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H. R. 2600

To promote economic growth and credit formation by facilitating the development of a secondary market for business, commercial, and community development debt and equity investments, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 1, 1993

Mr. KANJORSKI (for himself, Mrs. ROUKEMA, Mr. NEAL of North Carolina, Mr. ORTON, Mr. KLEIN, Mr. MORAN, and Ms. KAPTUR) introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

A BILL

To promote economic growth and credit formation by facilitating the development of a secondary market for business, commercial, and community development debt and equity investments, 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 “Business, Commercial,
5 and Community Development Secondary Market Develop-
6 ment Act”.

1 **SEC. 2. FINDINGS; PURPOSES; DEFINITIONS.**

2 (a) FINDINGS.—The Congress makes the following
3 findings:

4 (1) The availability of financing for the Na-
5 tion's small- and medium-sized businesses is a key
6 factor in promoting economic growth, full employ-
7 ment, and competitive innovation essential for long-
8 term gains in the emerging global economy.

9 (2) The creation of a secondary market for
10 business, commercial, and community development
11 debt and equity investments can stimulate an in-
12 creased flow of funds through capital markets, and
13 increase the liquidity of our lending institutions.

14 (3) The sale of portions of bank portfolios,
15 without recourse, in a secondary market for busi-
16 ness, commercial, and community development debt
17 and equity investments would encourage lending in-
18 stitutions to utilize their increased liquidity to make
19 additional debt and equity investments in the Na-
20 tion's economy.

21 (4) Increased access to funds will play a crucial
22 role in the revitalization of the economy of the
23 United States, significantly increase the availability
24 of credit at reasonable interest rates for business,
25 commercial, and community development invest-

1 ments, and create new opportunities for growth and
2 employment.

3 (5) The creation of a secondary market for
4 business, commercial, and community development
5 debt and equity investments can greatly increase the
6 likelihood that businesses seeking to develop emerg-
7 ing technologies or processes will be able to obtain
8 the funding necessary to permit them to become
9 growth industries to enhance the economic future of
10 the Nation.

11 (6) The development of a secondary market for
12 business, commercial, and community development
13 debt and equity investments can facilitate the
14 spreading of risk associated with new business, com-
15 mercial, and community development lending and
16 allow more venture capital investments to be made.

17 (7) The development of a secondary market for
18 business, commercial, and community development
19 debt and equity investments would facilitate invest-
20 ments by pension and insurance funds in business,
21 commercial, and community development enter-
22 prises.

23 (8) The development of a secondary market for
24 business, commercial, and community development
25 debt and equity investments, should significantly in-

1 crease the availability of credit for new and expand-
2 ing minority- and women-owned businesses and for
3 efforts to revitalize the economies of disadvantaged
4 communities.

5 (9) A secondary market for business, commer-
6 cial, and community development debt and equity in-
7 vestments can help stabilize and absorb cyclical
8 downturns in business and real estate cycles.

9 (10) A secondary market for business, commer-
10 cial, and community development debt and equity in-
11 vestments would be a highly effective tool to multiply
12 Federal and State government funds dedicated to
13 community and economic development debt and
14 equity investments.

15 (11) The development of a secondary market
16 for business, commercial, and community develop-
17 ment debt and equity investments can play a critical
18 role in securing the amount of capital necessary for
19 community development financial institutions to re-
20 alize their full potential.

21 (12) The development of a secondary market
22 for business, commercial, and community develop-
23 ment debt and equity investments can play an im-
24 portant role in stabilizing commercial real estate
25 markets and enhance the value of real estate-backed

1 collateral frequently used by businesses to secure
2 necessary credit from financial institutions.

3 (13) Active and efficient secondary markets
4 currently exist for nearly all types of investments ex-
5 cept for business, commercial, and community devel-
6 opment debt and equity investments. This puts busi-
7 ness, commercial, and community development bor-
8 rowers at a competitive disadvantage in securing
9 necessary funds.

10 (b) PURPOSES.—The purposes of this Act are as
11 follows:

12 (1) To facilitate the development of an efficient
13 secondary market for business, commercial, and
14 community development debt and equity investments
15 in the private sector of the economy.

16 (2) To further develop the loan-originating and
17 loan-servicing capabilities of, and enhance the
18 amount of credit available through, the banking
19 system.

20 (3) To afford financial institutions in the
21 United States greater liquidity to enhance the long-
22 term stability of the financial system and facilitate
23 the potential inherent in the origination and servic-
24 ing of business, commercial, and community develop-

1 ment debt and equity investments for additional fee
2 income.

