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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Helping Open Properties Endeavor Act of 2020” or the “HOPE Act of 2020”.

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SEC. 2. HOPE PREFERRED EQUITY FACILITY.

(a) Establishment.—The Secretary of the Treasury shall establish a HOPE Preferred Equity Facility to provide financial assistance to borrowers of commercial mortgages in the form of a guarantee of a purchase by a financial institution of a preferred equity instrument issued by a borrower. The Secretary shall guarantee 100 percent of any such purchase made under this section.

(b) Eligibility of Borrowers.—A borrower is eligible to receive financial assistance under this section if, as determined by the financial institution—

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

(2) the borrower had not received written notice of monetary default on the commercial mortgage within the previous year and failed to cure such notice as of March 1, 2020;

(3) either—

(A) the debt service coverage ratio with respect to the commercial mortgage was at least 1.3 times on an annual basis during 2019; or
(B) the debt service coverage ratio with respect to the commercial mortgage was at least 1.3 times on an annual basis during both 2017 and 2018;

(4) the property securing the commercial mortgage is not owner-occupied, except to manage the property or de minimis occupancy as otherwise provided by the Secretary;

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

(6) the borrower has not already received financial assistance under this section with respect to the applicable property securing the commercial mortgage.

(e) REQUIREMENTS ON PREFERRED EQUITY INSTRUMENTS.—

(1) IN GENERAL.—With respect to a preferred equity instrument purchased by a financial institution from a borrower, the purchase of which is guaranteed under this section—

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

(B) the amount paid for such instrument shall be in an amount, as determined by the fi-
nancial institution, that does not exceed 10 per-
cent of the outstanding amount owed on the
commercial mortgage;

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

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

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

(F) the instrument shall, except as pro-
vided under paragraph (2), have an annual in-
terest rate of 3 percent calculated on a monthly
basis on all amounts that have been drawn from
the account described in subparagraph (B), of
which 0.5 percent shall be transferred to the
Secretary of the Treasury for purposes under
subsection (g)(4);
(G) any portion of the instrument may be
redeemed by the borrower at any time with the
financial institution, without penalty;

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

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

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

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

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

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

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

(i) expenses of the parent company re-
related to the administration of oversight of
such borrower, ownership or operation of
such borrower, or to a subsidiary entity of
the parent company for same or similar ex-
penses;

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

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

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

(2) Failure to make payments.—

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

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

(ii) during the second year in which
payments are due, the interest rate on the
instrument shall increase to 4.5 percent for
the remainder of the loan, beginning at the
end of the second year;

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

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

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

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

(vii) during the seventh year in which
payments are due, the interest rate on the
instrument shall increase to 9.5 percent for
the remainder of the loan, beginning at the
end of the seventh year; and

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

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

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

(D) TREATMENT OF FINANCIAL INSTITU-
TION FAILURE TO ASSESS INTEREST.—If the fi-
nancial institution fails to assess interest re-
quired under this paragraph on the borrower,
or fails to notify the borrower of such required
interest for a period of 3 months or more, the
financial institution shall only be eligible to re-
ceive half of the service fee described under
subsection (d)(1) for the period of such failure.

(d) Payments to Financial Institutions.—

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

(2) Pay for Origination.—

(A) In General.—The Secretary shall pay
a financial institution described under para-
graph (1) at a rate, based on the covered
amount, of—

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

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

(iii) 1 percent for a covered amount of
not less than $2,000,000.
(B) Exception in cases of loss.—If the borrower defaults on 90 percent or more of the amount drawn down, the financial institution shall repay any reimbursement amount paid pursuant to subparagraph (A).

(C) Covered amount defined.—In this paragraph, with respect to a preferred equity instrument, the term “covered amount” means the full amount made available to the borrower at the time the instrument is purchased, regardless of whether the borrower has drawn down the entire amount.

(e) Protection of government interests.—With respect to a borrower who issues a preferred equity instrument, the purchase of which is guaranteed under this section, until such time as the instrument is redeemed, the parent company of the borrower may not remove value from the borrower, including—

(1) by paying any dividend;

(2) with respect to any affiliated property of the borrower for which there is a manager, if the manager and the borrower are related, by increasing any fee paid to the manager compared to the amount of such fee before such instrument is purchased;
(3) with respect to an affiliate of the owner property, by procuring the performance of services or selling goods that are not ordinary, necessary, and at market rates; or

(4) by lending money to any owner of the borrower or to any related person.

(f) TREASURY AUTHORITY AND DUTIES.—

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

(2) PURCHASE AND SALE AUTHORITY.—With respect to a preferred equity instrument, the purchase of which is guaranteed under this section, the Secretary may, at the Secretary’s discretion—

(A) purchase the preferred equity instrument from the applicable financial institution any time after the end of 7-year period beginning on the date payments are first due with respect to the instrument;

(B) sell any preferred equity instrument purchased by the Secretary under subparagraph (A); and
(C) contract with a private servicer to service any preferred equity instrument purchased by the Secretary under subparagraph (A).

(3) **Transfer of Notes and Papers.**—When the preferred equity instrument is redeemed by the Secretary, a digital copy of all notes and papers shall be provided to the Secretary upon request of the Secretary. Upon request of the Secretary, an original document shall be provided.

(4) **Administrative Costs.**—The Secretary shall use amounts described under subsection (c)(1)(E) for administrative costs of carrying out this section.

(5) **Rulemaking.**—Not later than 30 days after the date of the enactment of this Act, the Secretary shall issue such rules or guidance as the Secretary determines necessary to carry out this section.

(g) **Financial Institution Requirements and Authorities.**—

(1) **Deadline for Making Funds Available.**—A financial institution submitting a preferred equity instrument to the Secretary under this section shall, if the Secretary approves such instrument, make funds available to the borrower in con-
connection with such instrument not later than 14 cal-
endar days after such approval.

(2) Sale of Instrument to Treasury.—A financial institution may sell a preferred equity in-
strument to the Secretary after the end of the 10-
year period beginning on the date on which the fi-
nancial institution purchased the instrument at par
plus interest less origination fees.

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

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

(h) Other Requirements.—

(1) Public Reporting.—A borrower that re-
ceives financial assistance under this Act shall issue
a public statement announcing such receipt imme-
diately after such receipt. The Secretary periodically shall make publicly available a list of such bor-
rowers, along with the amount each such borrower received.

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

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

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

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

(D) Intentionally wastes the property.

(3) ADDITIONAL FEE.—A financial institution may charge additional fees to a borrower from which
the financial institution purchases a preferred equity instrument.

(i) TREATMENT OF INSTRUMENTS BY REGULATORS.—For purposes of calculating any capital requirement, the appropriate Federal banking agencies shall treat preferred equity instruments, the purchase of which are guaranteed under this section, in the same manner as loans guaranteed under the Paycheck Protection Program under section 7(a)(36) of the Small Business Act.

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

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

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

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

(l) DEFINITIONS.—In this section:
(1) **APPROPRIATE FEDERAL BANKING AGENCY.**—The term “appropriate Federal banking agency”—

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

(B) means the National Credit Union Administration, in the case of an insured credit union (as defined under section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

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

(3) **COMMERCIAL MORTGAGE.**—The term “commercial mortgage” means a mortgage loan secured by an interest in real property owned for rental income.

(4) **FINANCIAL INSTITUTION.**—The term “financial institution” means—

(A) a person authorized to make and approve loans under section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) or section 1109 of the CARES Act (Public Law 116–136);

(B) a national banking association; and
(C) such other persons as the Secretary determines appropriate.

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

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