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H. R. 1086

To increase the availability of credit to small businesses by eliminating impediments to securitization and facilitating the development of a secondary market in small business loans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1993

Mr. BAKER of Louisiana (Mr. LEACH, Mr. McCOLLUM, Mr. SAM JOHNSON of Texas, Mr. McCANDLESS, Mr. KING, Mr. PRYCE, Mr. LINDER, Mr. HUFFINGTON, Mr. NUSSLE, and Mr. GRAMS) introduced the following bill; which was referred jointly to the Committees on Energy and Commerce, Banking and Finance, Ways and Means, and Education and Labor

A BILL

To increase the availability of credit to small businesses by eliminating impediments to securitization and facilitating the development of a secondary market in small business loans, 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 “Small Business Loan
5 Securitization and Secondary Market Enhancement Act of
6 1993”.

1 **SEC. 2. SMALL BUSINESS RELATED SECURITY.**

2 (a) DEFINITION.—Section 3(a) of the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78c(a)) is amended by
4 adding at the end the following new paragraph:

5 “(53)(A) The term ‘small business related secu-
6 rity’ means a security that is rated in 1 of the 4
7 highest rating categories by at least 1 nationally rec-
8 ognized statistical rating organization, and either—

9 “(i) represents an interest in 1 or more
10 promissory notes evidencing the indebtedness of
11 a small business and originated by an insured
12 depository institution (as defined in section 3 of
13 the Federal Deposit Insurance Act), credit
14 union, insurance company, or similar institution
15 which is supervised and examined by a Federal
16 or State authority; or

17 “(ii) is secured by an interest in 1 or more
18 promissory notes (with or without recourse to
19 the issuer) and provides for payments of prin-
20 cipal in relation to payments, or reasonable pro-
21 jections of payments, on notes meeting the re-
22 quirements of subparagraph (A).

23 “(B) For purposes of this paragraph—

24 “(i) an interest in a promissory note in-
25 cludes ownership rights, certificates of interest
26 or participation in such notes, and rights de-

1 signed to assure servicing of such notes, or the
2 receipt or timely receipt of amounts payable
3 under such notes; and

4 “(ii) a small business is a business that
5 meets the criteria for a ‘small business concern’
6 established under section 3(a) of the Small
7 Business Act.”.

8 (b) CONFORMING AMENDMENT.—Section 3(a) of the
9 Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is
10 amended by redesignating paragraph (51) defining the
11 term “foreign financial regulatory authority” as para-
12 graph (52) and inserting such paragraph after paragraph
13 (51), defining the term “penny stocks”.

14 **SEC. 3. APPLICABILITY OF MARGIN REQUIREMENTS.**

15 Section 7(g) of the Securities Exchange Act of 1934
16 (15 U.S.C. 78g(g)) is amended by inserting “or a small
17 business related security” after “mortgage related secu-
18 rity”.

19 **SEC. 4. BORROWING IN THE COURSE OF BUSINESS.**

20 Section 8(a) of the Securities Exchange Act of 1934
21 (15 U.S.C. 78h(a)) is amended in the last sentence by in-
22 serting “or a small business related security” after “mort-
23 gage related security”.

1 **SEC. 5. SMALL BUSINESS RELATED SECURITIES AS COL-**
2 **LATERAL.**

3 Clause (ii) of section 11(d)(1) of the Securities Ex-
4 change Act of 1934 (15 U.S.C. 78k(d)(1)) is amended by
5 inserting “or any small business related security” after
6 “mortgage related security”.

7 **SEC. 6. INVESTMENT BY DEPOSITORY INSTITUTIONS.**

8 (a) HOME OWNERS’ LOAN ACT AMENDMENT.—Sec-
9 tion 5(c)(1) of the Home Owners’ Loan Act (12 U.S.C.
10 1464(c)(1)) is amended by adding at the end the following
11 new subparagraph:

12 “(S) SMALL BUSINESS RELATED SECURI-
13 TIES.—Investments in small business related
14 securities (as defined in section 3(a)(53) of the
15 Securities Exchange Act of 1934), subject to
16 such regulations as the Director may prescribe,
17 including regulations concerning the minimum
18 size of the issue (at the time of the initial dis-
19 tribution) or minimum aggregate sales price, or
20 both.”.

21 (b) CREDIT UNIONS.—Section 107(15) of the Fed-
22 eral Credit Union Act (12 U.S.C. 1757(15)) is amended—

23 (1) in subparagraph (A), by striking “or” at
24 the end;

25 (2) in subparagraph (B), by inserting “or” at
26 the end; and

1 (3) by adding at the end the following new sub-
2 paragraph:

3 “(C) are small business related securities
4 (as defined in section 3(a)(53) of the Securities
5 Exchange Act of 1934), subject to such regula-
6 tions as the Board may prescribe, including
7 regulations prescribing the minimum size of the
8 issue (at the time of the initial distribution) or
9 minimum aggregate sales price, or both;”.

