

116TH CONGRESS
2D SESSION

S. 3526

To restrict the authority of the Secretary of the Treasury to purchase or guarantee assets in response to the coronavirus disease (COVID–19) outbreak.

IN THE SENATE OF THE UNITED STATES

MARCH 18, 2020

Mr. REED introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To restrict the authority of the Secretary of the Treasury to purchase or guarantee assets in response to the coronavirus disease (COVID–19) outbreak.

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 “Protecting Taxpayer’s
5 Return on Investment Act of 2020”.

6 **SEC. 2. AUTHORITY FOR WARRANTS AND DEBT INSTRU-**
7 **MENTS.**

8 (a) DEFINITIONS.—In this section:

9 (1) ASSET.—The term “asset” means any fi-
10 nancial instrument that the Secretary, after con-

1 sultation with the Chairman of the Board of Gov-
2 ernors of the Federal Reserve System, determines
3 the purchase of which or the guarantee of which is
4 necessary to promote economic stability.

5 (2) COMPANY.—The term “company” means
6 any entity that is not subject to the prohibitions in
7 subsection (e).

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

10 (b) WARRANT OR SENIOR DEBT INSTRUMENT.—The
11 Secretary may not purchase, or make any commitment to
12 purchase, or guarantee, or make any commitment to guar-
13 antee, any asset in response to the coronavirus disease
14 (COVID–19) outbreak, unless the Secretary receives from
15 the company from which such assets are to be purchased
16 or are to be guaranteed—

17 (1) in the case of a company, the securities of
18 which are traded on a national securities exchange,
19 a warrant giving the right to the Secretary to receive
20 nonvoting common stock or preferred stock in such
21 company, or voting stock with respect to which, the
22 Secretary agrees not to exercise voting power, as the
23 Secretary determines appropriate; or

24 (2) in the case of any company other than one
25 described in paragraph (1), a warrant for common

1 or preferred stock, or a senior debt instrument from
 2 such company, as described in subsection (c)(3).

3 (c) TERMS AND CONDITIONS.—The terms and condi-
 4 tions of any warrant or senior debt instrument required
 5 under subsection (b) shall meet the following require-
 6 ments:

7 (1) PURPOSES.—Such terms and conditions
 8 shall, at a minimum, be designed—

9 (A) to provide for reasonable participation
 10 by the Secretary, for the benefit of taxpayers,
 11 in equity appreciation in the case of a warrant
 12 or other equity security, or a reasonable interest
 13 rate premium, in the case of a debt instrument;
 14 and

15 (B) to provide additional protection for the
 16 taxpayer against losses from sale of assets by
 17 the Secretary and any associated administrative
 18 expenses.

19 (2) AUTHORITY TO SELL, EXERCISE, OR SUR-
 20 RENDER.—

21 (A) IN GENERAL.—For the primary benefit
 22 of taxpayers, the Secretary may sell, exercise,
 23 or surrender a warrant or any senior debt in-
 24 strument received under this section, based on
 25 the conditions established under paragraph (1).

1 (B) PROCEEDS.—Of any proceeds received
2 through the sale, exercise, or surrender of any
3 warrant or any senior debt instrument—

4 (i) 65 percent shall be transferred or
5 credited to the Housing Trust Fund estab-
6 lished under section 1338 of the Federal
7 Housing Enterprises Financial Safety and
8 Soundness Act of 1992 (12 U.S.C. 4568);
9 and

10 (ii) 35 percent shall be transferred or
11 credited to the Capital Magnet Fund under
12 section 1339 of the Federal Housing En-
13 terprises Financial Safety and Soundness
14 Act of 1992 (12 U.S.C. 4569).

15 (3) CONVERSION.—The warrant shall provide
16 that if, after the warrant is received by the Sec-
17 retary under this section, the company that issued
18 the warrant is no longer listed or traded on a na-
19 tional securities exchange or securities association,
20 as described in subsection (b)(1), such warrants
21 shall convert to senior debt, or contain appropriate
22 protections for the Secretary to ensure that the
23 Treasury is appropriately compensated for the value
24 of the warrant, in an amount determined by the Sec-
25 retary for the primary benefit of taxpayers.

