



April 16, 2020

Federal Reserve Board
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Dear Board Members:

The National Association of Electrical Distributors is concerned by a provision in the Main Street New and Expanded Loan Facility term sheets that requires a borrower to calculate and deduct from its maximum loan the amount of its “committed but undrawn debt.” Depending on the purpose of this provision, NAED members could face unintended consequences with their current lenders.

It is a common practice in the electrical wholesale industry for companies to use asset-based lending as a form of secured borrowing to fund inventory needs. In many cases as much as 20 to 30 percent is treated as a “cushion” by lenders and is only accessible to the borrower at the cost of additional fees and penalties or limitations on operations. If the intention is to require borrowers to use undrawn debt prior to taking out any loans from the Main Street Lending Program, many distributors will be negatively impacted.

Electrical wholesalers may be uniquely impacted by the “committed but undrawn debt” restriction because use of that credit method is widely used to finance inventory, and we would therefore ask that you consider removing that condition from the term sheets. This solution can be accomplished by substituting “available” for “committed” in item 5 and by adding the following: “For purposes of determining the eligible loan amount (or, for purposes of this provision), an eligible borrower’s existing outstanding and available but undrawn bank debt does not include any amount that, if drawn, would cause the Borrower to suffer fees, penalties, restrictions, or limitations on its operations. Lease financing obligations are also excluded.”

If that solution is not possible, we urge the Federal Reserve to modify the term sheets to allow borrowers to calculate their loan amounts using only the amount of “committed but undrawn debt” that is available to them without punitive bank responses. This can be accomplished by adding the following: “For purposes of determining the eligible loan amount (or, for purposes of this provision), an eligible borrower’s existing outstanding and committed but undrawn bank debt does not include any amount that is not currently available under the terms of the facility, nor does it include any amount that, if drawn, would cause the Borrower to suffer fees, penalties, restrictions, or limitations on its operations. Lease financing obligations are also excluded.”



NATIONAL ASSOCIATION OF
ELECTRICAL DISTRIBUTORS

We believe this program was meant to help our members maximize access to capital during this unprecedented disruption in national economic activity. Please consider these logical fixes that will put our members in the best position to continue to serve their customers and their communities.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward M. Orlet". The signature is fluid and cursive, with a prominent loop at the end.

Edward M. Orlet
Senior Vice President for Government Affairs



1101 30TH STREET, NW
SUITE 500
WASHINGTON, DC 20007



EMBASSY OF TRIBAL NATIONS
1516 P STREET NW,
WASHINGTON, DC 20005

April 10, 2020

The Honorable Steven Mnuchin
Secretary of the Treasury
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Jerome Powell
Chair of the Board of Governors
The Federal Reserve
2051 Constitution Avenue, NW
Washington, DC 20551

RE: Implementation of Title IV of Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Dear Secretary Mnuchin and Chairman Powell,

On behalf of the tribal governments that we collectively represent in matters of economic development and governance, the Native American Finance Officers (NAFOA) and the National Congress of American Indians (NCAI) would like to express our appreciation for your willingness to accommodate the unique needs of Indian tribes in credit relief. We stand ready to work in partnership to create responsive and necessary solutions.

Title IV, the Economic Stabilization and Assistance to Severely Distressed Sectors of the U.S. Economy (Economic Stabilization Fund), has the potential to provide flexible and prompt financing and credit relief that tribal governments need during this time of uncertainty and unparalleled stress. Like other governments dealing with the impacts of this crisis, tribal governments need to provide front line care for the well-being of their people. However, tribal governments are much more vulnerable during this crisis since tribal governments are dealing with mitigating elevated health risk factors while also directly managing the devastating economic impacts caused by the shuttering of government enterprises.

Tribal governments, in lieu of a tax base, rely on economic revenue to provide fundamental government programs and services. The revenue from this equivalency of a tax base has not simply dipped, as experienced by other state and local governments, it has ceased to exist in most cases.

All at a time when government expenses will rise to meet the health crisis, credit will diminish for government-owned economic enterprises, and existing government expenditures will no longer have the revenue to support their initial purpose.

The reasons stated warrant the full attention of the federal government to take all appropriate and immediate action to ensure tribal government funding sources are supported. A key component of that tribal government support is ensuring their economic engines remain viable and are able to recover. Without action from the federal government, tribal government debt will be on a path to default impacting not just the tribal governments and their citizens, but the surrounding communities that rely on tribal enterprises for their support. Tribal governments are often the largest employers in their respective areas, states, and for some, entire regions. Taken together they would represent one of the top ten employers in the nation.

The stability and recovery of the tribal economies can be achieved with consideration of the unique aspects of the tribal debt market and a proportionately unique and discretionary response from the Department of Treasury and the Federal Reserve Bank. The intent of Congress was clear in including tribal governments in Title IV of the CARES Act such that the Federal Reserve Bank would provide financing opportunities in this economic crisis. However, we are concerned that the first facility for governments under this title does not allow direct access for tribal governments and further relies on an assumption that other government relief facilities and business relief facilities will assist tribal governments. We can assure you with centuries of experience, that is a false assumption and one that would have devastating economic consequences.

With the shared goal of building a system that will work for Indian Country, we are outlining the characteristics of tribal debt and the terms that will help guide the Department of the Treasury and the Federal Reserve Bank toward effective intervention. We will also continue to urge flexibility as the crisis continues to evolve along with its impacts and strongly request that you modify programs that fail to incorporate tribal governments needs as originally proposed.

Tribal Debt Characteristics

Tribal governments occupy lands held in trust for their use by the federal government. These trust lands can't be leveraged or used as collateral. Debt issued to tribal governments is largely based on government (federal funds, enterprise, and lease) revenue as general obligations of the government or their political subdivisions. The tribal or tribal entity distressed debt is concentrated on a few large sectors that make up a large part of the Indian Country economy – gaming, hospitality, and natural resource extraction. These sectors are either shut down entirely or effectively shut down due to depressed pricing, as is the case with oil.

The majority of debt is private bank debt with one or more banks as lenders, not publicly traded as is common in the state and municipal markets. There are, however, a few outstanding public issuances (taxable and tax-exempt) that represent approximately \$6 billion of the total tribal debt offerings. Larger issuances of public and private debt involve mostly banks with some participation by institutions and individuals. For these reasons restrictions that focus on market debt with credit ratings can create significant challenges. The Fed has used programs that provide banks financial incentives, liquidity, and credit support, for placement of direct loans for private

businesses (such as the Main Street Lending Program). Figuring a way to make this work for tribal government debt is critical.

Tribal governments have the ability to issue both taxable and tax-exempt debt with a majority issued as taxable. Tax-exempt debt for tribal governments for economic or private activity purposes differs from the tax-exempt debt issued by other governments. Tribal governments are prohibited from fully utilizing the tax-exempt debt market beyond the tightly defined purposes of essential government functions; leaving tribal governments no choice but to use commercial debt to fund marinas, conference centers, parking lots and other services commonly funded by state and local governments.

As a partial remedy for this restriction, the Department of the Treasury under the Tribal Economic Development Bond program authorized by Congress during the American Recovery and Reinvestment Act provided \$2 billion in bonding authority for economic rebuilding purposes. Not all of these issuances have been rated, but all TED bonds have been registered at the Department of the Treasury. The entire allocation has been recently drawn down and is no longer an option. This means that existing tribal tax-exempt debt is either general obligation government debt for essential services or issued as Tribal Economic Development Bonds through the prior allocation.

Tribal debt is issued directly from the tribal government, its political subsidiaries, or directly from government-owned enterprises. The government subdivisions may include an economic development authority, a gaming authority, or a business entity listed as part of the governing body but separated for tax and business purposes.

Below are four specific potential terms on which you could intervene to fulfill your statutory and economic obligations to tribal governments. This list is a subset of potential solutions, intended to help you and your staff during these challenging times.

Proposed Terms of Intervention

- The Federal Reserve bank should purchase loans or lines or credit to facilitate better terms or credit for tribal governments and their authorities. Relief should be considered in two forms. First, direct purchasing of debt from banks and investors for temporary relief during the crisis.

Second, consideration should be given to loan guarantees on new tribal debt to secure needed lines of credit during the crisis and for securing reasonable credit when revenue streams do recover and tribal governments need to re-issue the debt. During the last downturn, lending continued to be tight for tribal governments long after the recovery was taking place. Either could be accomplished through one of several existing Fed facilities, simply by modifying eligibility terms and work through financial institutions or Tribes.

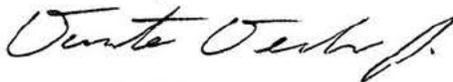
- Current purchasing of debt should include setting aside \$25 billion for direct purchasing of tribal government debt. The Federal Reserve Bank's initial announcement of direct purchases of debt from cities greater than 1 million and counties greater than 2 million excludes all Tribes. The catch-all of having tribes go through a state governor's offices is

a failure to acknowledge the direct government-to-government sovereign relationship that is the foundation of American Indian policy. The first amortizing payment should be due no earlier than 180 days after issuance and no later than 365 days given that tribal government revenues from enterprises have ceased. Consideration should be given to a favorable loan term of at least a five-years with the going treasury interest rate to match the term.

- Assistance from the funds established in Title IV should include loan guarantees for short-term credit facilities and for on-going enterprises that may need credit for restarting an enterprise, continued operations, including those that may be tied to similar revenue pledged for distressed debt. Loan guarantees should be pledged to secure approximately \$30 billion in debt.
- The Federal Reserve Bank should consider the ability to purchase tribal debt based on tribal revenue prior to the crisis. The majority of tribal government debt is unrated making revenue a suitable criterion. However, tribal enterprises often have geographic and political competitive buffers that make loans viable. In addition, given the uncertainty of the crisis, these loans should be subject to repayment only from revenue from existing and future tribal businesses and not be subject to garnishment of any other programs or transfers of federal aid to tribal governments.

We would strongly urge the Department of the Treasury and the Federal Reserve Bank to immediately engage Indian Country on the Economic Stabilization Fund. Thank you in advance for your consideration of our requests. Please feel free to reach out to either organization through Dante Desiderio by phone at 202-631-2003 or by email at Dante@nafoa.org

Best regards,



Dante Desiderio,
Executive Director



Kevin J. Allis,
Chief Executive Officer
National Congress of American Indians

CC: Gary Grippo, Deputy Assistant Secretary for Government Financial Policy
Daniel Kowalski, Counselor to the Secretary for Domestic Affairs
Lael Brainard, Federal Reserve Board Governor
Richard Clarida, Federal Reserve Board Governor
Randall Quarles, Federal Reserve Board Governor
Michelle Bowman, Federal Reserve Board Governor

Chris Netram

*Vice President,
Tax and Domestic Economic Policy*

April 20, 2020

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Dear Chairman Powell,

The National Association of Manufacturers appreciates the Federal Reserve's efforts to stabilize the economy via lending facilities designed to provide needed liquidity to businesses impacted by COVID-19. Speedy delivery of aid to manufacturers affected by the crisis is a key component of the NAM's advocacy.

Manufacturers of all sizes are facing significant business disruptions due to the COVID-19 crisis. As such, the NAM appreciates that the Federal Reserve has announced a wide range of liquidity facilities to meet the needs of small, medium-sized, and large businesses across the country. As you finalize the details of these programs in the coming weeks, it is vital that the terms and processes related to the various facilities collectively enable participation for any and all manufacturers in need of liquidity. Furthermore, the NAM encourages you to continue to provide clarity on key questions regarding the operation of the facilities, qualifications for participation, and processes for application and approval to enable businesses to make decisions on how best to protect themselves and their employees during these difficult times.

I. Main Street Lending Program

The NAM welcomed Congress's work via the Coronavirus Aid, Relief, and Economic Security (CARES) Act to authorize a new program to support lending to small and medium-sized businesses. We appreciate that the Federal Reserve is now taking steps to implement the Main Street New Loan Facility (MSNLF) and the Main Street Expanded Loan Facility (MSELF) to meet the capital needs of the wide range of small and medium-sized businesses that need financing to weather the economic disruption caused by COVID-19.

The Main Street Lending Program should address the needs of these smaller companies, which may not qualify for the Federal Reserve's facilities designed for larger businesses. The NAM encourages you to implement program qualifications and loan terms that ensure that small and medium-sized manufacturers can access needed funding via the Main Street Lending Program.

- **Decrease the minimum loan size.** The Main Street Lending Program has a minimum loan amount of \$1 million, but many small and medium-sized companies may need less financing based on their payroll and operating expenditures. For example, the data released by the Small Business Administration on the Paycheck Protection Program indicated that the average loan size for manufacturers was roughly \$375,000. In fact, 96% of all loans approved under the PPP were for less than \$1 million. While the overlap between the PPP and the Main Street Lending Program is not perfect, the Main Street terms should not exclude 96% of PPP businesses. Accordingly, the NAM encourages you to decrease the minimum loan size for the Main Street

Lending Program so as to allow more small businesses to participate in the MSNLF and MSELF.