3 (4) To provide additional sources of credit to
4 business, commercial, and community development
5 enterprises to revitalize the Nation's economy and
6 foster additional employment opportunities.

7 (5) To provide additional sources of capital to
8 Federal and State governments for reinvestment in
9 business, commercial, and community development
10 enterprises.

11 (c) DEFINITIONS.—For purposes of this Act—

12 (1) SECONDARY MARKET FACILITATING ORGA-
13 NIZATION.—The term “secondary market facilitating
14 organization” means any person or governmental
15 unit which is authorized by the Secretary to engage
16 in secondary market operations with respect to busi-
17 ness, commercial, and community development debt
18 and equity investments in accordance with this Act.

19 (2) SECONDARY MARKET OPERATIONS.—The
20 term “secondary market operations” means any of
21 the following activities:

22 (A) Underwriting, dealing in, or acting as
23 a principal in the placement of securities that
24 are backed by or represent interests in debt or
25 equity.

1 (B) Guaranteeing the timely payment of
2 the principal of or interest on any security de-
3 scribed in subparagraph (A).

4 (C) Selling or purchasing business, com-
5 mercial, and community development debt and
6 equity assets or participations in such assets.

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

9 **SEC. 3. CERTIFICATION OF SECONDARY MARKET FACILI-**
10 **TATING ORGANIZATIONS TO ENGAGE IN SEC-**
11 **ONDARY MARKET OPERATIONS FOR BUSI-**
12 **NESS, COMMERCIAL, AND COMMUNITY DE-**
13 **VELOPMENT DEBT AND EQUITY INVEST-**
14 **MENTS.**

15 (a) IN GENERAL.—The Secretary of the Treasury
16 may certify any person or government unit which meets
17 the requirements established by the Secretary under this
18 section as a secondary market facilitating organization for
19 business, commercial, and community development debt
20 and equity investments.

21 (b) ELIGIBILITY STANDARDS.—

22 (1) ESTABLISHMENT REQUIRED.—The Sec-
23 retary shall establish, by regulation, standards for
24 the certification of any secondary market facilitating
25 organization for business, commercial, or community

1 development debt and equity investments, including
2 eligibility standards in accordance with paragraph
3 (2).

4 (2) MINIMUM REQUIREMENTS.—To be eligible
5 to be certified under the standards referred to in
6 paragraph (1), a secondary market facilitating orga-
7 nization shall—

8 (A) meet or exceed minimum capital stand-
9 ards established by the Secretary;

10 (B) meet or exceed minimum reserves for
11 losses requirements established by the Sec-
12 retary;

13 (C) meet or exceed the business, commer-
14 cial, and community development debt and eq-
15 uity investment portfolio requirements estab-
16 lished by the Secretary under subsection (c);

17 (D) demonstrate that directors, officers,
18 and employees of the organization and persons
19 who control the organization meet the stand-
20 ards for competence, experience, integrity, and
21 financial ability established by the Secretary,
22 including managerial ability with respect to—

23 (i) business, commercial, and commu-
24 nity development debt and equity invest-

1 ment underwriting, servicing, and market-
2 ing; and

3 (ii) secondary market operations for
4 business, commercial, and community de-
5 velopment debt and equity investments;

6 (E) adopt appropriate business, commer-
7 cial, or community development debt and equity
8 investment underwriting, appraisal, and servic-
9 ing standards and procedures that meet or ex-
10 ceed minimum standards required by the Sec-
11 retary;

12 (F) for purposes of enabling the Secretary
13 to examine the organization, agree to allow the
14 Secretary to have access to all books, accounts,
15 financial records, reports, and all property of,
16 or used by, the organization that are necessary
17 to facilitate examinations by the Secretary, or
18 the agency designated by the Secretary, under
19 section 5;

20 (G) adopt appropriate minimum standards
21 and procedures relating to loan administration
22 and disclosures to business, commercial, and
23 community development debt and equity bor-
24 rowers that meet or exceed uniform standards
25 established by the Secretary;

1 (H) comply with the uniform reporting
2 standards established under section 8; and

3 (I) comply with all regulations prescribed
4 by the Secretary under this Act.