1 (4) PROTECTIONS.—Any warrant representing
2 securities to be received by the Secretary under this
3 section shall contain anti-dilution provisions of the
4 type employed in capital market transactions, as de-
5 termined by the Secretary for the primary benefit of
6 taxpayers. Such provisions shall protect the value of
7 the securities from market transactions such as
8 stock splits, stock distributions, dividends, and other
9 distributions, mergers, and other forms of reorga-
10 nization or recapitalization.

11 (5) EXERCISE PRICE.—The exercise price for
12 any warrant issued pursuant to this section shall be
13 set by the Secretary, for the primary benefit of tax-
14 payers.

15 (6) SUFFICIENCY.—The company shall guar-
16 antee to the Secretary that it has authorized shares
17 of nonvoting stock available to fulfill its obligations
18 under this section. Should the company not have
19 sufficient authorized shares, including preferred
20 shares that may carry dividend rights equal to a
21 multiple number of common shares, the Secretary
22 may, to the extent necessary for the primary benefit
23 of taxpayers, accept a senior debt note in an
24 amount, and on such terms as will compensate the
25 Secretary with equivalent value, in the event that a

1 sufficient shareholder vote to authorize the necessary
 2 additional shares cannot be obtained.

3 (d) EXCEPTIONS.—The Secretary may establish an
 4 exception to the requirements of this section and appro-
 5 priate alternative requirements for any participating com-
 6 pany that is legally prohibited from issuing securities and
 7 debt instruments, so as not to allow circumvention of the
 8 requirements of this section.

9 (e) PROHIBITIONS OF FOREIGN COMPANIES.—

10 (1) IN GENERAL.—The Secretary may not pur-
 11 chase, or make any commitment to purchase, or
 12 guarantee, or make any commitment to guarantee,
 13 any asset in response to the coronavirus disease
 14 (COVID–19) outbreak from—

15 (A) any foreign incorporated entity that
 16 the Secretary has determined is an inverted do-
 17 mestic corporation or any subsidiary of such en-
 18 tity; or

19 (B) any joint venture if more than 10 per-
 20 cent of the joint venture (by vote or value) is
 21 held by a foreign incorporated entity that the
 22 Secretary has determined is an inverted domes-
 23 tic corporation or any subsidiary of such entity.

24 (2) INVERTED DOMESTIC CORPORATION.—

1 (A) IN GENERAL.—For purposes of this
2 subsection, a foreign incorporated entity shall
3 be treated as an inverted domestic corporation
4 if, pursuant to a plan (or a series of related
5 transactions)—

6 (i) the entity completes on or after
7 May 8, 2014, the direct or indirect acquisi-
8 tion of—

9 (I) substantially all of the prop-
10 erties held directly or indirectly by a
11 domestic corporation; or

12 (II) substantially all of the assets
13 of, or substantially all of the prop-
14 erties constituting a trade or business
15 of, a domestic partnership; and

16 (ii) after the acquisition, either—

17 (I) more than 50 percent of the
18 stock (by vote or value) of the entity
19 is held—

20 (aa) in the case of an acqui-
21 sition with respect to a domestic
22 corporation, by former share-
23 holders of the domestic corpora-
24 tion by reason of holding stock in
25 the domestic corporation; or

(bb) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; or

(II) the management and control of the expanded affiliated group which includes the entity occurs, directly or indirectly, primarily within the United States, as determined pursuant to regulations prescribed by the Secretary, and such expanded affiliated group has significant domestic business activities.

(B) EXCEPTION FOR CORPORATIONS WITH
SUBSTANTIAL BUSINESS ACTIVITIES IN FOR-
EIGN COUNTRY OF ORGANIZATION.—

(i) IN GENERAL.—A foreign incorporated entity described in subparagraph (A) shall not be treated as an inverted domestic corporation if after the acquisition the expanded affiliated group which includes the entity has substantial business

1 activities in the foreign country in which or
2 under the law of which the entity is cre-
3 ated or organized when compared to the
4 total business activities of such expanded
5 affiliated group.

6 (ii) SUBSTANTIAL BUSINESS ACTIVI-
7 TIES.—The Secretary shall establish regu-
8 lations for determining whether an affili-
9 ated group has substantial business activi-
10 ties for purposes of clause (i), except that
11 such regulations may not treat any group
12 as having substantial business activities if
13 such group would not be considered to
14 have substantial business activities under
15 the regulations prescribed under section
16 7874 of the Internal Revenue Code of
17 1986, as in effect on January 18, 2017.