- **Allow for alternative methods of calculating loan amounts.** Many businesses that would otherwise qualify for the Main Street Lending Program may find their participation limited by the maximum loan calculations for the MSNLF and MSELF, which rely on a borrower's 2019 earnings before interest, taxes, depreciation, and amortization (EBITDA). Some small, pre-revenue, or start-up companies may not have sufficient earnings from 2019 to qualify for a meaningful loan amount (or perhaps for any loan at all) if the calculation must be based on EBITDA. These businesses may have other metrics that would better illustrate an appropriate loan size, including assets, tangible net worth, or payroll. The Federal Reserve should allow for flexibility for these small businesses and permit alternative metrics for determining the maximum loan amount beyond the proposed EBITDA calculations.
- **Reform the undrawn debt restriction.** The Main Street program's maximum loan calculations require a borrower to reduce its potential loan total by the amount of its existing outstanding and committed but undrawn debt. Many companies have undrawn debt that is nevertheless unavailable to them without the imposition by their lender of fees, penalties, restrictions, or limitations on their operations. (This undrawn debt is viewed as a "cushion" by lenders and is thus not truly available for businesses to draw down.) We encourage the Federal Reserve to modify the undrawn debt language in the MSNLF and MSELF maximum loan calculations to clarify that the maximum loan size should only be reduced by the amount of debt that is available to a borrower to be drawn without the imposition of fees, penalties, restrictions, or limitations on its operations.
- **Provide clarity on affiliation rules.** The Main Street Lending Program is available to businesses with up to 10,000 employees or up to \$2.5 billion in 2019 annual revenues. The NAM urges you to clarify that these and any other eligibility tests apply to the business applying for the loan on a standalone basis, not on a consolidated basis incorporating a small business's affiliates, parents, or parents' subsidiaries.
- **Encourage lenders to participate in the program.** It is vital that lenders feel comfortable with the risk profile associated with offering loans under the Main Street program. Small and medium-sized manufacturers desperately need access to liquidity to weather the current economic storm, so the NAM encourages the Federal Reserve to take reasonable steps to ensure that lenders will participate in the Main Street program. For example, the Federal Reserve could consider increasing the Main Street facilities' 95% participation rate in a new loan or an upsized loan tranche.
- **Provide clarity to businesses on implementation questions.** Given the speed with which the Federal Reserve plans to implement the new Main Street program, it is vital that lenders and borrowers understand the requirements to offer and access loans, respectively. We urge the Federal Reserve to announce and implement clear guidelines around eligibility, applications, processes, loan terms, and more in order to ensure smooth implementation of the program and allow small businesses to access needed funds.

II. Larger Business Liquidity Facilities

Over the past several weeks, the Federal Reserve has announced several facilities to provide liquidity to a wide range of businesses dealing with the economic consequences of COVID-19. These facilities—including the Primary Market Corporate Credit Facility (PMCCF), Secondary Market Corporate Credit Facility (SMCCF), Term Asset-Backed Securities Loan Facility (TALF), and Commercial Paper Funding Facility (CPFF)—are designed to inject capital into the U.S. economy and provide support for American businesses and workers. The NAM encourages the Federal Reserve to address certain key issues

related to these liquidity facilities in order to improve access to needed funding and speed America's economic recovery.

PMCCF, SMCCF, and TALF

- **Allow all companies with a significant U.S. presence to receive financing.** The NAM believes that the Federal Reserve should focus on the impact to U.S. workers when determining eligibility for its various liquidity facilities. As announced, the PMCCF, SMCCF, and TALF (as well as the Main Street Lending Program's MSNLF and MSELF) limit participation to businesses with a majority of employees based in the United States. In the NAM's view, the number of workers outside the United States is immaterial to the American families who are depending on their employers to continue to make payroll during the crisis. The Federal Reserve should ensure that all businesses with a significant presence in the United States—including businesses with foreign subsidiaries and/or foreign employees and U.S. subsidiaries whose parents are foreign-based or have foreign subsidiaries and/or foreign employees—are eligible for these vital programs and can access capital for the benefit of their employees based in the United States. Furthermore, the NAM believes that any tests designed to quantify a business's U.S. presence should be applied on a standalone basis rather than by consolidating employees or economic activity on an enterprise-wide basis.
- **Clarify the "specific support" prohibition for PMCCF and SMCCF issuers.** The term sheets released for the PMCCF and SMCCF exclude businesses that have received "specific support pursuant to the CARES Act or any subsequent federal legislation." The Federal Reserve should clarify that this prohibition does not apply to businesses participating in programs that were upsized via CARES Act Section 4003(b)(4) funds, which does not constitute "specific support" sufficient to exclude them from the PMCCF and SMCCF. The Federal Reserve should also clarify that businesses that benefitted from generally applicable provisions in the CARES Act, such as the law's tax provisions, would similarly not be excluded from the PMCCF and SMCCF.
- **Provide clarity on the applicability of certain CARES Act restrictions.** Section 4003(c)(3)(A)(ii) of the CARES Act restricts direct loans provided via facilities funded using Section 4003(b)(4) dollars to businesses that comply with certain restrictions on share repurchases, dividend payments, and executive compensation. Because these restrictions only apply to businesses receiving direct loans dispersed via CARES Act-funded facilities, the Federal Reserve should clarify that they do not apply to businesses participating in the PMCCF, SMCCF, or TALF. These facilities were upsized using CARES Act funds, but they are not direct loan facilities and, thus, participating businesses should not be subject to the Section 4003(c)(3)(A)(ii) restrictions.
- **Expand the PMCCF and SMCCF to non-investment grade issuers.** The term sheets released for the PMCCF and SMCCF limit participation in the facilities to issuers with at least a BBB-/Baa3 rating from a major nationally recognized statistical rating organization (NRSRO). However, many manufacturers, including those in the basic materials sector and its domestic supply chains, are "single-B" rated companies. These businesses are critical to sourcing materials, producing goods in the United States, and stimulating the American economy. The investment-grade prohibition limits participation from these healthy companies, many of which would otherwise qualify for and benefit from the PMCCF and SMCCF. The NAM encourages the Federal Reserve to relax this requirement and allow non-investment grade issuers, including at least issuers with a B-/B3 rating, to access needed financing via the facilities.
- **Expand the pool of acceptable PMCCF and SMCCF ratings agencies.** As noted above, qualification for the PMCCF and SMCCF is determined based on an issuer's rating from a major NRSRO. The Fed should provide flexibility by clarifying that ratings from any SEC-registered NRSRO, not just a major NRSRO, are sufficient for determining qualifications for both facilities.

CPFF

- **Expand the CPFF to Tier 2 issuers.** The term sheet released for the CPFF limits participation to issuers that have been rated at least A1/P1/F1 by a major NRSRO. Expanding CPFF participation to include Tier 2 issuers would not expose the facility to significantly higher credit risk but would allow a wider range of companies to access needed liquidity. The NAM encourages the Federal Reserve to relax the Tier 1 limitation, allowing for issuers to benefit from the CPFF if they have been rated at least A2/P2/F2.
- **Expand the pool of acceptable CPFF ratings agencies.** As noted above, qualification for the CPFF is determined based on an issuer's rating from a major NRSRO. The Fed should provide flexibility by clarifying that ratings from any SEC-registered NRSRO, not just a major NRSRO, are sufficient for determining qualifications for the CPFF.
- **Increase per-issuer purchase limits under the CPFF.** The term sheet released for the CPFF sets the maximum amount of an issuer's commercial paper that the CPFF special purpose vehicle may own as the greatest amount of commercial paper that the issuer had outstanding between March 16, 2019 and March 16, 2020. However, a one-year lookback to a period of strong economic performance is not indicative of a business's potential need to participate in the CPFF during the current economic crisis. The Federal Reserve should instead allow the CPFF special purpose vehicle to purchase commercial paper up to the amount authorized under an issuer's existing program, whether or not it had any commercial paper outstanding during the one-year window.

* * * *

The NAM has welcomed the Federal Reserve's aggressive actions to provide for new and expanded liquidity facilities for businesses impacted by COVID-19, and we appreciate your ongoing dedication to ensuring that these facilities work as well as possible for small, medium-sized, and large manufacturers.

On behalf of the NAM and the 13 million men and women who make things in America, thank you for your attention to these concerns.

Sincerely,



Chris Netram
Vice President, Tax and Domestic Economic Policy

cc: The Honorable Steven Mnuchin
The Honorable Mike Crapo
The Honorable Sherrrod Brown
The Honorable Maxine Waters
The Honorable Patrick McHenry

April 22, 2020

VIA ELECTRONIC SUBMISSION - regs.comments@federalreserve.gov

The Honorable Steven T. Mnuchin
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Jerome H. Powell
Chair
Board of Governors of the Federal Reserve
System
20th Street and Constitution Ave NW
Washington, DC 20551

Re: Concerns Regarding the Main Street Lending Program: Main Street New Loan Facility (MSNLF) and Main Street Expanded Loan Facility (MSELF)

Dear Sirs:

The Real Estate Roundtable¹ (RER) and Nareit² represent the owners, investors, managers and other stakeholders in the \$16 trillion U.S. commercial real estate (CRE) sector, which includes a broad range multifamily, lodging, office, industrial, retail and healthcare properties. U.S. commercial and multifamily real estate is supported by over \$4 trillion in debt – mostly provided by commercial banks, life companies, government sponsored enterprises and commercial mortgage backed securities (CMBS). We appreciate the opportunity to comment on the April 9 term sheets for the Main Street New Loan Facility (MSNLF) and Main Street Expanded Loan Facility (MSELF; together the Programs).

Both of our organizations are grateful for your collective efforts to support the U.S. economy during the economic crisis resulting from the COVID-19 pandemic. We are particularly encouraged by the Federal Reserve and Treasury's timely decision to revive the Term Asset Backed Securities Facility (TALF), the Federal Reserve Bank of New York's (FRBNY) initiation of purchase of agency CMBS³, and we appreciate the recent announcement⁴ that the Federal Reserve will broaden the range of TALF eligible collateral to include the triple-A rated tranches of both outstanding (legacy) CMBS, commercial mortgage loans and newly issued collateralized loan obligations.

¹ The Real Estate Roundtable (www.RER.org) brings together leaders of the nation's top publicly-held and privately-owned real estate ownership, development, lending and management firms with the leaders of major national real estate trade associations to jointly address key national policy issues relating to real estate and the overall economy.

² Nareit (www.Nareit.com) serves as the worldwide representative voice for real estate investment trusts (REITs) and real estate companies with an interest in U.S. income-producing real estate. Nareit's members are REITs and other real estate companies throughout the world that own, operate, and finance income-producing real estate, as well as those firms and individuals who advise, study, and service those businesses.

³ "Statement Regarding Treasury Securities and Agency Mortgage-Backed Securities Operations," Federal Reserve Bank of New York (Mar. 23, 2020), available at:

https://www.newyorkfed.org/markets/opolicy/operating_policy_200323.

⁴ "Federal Reserve takes additional actions to provide up to \$2.3 trillion in loans to support the economy", Federal Reserve (April 9, 2020), available at:

<https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm>

We previously wrote to you on March 24 and April 14, urging greater support for Agency and private label, non-agency CMBS and related CRE lending products. We then noted that it was already apparent that the damage to the commercial real estate sector will be both broader and deeper than it was during the 2008 crisis.

Unfortunately, in the intervening days, conditions in the commercial real estate sector have deteriorated further, providing us with a more detailed understanding of the nature and scope of the problem. Survey data with regard to April rents is currently being compiled, but the early data is discouraging. Initial survey data estimates that fewer than 50% of shopping center rents may have been paid. In the residential sector, estimates of unpaid rent range from the six to 14%. These numbers are likely to increase because the CARES Act permits financially stressed tenants in properties financed by federally backed loans to postpone rent payments and several states and municipalities are currently considering additional measures to afford tenants rent forbearance.

Total commercial real estate rents collected in 2019 are estimated to be in excess of \$1.8 trillion. These rents are collected from properties across a range of sectors including office, industrial, retail, multifamily, hotels, health care, self-storage and newer sectors that include data centers and cell phone towers. U.S. rental revenues are equivalent to 9% of GDP, but are rarely recognized because they are an input rather than a final good. Rent supports the payment of expenses such as salaries, property taxes, utilities, insurance and maintenance, principal and interest expense to banks and bondholders, and only then dividends and distributions to investors.

So, with revenue in commercial and multifamily real estate markets diminishing, real estate credit and capital markets are stalled. Borrowers, owners, managers are facing existential challenges. At a time when Main Street needs credit, it cannot get it because the secondary markets that provide liquidity to Main Street lenders are clogged.

We are encouraged by the steps taken by the Treasury and the Federal Reserve thus far, but more must be done. It is important for the Main Street Lending Program to work effectively and support commercial real estate.

Suggestions to Enable CRE Borrowers to Access the Programs

The Federal Reserve established the Main Street Lending Program to enhance support for small and mid-sized businesses across the U.S. economy that are in good financial standing before the crisis. Notwithstanding the significance of commercial real estate to the U.S. economy, it will be difficult, if not impossible, for many commercial real estate companies to access the Main Street Lending Program if certain changes, set forth below, are not made to offer more realistic flexibility to the Program.

1. Underwriting/Leverage Limitations/Loan Size.

As a general matter, we recommend that the banks underwriting these Main Street loans be granted greater discretion in assessing credit worthiness across industries and with respect to individual borrower circumstances. In addition to considering industry-specific factors, lenders should be able to take account of existing covenants, funding terms and utilize pre-existing metrics in the credit agreements for calculating the leverage limitations applicable to borrowings from the MSNLF and the MSELF.

