

106TH CONGRESS
2D SESSION

S. 3242

To amend the Consolidated Farm and Rural Development Act to encourage equity investment in rural cooperatives and other rural businesses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 25 (legislative day, SEPTEMBER 22), 2000

Mr. HARKIN (for himself, Mr. CRAIG, Mr. DASCHLE, Mr. JEFFORDS, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Consolidated Farm and Rural Development Act to encourage equity investment in rural cooperatives and other rural businesses, 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. NATIONAL RURAL COOPERATIVE AND BUSI-**
4 **NESS EQUITY FUND.**

5 The Consolidated Farm and Rural Development Act
6 (7 U.S.C. 1921 et seq.) is amended by adding at the end
7 the following:

1 **“Subtitle F—National Rural Coop-**
2 **erative and Business Equity**
3 **Fund**

4 **“SEC. 391A. SHORT TITLE.**

5 “This subtitle may be cited as the ‘National Rural
6 Cooperative and Business Equity Fund Act’.

7 **“SEC. 391B. PURPOSE.**

8 “The purpose of this subtitle is to revitalize rural
9 communities and enhance farm income through sustain-
10 able rural business development by providing Federal
11 funds and credit enhancements to a private equity fund
12 in order to encourage investments by institutional and
13 noninstitutional investors for the benefit of rural America.

14 **“SEC. 391C. DEFINITIONS.**

15 “In this subtitle:

16 “(1) **AUTHORIZED PRIVATE INVESTOR.**—The
17 term ‘authorized private investor’ means an indi-
18 vidual, legal entity, or affiliate or subsidiary of an
19 individual or legal entity that—

20 “(A) is eligible to receive a loan guarantee
21 under this title;

22 “(B) is eligible to receive a loan guarantee
23 under the Rural Electrification Act of 1936 (7
24 U.S.C. 901 et seq.);

1 “(C) is created under the National Con-
2 sumer Cooperative Bank Act (12 U.S.C. 3011
3 et seq.);

4 “(D) is an insured depository institution;
5 or

6 “(E) is determined by the Fund to be an
7 appropriate investor in the Fund.

8 “(2) BOARD.—The term ‘Board’ means the
9 board of directors of the Fund established under
10 section 391G.

11 “(3) FUND.—The term ‘Fund’ means the Na-
12 tional Rural Cooperative and Business Equity Fund
13 established under section 391D.

14 “(4) GROUP OF SIMILAR INVESTORS.—The
15 term ‘group of similar investors’ means any 1 of the
16 following:

17 “(A) Insured depository institutions with
18 total assets of more than \$250,000,000.

19 “(B) Insured depository institutions with
20 total assets equal to or less than \$250,000,000.

21 “(C) Farm Credit System institutions
22 under the Farm Credit Act of 1971 (12 U.S.C.
23 2001 et seq.).

24 “(D) Cooperative financial institutions
25 (other than Farm Credit System institutions).

1 “(E) Authorized private investors, other
2 than those described in subparagraphs (A)
3 through (D).

4 “(F) Other nonprofit organizations, includ-
5 ing credit unions.

6 “(5) INSURED DEPOSITORY INSTITUTION.—The
7 term ‘insured depository institution’ means any bank
8 or savings association the deposits of which are in-
9 sured under the Federal Deposit Insurance Act (12
10 U.S.C. 1811 et seq.).

11 “(6) RURAL AREA.—The term ‘rural area’
12 means an area that is located—

13 “(A) outside a standard metropolitan sta-
14 tistical area; or

15 “(B) within a community that has a popu-
16 lation of 50,000 individuals or fewer.

17 “(7) RURAL BUSINESS.—The term ‘rural busi-
18 ness’ means a rural cooperative, a value-added agri-
19 cultural enterprise, or any other business located or
20 locating in a rural area.

21 **“SEC. 391D. ESTABLISHMENT OF THE FUND.**

22 “(a) IN GENERAL.—

23 “(1) AUTHORITY TO ESTABLISH.—A group of
24 authorized private investors may establish, as a non-
25 Federal entity under State law, and manage a fund

1 to be known as the ‘National Rural Cooperative and
2 Business Equity Fund’, to raise and provide equity
3 capital to rural businesses.

4 “(2) COMPOSITION OF GROUP.—The group of
5 authorized private investors referred to in paragraph
6 (1) shall be composed, to the maximum extent prac-
7 ticable, of representatives of a majority of groups of
8 similar investors.

9 “(b) PURPOSES.—The purposes of the Fund shall
10 be—

11 “(1) to strengthen the economy of rural areas;

12 “(2) to further sustainable rural business devel-
13 opment;

14 “(3) to encourage start-up rural businesses, in-
15 creased opportunities for small and minority-owned
16 rural businesses, and the formation of new rural
17 businesses;

18 “(4) to enhance rural employment opportuni-
19 ties;

20 “(5) to provide equity capital to rural busi-
21 nesses that have been unable to obtain equity cap-
22 ital; and

23 “(6) to leverage non-Federal funds for rural
24 businesses.