5 (c) PORTFOLIO AND BULK SALE STANDARDS.—

6 (1) IN GENERAL.—The Secretary shall establish
7 such requirements relating to the manner in which
8 business, commercial, and community development
9 debt and equity investments are held or sold by cer-
10 tified secondary market facilitating organizations in
11 connection with secondary market operations, includ-
12 ing portfolio standards and requirements for diver-
13 sity of the assets which are subject to a multiasset
14 sales initiative, as the Secretary determines to be ap-
15 propriate for the achievement of essential economic
16 objectives in the public interest, such as employment
17 enhancement, community development, investments
18 in low- and moderate-income areas, investment di-
19 versity, and equal opportunity in accordance with
20 paragraph (2).

21 (2) GOALS.—In establishing the requirements
22 referred to in paragraph (1), the Secretary, in con-
23 sultation with certified secondary market facilitating
24 organizations and other interested parties, shall es-
25 tablish goals for the intermediation of debt and

1 equity investments by secondary market facilitating
2 organizations which—

3 (A) enhance employment opportunities;

4 (B) promote community development;

5 (C) are directed to business and commer-
6 cial enterprises in low- and moderate-income
7 areas;

8 (D) promote investment diversity; and

9 (E) promote equal opportunity.

10 (3) FACTORS TO BE CONSIDERED.—In estab-
11 lishing the goals referred to in paragraph (2), the
12 Secretary shall consider—

13 (A) the need to maintain the sound finan-
14 cial condition of, and a reasonable economic re-
15 turn to, the secondary market facilitating orga-
16 nizations;

17 (B) economic conditions;

18 (C) the past performance and efforts of
19 secondary market facilitating organizations to
20 meet or exceed the goals referred to in para-
21 graph (2);

22 (D) the availability of debt and equity in-
23 vestments necessary to meet or exceed the goals
24 referred to in paragraph (2); and

1 (E) such other factors as the Secretary de-
2 termines to be appropriate in meeting the re-
3 quirements of this section.

4 (4) ADJUSTMENT OF GOALS.—The Secretary
5 may adjust any goal for the intermediation of debt
6 and equity investments by secondary market facili-
7 tating organizations established under paragraph
8 (2).

9 (5) NONDISCRIMINATION.—The Secretary shall,
10 by regulation, prohibit each secondary market facili-
11 tating organization from discriminating in any man-
12 ner in the purchase of any debt or equity investment
13 because of race, color, religion, sex, handicap, famil-
14 ial status, age, or national origin, including any con-
15 sideration of the neighborhood or census tract in
16 which the business, commercial, or community devel-
17 opment debt and equity investment is located in a
18 manner that has a discriminatory effect.

19 (d) REVOCATION.—After notice and opportunity for
20 hearing, the Secretary may revoke the certification of a
21 secondary market facilitating organization if the Secretary
22 determines that the organization fails to meet any eligi-
23 bility requirement under subsection (b) or (c).

24 (e) PUBLIC DISCLOSURE.—

1 (1) IN GENERAL.—The Secretary shall, by reg-
2 ulation, provide for periodic public disclosure of the
3 standards established under this subsection and the
4 performance of secondary market facilitating organi-
5 zations in the fulfillment of the goals established
6 under subsection (c).

7 (2) NONDISCLOSURE OF PROPRIETARY INFOR-
8 MATION.—Paragraph (1) shall not be construed as
9 authorizing the Secretary to publicly disclose any
10 proprietary information of a secondary market facili-
11 tating organization.

12 **SEC. 4. WAIVERS TO MEET ESSENTIAL ECONOMIC OBJEC-**
13 **TIVES IN THE PUBLIC INTEREST.**

14 (a) WAIVERS AUTHORIZED.—

15 (1) IN GENERAL.—For purposes of this Act,
16 the Secretary may, by regulation, waive the applica-
17 tion of any provision of Federal or State law, includ-
18 ing any provision of any regulation prescribed under
19 any Federal or State law, to a certified secondary
20 market facilitating organization, or the activities or
21 products of a certified secondary market facilitating
22 organization, which meets the minimum portfolio re-
23 quirements established under section 3(c) and is in
24 full compliance with all other standards applicable
25 for certification under this Act if the Secretary de-

1 termines that such waiver is appropriate in order to
2 meet the essential economic objectives in the public
3 interest described in this Act.

4 (2) SPECIFICITY OF WAIVER.—Any waiver
5 granted by the Secretary under paragraph (1) shall
6 specify in detail each provision of law or regulation
7 which is the subject of the waiver.

8 (b) EXCEPTIONS.—

9 (1) IN GENERAL.—No waiver may be granted
10 under this section of any law or regulation respect-
11 ing public or individual health or safety, civil rights
12 and nondiscrimination, environmental protection,
13 labor relations, labor standards, occupational health
14 or safety, pensions, or any other law or regulation
15 that the Attorney General determines, by regulation,
16 to be inappropriate.