Our CRE members are particularly concerned that the “one-size-fits-all-industries” leverage limits set forth in the MSNLF and MSELF term sheets will not work for most U.S. CRE companies, which typically operate at higher leverage levels than other industries. The highly specific Debt/EBITDA metrics of 4x (New Loan) and 6x (Expanded Loan) would significantly limit the number of CRE companies who can access the Main Street Lending Programs. Lenders should be given discretion to use CRE-specific leverage limitations based on loan-to-value or a substantially higher EBITDA threshold to address the conventions of CRE practices.

2. Distributions.

REITs and certain other pass-through entities are required by law to annually distribute their taxable income to shareholders. The application of the dividend-related restriction to REITs would not be consistent with the longstanding federal interest of supporting REIT-based real estate investment. For this reason, it would appear that the absence of an exception for REITs is an oversight stemming from the emergency nature of the CARES Act. We suggest that the Programs allow for limited exceptions to the CARES Act distribution prohibitions for borrowers, like REITs, which are required by law to make distributions to maintain their legal status. Similarly, any extension of the restriction to distributions by S corporations or partnerships would undermine the critical purposes served by the lending facilities.

3. Loan Terms.

The Programs loan terms, as proposed, will be too short to accommodate CRE borrowers in many cases. CRE loans tend to be longer-dated than lending facilities for operating businesses. We suggest that the Programs permit lenders and borrowers to agree to terms of at least six years, and permit borrower and its lenders to agree to amortization schedules consistent with existing their circumstances and existing borrowings.

4. Applicable Interest Rate Index.

The great majority of CRE borrowers currently use LIBOR. With respect to more recent CRE loans, provisions generally permit the agent to move to a replacement rate when LIBOR is no longer published, or when an alternative rate (e.g., SOFR) is generally in use. We suggest that the Programs implement a similar policy, consistent with current market practice, i.e., permit

borrowers to initially use LIBOR with “fallback” provisions for transitioning to SOFR consistent with either of the ARRC’s approved options.

5. Program Timing.

Given the complexity of CRE capital structures and loans, the ability to complete transactions that benefit these properties may take longer than September 30, 2020. We suggest that the Program’s facility termination date be extended to December 31, 2020.

* * *

We appreciate the opportunity to provide commentary on the Main Street Lending Programs, and the importance enabling the Programs to provide credit support for the commercial real estate sector. We respectfully urge that these additional measures be adopted to expand the scope of the Main Street Lending Programs to forestall further disruption and economic dislocations in the commercial real estate sector.

Should you have any questions or desire any clarification concerning the matters addressed in this letter, please do not hesitate to contact Clifton E. Rodgers, Jr. (crodgers@rer.org) or Victoria Rostow (vrostow@nareit.com).

Sincerely,



Steven A. Wechsler
President & CEO
Nareit



Jeffrey D. DeBoer
President & CEO
The Real Estate Roundtable



THE VOICE OF **RETAIL**

April 16, 2020

BY ELECTRONIC MAIL

The Honorable Jerome Powell
Chairperson, Board of Governors
Federal Reserve System
Eccles Federal Reserve Board Building
Washington, DC 20551

The Honorable Steven Mnuchin
Secretary of the Treasury
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Chairman Powell and Secretary Mnuchin:

Retail is the nation's largest private sector employer, supporting one in four U.S. jobs. As the Federal Reserve cited in its Beige Book report issued yesterday, the retail industry has been especially hard hit by social distancing measures and mandated closures.

The National Retail Federation (NRF) is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants, and internet retailers in the United States. As the American public stays home due to voluntary and mandatory social distancing, the retail industry pays the price along with the tens of millions of Americans who work in stores and restaurants. Labor and benefit obligations, vendor payments, rents, and loan payments are all crippling burdens without sales revenue. Our members are suffering cumulative losses that amount to tens of billions of dollars each week, and many parts of the retail sector have seen revenues shrink by 90-100% compared to the same period last year.

The NRF urges you to take steps now to ensure that our nation's largest retailers can rely on the same economic support programs that have been made available to America's small businesses and largest corporations. Prompt access to financial relief should be available to hard-hit businesses of all sizes. If appropriate attention is not paid to the financial needs of this important sector, the disruptions of the pandemic on retailers and their workers may have adverse long-term consequences on the larger economy.

The Federal Reserve and the Treasury Department possess broad discretion with these programs, including the Main Street Lending Program and the Primary Market Corporate Credit Facility ("PMCCF")—the two programs in which our members have expressed the most interest. We are concerned that, while helpful to some, the Main Street Lending Program and PMCCF eligibility requirements are so limiting that many critical businesses in need of financial assistance will not qualify for relief. Expanding the eligibility criteria for these programs will provide much needed support to some of America's most recognizable brands and, most importantly, their workers who have been severely impacted by the pandemic.

At the outset, we note that getting access to these facilities as quickly as possible is of paramount concern to our members. Retailers want to know how quickly they can be accessed and have multiple questions about how they will work. An overarching concern shared by thousands of our members across the country is that, when their May rents come due, a domino effect of defaults and foreclosures could upend the commercial mortgage market, many community banks, and state and local tax bases. Getting cash to our members as quickly as possible will provide a financial tourniquet that entire communities need to survive.

In assessing the programs announced to date, it seems clear that the Federal Reserve and Treasury Department have made a qualitative judgment that mid-sized companies can be served by allowing the relief at the top and bottom ends of the market to trickle “down the credit stack.” This strategy may work in theory, but our members report that they are not seeing strong signs that the markets serving their liquidity needs are loosening. Moreover, the absence of a direct lending option or a clearly defined facility serving these firms sends the unfortunate signal that help is not likely to be forthcoming from the Title IV CARES Act programs, and these firms must take more drastic steps to relieve the economic pressure.

We strongly encourage the Treasury and Reserve to consider the unintended consequences of some of the proscriptive requirements attached to the lending facilities and how they may impact retailers of all sizes. In cases where the eligibility criteria are too narrow for American retailers, we ask that your respective agencies exercise discretion to make these programs more widely available.

Greater flexibility in eligibility criteria means that more businesses can access the financial assistance they need. For example, many retail companies will not qualify for the Main Street Lending Program as designed because they employ more than 10,000 individuals. Other retailers earned more than \$2.5 billion in revenue in 2019 (though some of those will not in 2020). Based on public data, nearly 200 non-investment grade borrowers that do not qualify for access to the PMCCF or other Federal Reserve programs do not currently meet the 10,000 employee/\$2.5bn revenue criteria as contained in the MSNLF and MSELF term sheets. As written, the Main Street Lending Program is out of reach for these businesses, despite their need.

Specifically, the Main Street Lending Program’s EBITDA requirements add an additional hurdle to a business’s ability to access assistance through the Main Street Lending Program. We respectfully request that the Federal Reserve confirm that the EBITDA calculation excludes the untapped portion of any revolving debt facility, which would otherwise artificially constrain loan amounts.

In addition, the blunt EBITDA ratio requirements in the maximum loan amount calculations do not account for one-time revenue hits, which could result in the exclusion of struggling businesses that would be otherwise eligible. We urge you to consider an accommodation for borrowers who face this type of situation.

We would also like to observe that limiting the definition of Eligible Loan under the Main Street Expanded Loan Facility to a “term loan” may be inconsistent with the kinds of committed revolving loan facilities common in retail. Simply expanding the definition to include a revolving loan facility in addition to a term loan is appropriate as the ability of an otherwise Eligible Borrower to access the Main Street Expanded Loan Facility should not be dependent on the nature of such Eligible Borrower’s existing credit facility, so long as such credit facility is provided by one or more Eligible Lenders. In fact, the term sheet otherwise seems to account for a committed revolving loan facility since the definition of Maximum Loan Size refers to an Eligible Borrower’s existing outstanding and committed but undrawn debt.

As you consider expanding the Main Street Lending Program, please also consider using your discretion to ensure that the PMCCF is available to companies that were healthy before the covid-19 outbreak, even if they had low revenue margins (as most retailers do) before March 2020, some leverage, and were below investment grade. Under the PMCCF, flexible and lower investment grade ratings that account for companies with split credit ratings would expand the range of eligible participants. Only allowing investment grade companies to participate automatically excludes certain specialty retailers whose size and sales are below the rating agencies' size threshold. As a result, the PMCCF is off limits for some businesses with strong pre-pandemic business models.

In general, with all of these programs, expanded credit criteria, longer loan durations, and higher loan amount limits would ensure long-term success for borrowers, and our economy. At the end of the day, regardless of the specific technical solution, our retailers need access to economic support, and they need access now. These companies are looking for a way to keep their employees on the payroll and provide the goods and services that their customers enjoy.

In closing, I thank you for your extraordinary leadership and public service at this unprecedented time. The NRF's members support the swift efforts of your institutions, the Trump Administration and Congressional leadership to address the public health and economic challenges our country faces.

Sincerely,

A handwritten signature in black ink, appearing to read "David French".

David French
Senior Vice President
Government Relations

cc: Members of the Board of Governors of the Federal Reserve System



The Honorable Steven T. Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

The Honorable Jerome H. Powell
Chairman
Board of Governors of the Federal Reserve
20th Street and Constitution Avenue NW
Washington, D.C. 20551

Dear Secretary Mnuchin and Chairman Powell:

The National Association of Theatre Owners (“NATO”) respectfully submits these comments to The Board of Governors of the Federal Reserve System (the “Fed”) and the Department of the Treasury (the “Treasury”) regarding the terms of the Main Street New Loan Facility and Main Street Expanded Loan Facility (together “MSLFs”) announced on April 9, 2020. These loans, as a supplement to the other loan vehicles described in the CARES Act must be modified significantly in order to be useful in addressing the economic realities of severely distressed sectors of the economy such as movie theaters that have been forced to close in the interest of public health directives. A loan that merely adds debt to companies in these sectors will not further your stated goal of helping to “ensure that the eventual recovery is as vigorous as possible.”¹

We ask that you ensure our nation’s beloved motion picture exhibition industry² is eligible for lending facilities and loan guarantee programs established in coordination

¹ Board of Governors of the Federal Reserve System, *Federal Reserve takes additional actions to provide up to \$2.3 trillion in loans to support the economy* (April 9, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm>

² See e.g., Matt Singer, *The 15 Things We Miss Most About Movie Theaters*, SCREEN CRUSH (Apr. 13, 2020) <https://screencrush.com/things-we-miss-about-movie-theaters/>; Owen Gleiberman, *Why I Miss Movie Theaters, and Why Nothing Can Replace Them*, VARIETY (Apr. 13, 2020) <https://variety.com/2020/film/columns/why-i-miss-movie-theaters-1234577997/>; David Ehrlich, *Movie Theaters Are Closed, but Their Value Isn’t Lost to Us Yet*, INDIEWIRE (Mar. 22, 2020).

between the Department of the Treasury and the Federal Reserve under Section 4003 of the CARES Act including the MSLFs. These lending facilities and programs will be crucial to the survival of the theater industry, a sector severely distressed by the COVID-19 public health crisis.

NATO is the largest motion picture exhibition trade organization in the world, representing more than 33,000 movie screens in all 50 states, employing over 150,000 people in the United States. Our membership includes the largest cinema chains in the world along with hundreds of small family-operated independent theaters. NATO and its members have a significant interest in preserving moviegoing in the United States, which is the biggest film-going market in the world, accounting for roughly 30% of global revenue from only 5% of the global population.

We respectfully suggest the following modifications to any loan vehicle under the CARES Act in order to ensure a full economic recovery for shuttered industries such as movie theaters post-pandemic:

- 1. Immediate Need for Lending Vehicles to Address Companies of All Sizes**
- 2. Need Option for Broad Forgiveness of Fixed Costs**
- 3. Eliminate Employee Retention Requirements for Shuttered Industries**
- 4. Need Flexibility on Acceptable Uses of Loan Proceeds to Address Industry-Specific Costs**
- 5. Waive Solvency Requirements for Shuttered Industries**
- 6. Need Reasonable Loan Terms that Will Allow Industries to Succeed Post-Pandemic**
- 7. Loan Caps Should be Increased to Address Possible Delay in Recovery**
- 8. Loan Vehicles Should not be Mutually-Exclusive**
- 9. Expand Lending Eligibility to Non-Bank Lenders**

Key issues in the MSLFs continue the significant gaps in the CARES Act response to severely distressed industries. The CARES Act provided much needed relief to our 150,000 furloughed employees through direct payments and substantially enhanced

unemployment benefits. That landmark legislation also addressed some of the liquidity challenges experienced by the theater companies themselves, but many key loan vehicles remain underfunded or awaiting formal enactment. Given the fact that movie theaters are completely shuttered, and have no work for their employees to do, loan programs must contain specific provisions to enable cinemas to survive this crisis, and have jobs for their employees when the crisis is over. The failure of movie theaters to survive this crisis will have significant negative consequences beyond the theaters themselves. Other businesses and industries depend on the success of movie theaters. Theaters are desirable and stable anchor tenants that boost foot traffic to nearby retailers, providing a lift to neighboring businesses and dependent industries.³ The creative community, which employs some 2.5 million people around the country, depends on a healthy and thriving theatrical market. Theaters are closely tied to their communities' economic success, and we were among the earliest businesses to close to support public health efforts. Without appropriate lending facilities, we may be among the last to fully recover.