10 (c) NATIONAL BANKING ASSOCIATIONS.—Section
11 5136 of the Revised Statutes (12 U.S.C. 24) is amended
12 in the last sentence in the first full paragraph of para-
13 graph Seventh by striking “or (B) are mortgage” and in-
14 serting the following: “(B) are small business related secu-
15 rities (as defined in section 3(a)(53) of the Securities Ex-
16 change Act of 1934); or (C) are mortgage”.

17 **SEC. 7. PREEMPTION OF STATE LAW.**

18 (a) IN GENERAL.—Section 106(a)(1) of the Second-
19 ary Mortgage Market Enhancement Act of 1984 (15
20 U.S.C. 77r-1(a)(1)) is amended—

21 (1) by striking “or” at the end of subparagraph

22 (B);

23 (2) by redesignating subparagraph (C) as sub-
24 paragraph (D); and

1 (3) by inserting after subparagraph (B) the fol-
2 lowing new subparagraph:

3 “(C) small business related securities (as
4 defined in section 3(a)(53) of the Securities Ex-
5 change Act of 1934), or”.

6 (b) OBLIGATIONS OF THE UNITED STATES.—Section
7 106(a)(2) of the Secondary Mortgage Market Enhance-
8 ment Act of 1984 (15 U.S.C. 77r-1(a)(2)) is amended—

9 (1) by striking “or” at the end of subparagraph
10 (B);

11 (2) by redesignating subparagraph (C) as sub-
12 paragraph (D); and

13 (3) by inserting after subparagraph (B) the fol-
14 lowing new subparagraph:

15 “(C) small business related securities (as
16 defined in section 3(a)(53) of the Securities Ex-
17 change Act of 1934), or”.

18 (c) PREEMPTION OF STATE LAWS.—Section 106(c)
19 of the Secondary Mortgage Market Enhancement Act of
20 1984 (15 U.S.C. 77r-1(c)) is amended—

21 (1) in the first sentence, by striking “or that”
22 and inserting “, that”;

23 (2) by inserting “, or that are small business
24 related securities (as defined in section 3(a)(53) of

1 the Securities Exchange Act of 1934)” before “shall
2 be exempt”; and

3 (3) by adding at the end the following new sub-
4 section:

5 “(d) IMPLEMENTATION.—

6 “(1) LIMITATION.—The provisions of sub-
7 sections (a) and (b) concerning small business relat-
8 ed securities shall not apply with respect to a par-
9 ticular person, trust, corporation, partnership, asso-
10 ciation, business trust, or business entity or class
11 thereof in any State that, prior to the expiration of
12 7 years after the date of enactment of this Act, en-
13 acts a statute that specifically refers to this section
14 and either prohibits or provides for a more limited
15 authority to purchase, hold, or invest in small busi-
16 ness related securities by any person, trust, corpora-
17 tion, partnership, association, business trust, or
18 business entity or class thereof than is provided in
19 such amendments. The enactment by any State of
20 any statute of the type described in the preceding
21 sentence shall not affect the validity of any contrac-
22 tual commitment to purchase, hold, or invest that
23 was made prior to such enactment, and shall not re-
24 quire the sale or other disposition of any small busi-

1 ness related securities acquired prior to the date of
2 such enactment.

3 “(2) ENACTMENT OF STATE PROVISIONS.—Any
4 State may, not later than 7 years after the date of
5 enactment of this Act, enact a statute that specifi-
6 cally refers to this section and requires registration
7 or qualification of any small business related securi-
8 ties on terms that differ from those applicable to
9 any obligation issued by the United States.”.

10 **SEC. 8. INSURED DEPOSITORY INSTITUTION CAPITAL RE-**
11 **QUIREMENTS FOR TRANSFERS OF SMALL**
12 **BUSINESS LOANS AND INVESTMENTS IN**
13 **SMALL BUSINESS RELATED SECURITIES.**

14 (a) ACCOUNTING PRINCIPLES.—The accounting prin-
15 ciples applicable to the transfer of a small business loan
16 with recourse contained in reports or statements required
17 to be filed with the appropriate Federal banking agencies
18 by all insured depository institutions shall be uniform and
19 consistent with generally accepted accounting principles.

20 (b) CAPITAL REQUIREMENTS.—The amount of cap-
21 ital required to be maintained by an insured depository
22 institution under applicable capital standards and other
23 capital measures with respect to the sale of a small busi-
24 ness loan with recourse, as reported under subsection (a),
25 shall not exceed an amount sufficient to meet the institu-

1 tion’s reasonable estimated liability under the recourse ar-
2 rangement.

