19 ance with the requirements of subsection
20 (c)(1)(K).

21 (C) Fails to comply with the requirements
22 of subsection (f).

23 (D) Intentionally wastes the property.

24 (3) ADDITIONAL FEE.—A financial institution
25 may charge additional fees to a borrower from which

1 the financial institution purchases a preferred equity
2 instrument.

3 (i) TREATMENT OF INSTRUMENTS BY REGU-
4 LATORS.—For purposes of calculating any capital require-
5 ment, the appropriate Federal banking agencies shall treat
6 preferred equity instruments, the purchase of which are
7 guaranteed under this section, in the same manner as
8 loans guaranteed under the Paycheck Protection Program
9 under section 7(a)(36) of the Small Business Act.

10 (j) LIMITATION ON FINANCIAL ASSISTANCE GOING
11 TO ENTITIES CONTROLLED BY SENIOR MEMBERS OF THE
12 EXECUTIVE BRANCH OR MEMBERS OF CONGRESS.—

13 (1) PROHIBITION.—A covered entity may not
14 receive financial assistance under this section.

15 (2) DEFINITION.—In this subsection, the term
16 “covered entity” has the meaning given that term
17 under section 4019(a) of the CARES Act (15 U.S.C.
18 9054(a)).

19 (k) FUNDING.—The Secretary shall, without further
20 appropriation, use amounts made available under section
21 4003(b)(4) of the CARES Act (15 U.S.C. 9042(b)(4)) to
22 carry out this section.

23 (l) DEFINITIONS.—In this section:

1 (1) APPROPRIATE FEDERAL BANKING AGEN-
2 CY.—The term “appropriate Federal banking agen-
3 cy”—

4 (A) has the meaning given that term under
5 section 3 of the Federal Deposit Insurance Act
6 (12 U.S.C. 1813); and

7 (B) means the National Credit Union Ad-
8 ministration, in the case of an insured credit
9 union (as defined under section 101 of the Fed-
10 eral Credit Union Act (12 U.S.C. 1752)).

11 (2) BORROWER.—The term “borrower” means
12 a borrower of a commercial mortgage loan.

13 (3) COMMERCIAL MORTGAGE.—The term “com-
14 mercial mortgage” means a mortgage loan secured
15 by an interest in real property owned for rental in-
16 come.

17 (4) FINANCIAL INSTITUTION.—The term “fi-
18 nancial institution” means—

19 (A) a person authorized to make and ap-
20 prove loans under section 7(a)(36) of the Small
21 Business Act (15 U.S.C. 636(a)(36)) or section
22 1109 of the CARES Act (Public Law 116–
23 136);

24 (B) a national banking association; and

1 (C) such other persons as the Secretary
2 determines appropriate.

3 (5) PARENT COMPANY.—The term “parent
4 company” means any entity that has control over a
5 borrower.

6 (6) SECRETARY.—The term “Secretary” means
7 the Secretary of the Treasury.

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