NECESSARY LOAN PARAMETERS FOR SHUTTERED INDUSTRIES

1. Immediate Need for Lending Vehicles to Address Companies of All Sizes

As an initial matter, the MSLFs fail to address the needs of the exhibition market in its size, scope and terms. The ongoing viability of the industry depends on assistance that reflects the needs of the industry holistically. The success of the exhibition industry as a whole is dependent on the success of movie theaters of all sizes across the country meeting the unique demands of their communities. This network of individual exhibition companies form a wide theatrical footprint that film distribution companies rely on to shape their release patterns. Exhibitors depend on consistent product and distributors depend on this diverse footprint. The loan options under the CARES Act need to address each of the elements of this interconnected ecosystem that is central to American cultural life. While the efforts to assist small employers through the SBA and some small and

³International Council of Shopping Centers, *Expanding Entertainment Tenants Add Experiences to Shopping Centers*, (Sept. 5, 2019) https://www.icsc.com/uploads/t07-subpage/Entertainment_Part_II_Industry_Sector_Series.pdf (Movie theaters are key tenants in retail space helping drive consumer traffic and provide a lift to surrounding businesses).

mid-sized employers through the MSLFs is appreciated, there needs to be an immediate effort to provide necessary liquidity to movie theater companies of all sizes including: (1) small companies with fewer than 500 employees; (2) mid-sized companies with up to 10,000 employees; and (3) larger companies that employ more than 10,000 people. Ensuring a wide infrastructure of theaters after this pandemic is critical to continued studio releases of all sizes, the success of surrounding retail establishments and related industries, and the enduring success of the American moviegoing culture.

2. Need Option for Broad Forgiveness of Fixed Costs

As an initial matter, we understand that expanding forgiveness will take an act of Congress. That said, broad forgiveness should be included in all loan options for shuttered industries. Movie theaters are among a handful of industries that depend on social gathering for their ongoing success. Companies in these severely distressed sectors have been the hardest-hit by the COVID-19 pandemic as they were among the very first to shut down and will be among the last to be back to full capacity as we await for reopening plans across the country, many of which anticipate social distancing requirements for several months or longer.⁴ Currently, over 99% of the movie theaters across the country are completely shuttered through no fault of their own.

Currently, only the Paycheck Protection Plan (“PPP”) offers any forgiveness at all, and even this modest forgiveness does not allow for benefit toward the fixed costs movie theaters must continue to pay even while shut down in compliance with government orders. Loans intended to help these most impacted sectors should come with meaningful forgiveness tied to the economic realities of the companies as do their part to protect the American public and comply with government mandates.

⁴Adam B. Vary, *New Federal Coronavirus Guidelines Specify When Movie Theaters Could Reopen*, VARIETY (Apr. 16, 2020) <https://variety.com/2020/film/news/coronavirus-guidelines-reopen-movie-theaters-1234582617/> (movie theaters will be subject to social distancing requirements upon reopening); see also Heather Long, *Here’s What Reopening the Economy is Likely to Look Like: More Masks, Fewer Workers, High Unease*, THE WASHINGTON POST (Apr. 14, 2020) <https://www.washingtonpost.com/business/2020/04/14/economy-reopenings/> (“Opening up the economy is likely to happen in waves. Some sectors such as construction and manufacturing are likely to restart faster than restaurants, hair salons and concerts that involve more human contact and will need time to sort out safety measures. For months to come, business efficiency will be sacrificed by putting in place necessary health measures.”)

In order to avoid adding on more debt without a meaningful roadmap to reopening, government loan programs should acknowledge the costs to businesses of these prolonged closures. Fixed costs such as rent and utilities should be forgiven in full while the business is shut down and then proportionally forgiven as businesses are allowed to begin reopening, so that a business that is allowed to reopen only at a 50% capacity may have 50% of its eligible fixed costs forgiven.

Allowing all eligible fixed costs to be completely forgiven for distressed industries during a government-mandated shutdown is an equitable means to ensure these vital employers and cultural centers across the country are able to return to full operational capacity once it is safe to do so.

3. Eliminate Employee Retention Requirements for Shuttered Industries

Loan eligibility or forgiveness under the CARES Act should not be tied to employee retention for shuttered industries. The MSLFs contain a mandate that an eligible borrower “will make reasonable efforts to maintain its payroll and retain its employees during the term of the Eligible Loan.” A similar restriction is linked to the Mid-Size business loans in Section 4003(c)(3)(D)(i). The PPP loans also contain a requirement for 75% of the loan to go toward payroll.

These retention requirements have largely drained the utility of any loan for businesses that have suspended their operations due to government shutdowns. Especially given the generous pandemic unemployment supplement offered by the federal government, requiring businesses that have no work to offer employees to retain workers means that we are not able to divert the desperately needed liquidity to mounting fixed costs such as rent, mortgages, existing debt, and accounts payable. Further, health care mandates and product supply may mean that theaters may not reopen until after other businesses are able to go back to normal operating status⁵. Given our longer recovery needs, tying

⁵ Jason Guerassio, *Movie Theaters are Desperately Trying to Reopen. When it Happens, You Won't be Sitting Near Anyone for a While*, INSIDER (April 16, 2020) <https://www.insider.com/when-will-movie-theaters-reopen-masks-social-distancing-2020-4> (On product delay: “The coronavirus pandemic has caused many studios and distributors to drastically change their release slates.” On health code delay: “All sources

eligibility for much-needed liquidity to employee retention could prevent severely distressed industries from recovering, and would therefore have the unintended consequence of prioritizing employment in the short-term at the risk of the long-term economic health and employment capacity of these industries.

4. Need Flexibility on Acceptable Uses of Loan Proceeds to Address Industry-Specific Costs

Loan vehicles must allow for flexible distribution of the loan’s qualifying uses, with no minimums on the percentage dedicated to payroll or other expenses. With loans from the PPP to the MSLFs requiring a pledge to divert proceeds to payroll, borrowers are not able to divert the desperately needed liquidity to mounting fixed costs such as rent, mortgages, existing debt, and accounts payable. Exhibitors are eager to get back to pre-pandemic employment numbers and corresponding business levels, but must first get through this period of continued fixed costs with zero income. Many of our employees are protected by the generous unemployment provisions in the CARES Act; we ask that you expand your focus—particularly for shuttered industries—on funding fixed costs that are not otherwise addressed by the CARES Act. This flexibility is key to ensuring a “swift recovery once the disruptions abate.”⁶

5. Waive Solvency Requirements for Shuttered Industries

Solvency requirements and the application of credit ratings should not apply to businesses in distressed sectors that are shut down due to the global pandemic. For example, because the CARES Act (Section 4003(c)(3)(C)) applies all applicable requirements of section 13(3) of the Federal Reserve Act to CARES Act section 4003(c) loans, the solvency requirements contained in 12 C.F.R. § 201.4(d)(5)(iii)(B)⁷ may

agree that their plans will need to be based on the CDC’s recommendations, any mandates by governors and mayors, and evidence that the rate of new coronavirus cases has flattened.”).

⁶ Board of Governors of the Federal Reserve System, *Federal Reserve takes additional actions to provide up to \$2.3 trillion in loans to support the economy* (April 9, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm>

⁷ An entity is “insolvent” if it meets one of three tests, including that the “entity is generally not paying its undisputed debts as they become due during the 90 days preceding the date of borrowing under the program or facility”.

prevent closed consumer facing businesses from qualifying for a lending facility. Clearly, companies that have been ordered closed by state governments and have no income may not be able to overcome the strict definition of “insolvency” in regulations not meant to address the need to stabilize a pandemic induced economic shutdown.

In the alternate, Treasury and the Federal Reserve should adopt a broad approach to the Federal Reserve Act’s definition of insolvency and to the application of credit ratings, ensuring that businesses that have struggled to pay down existing debt and accounts payable since the declaration of a national emergency have access to liquidity. Backdating the solvency determination to the date of the pandemic declaration is consistent with the intent of both the Dodd-Frank Act and the CARES Act, which both attempt to distinguish companies that caused an economic crisis through bad acts from those that were harmed directly by government orders to shut down.⁸

⁸ Senator McConnell in particular was clear that the loan relief was intended to assist businesses in those sectors that were forced to slow down or shut down entirely in order to slow the spread of the pandemic. It is these cases where the type of the business itself made it particularly vulnerable to social distancing measures or full shutdowns that this section is meant to protect. As Senator McConnell described it:

We are not talking about so-called bailouts for firms that made reckless decisions. Nobody is alleging a moral hazard here. None of these firms—not corner stores, not pizza parlors, not airlines—brought this on themselves. We are not talking about a taxpayer-funded cushion to companies that made mistakes. **We are talking about loans, which must be repaid, for American employers whom the government itself—the government itself—is temporarily crushing for the sake of public health.**

Mitch McConnell (KY). “Senate Legislative Agenda.” Congressional Record Vol. 166, No. 53 (March 19, 2020) p. S1818. (Text from: Congressional Record Permanent Digital Collection); Accessed: April 15, 2020. <https://www.congress.gov/116/crec/2020/03/19/CREC-2020-03-19-pt1-PgS1817-8.pdf> (emphasis added).

In contrast, during the enactment of Dodd-Frank, Senator Dodd clarified the intent behind the solvency requirement was to ban bad actors from profiting off of their misdeeds:

The Federal Reserve can only use its 13(3) emergency lending authority to help solvent companies. Regulators can ban **culpable management and directors** of failed firms from working in the financial sector. That is an add-on. It makes sense that if someone has been involved in the mismanagement of a company and **caused this kind of disruption in the economy**, then it requires that they would be banned from engaging in further economic activities. With this agreement, there can be no doubt that the Senate is unified in its commitment to end taxpayer-funded bailouts.

Chris Dodd (CT). “Restoring American Financial Stability Act of 2010.” Congressional Record Vol. 156, No. 66 (May 5, 2010) p. S3131. (Text from: Congressional Record Permanent Digital Collection); Accessed: April 15, 2020. <https://www.congress.gov/111/crec/2010/05/05/CREC-2010-05-05.pdf> (emphasis added).

6. Need Reasonable Loan Terms that Will Allow Industries to Succeed Post-Pandemic

Loan terms to distressed sectors should contain terms that will promote recovery, not saddle these businesses with debts that will delay or prevent reopening. At a minimum, all loans to distressed sectors should adopt the following parameters:

- a. Interest Rate Should be No More Than 2%**
- b. All Loans Should Include 1 Year Deferral on Principal and Interest**
- c. Loan Maturity Period Should Exceed 10 Years Following 1-Year Deferral**
- d. Loan Should Have No Fees or Limited Fees**

Given uncertainty about how quickly theaters and other similarly distressed industries will be able to reopen, loan terms should reflect the difficulty in incurring additional debt, and should reflect the intention to ensure these industries are able to return post-pandemic, rather than an attempt to profit off of their necessary shutdowns.

7. Loan Caps and Application Deadlines Should be Increased to Address Possible Delay in Recovery

Loan caps and application deadlines should reflect a possible delay in recovery, particularly for shuttered industries. Currently, none of the loan vehicles adequately address the liquidity needs of severely distressed industries that may have longer recovery periods than other sectors. For example, the PPP loans offer a cap of 2.5 months of average 2019 payroll, along with restrictive payroll requirements. Further the MSLFs EBITDA calculation could leave many industries without necessary funding to get through a potentially months-long shutdown and likely slow reopening.

a. Loans Should be Calculated at 8x all Monthly Fixed Costs

Loans for shuttered industries should increase a cap to 8x the average monthly cost of *all* qualified uses of the loan expenses, not just payroll, which will allow the loan to go further and cover a longer- than-expected closure and recovery period.

b. Reconsider Use of EBITDA; If Used Definition Should Allow for Flexibility and With Increased Multiple

The MSLFs reliance on EBITDA to determine funding cap is prohibitive to many exhibitors and will unintentionally exclude these key businesses from the recovery funding measures. For example, many exhibitors have been expanding or investing in major improvements in recent years to add recliners or exciting new technologies. For many of these exhibitors, they have taken on new debt for remodeled or improved properties, but may have only been able to open those properties to the public for a few months leaving them off the EBITDA calculations. Further, because some of these properties were closed partially or entirely in 2019 this significantly impacts the EBITDA for 2019. This leaves these popular and growing companies with very little opportunity to access liquidity via the MSLFs as their EBITDA less debt is \$0 or potentially negative.

In order to address these concerns, the MSLF cap should allow for different measures for loan cap other than just EBITDA. In the alternative, a flexible approach to EBITDA using an average over a period of years or a theater-level/unit cash flow metric rather than an overall/corporate calculation could better reflect the needs and reality of these companies. When using a flexible EBITDA definition to determine the loan cap, a multiple of 6-8x is more appropriate, particularly for industries such as exhibition that operate with low margins and high fixed costs.

8. Loan Vehicles Should not be Mutually-Exclusive

While many small business theaters may be temporarily assisted with Small Business Administration loans, given the revised parameters of the loan programs and the uncertainty around reopening, we are concerned that the loans simply will not extend far

enough to cover the anticipated closure period. As such, we ask that all businesses that have already received loans through the CARES Act are also eligible for additional assistance from Treasury or Fed vehicles. In addition, many companies may have had to establish or draw down expensive debt to bridge the short-term delay in federal funding. These debts, which were incurred as a direct result of the pandemic, should be able to be refinanced into any new loan vehicle under the CARES Act. Finally, we would ask that loan programs, such as the two MSLF vehicles not be made mutually exclusive as this will unnecessarily deny access to liquidity from otherwise qualified borrowers.