1 “(c) ARTICLES OF INCORPORATION AND BY-LAWS.—
2 The articles of incorporation and by-laws of the Fund shall
3 set forth purposes of the Fund that are consistent with
4 subsection (b).

5 **“SEC. 391E. INVESTMENT IN THE FUND.**

6 “(a) IN GENERAL.—The Secretary, using funds of
7 the Commodity Credit Corporation, shall—

8 “(1) subject to subsection (b)(1), make avail-
9 able to the Fund \$50,000,000 for each of fiscal
10 years 2001 through 2003;

11 “(2) subject to subsection (c), guarantee 50
12 percent of each investment made by an authorized
13 private investor in the Fund; and

14 “(3) subject to subsection (d), guarantee the re-
15 payment of principal to authorized private investors
16 in debentures issued by the Fund.

17 “(b) PRIVATE INVESTMENT.—

18 “(1) MATCHING REQUIREMENT.—Under sub-
19 section (a)(1), the Secretary shall make an amount
20 available to the Fund only after an equal amount
21 has been invested in the Fund by authorized private
22 investors in accordance with this subtitle and the
23 terms and conditions set forth in the by-laws of the
24 Fund.

1 “(2) INVESTMENTS BY INSURED DEPOSITORY
 2 INSTITUTIONS.—Investments in the Fund by an in-
 3 sured depository institution shall be considered part
 4 of the record of the insured depository institution for
 5 meeting the credit needs of its entire community for
 6 the purposes of Federal law.

7 “(c) GUARANTEE OF PRIVATE INVESTMENTS.—

8 “(1) IN GENERAL.—The Secretary shall guar-
 9 antee, under terms and conditions determined by the
 10 Secretary, 50 percent of any loss of the principal of
 11 an investment made in the Fund by an authorized
 12 private investor.

13 “(2) MAXIMUM TOTAL GUARANTEE.—The ag-
 14 gregate liability of the Secretary with respect to all
 15 guarantees under paragraph (1) shall not apply to
 16 more than \$300,000,000 in private investments.

17 “(3) REDEMPTION OF GUARANTEE.—

18 “(A) DATE.—An authorized private inves-
 19 tor in the Fund may redeem a guarantee under
 20 paragraph (1), with respect to the total invest-
 21 ments in the Fund and the total losses of the
 22 authorized private investor as of the date of
 23 redemption—

24 “(i) on the date that is 5 years after
 25 the date of incorporation of the Fund; or

1 “(ii) annually thereafter.

2 “(B) EFFECT OF REDEMPTION.—On re-
3 redemption of a guarantee under subparagraph
4 (A)—

5 “(i) the shares in the Fund of the au-
6 thorized private investor shall be redeemed;
7 and

8 “(ii) the authorized private investor
9 shall be prohibited from making any future
10 investment in the Fund.

11 “(d) DEBT.—

12 “(1) IN GENERAL.—The Fund may, at the dis-
13 cretion of the Board, raise additional capital through
14 the issuance of debentures and through other means
15 determined to be appropriate by the Board.

16 “(2) GUARANTEE OF DEBT BY SECRETARY.—

17 “(A) IN GENERAL.—The Secretary may
18 guarantee 100 percent of the principal of, and
19 accrued interest on, debentures issued by the
20 Fund that are approved by the Secretary.

21 “(B) MAXIMUM DEBT GUARANTEED BY
22 SECRETARY.—The outstanding value of deben-
23 tures issued by the Fund and guaranteed by
24 the Secretary shall not exceed the lesser of—

1 “(i) the amount equal to twice the
2 value of the assets held by the Fund; or

3 “(ii) \$500,000,000.

4 “(C) RECAPTURE OF GUARANTEE PAY-
5 MENTS.—If the Secretary makes a payment on
6 a debenture issued by the Fund as a result of
7 a guarantee of the Secretary under this para-
8 graph, the Secretary shall have priority over
9 other creditors for repayment of the debenture.

10 “(3) AUTHORIZED PRIVATE INVESTORS.—An
11 authorized private investor may purchase debentures
12 and other securities issued by the Fund.

13 **“SEC. 391F. INVESTMENTS AND OTHER ACTIVITIES OF THE**
14 **FUND.**

15 “(a) INVESTMENTS.—

16 “(1) IN GENERAL.—

17 “(A) TYPES.—Subject to subparagraphs
18 (B) and (C), the Fund may—

19 “(i) make equity investments in an
20 entity that meets the requirements of para-
21 graph (6) and such other requirements as
22 the Board may establish; and

23 “(ii) extend credit to such an entity
24 in—

1 “(I) the form of mezzanine debt
2 or subordinated debt; or

3 “(II) any other form of quasi-equity.
4

5 “(B) LIMITATION ON EQUITY INVEST-
6 MENTS.—After the initial equity investment in
7 an entity described in subparagraph (A)(i), the
8 Fund may not make additional equity invest-
9 ments in the entity if the additional equity in-
10 vestments would result in the Fund owning
11 more than 30 percent of the equity of the enti-
12 ty.