18 (C) SIGNIFICANT DOMESTIC BUSINESS AC-
19 TIVITIES.—

20 (i) IN GENERAL.—For purposes of
21 subparagraph (A)(ii)(II), an expanded af-
22 filiated group has significant domestic
23 business activities if at least 25 percent
24 of—

1 (I) the employees of the group
2 are based in the United States;

3 (II) the employee compensation
4 incurred by the group is incurred with
5 respect to employees based in the
6 United States;

7 (III) the assets of the group are
8 located in the United States; or

9 (IV) the income of the group is
10 derived in the United States.

11 (ii) DETERMINATION.—Determina-
12 tions pursuant to clause (i) shall be made
13 in the same manner as such determina-
14 tions are made for purposes of determining
15 substantial business activities under regu-
16 lations referred to in subparagraph (B) as
17 in effect on January 18, 2017, but applied
18 by treating all references in such regula-
19 tions to “foreign country” and “relevant
20 foreign country” as references to “the
21 United States”. The Secretary may issue
22 regulations decreasing the threshold per-
23 cent in any of the tests under such regula-
24 tions for determining if business activities

1 constitute significant domestic business ac-
2 tivities for purposes of this subparagraph.

3 (3) WAIVER.—

4 (A) IN GENERAL.—The Secretary may
5 waive paragraph (1) if the Secretary determines
6 that the waiver is—

7 (i) required in the interest of national
8 security; or

9 (ii) necessary for the efficient or effec-
10 tive administration of Federal or federally
11 funded—

12 (I) programs that provide health
13 benefits to individuals; or

14 (II) public health programs.

15 (B) REPORT TO CONGRESS.—The Sec-
16 retary shall, not later than 14 days after
17 issuing such waiver, submit a written notifica-
18 tion of the waiver to the relevant authorizing
19 committees of Congress and the Committees on
20 Appropriations of the Senate and the House of
21 Representatives.

22 (4) DEFINITIONS AND SPECIAL RULES.—

23 (A) DEFINITIONS.—In this subsection, the
24 terms “expanded affiliated group”, “foreign in-
25 corporated entity”, “domestic”, and “foreign”

1 have the meaning given those terms in section
2 835(c) of the Homeland Security Act of 2002
3 (6 U.S.C. 395(c)).

4 (B) SPECIAL RULES.—In applying para-
5 graph (2) of this subsection for purposes of
6 paragraph (1) of this subsection, the rules de-
7 scribed under 835(c)(1) of the Homeland Secu-
8 rity Act of 2002 (6 U.S.C. 395(c)(1)) shall
9 apply.

10 (5) REGULATIONS REGARDING MANAGEMENT
11 AND CONTROL.—

12 (A) IN GENERAL.—The Secretary shall, for
13 purposes of this subsection, prescribe regula-
14 tions for purposes of determining cases in which
15 the management and control of an expanded af-
16 filiated group is to be treated as occurring, di-
17 rectly or indirectly, primarily within the United
18 States. The regulations prescribed under the
19 preceding sentence shall apply to periods after
20 May 8, 2014.

21 (B) EXECUTIVE OFFICERS AND SENIOR
22 MANAGEMENT.—The regulations prescribed
23 under subparagraph (A) shall provide that the
24 management and control of an expanded affili-
25 ated group shall be treated as occurring, di-

1 rectly or indirectly, primarily within the United
 2 States if substantially all of the executive offi-
 3 cers and senior management of the expanded
 4 affiliated group who exercise day-to-day respon-
 5 sibility for making decisions involving strategic,
 6 financial, and operational policies of the ex-
 7 panded affiliated group are based or primarily
 8 located within the United States. Individuals
 9 who in fact exercise such day-to-day responsibil-
 10 ities shall be treated as executive officers and
 11 senior management regardless of their title.