9. Expand Lending Eligibility to Non-Bank Lenders

Finally, in order to diversify the opportunities for investment, the lending pool should be broadened to include non-bank lenders such as private equity firms. As we have already seen with the PPP loans, eligible lenders are hitting their funding caps quickly, creating a significant backlog in applications and delays in needed funding.⁹ By expanding eligible lenders, this will allow businesses to work with trusted lenders that understand their business and will also help reduce the burden on banks.

CONCLUSION

Movie theaters will survive in the long term if they can survive in the short term. The loan programs and lending facilities overseen by the Department of the Treasury and the Federal Reserve will be crucial to theater resiliency during this difficult period. We applaud your dedicated staff on the extraordinary steps taken in recent weeks to facilitate the recovery and reopening of the American economy. With the above parameters in mind, these loan programs will ensure that our theaters can bring the magic of the movies to communities for years to come.

⁹ Aaron Gregg, Jeanne Whalen and Erica Werner, *Small-business program intended for quick grants is running weeks behind*, THE WASHINGTON POST (April 15, 2020); <https://www.washingtonpost.com/business/2020/04/15/another-sba-program-is-severely-backlogged-running-low-funds/>.

We appreciate your attention to these comments.

Sincerely,

John Fithian

President and CEO

National Association of
Theatre Owners
1705 N Street, N.W.
Washington, D.C. 20036
(202) 962-0054
jf@natodc.com

Jackie Brenneman

General Counsel

National Association of
Theatre Owners
3450 Cahuenga Blvd. W
Unit 410
Los Angeles, CA 90068
(818) 506-1778
jeb@natoca.com

Esther Baruh

**Director of
Government Relations**

National Association of
Theatre Owners
1705 N Street, N.W.
Washington, D.C. 20036
(202) 962-0054
erb@natodc.com

April 16, 2020

Federal Reserve Board
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Dear Board Members:

There is a provision in the Main Street New and Expanded Loan Facility term sheets that requires a borrower to calculate and deduct from its maximum loan the amount of its “committed but undrawn debt.” While the apparent intent of this provision is to require a business to use its available debt/credit before taking advantage of MSLP loans, the provision will have the unintended consequences of making many companies ineligible for the MSLP program.

It is a common practice in the wholesale distribution industry for companies to use asset-based lending as a form of secured borrowing to fund their inventory needs. In many cases a large portion of the revolving credit – often 20-30 percent – is considered to be cushion by the banks and is only accessible to the company with the addition of fees, penalties, restrictions or limitations on its operations. Dominion control of bank accounts by the lenders is not uncommon when the company draws debt below the bank-mandated cushion.

Realistically, the amount of “committed but undrawn debt” that should be used in calculating the amount of requested loan under the MSLP should not include debt that is not actually available to the borrower without untenable restrictions being imposed by the banks.

The wholesale distribution industry may be uniquely impacted by the “committed but undrawn debt” restriction because use of that credit method is widely used to finance inventory, and we would therefore ask that you consider removing that condition in its entirety from the term sheets.

Absent that, we urge the Federal Reserve to consider modifying the Loan Facility Term sheets to allow borrowers to calculate their loan amounts using only the amount of “committed but undrawn debt” that is available to them without punitive bank responses.

We propose two modifications for your consideration:

Option 1:

- Substitute “available” for “committed” in item 5. (Both terms are universally understood terms in asset-based lending, but they mean two very different things.)

-more-

April 16, 2020

Page 2

- Add the following clarifying language: “For purposes of determining the eligible loan amount (or, for purposes of this provision), an eligible borrower’s existing outstanding and available but undrawn bank debt does not include any amount that, if drawn, would cause the Borrower to suffer fees, penalties, restrictions, or limitations on its operations. Lease financing obligations are also excluded.”

Option 2:

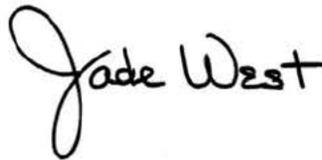
- No change to the term committed in item 5.
- Add the following clarifying language: “For purposes of determining the eligible loan amount (or, for purposes of this provision), an eligible borrower’s existing outstanding and committed but undrawn bank debt does not include any amount that is not currently available under the terms of the facility, nor does it include any amount that, if drawn, would cause the Borrower to suffer fees, penalties, restrictions, or limitations on its operations. Lease financing obligations are also excluded.”

Thank you for your consideration.

Sincerely,



Dirk Van Dongen
President & CEO



Jade West
Chief Government Relations Officer



America's Beer Distributors ■ www.nbwa.org

Craig A. Purser
President & CEO

April 16, 2020

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal
Reserve System
20th Street & Constitution Avenue, NW
Washington, D.C. 20551

Dear Secretary Mnuchin and Chairman Powell:

As the Department of Treasury and the Federal Reserve determine guidance on the implementation and eligibility requirements of the Main Street Lending Program (MSLP), I am writing to raise an issue that will impact many of the nation's pass-through businesses, including the majority of over 3,000 family-owned beer distribution businesses represented by the National Beer Wholesalers Association (NBWA).

Federal guidance should include and allow for S corporation access to the MSLP loan program during this difficult time. The inclusion of certain capital distribution limitations or restrictions could prevent S corporations from participation in this much-needed loan program.

To address this concern, NBWA recommends clarifying capital distribution attestation requirements for the loan program by addressing Section 4003(c)(3)(D)(i)(vii) of the CARES Act with an exception for pass-through distributions that are made to finance taxes owed on business income, in a manner similar to the following:

The Eligible Borrower must attest that it will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under 4003(c)(3)(D)(i)(vii) of the CARES Act. These restrictions do not apply to pass-through entities that make distributions to pay taxes attributable to income earned by the eligible entity.

NBWA members are primarily structured as S corporations. Many do not qualify for the Paycheck Protection Program because they have more than 500 employees. Beer distributors service every state and congressional district and collectively employ millions of workers across the country. Correcting this presumed unintended consequence for pass-throughs will help

ensure that these businesses – many of which are family-owned and family-operated – are allowed to participate in the MSLP loan program.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, reading "Craig A. Purser". The signature is written in a cursive style with a long horizontal flourish at the end.

Craig Purser
President & CEO



NEW ENGLAND BOARD OF HIGHER EDUCATION

45 Temple Place, Boston, Massachusetts 02111-1305 • Phone 617.357.9620 • Fax 617.338.1577 • www.nebhc.org

April 15, 2020

Jerome Powell, Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Dear Chairman Powell,

I write to ask that the Board of Governors consider including higher education institutions as eligible applicants for the Main Street Lending Program, which is a core part of the recently announced \$2.3 trillion in loans to support the nation's economy. They are a significant sector of our economy that provide impact and benefit in multiple ways.

In New England, our public and independent postsecondary institutions comprise one of the region's most precious resources and critical industries, the fourth largest in terms of overall economic impact. They are the core economic engines of cities and towns across the region, enrolling more than 1 million students, employing more than 256,000 faculty and staff and paying over \$12.8 billion a year in salaries—for an annual economic impact of over \$23 billion. Moreover, their graduates are the primary source of skilled talent consistently sought by employers in all industries. Their research and development are at the core of innovation and the region's current and future competitiveness. Their response to the pandemic has been rapid and significant—but they desperately require additional economic resources.

Nationwide, according to the U.S. Department of Education, higher education in the United States is a \$364 billion-a-year industry with nearly 4 million employees. Many of those employed at higher education institutions live in the communities in which they are employed and where they pay taxes and support local businesses.

The \$6.2 billion provided directly to postsecondary institutions under CARES for COVID-related expenses is an important first step—but this represents only a small percentage of actual institutional costs related to the pandemic. Consider that in New England, the average expected disbursement of emergency relief funds to directly support a 2-year public institution is \$1.2 million; to a 4-year public institution, \$2.3 million; and to an independent nonprofit institution, \$878,000. These amounts under CARES are simply not adequate to close financial gaps due to the costs of retaining faculty and staff, reduced revenues due to tuition and fee refunds, anticipated state appropriation cuts, reduced charitable contributions, investment losses and other factors. Additional help is needed and quickly.

Public and non-profit independent postsecondary institutions need expanded access to credit to stabilize their financial circumstances, which have been negatively impacted by the pandemic. In our region, where many postsecondary institutions were already facing financial sustainability challenges, a broad range of borrowing alternatives is needed. Please include postsecondary institutions in Main Street Lending Program.

Thank you for considering this request and I look forward to your earliest response.

Sincerely,

A handwritten signature in black ink that reads "Michael K. Thomas". The signature is written in a cursive style with a prominent initial "M".

Michael K. Thomas
President

cc: Eric Rosengren, President and Chief Executive Officer, Federal Reserve Bank of
Boston



NATIONAL
MULTIFAMILY
HOUSING
COUNCIL



April 16, 2020

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W
Washington, D.C. 20220

The Honorable Jerome H. Powell
Chair
Board of Governors of the Federal
Reserve System
20th Street and Constitution Ave, N.W.
Washington, D.C. 20551

Dear Sirs:

For more than 25 years, the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) have partnered to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of 1,500 firms that own, develop, manage and finance apartments. As a federation of more than 160 state and local affiliates, NAA encompasses over 73,000 members representing nearly 9 million apartment homes globally. One-third of all Americans rent their housing and 40 million of them live in an apartment home.

We commend you for the leadership in supporting businesses during the COVID-19 crisis. As requested, in your announcement, we write to you to provide comments on the Main Street Lending Program: *Main Street New Lending Facility* (MSNLF) and *Main Street Expanded Loan Facility* (MSELF) established on April 9. The scope of this program is potentially very broad, and its impact on the United States economy could be substantial. We are providing our initial observations but also stand ready to continue to work with you to enhance the program to ensure its maximum effectiveness for the multifamily industry.

Our comments concern:

- Ensuring MSNLF and MSELF Conforms to the Intent of the *Coronavirus Aid, Relief, and Economic Security (CARES) Act*;
- Loan Underwriting;
- Loan Parameters; and
- Loan Use

Conforming Changes to CARES Act Intent

The intent of the Payroll Protection Program (PPP) enacted as part of the *CARES Act* is to support small businesses impacted by COVID-19 and to assist those enterprises to retain their employees. Eligible small businesses are provided relief from repayment of PPP loans if certain conditions are met regarding the retention of employees. While the MSNLF and MSELF facilities are also intended to support the needs of small and medium-size businesses during the downturn, these programs, unfortunately, do not

offer similar relief offered under the PPP. Given that the goal of supporting businesses is paramount, NMHA and NAA believe that the Federal Reserve should offer a similar approach to repayment relief to the MSNLF and MSELF facilities as the Small Business Administration provides for the PPP. Specifically, we recommend that the Federal Reserve provide a loan forgiveness feature similar to that applicable to the PPP loans. Specifically, The loans from the MSNLF and MSELF facilities could become fully or partially forgivable if tied to specific business activities such as retaining employees and meeting other operational and financial obligations. Rental housing providers are gravely concerned about their ability to keep up with their financial responsibilities, which remain unchanged as more jurisdictions adopt renter protections with limited relief for housing providers. Owners and operators rely on rental income to pay employee payroll, mortgage payments, taxes, insurance and, importantly, use these funds to maintain continuity of essential services for apartment communities as many renters must shelter in place.

Loan Underwriting:

Underwriting Guidance

The Federal Reserve will rely on the banking system to underwrite and disburse funds from the two loan facilities. While the term sheet provided in the Federal Reserve's announcement describes certain loan provisions and qualifying parameters that borrowers must meet to qualify, it falls short in providing details regarding the loan underwriting process. As the expeditious disbursement of funds is critical for businesses to continue operating, we request further guidance on the requirements that lending institutions will need to follow to underwrite loan requests, as well as the specific company financial information that borrowers will need to provide. Without further specific guidance banks that will be underwriting and making the decisions to approve loans, approvals and disbursements will be delayed, denying funds to businesses at a critical time.

Loan Sizing

For the MSNLF, loan limits are based on the lesser of 1) \$25,000,000 or 2) an amount when added to outstanding debt plus committed but undrawn debt is no more than 4 times earnings before interest, taxes, depreciation and amortization (EBITDA). Loan sizing using this methodology fails to account for business models that vary widely in their net profitability and debt leverage such as firms in the multifamily business. Real estate businesses often generate passive and/or non-cash expenses that reduce EBITDA, thereby reducing the maximum loan amount available. This could result in a loan amount that would fall short of supporting necessary business operations. Finally, loan limits may be constrained by limiting the use of EBITDA for only 2019. If a company experienced a one-time event in 2019 that reduced their EBITDA, they would have their borrowing capacity reduced. The multifamily industry requests that the Federal Reserve consider changing the underwriting to reflect the business nature of the multifamily business which is a more leveraged business whereby EBITDA may not accurately reflect the financing need of the business. Alternatively, but less desirable as an option, is to allow

the businesses the option to use an average of EBITDA between 2017 and 2019 or provide lenders underwriting flexibility to evaluate borrowers that may have experienced a drop in their 2019 EBITDA due to an unusual circumstance unrelated to COVID-19 and that would not have been likely to persist in 2020 in the absence of COVID-19.

Loan Parameters

Borrower Fees

NMHC and NAA request that borrowers be permitted to finance, in the loan proceeds, the obligation to pay the lender a 100bps origination fee based on the loan amount, and, at the option of the lender, pay the origination fee the lender will pay to the Federal Reserve based on the loan amount sold to the Federal Reserve. We also have the following additional questions:

- While loan repayment is deferred for one year, does interest accrue during that time?
- If a loan is fully repaid at the end of the deferral period is the payoff amount simply the loan amount?