13 “(C) LIMITATION ON NONEQUITY INVEST-
14 MENTS.—Except in the case of a project to as-
15 sist a rural cooperative, the total amount of
16 nonequity investments described in subpara-
17 graph (A)(ii) that may be provided by the Fund
18 shall not exceed 20 percent of the total invest-
19 ments of the Fund in the project.

20 “(2) PROCEDURES.—The Fund shall implement
21 procedures to ensure that—

22 “(A) the financing arrangements of the
23 Fund meet the Fund’s primary focus of pro-
24 viding equity capital; and

1 “(B) the Fund does not compete with con-
2 ventional sources of credit.

3 “(3) DIVERSITY OF PROJECTS.—The Fund—

4 “(A) shall seek to make equity investments
5 in a variety of viable projects, with a significant
6 share of investments—

7 “(i) in smaller projects in rural com-
8 munities of diverse sizes; and

9 “(ii) in cooperative and noncoopera-
10 tive enterprises; and

11 “(B) shall be managed in such a way as to
12 diversify the risks to the Fund among a variety
13 of projects.

14 “(4) LIMITATION ON RURAL BUSINESSES AS-
15 SISTED.—The Fund shall not invest in any rural
16 business that is primarily retail in nature (as deter-
17 mined by the Board), other than a purchasing coop-
18 erative.

19 “(5) INTEREST RATE LIMITATIONS.—Returns
20 on investments in and by the Fund and returns on
21 the extension of credit by participants in projects as-
22 sisted by the Fund, shall not be subject to any State
23 or Federal law establishing a maximum allowable in-
24 terest rate.

25 “(6) REQUIREMENTS FOR RECIPIENTS.—

1 “(A) OTHER INVESTMENTS.—Any recipi-
2 ent of amounts from the Fund shall make or
3 obtain a significant investment from a source of
4 capital other than the Fund.

5 “(B) SPONSORSHIP.—Rural business in-
6 vestment projects to be considered for an equity
7 investment from the Fund shall be sponsored
8 by a regional, State, or local sponsoring or en-
9 dorsing organization such as—

10 “(i) a financial institution;

11 “(ii) a development organization; or

12 “(iii) any other established entity en-
13 gaging or assisting in rural business devel-
14 opment, including a rural cooperative.

15 “(b) TECHNICAL ASSISTANCE.—The Board shall use
16 not less than 1 percent of the net earnings of the Fund
17 to provide technical assistance to rural businesses seeking
18 an equity investment from the Fund.

19 “(c) ANNUAL AUDIT.—

20 “(1) IN GENERAL.—The Board shall authorize
21 an annual audit of the financial statements of the
22 Fund by a nationally recognized auditing firm using
23 generally accepted auditing procedures.

1 “(2) AVAILABILITY OF AUDIT RESULTS.—The
2 results of the audit required by paragraph (1) shall
3 be made available to investors in the Fund.

4 “(d) ANNUAL REPORT.—The Board shall prepare
5 and make available to the public an annual report that—

6 “(1) describes the projects funded with amounts
7 from the Fund;

8 “(2) specifies the recipients of amounts from
9 the Fund;

10 “(3) specifies the co-investors in all projects
11 that receive amounts from the Fund; and

12 “(4) meets the reporting requirements, if any,
13 of the State under the law of which the Fund is es-
14 tablished.

15 “(e) OTHER AUTHORITIES.—The Board may exercise
16 such other authorities as are necessary to carry out this
17 subtitle.

18 **“SEC. 391G. GOVERNANCE OF THE FUND.**

19 “(a) IN GENERAL.—The Fund shall be governed by
20 a board of directors that represents all of the authorized
21 private investors in the Fund and the Federal Government
22 and that consists of—

23 “(1) the Secretary or a designee;

24 “(2) 2 members who are appointed by the Sec-
25 retary and are not Federal employees, including—

1 “(A) 1 member with expertise in venture
2 capital investment; and

3 “(B) 1 member with expertise in coopera-
4 tive development;

5 “(3) 8 members who are elected by the author-
6 ized private investors with investments in the Fund;
7 and

8 “(4) 1 member who is appointed by the Board
9 and who is a community banker from an insured de-
10 pository institution with total assets equal to or less
11 than \$250,000,000.

12 “(b) LIMITATION ON VOTING CONTROL.—No indi-
13 vidual investor or group of similar investors may control
14 more than 25 percent of the votes on the Board.”.

○