3 (c) INVESTMENTS IN SMALL BUSINESS RELATED SE-
4 CURITIES.—A small business related security shall be
5 treated as a similarly rated mortgage-backed security
6 under the risk-based capital requirement applicable to in-
7 sured depository institutions.

8 (d) REGULATIONS REQUIRED.—Not later than 180
9 days after the date of enactment of this Act, each appro-
10 priate Federal banking agency shall promulgate final reg-
11 ulations implementing this section not later than 180 days
12 after the date of enactment of this Act.

13 (e) DEFINITIONS.—For purposes of this section—

14 (1) the term “appropriate Federal banking
15 agency” has the same meaning as in section 3 of the
16 Federal Deposit Insurance Act;

17 (2) the term “capital standards” has the same
18 meaning as in section 38(c) of the Federal Deposit
19 Insurance Act;

20 (3) the term “insured depository institution”
21 has the same meaning as in section 3 of the Federal
22 Deposit Insurance Act;

23 (4) the term “other capital measures” has the
24 same meaning as in section 38(c) of the Federal De-
25 posit Insurance Act;

1 (5) the term “recourse” shall have the meaning
2 given such term under generally accepted accounting
3 principles;

4 (6) the term “small business” means a business
5 that meets the criteria for a small business concern
6 established under section 3(a) of the Small Business
7 Act; and

8 (7) the term “small business related security”
9 has the same meaning as in section 3(a)(53) of the
10 Securities Exchange Act of 1934 (15 U.S.C.
11 78c(a)(53).

12 **SEC. 9. TRANSACTIONS IN SMALL BUSINESS RELATED**
13 **SECURITIES BY EMPLOYEE BENEFIT PLANS.**

14 (a) PROHIBITED TRANSACTION EXEMPTION.—The
15 Secretary of Labor, in consultation with the Secretary of
16 the Treasury, shall exempt transactions involving small
17 business related securities (as defined in section 3(a)(53)
18 of the Securities Exchange Act of 1934 (as added by sec-
19 tion 2 of this Act)), either unconditionally or on stated
20 terms and conditions, from the restrictions of sections 406
21 and 407 of the Employee Retirement Income Security Act
22 of 1974 (29 U.S.C. 1106, 1107) and the taxes imposed
23 under section 4975 of the Internal Revenue Code of 1986
24 (26 U.S.C. 4975).

1 (b) CONDITIONS.—In providing for the exemption re-
2 quired under subsection (a) the Secretary of Labor shall
3 consider—

4 (1) the importance of facilitating transactions
5 in small business related securities; and

6 (2) the necessity of imposing any term or condi-
7 tion to protect the rights and interests of partici-
8 pants and beneficiaries of such plan.

9 (c) REGULATIONS.—Not later than 180 days after
10 the date of enactment of this Act, the Secretary of Labor
11 shall promulgate final regulations to carry out subsection
12 (a).

13 **SEC. 10. TAXATION OF SMALL BUSINESS LOAN INVEST-**
14 **MENT CONDUITS.**

15 (a) TAXATION SIMILAR TO REMIC.—The Secretary
16 of the Treasury shall promulgate regulations providing for
17 the taxation of a small business loan investment conduit
18 and the holder of an interest therein similar to the tax-
19 ation of a real estate mortgage investment conduit and
20 the holder of interests therein under the Internal Revenue
21 Code of 1986.

22 (b) ADJUSTMENT TO REMIC PROVISIONS.—In pro-
23 mulgating regulations under subsection (a), the Secretary
24 shall make any necessary adjustments to the real estate

1 mortgage investment conduit provisions to take into con-
2 sideration—

3 (1) the purpose of facilitating the securitization
4 of small business loans through the use of small
5 business loan investment conduits and the develop-
6 ment of a secondary market in small business loans;

7 (2) differences in the nature of qualifying mort-
8 gages in a real estate mortgage investment conduit
9 and small business loans and obligations; and

10 (3) differences in the practices of participants
11 in the securitization of real estate mortgages in a
12 real estate mortgage investment conduit and the
13 securitization of other assets.

14 (c) SMALL BUSINESS LOAN INVESTMENT CONDUIT
15 DEFINED.—For purposes of this section, the term “small
16 business loan investment conduit” means—

17 (1) any entity substantially all of the assets of
18 which consist of any obligation (including any par-
19 ticipation or certificate of beneficial ownership there-
20 in) of a business that meets the criteria for a small
21 business concern established under section 3(a) of
22 the Small Business Act; and

23 (2) if such obligation was originated by an in-
24 sured depository institution (as defined in section 3
25 of the Federal Deposit Insurance Act), credit union,

1 insurance company, or similar institution which is
2 supervised and examined by an appropriate Federal
3 or State authority.

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