12 **SEC. 3. SPECIAL RULES FOR TAX TREATMENT OF EXECU-**
 13 **TIVE COMPENSATION FOR EMPLOYERS PAR-**
 14 **TICIPATING IN CERTAIN CORONAVIRUS RE-**
 15 **LIEF PROGRAMS.**

16 (a) IN GENERAL.—Section 162(m) of the Internal
 17 Revenue Code of 1986 is amended by adding at the end
 18 the following new paragraph:

19 “(7) SPECIAL RULE FOR APPLICATION TO EM-
 20 PLOYERS PARTICIPATING IN CERTAIN CORONAVIRUS
 21 RELIEF PROGRAMS.—

22 “(A) IN GENERAL.—In the case of an ap-
 23 plicable employer, no deduction shall be allowed
 24 under this chapter—

1 “(i) in the case of applicable remuneration for any applicable taxable year
2 which is attributable to services performed
3 by a covered individual during such applicable taxable year, to the extent that the
4 amount of such remuneration exceeds
5 \$500,000, or
6

7
8 “(ii) in the case of deferred deduction remuneration for any taxable year for services performed during any applicable taxable year by a covered individual, to the extent that the amount of such remuneration exceeds \$500,000 reduced (but not below zero) by the sum of—
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15 “(I) the applicable remuneration
16 for such applicable taxable year, plus

17 “(II) the portion of the deferred
18 deduction remuneration for such services which was taken into account
19 under this clause in a preceding taxable year.
20
21

22 “(B) APPLICABLE EMPLOYER.—For purposes of this paragraph—
23

24 “(i) IN GENERAL.—The term ‘applicable employer’ means any employer from
25

1 whom one or more assets are purchased or
2 guaranteed in accordance with section 2 of
3 the Protecting Taxpayer’s Return on In-
4 vestment Act of 2020.

5 “(ii) AGGREGATION RULES.—Two or
6 more persons who are treated as a single
7 employer under subsection (b) or (c) of
8 section 414 shall be treated as a single em-
9 ployer, except that in applying section
10 1563(a) for purposes of either such sub-
11 section, paragraphs (2) and (3) thereof
12 shall be disregarded.

13 “(C) APPLICABLE TAXABLE YEAR.—For
14 purposes of this paragraph, the term ‘applicable
15 taxable year’ means, with respect to any em-
16 ployer—

17 “(i) the first taxable year of the em-
18 ployer in which the Secretary has pur-
19 chased or guaranteed an asset of the em-
20 ployer in accordance with section 2 of the
21 Protecting Taxpayer’s Return on Invest-
22 ment Act of 2020, and

23 “(ii) any subsequent taxable year end-
24 ing before the date on which the Secretary
25 sells the assets associated with the em-

1 ployer or no longer guarantees the assets
2 associated with the employer, as the case
3 may be.

4 “(D) COVERED INDIVIDUAL.—For pur-
5 poses of this paragraph, the term ‘covered indi-
6 vidual’ means any individual who has performed
7 services (directly or indirectly) for the applica-
8 ble employer (or any predecessor).

9 “(E) APPLICABLE REMUNERATION.—For
10 purposes of this paragraph, the term ‘applicable
11 remuneration’ means the applicable employee
12 remuneration of the covered individual, as de-
13 termined under paragraph (4) without regard
14 to subparagraph (B) thereof. Such term shall
15 not include any deferred deduction remunera-
16 tion with respect to services performed in a
17 prior applicable taxable year.

18 “(F) DEFERRED DEDUCTION REMUNERA-
19 TION.—For purposes of this paragraph, the
20 term ‘deferred deduction remuneration’ means
21 remuneration which would be applicable remu-
22 neration for services performed in an applicable
23 taxable year but for the fact that the deduction
24 under this chapter (determined without regard

1 to this paragraph) for such remuneration is al-
2 lowable in a subsequent taxable year.

3 “(G) COORDINATION.—Rules similar to
4 the rules of subparagraphs (D), (E), and (F) of
5 paragraph (4) shall apply for purposes of this
6 paragraph.

7 “(H) REGULATORY AUTHORITY.—The Sec-
8 retary may prescribe such guidance, rules, or
9 regulations as are necessary to carry out the
10 purposes of this paragraph, including the extent
11 to which this paragraph applies in the case of
12 any acquisition, merger, or reorganization of an
13 applicable employer.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to taxable years beginning after
16 December 31, 2019.

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