17 (2) SAFETY AND SOUNDNESS.—No waiver of a
18 law or regulation may be granted under this section
19 with respect to a secondary market facilitating orga-
20 nization if the appropriate Federal regulatory agency
21 of the organization notifies the Secretary that the
22 agency has determined that there is a reasonable
23 basis to believe that the waiver of such law or regu-
24 lation would have an adverse effect on the safety
25 and soundness of the organization.

1 (3) EXCEPTION TO PREVENT INCREASE IN DI-
2 RECT SPENDING.—No waiver may be granted under
3 this section that would have the effect of increasing
4 direct Federal spending above levels that would have
5 occurred in the absence of the waivers.

6 (c) CONSULTATION.—Before granting any waiver
7 under subsection (a), the Secretary shall consult with the
8 head of the agency or department of the Federal or State
9 government responsible for carrying out and enforcing the
10 provision of law or regulation which would be affected by
11 the waiver.

12 (d) SUSPENSION, REVOCATION, MODIFICATION, OR
13 LIMITATION.—

14 (1) IN GENERAL.—The Secretary may suspend,
15 revoke, modify, or limit the scope of any waiver
16 granted under subsection (a)(1) with respect to a
17 secondary market facilitating organization if the
18 Secretary determines that—

19 (A) the organization fails to meet any eligi-
20 bility standard under subsection (b) or (c) of
21 section 3 or any regulation prescribed by the
22 Secretary under this Act; or

23 (B) the waiver is no longer appropriate in
24 order to meet essential economic objectives in
25 the public interest.

1 (2) EFFECTIVE UPON NOTICE.—The suspen-
2 sion, revocation, modification, or limitation of any
3 waiver in accordance with paragraph (1) shall take
4 effect upon receipt of notice by the secondary mar-
5 ket facilitating organization of such revocation.

6 (3) HEARING AFTER NOTICE.—Any person ad-
7 versely affected by a suspension, revocation, modi-
8 fication, or limitation of a waiver in accordance with
9 paragraph (1) shall be afforded a hearing in accord-
10 ance with chapter 5 of title 5, United States Code.

11 (4) SCOPE OF APPLICATION.—The suspension,
12 revocation, modification, or limitation of any waiver
13 in accordance with paragraph (1) with respect to a
14 secondary market facilitating organization shall—

15 (A) apply with respect to activities engaged
16 in and products produced by the organization
17 on or after the effective date of the waiver; and

18 (B) not apply with respect to activities en-
19 gaged in and products produced by the organi-
20 zation before such date.

21 **SEC. 5. EXAMINATION AND OVERSIGHT OF CERTIFIED SEC-**
22 **ONDARY MARKET FACILITATING ORGANIZA-**
23 **TIONS.**

24 (a) PROVISION FOR EXAMINERS.—

1 (1) APPOINTMENT OF EXAMINERS.—The Sec-
2 retary may appoint examiners to carry out this
3 section.

4 (2) DELEGATION OF EXAMINATION AUTHOR-
5 ITY.—With respect to a certified secondary market
6 facilitating organization which is subject to complete
7 examination by another Federal regulatory agency,
8 the Secretary may delegate, on a reimbursable basis
9 and subject to such standards and guidelines as the
10 Secretary may establish, the authority to conduct an
11 examination under this section of such organization
12 to such other agency.

13 (b) EXAMINATIONS REQUIRED.—

14 (1) IN GENERAL.—The Secretary shall require
15 the examination of a certified secondary market fa-
16 cilitating organization whenever the Secretary deter-
17 mines an examination is necessary for purposes of
18 this Act.

19 (2) REQUIRED COMPONENTS OF EXAMINA-
20 TION.—In conducting any examination under this
21 section of any certified secondary market facilitating
22 organization, the following factors shall be examined:

23 (A) The secondary market operations of
24 the organization.

1 (B) The operations of the organization re-
2 relating to underwriting, appraising, servicing,
3 and marketing business, commercial, and com-
4 munity development debt and equity invest-
5 ments.

6 (C) The compliance of the secondary mar-
7 ket facilitating organization with the eligibility
8 and portfolio standards of subsections (b) and
9 (c) of section 3.

10 (D) The financial condition of the organi-
11 zation, including the financial condition of the
12 operations of the organization which are de-
13 scribed in subparagraphs (A), (B), and (C).

