To prohibit the enforcement of certain loan covenants during the COVID–19 national emergency, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 8, 2020

Mr. SHERMAN (for himself and Ms. WATERS) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To prohibit the enforcement of certain loan covenants during the COVID–19 national emergency, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Business Borrowers
Protection Act”.

SEC. 2. ENFORCEMENT OF LOAN COVENANTS.

(a) LOANS RECEIVED UNDER COVID–19 RELIEF
PROGRAMS.—Any loan that a borrower receives under a
COVID–19 relief program may not be taken into ac-
count—
(1) in determining whether—

(A) the borrower is in violation of any loan covenant of a covered loan; or

(B) a lender may accelerate the due date of any covered loan agreement; or

(2) in calculating the debts or liabilities of the borrower for purposes of determining whether such borrower is in conformity with any covered loan agreement.

(b) Loan Covenants Not Enforceable During COVID–19 National Emergency.—

(1) In General.—A lender may not enforce any loan covenant during the period beginning on the date of enactment of this Act and ending on the day that is 1 year after the termination of the national emergency declared by the President on March 13, 2020, under the National Emergencies Act (50 U.S.C. 1601 et seq.) relating to the COVID–19 pandemic.

(2) Rulemaking.—Not later than the end of the 60-day period beginning on the date of enactment of this Act, the Secretary of the Treasury shall issue such regulations and guidance as may be necessary to ensure that any lender who complies with the requirements described in paragraph (1) is not
deemed to be in violation of any law or regulation relating to the enforcement of loan covenants.

(c) TRUSTEE OR PERSON WITH FIDUCIARY DUTY NOT LIABLE.—

(1) IN GENERAL.—No trustee or other person with a fiduciary duty to the holders of any debt security shall be liable for any decision made not to enforce a loan covenant related to such debt security.

(2) APPLICABILITY.—Paragraph (1) shall only apply during the period beginning on March 12, 2020, and ending on March 13, 2022.

(d) DEFINITIONS.—In this Act, the following definitions apply:

(1) COVERED LOAN.—The term “covered loan” means a loan entered into on or before the date of the enactment of this Act.

(2) COVID–19 RELIEF PROGRAM.—The term “COVID–19 relief program” means any program created by—

(A) the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (Public Law 116–123);

(B) the Families First Coronavirus Response Act (Public Law 116–127);
(C) the CARES Act (Public Law 116–136); or

(D) the Federal Government or any State, local, Tribal, or territorial government for the purpose of reducing the financial losses of businesses caused by the spread of COVID–19.

(3) LOAN COVENANT.—The term “loan covenant” means any provision in a covered loan agreement that allows or requires the acceleration of repayments due under any loan agreement or that reduces the availability of funds under a line of credit—

(A) due to any act or omission of a borrower or any entity related to the borrower; or

(B) because the total liabilities or current liabilities of a borrower exceed—

(i) any benchmark; or

(ii) any percentage of the assets of the borrower, revenues, equity, or any other benchmark.