Interest Rate Determination

The interest rate for program loans ranges from SOFR+ 250bps to 400bps, yet there is no guidance offered to determine the specific spread the lender will charge. To make the program easier to execute, we recommend selecting a single spread. In particular, we recommend that the spread on the entire loan amount be split with the lender receiving a fixed spread similar to what is proposed in the guidance with the caveat that the portion of the loan purchased by the Federal Reserve should accrue interest at a rate near or under one percent. The blended interest rate on the loan would be at a level appropriate to supporting businesses impacted by COVID-19.

Employee Retention

The facility term sheets require the borrower to attest that they “will make reasonable efforts to maintain its payroll and retain its employees during the term of the Eligible Loan” yet it offers no detail on how this will be determined. We request guidance with respect to how that requirement will be determined, monitored, assessed and enforced. We believe specific guidance must be provided if this requirement is to be included in the term sheet. See our recommendation, in the section titled **Conforming Changes to CARES Act Intent**, on how to utilize employee retention as an evaluative tool.

Loan Uses

Payment on Higher Priority Debt

We note that loan proceeds cannot be used to repay other debt of equal or lower priority. Additionally, while it appears permissible to repay principle of a debt of higher priority, it is unclear if proceeds may be used to repay interest applicable to such debts. We request

that guidance clarify that loan proceeds may be used to repay interest and principle applicable to debt of higher priority.

Restricted Uses

The *CARES Act* imposes restrictions on the use of loan proceeds from the MSNLF and MSELF facilities, including the ability to distribute dividends. We believe that restricting dividend distributions over a four-year loan repayment period is overly restrictive. Accordingly, we recommend that the Federal Reserve enable borrowers to distribute dividends if certain financial metrics are met, such as those pertaining to liquidity levels and financial performance. Further, REITs represent a critical provider of housing yet are precluded from using this program due to the restriction on dividend distribution. We request providing a waiver to enable REITS to participate in the program given that they are statutorily required to distribute net earnings via dividends after satisfying all financial obligations that include loan repayments.

Thank you for your attention to these matters. Please feel free to contact Cindy Chetti, SVP of Government Affairs with any questions at 202-974-2328 or cchetti@nmhc.org if our organizations can be helpful in addressing these or other matters further.

Sincerely,



Doug Bibby
President
National Multifamily Housing Council



Bob Pinnegar
President
National Apartment Association

NONPROFIT NEW YORK

A relentless,
collective
force for good.

Public Comments on behalf of Nonprofit New York Re: Main Street Lending Program
April 15, 2020

The Honorable Jerome H. Powell
Chair, Board of Governors of the Federal Reserve System

Dear Chairman Powell:

Nonprofit New York is an association of 1,500 nonprofit organizations in the New York City area that works to strengthen and unite New York's nonprofit sector. We write to express our deep concern that the Federal Reserve's Main Street Loan Facilities plans will exclude nonprofits. Nonprofits with more than 500 staff members are ineligible for the CARES Act PPP/SBA 7(a) loan program.

Due to years of chronic under-funding, many nonprofit human service organizations in New York City have merged or consolidated into organizations with well over 500 staff members. These nonprofits operate with razor thin margins (averaging 1%), are shifting scopes of work as essential providers during the pandemic, do not have meaningful endowments, and are in most need of emergency loans. Many of the city's cultural institutions have experienced hundreds of thousands of dollars in lost revenue, are being denied business interruption insurance coverage, and have had to lay off significant staff or close. We expected nonprofits with more than 500 staff to be eligible for relief from the CARES Act §4003(c)(3)(D). If the Main Street Loan program intends to fulfill this section of the CARES Act, excluding nonprofits will be devastating for New Yorkers. The very nonprofits critical for New York City's survival through and after COVID-19 will not make it to mid-May. Our state is facing a \$15 billion deficit and our city \$6 billion, while strain on nonprofit services are increasing. We urge the Fed to include nonprofits in the Main Street Loan program, or create a program for nonprofits to fulfill §4003(c)(3)(D) of the CARES Act that should:

- Include an interest rate of 0.50% (50 basis points) for 501(c)(3) charitable nonprofits at a 5 year amortization
- Provide priority to 501(c)(3) charitable nonprofits responding to COVID-19 relief efforts and require lenders to make a proportionate number and value of loans to nonprofits to prevent the crowding out that is being seen in the Paycheck Protection Program
- Set a date certain for when employee retention provisions should begin • Payments shall not be due until two years after a direct loan is made

The Federal Reserve and Treasury must act swiftly to avoid immediate nonprofit layoffs, furloughs, and closures. Our community members, nonprofits, and the city's survival are on the line.

Sincerely,



Chai Jindasurat, Policy Director



April 16, 2020

VIA Federal Reserve Email

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, DC 20551

Re: Main Street Lending

Dear Board of Governors of the Federal Reserve System:

On behalf of our nation's venture capital investors and the 2.27 million workers who are building the next generation of venture-backed companies driving innovation, job growth and economic expansion in the United States, I write to provide our comments on the Main Street Lending Facility announced by the Federal Reserve ("MSLF"). The changes to MSLF discussed below would further the aim of the Federal Reserve System to bridge the liquidity disruptions arising in connection with the COVID-19 pandemic. We believe that adoption of these changes will permit the programs to more fully satisfy the aim of re-establishing damaged or destroyed liquidity (and the ability to pay current obligations and employee salaries) and support companies and their employees through the COVID-19 crisis.

The comments cover: (1) the EBITDA test and minimum cash flow requirements for a business to be considered for an MSLF loan; (2) the scope of prohibitions on capital distributions; (3) availability of funding for companies addressing the COVID-19 virus and attendant medical challenges; (4) the nature of the limit on employee and executive compensation; (5) priority of existing loans; and (6) payment on other debt.

1. EBITDA test as gating factor

Problem – The current MSLF test for minimum and maximum loan size uses a measure applicable to profitable companies with records of operation that have built up over several years. Because of this test, MSLF risks excluding virtually all companies who are in their growth phases. These companies include venture-backed growth companies that commonly use up investment capital to conduct research and development and invest in hiring and other scaling activities before revenue reaches a level that outstrips current expenses. This activity creates current year losses in a bid for long-term value creation. These businesses may not be profitable or cash flow positive yet. Free cash flow is not the only (or even best) measure of liquidity or potential for a venture-backed growth company, and the absence of free cash flow does not mean that the company is not in good financial standing. Rather, the fact that the venture-backed

growth company has capital and an equity valuation means the business has real promise, and by extension employs American workers and benefits the economy.

Solution – An alternate test can accurately reflect an appropriate loan size for venture-backed growth companies. In lieu of using the EBITDA test for venture-backed growth companies, we recommend an additional test based upon percentage of valuation (for private) or market capitalization (for public) for companies in their growth phases. For private venture-backed growth companies, the test could look to the most recent Internal Revenue Code Section 409A valuation; post-money valuation from the most recent financing round in an arms’ length transaction by a third party investor; or the dollar amount of investment in the preferred equity held in the company, and then use a percentage (15-25%) to create the upper bound of the loan. For public growth companies, the test could look to a percentage of 50-week average market capitalization for the period ending prior to the beginning of the COVID-19 economic crisis (similar to EBITDA test). The maximum loan size of \$25 million would not be changed.

2. Capital distribution challenge should be clarified

Problem – The capital distribution limitation in MSLF may remove liquidity from acquisition or initial public offering (IPO) activity for up to 12 months after repayment of the loan. This would be problematic if the loan is retired as part of an acquisition or an IPO but equity holders cannot receive proceeds for the sale of their equity for a year after that. This could chill IPOs and acquisitions that benefit companies and their customers, employees and the economy.

Solution – Exempt from the distribution limitation any amounts distributed to shareholders in an acquisition or IPO, provided that the MSLF loan is paid off prior to the acquisition or IPO, or asset or liquidity buffers are retained to ensure full repayment of the MSLF loan prior to distributions.

3. Possible unavailability to capital access for companies directly combating the COVID-19 crisis

Problem – Because availability of MSLF is keyed to needs arising due to “exigent circumstances of COVID-19,” some companies could conclude that they are excluded from participation in the MSLF if they need funds to scale up production, distribution or testing to produce products that will directly support efforts to combat the COVID-19 crisis (e.g., vaccines, research and production of testing devices or treatment drugs, development of medical equipment, and more).

Solution – Clarify that exigent COVID-19 circumstances include activities that further efforts to combat COVID-19 and effect on companies, markets and the economy.

4. Potential challenges with preexisting stock and equity award agreements with executives

Problem – If the limit on executive compensation sweeps in stock vesting from previously agreed upon stock compensation arrangements, even though stock-based compensation is illiquid stock, it may exclude venture-backed growth companies that otherwise would be eligible for the program. While compensation limitations are important, if the rules require counting illiquid stock awards arising from agreements entered into prior to enactment of the CARES Act vests

during the period the loan remains outstanding, the rules could create confusion and significant adverse outcomes for venture-backed growth company workers and executives.

Solution – For purposes of calculating compensation during the time period that the loan remains outstanding, disregard stock or equity awards that vest under stock or equity award agreements that took effect prior to March 27, 2020.

5. Existing lenders’ unwillingness to agree to MSLF loans that are pari passu with or senior to existing creditors

Problem – Many venture debt arrangements (as well as more traditional debt arrangements) allow existing creditors to prohibit or restrict new debt. This means borrowers must obtain lender consent before MSLF loans can be accepted.

Solution – Permit other lenders to restructure other debt so long as it does not create debt senior to the MSLF loan, and that the MSLF loan is not used to pay down other debt.

6. Limitations on reductions in debt and existing lines of credit by the lender

Problem – Lenders would lose the ability to restructure credit lines or otherwise reduce debt owed by borrowers when the MSLF loan is outstanding, which would create credit and asset management dangers for banks who provide other loans to the borrower.

Solution – Provide that limitations on reductions in debt and existing lines of credit by the lender be in place only for the first year of the loan.

Bringing in venture-backed growth companies under the MSLF program would help provide liquidity to these small-to-medium sized enterprises to sustain their businesses and their markets, assist their millions of employees, and provide support for a critical growth engine for our economy post-COVID-19.

Thank you for your remarkably fast work in setting up the MSLF in support of U.S. companies and for your consideration of our comments.

Sincerely,



Bobby Franklin
President and CEO

Accompanying Charts to Submission of NVCA April 16, 2020
Main Street Lending Facility (MSLF) Program
Please refer to Federal Reserve web portal submission by NVCA April 16, 2020 for
accompanying text

Chart 1

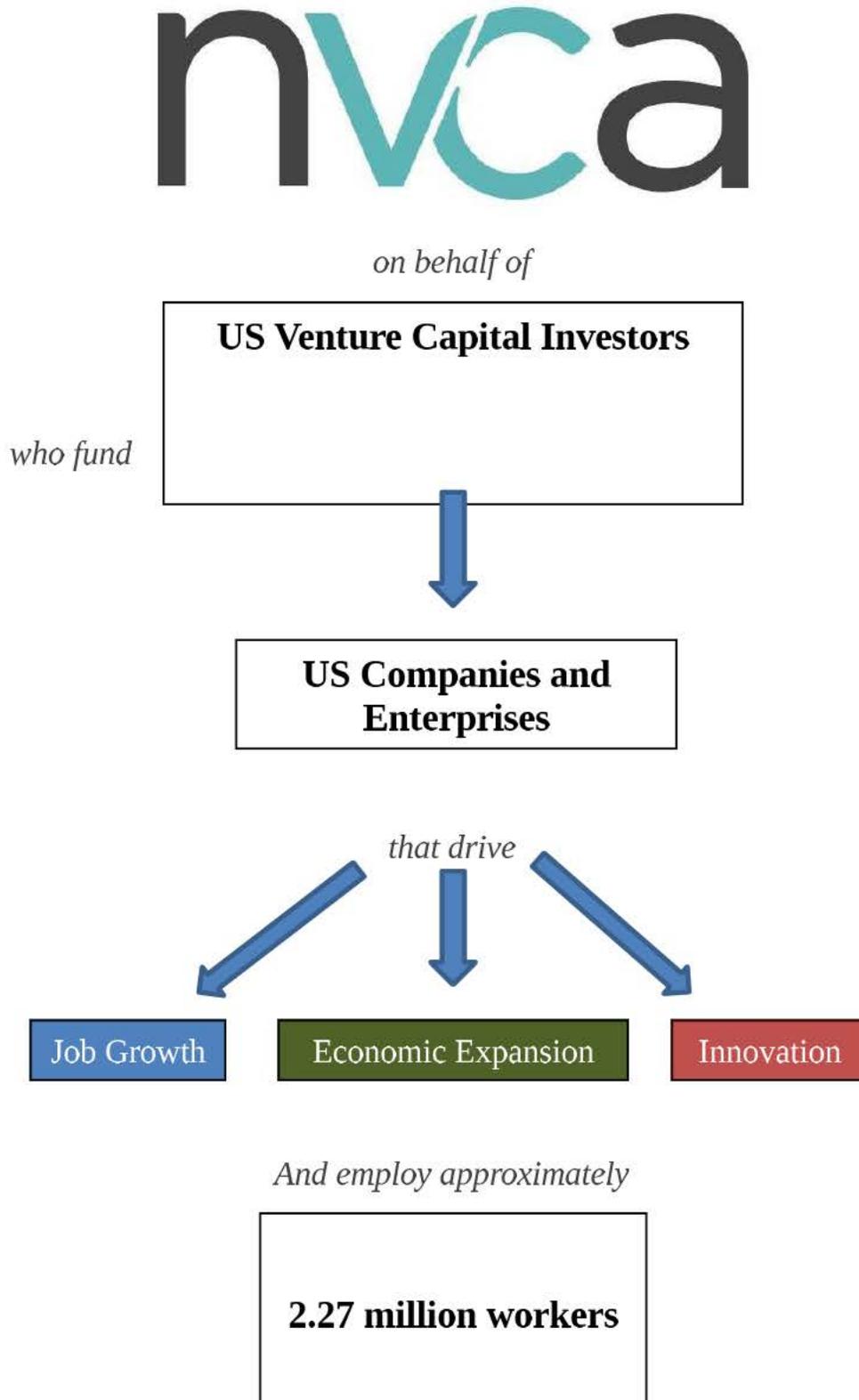


Chart 2

EBITDA controls minimum loan size for MSLF

EBITDA = (Revenue – expenses) + Interest, Taxes, Depreciation, and Amortization

Its focus:

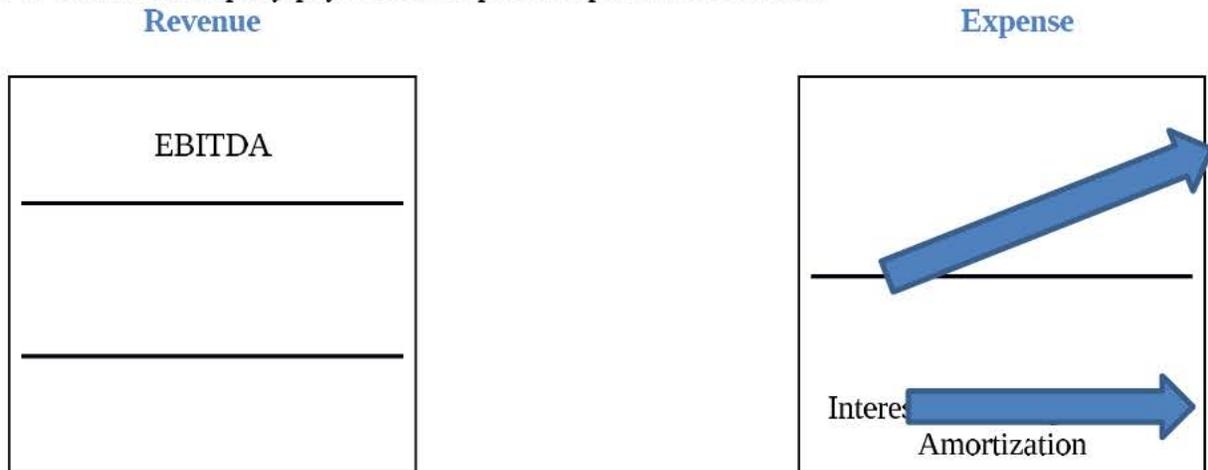
- Profitable companies with records of operation that have built up over several years

It excludes:

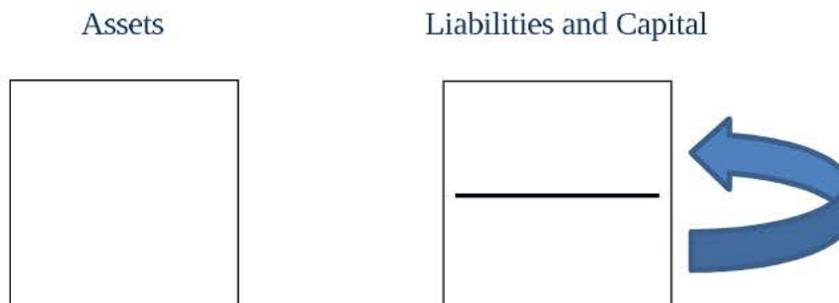
- Venture-backed growth companies

Why?

For a mature company payment of expense depends on Revenue



For a venture backed growth company, payment of expense depends on using invested capital to conduct research and development and hire and scale operations



Until revenue reaches a level that outstrips current expenses
These businesses may not be profitable or cash flow positive yet.

Accordingly...

Chart 2 cont'd

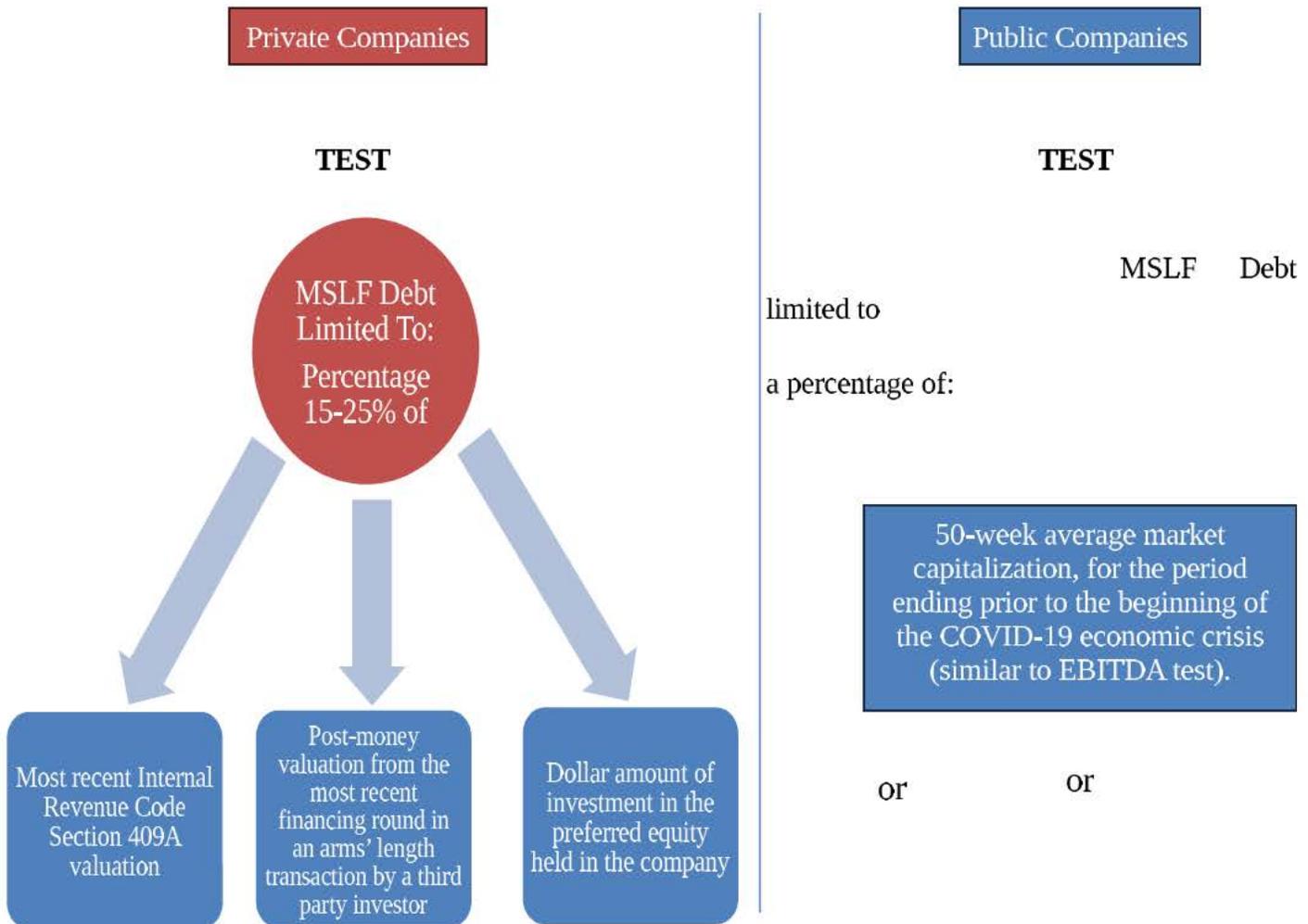
Free cash flow is not the only (or even best) measure of liquidity or potential for a venture-backed growth company

The absence of free cash flow does not mean that the company is not in good financial standing.

Rather, the fact that the venture-backed growth company has capital and an equity valuation attest real promise to the business, and by extension employment

Chart 3

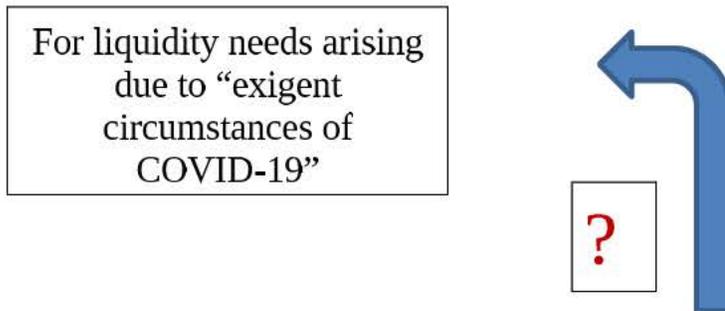
Alternate Sizing metric for venture-backed growth company



**RETAIN \$25MM CAP BUT SIZE MINIMUM LOAN TO USE ALTERNATE TEST
UNDERWRITEN BY BANKS PER CUSTOMARY PROCESSES**

Chart 4

MSFL Loans available to enterprises



But we need companies to

scale up production, distribution or testing to produce products (e.g., vaccines, research and production of testing devices or treatment drugs, development of medical equipment, and more)

These necessary activities and companies could be excluded from MSLF if they don't fit the exigent circumstances text.

Ron Travis, Jr.
Vice President, Tax & Legislative Affairs

April 16, 2020

Federal Reserve Board
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Dear Board Members:

I am hereby providing comments with respect to the Main Street New and Expanded Loan Facility term sheets. There is a provision in both facilities that requires a borrower to calculate and deduct from its maximum loan the amount of its "committed but undrawn debt." While the intent of this provision appears to be to require a business to use its available debt before taking advantage of the MSLP loans, the provision in practice makes O'Neal Industries ineligible for the MSLP program.

O'Neal is a 99-year-old family owned business in the Metals Distribution and Processing industry with locations in 30 states. We use an asset-based lending facility to fund our inventory needs.

Confidential
Business
Information

Confidential Business Information

As noted in the previous paragraph, Confidential Business Information

Absent that, we urge the Federal Reserve to consider modifying the Loan Facility Term sheets to allow borrowers to calculate their loan amounts using only the amount of "committed but undrawn debt" that is available to them without punitive bank responses.

We propose two modifications for your consideration:

Option 1:

- Substitute "available" for "committed" in item 5.
- Add the following clarifying language: "For purposes of determining the eligible loan amount, an eligible borrower's existing outstanding and available but undrawn bank debt does not include any amount that, if drawn, would cause the Borrower to suffer fees, penalties, restrictions, or limitations on its operations. Lease financing obligations are also excluded."

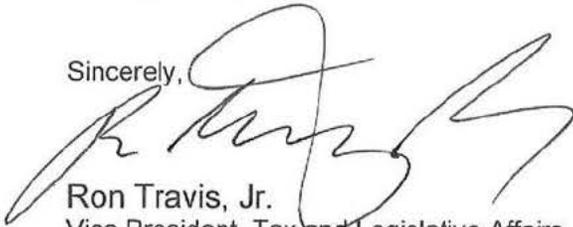
Option 2:

- No change to the term committed in item 5.
- Add the following clarifying language: "For purposes of determining the eligible loan amount, an eligible borrower's existing outstanding and committed but undrawn bank debt does not include any amount that is not currently available under the terms of the facility, nor does it include any amount that, if drawn, would cause the Borrower to suffer fees, penalties, restrictions, or limitations on its operations. Lease financing obligations are also excluded."

Either of these options would allow us to participate in the Expanded Loan Facility.

Thank you for your consideration.

Sincerely,



Ron Travis, Jr.
Vice President, Tax and Legislative Affairs
O'Neal Industries, Inc.

Office: 205-599-8415
Cell: 205-910-6949
Fax: 205-599-8516
Rtravis@Onealind.com



April 16, 2020

Members of the Board of the Federal Reserve System
20th Street and Constitution Avenue
Washington, DC 20555

RE: Main Street Lending

Dear Chairman Powell and Members of the Board of the Federal Reserve:

Thank you for the opportunity to provide comments on the Federal Reserve's recent announcement on lending facilities as part of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). Like many companies around the country, One Call is doing our part to minimize the negative impact on our associates, injured workers that we serve, health provider partners, and our customers while continuing to fulfill our mission of ensuring injured workers receive the care they need, when they need it. We commend the Department of Treasury for providing initial guidance on implementation of the various provisions aimed at assisting American companies during this difficult time.

One Call's Critical Role in the Workforce and Economy

One Call plays a critical and significant role in the nation's economy and workforce in our position as the nation's largest provider of specialized health services for injured workers. Based in Jacksonville, FL, we employ over 2,600 people throughout the country with additional employment centers in New Jersey, Pennsylvania, New York, California, Missouri, Georgia and Texas. Our employees, the injured workers we serve, and our healthcare provider partners are at the center of everything we do in achievement of One Call's mission; to ensure that injured workers receive the care they need, when they need it. We accomplish this through best-in-class provider networks throughout the country that allow the injured worker to experience a coordinated and connected experience with healthcare providers. In addition, this experience enables an efficient and effective pathway for the injured worker to return to work. Our diverse networks include many of the crucial ancillary healthcare services necessary to help the injured worker return to work after their injury. These services include physical therapy, transportation, diagnostic imaging, home health, translation services and durable medical equipment. It is this unique, coordinated care model that enables the injured worker to receive the best healthcare possible while maintaining costs and efficiencies for our customers who represent the largest employers throughout America.