14 (3) EXAMINATION OF APPLICANTS.—No sec-
15 ondary market facilitating organization may be cer-
16 tified by the Secretary under this Act until the Sec-
17 retary completes an examination of such organiza-
18 tion to determine that the organization meets the
19 eligibility requirements under section 3(b).

20 (c) REPORTS.—

21 (1) IN GENERAL.—Each certified secondary
22 market facilitating organization shall submit such
23 reports to the Secretary as the Secretary may re-
24 quire, by regulation or order.

1 (2) MINIMUM REQUIREMENT.—The Secretary
2 shall, by regulation, require each secondary market
3 facilitating organization to submit annual reports
4 concerning the composition and performance of all
5 secondary market operations of the organization.

6 (3) TIME AND MANNER.—Reports required
7 under this subsection shall be made at such time
8 and in such manner as the Secretary may require.

9 (d) ASSESSMENTS AND FEES.—

10 (1) EXAMINATION COSTS.—The cost of con-
11 ducting examinations of certified secondary market
12 facilitating organizations and persons or govern-
13 mental units applying for certification as secondary
14 market facilitating organizations shall be assessed by
15 the Secretary against each such organization, per-
16 son, or unit as the Secretary determines to be nec-
17 essary to recover the costs incurred by the Secretary
18 in conducting the examination.

19 (2) FEES FOR OTHER ADMINISTRATIVE
20 COSTS.—The administrative costs incurred by the
21 Secretary in carrying out the requirements of this
22 Act shall be recovered by the Secretary through fees
23 imposed on certified secondary market facilitating
24 organizations and persons or governmental units ap-

1 plying for certification as secondary market facilitat-
2 ing organizations.

3 (3) ASSESSMENTS.—

4 (A) WRITTEN NOTICE.—Any assessment
5 or fee authorized under this subsection may be
6 assessed and collected by the Secretary upon
7 written notice.

8 (B) FINALITY OF ASSESSMENT.—If, with
9 respect to any assessment under subparagraph
10 (A), a hearing is not requested in accordance
11 with subparagraph (C), the assessment shall
12 constitute a final and unappealable order.

13 (C) HEARINGS.—The certified secondary
14 market facilitating organization, person, or gov-
15 ernmental unit against whom any assessment is
16 made under subparagraph (A) shall be afforded
17 an agency hearing if such organization, person,
18 or governmental unit submits a request for such
19 hearing within 20 days of the issuance of the
20 written notice under such subparagraph.

21 (D) COLLECTION.—If any certified second-
22 ary market facilitating organization, person, or
23 governmental unit fails to pay an assessment
24 under this paragraph after the assessment has
25 become final, the Secretary shall recover the

1 amount of the assessment by action in the ap-
2 propriate United States district court.

3 (e) REGULATIONS.—The Secretary shall prescribe
4 such regulations as the Secretary determines to be nec-
5 essary to carry out the provisions of this Act.

6 **SEC. 6. NO FULL FAITH AND CREDIT OF THE UNITED**
7 **STATES FOR OBLIGATIONS OF CERTIFIED**
8 **SECONDARY MARKET FACILITATING ORGANI-**
9 **ZATIONS.**

10 (a) IN GENERAL.—The activities of a certified sec-
11 ondary market facilitating organization and any debt or
12 equity security or other obligation issued or guaranteed
13 by any such organization shall not be obligations of, or
14 guaranteed in any respect by, the United States.

15 (b) NOTICE TO CUSTOMERS.—The Secretary shall re-
16 quire, by regulation, each certified secondary market fa-
17 cilitating organization to provide adequate notice to cus-
18 tomers of the organization and purchasers of obligations
19 issued or guaranteed by the organization of the applicabil-
20 ity of the rule contained in subsection (a) to obligations
21 of such organization.

22 **SEC. 7. AUTHORITY OF REGULATORY AGENCIES NOT AF-**
23 **FECTED.**

24 No provision of this Act shall be construed as affect-
25 ing the authority of any Federal regulatory agency to su-

1 pervise or regulate any person or government unit which
2 is certified by the Secretary as a secondary market facili-
3 tating organization.

4 **SEC. 8. UNIFORM REPORTING STANDARDS.**

5 In order to improve the procedures for rating busi-
6 ness, commercial, and community development debt and
7 equity investments involved in secondary market oper-
8 ations, the Financial Institutions Examination Council
9 shall establish, before the end of the 6-month period begin-
10 ning on the date of enactment of this Act, uniform report-
11 ing standards with respect to such debt and equity invest-
12 ments for bank examination purposes.

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