As the nation's economy has come to a virtual standstill, the immediate effects upon all corners of the economy have been significant. Whether it has been the closing of a restaurant or store due to stay-at-home orders, or an injured worker having to cancel their medical appointment because their doctors are not able to take patients, there is little immunity to the broad impact of this crisis. Within our own industry, which is closely tied



to the American workforce, we have seen many customers and partners make the difficult decision to layoff or furlough their workforce.

One Call Recommends that the Federal Reserve Exercise Flexibility in Administering Lending Facilities

As the nation continues to navigate this difficult situation, it has become evident that both the short-term and long-term negative impacts on companies and workers around the country, including One Call, will be significant. We appreciate the efforts made through the CARES Act of 2020 to provide the necessary resources to the Federal Reserve to pursuant to the Main Street Expanded Loan Facility (“MSELF”) and the Main Street New Loan Facility (“MSNLF”). One of the primary goals of the CARES Act is to help stabilize and minimize the economic impact of the COVID-19 pandemic. We believe that these facilities will greatly assist many companies throughout the nation as they face the economic challenges ahead.

We also believe that the Federal Reserve should exercise as much flexibility (especially around the definition of EBITDA) as possible and within its authority to ensure that as many disproportionately impacted companies as possible are able to qualify for “Eligible Loans” within the available lending facilities, especially the MSELF. For example, there are many definitions for EBITDA and, in some cases, the definitions are set forth in the term loan credit facility that will be upsized by the MSELF or the MSNLF. A consistent definition of EBITDA, including the use of *Pro Forma EBITDA* as a financial measure would have the potential to expand the pool of eligible enterprises, strengthen the economy, and further accomplish one of the core goals of the CARES Act – protecting the American worker. Choosing a one-size-fits-all definition of EBITDA could have the unintended consequence of disqualifying companies in need, especially those that are directly tied to the delivery of vital healthcare related services and other critical industries.

As the impact of the COVID-19 pandemic is severe, it is likely that many companies within range or just above the definition of Eligible Loans could be disproportionately impacted without access to these facilities. For example, the *pro forma* 6x or 4x multiple on 2019 EBITDA, could further disqualify companies that may have had a challenging 2019 due to lower demand, tariff implications, etc., and would foreclose such companies from the availability of much needed liquidity. These companies and industries are currently having to make the same difficult decisions (and likely more significant future decisions) around workforce levels as those companies that fall within the limited definition of an Eligible Loan.



One Call greatly appreciates the opportunity to provide our perspective on this critical issue. With the critical role we place in the workforce and economy, we look forward to continuing to provide injured workers the care they need, when they need it, throughout the current situation and into the future. Ensuring that there is as much flexibility as possible in qualifying for the various lending facilities, including the MSELF, will help ensure that critically important companies like One Call can continue fulfilling their mission.

Sincerely,

Thomas W. Warsop, III
Chief Executive Officer
One Call



April 16, 2020

By Email

Jerome H. Powell
Chair
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Comments Regarding Main Street Lending Programs

Dear Chair Powell:

I write on behalf of Par Pacific Holdings, Inc. ("PPHI"), an energy company in the refining, retailing, and logistics spaces. PPHI appreciates the decisive actions of the Board of Governors of the Federal Reserve System (the "FRB") and the Treasury Department during these uncertain times, and is grateful for the opportunity to provide comments regarding the FRB's Main Street Lending Program. We hope that the two facilities that comprise this program – the Main Street Expanded Loan Facility ("MSELF") and the Main Street New Loan Facility ("MSNLF") – will provide a valuable source of financing for companies across a range of industries as the nation weathers the ongoing public health crisis and the related economic impact.

This comment letter raises five issues applicable to the Main Street Lending Program. As currently contemplated by the term sheets for the MSELF and the MSNLF the FRB published on April 9, we believe that the terms of these facilities do not optimally account for the ways in which some businesses operate, and thereby may inadvertently limit borrower access to the Main Street Lending Program and the loan amounts available to those borrowers. Therefore, we would respectfully suggest making the following five changes to the terms of these facilities, which we believe would enhance credit available to eligible businesses and allow lenders to better serve the policy aims for which Congress, the Treasury Department, and the FRB have created the Main Street Lending Program.

1. *The FRB Should Determine Maximum Loan Size Based Upon the Consolidated Operations of a U.S. Business Organization, Rather than the Specific Subsidiary that is the Borrower.*

The Main Street Lending Program is available to eligible borrowers that have up to 10,000 employees or up to \$2.5 billion in 2019 revenue. As is appropriate in these challenging economic circumstances, this set of eligibility criteria appears intended to cover a wide range of potential borrowers across industries, business stages and sizes, and corporate structures. Accordingly, many borrowers that seek to participate in either the MSELF or the MSNLF have complex corporate structures that utilize subsidiaries or other special purpose vehicles to borrow money to support the financing needs of the overall business. These structures are often

employed for administrative, tax, or other reasons that should not affect the ability of the larger business organization to participate in the MSELF or MSNLF.

In many cases, loans to such financing vehicles are supported by guarantees or other credit support from the parent company or other major operating subsidiaries of the business organization. The financing vehicle itself may have significantly fewer assets, sources of revenue, and employees, which are more often located at the operating companies or the parent company. Accordingly, if the term sheets published by the FRB for the MSELF and MSNLF are not interpreted to include the consolidated business operations of the parent company with regard to debt, revenue, and other financial measures that impact the maximum loan size available to an eligible borrower, many otherwise eligible borrowers will be excluded from participating in the MSELF and the MSNLF.

For example, under the MSELF, in some industries a parent company may not have an eligible term loan outstanding as required by the term sheet, even though one of its subsidiaries does. The parent company should not be prohibited from participating in the MSELF as a result. Similarly, a financing subsidiary may hold most or all of a business organization's debt burden, but most or all of the revenues may flow up to the parent company through operating subsidiaries that do not sit under the financing subsidiary from a structural perspective. In those cases, the financing subsidiary may not have the earnings before interest, taxes, depreciation, and amortization ("EBITDA") to obtain a loan under the MSELF or MSNLF given the leverage restrictions.

However, the purpose of the Main Street Lending Program is to provide credit to businesses facing financial difficulties in light of the economic fallout from the ongoing public health crisis. If the FRB requires the "Eligible Borrower" under these facilities to account only for its own financial position without regard to the fact that it is part of a complex corporate structure in which many of the assets, employees, and revenues are located elsewhere, loan sizes will be artificially constrained and many borrowers entirely excluded in a manner that we do not believe was intended.

We believe that the FRB should clarify its position with respect to an "Eligible Borrower" by taking a holistic view of the business organization that is seeking a loan, rather than looking at which legal entity directly borrows under such loan. Doing so would allow the size of the loan to be determined based upon the needs of the entire business organization, rather than artificially limited based upon the finances of the specific vehicle that holds the debt.

We understand that doing so may pose additional risk to the FRB's lending facilities, given that a particular borrowing entity may lack the financial wherewithal of the entire company. To address this concern, we believe that the FRB could require some additional form of credit support from the parent company or major operating subsidiaries, such as a guarantee, which would align with the manner in which loans to financing vehicles are often underwritten. We believe the "Eligible Lenders," which will retain 5% of the risk of loans, should be able through their underwriting processes to assess the need for such support, especially in the case of the MSELF where the lender is already familiar with the borrower's organization and may have an existing loan with that structure.

Finally, in the event the FRB does not grant the relief we have requested, it should at a minimum clarify that an existing term loan (originated on or before April 8, 2020) to a subsidiary could be assigned to a parent company or major operating subsidiary, thus making the parent company or major operating subsidiary eligible to participate in the MSELF. This is especially necessary where the parent company or other major operating subsidiary was already providing credit support for the loan.

2. *The FRB Should Not Require Collateral for Loans Under the Main Street Expanded Loan Program to be Shared on a Pro-Rata Basis.*

The term sheet for the MSELF provides that any collateral securing an eligible loan, whether pledged under the original terms of the loan or at the time the loan was upsized, will secure the FRB's loan participation on a pro rata basis. We believe that many lenders will be unwilling to make loans that require them to share loan collateral on a pro rata basis, especially when the upsized tranche of the loan would not involve the pledge of additional collateral by the borrower. This position has been confirmed through our discussions with one of our existing lenders. The risk that a lender would be required to accept in an MSELF loan exceeds merely the 5% of the upsized tranche that the lender retains; it also includes dilution of collateral that the lender obtained to secure the original term loan. This provides a clear disincentive to participating, as dilution of an existing lender's collateral for the original loan would effectively reduce the value of the collateral below the level that the lender thought was appropriate in making the initial loan. Therefore, we believe that the FRB should permit all or at least a portion of the upsized tranche to be made available on an unsecured basis, and not require collateral posted at the time of the original loan to be shared pro rata with respect to the FRB's participation in the upsized tranche. In the event the FRB does not grant such relief, we believe that the FRB should take only a second-lien (or otherwise wholly subordinated) position with respect to its pro rata share of the collateral, rather than a first-lien position. Changing the program in this manner will encourage lenders that otherwise might not be inclined to participate in the program to do so. This, in turn, will increase the availability of financing for businesses that need it, and thereby better fulfill both the congressional purpose for enacting this authority, and the FRB's purpose in implementing it.

3. *The FRB Should Permit Loans Other Than Term Loans (e.g., Revolving Loans) to Qualify as Eligible Loans for the Main Street Expanded Loan Program.*

In order to qualify as an eligible borrower under the MSELF, a company must have taken out a term loan from an eligible lender before April 8, 2020. However, many businesses rely upon forms of financing other than term loans, such as revolving loans. A business may have previously elected to obtain a type of loan other than a term loan for various reasons, including general practice within the particular industry or the distinctive financing needs of the particular business. This choice does not necessarily reflect whether such business is negatively and adversely impacted by the economic conditions associated with the ongoing public health crisis. In light of the difficulty in obtaining competitive financing in the current economic environment, a potential borrower may need term financing under the MSELF even if in more normal circumstances it would not have sought that type of loan. However, limiting such borrowers to participation in the MSELF, with its smaller maximum loan size and more substantial fees, places these borrowers at a disadvantage simply for selecting a revolving loan over a term loan in

a different economic context. As such, we recommend that the FRB open the MSELF to all borrowers that hold loans from eligible lenders taken out before April 8, 2020, regardless of whether the loan in question is a term loan. This will increase the availability of credit to potential borrowers, thereby furthering the aims of the Main Street Lending Program, and assisting worthy businesses during a difficult economic period.

4. *The FRB Should Increase the Maximum Size of Loans Under the Main Street New Loan Facility.*

Currently, there is a wide gap between the maximum size of loans available under the Main Street New Loan Facility and under the Main Street Expanded Loan Facility. Many eligible borrowers that would prefer to obtain financing under the MSELF may not have an outstanding eligible term loan to upsize, or may have one from a lender that is not eligible to participate as a lender in the MSELF, and accordingly those borrowers are forced to rely on the MSNLF. At present, the MSNLF has a substantially lower maximum loan amount. This amount may be insufficient for medium-size companies that would otherwise have sought more financing. Given the widespread disruption to the economy, and the acute need for financing faced by many companies, we believe that the FRB should seek to narrow the gap between the two programs. Therefore, we would recommend that the FRB increase the maximum loan size available under the MSNLF. This is appropriate given the minimal differences in risk allocation between the two loan facilities. Generally, we would recommend that the FRB increase the maximum loan size under the MSNLF to the lesser of \$150 million or six times EBITDA.

5. *The FRB Should Use EBITDA Calculations That Companies Have Relied Upon for Purposes of Public Reporting to Determine Maximum Loan Size.*

EBITDA is a non-GAAP measure that is calculated differently across industries and businesses in order to analyze the value of a business in its particular context. Adjustments to EBITDA may provide industry participants, lenders, and investors with greater insight into a company's financial condition than GAAP-only financial statements do on their own. The Securities and Exchange Commission ("SEC") generally restricts the use of non-GAAP measures in financial reporting. See 17 C.F.R. § 229.10(e). It does, however, permit the inclusion of a company's EBITDA, provided that the manner in which it is calculated conforms to SEC standards. See, e.g., Non-GAAP Financial Measures, Questions and Answers of General Applicability, Question 103.01 (Last Updated April 4, 2018) (*available at <https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm>*). To the extent that a reporter includes an EBITDA measure that deviates from the SEC definition, the reporter must refer to it by an alternate title, such as "Adjusted EBITDA." See *id.*

Many lenders and investors have made loans to, or investments in, many companies based on adjusted EBITDA measures. Indeed, some of the term loans eligible to be upsized under the MSELF were likely underwritten based at least in part on such measures, and such agreements typically include covenants or other tests that may be calculated based on adjusted EBITDA. We recognize that, for consistency in measuring maximum loan size under the Main Street Lending Program, the FRB intends to impose standards on how EBITDA is calculated. However, we believe that for purposes of calculating the maximum loan size under either the MSELF or the MSNLF, an eligible borrower should be permitted to rely on an adjusted EBITDA

number if the borrower can demonstrate that it regularly reports such an adjusted EBITDA calculation in its SEC filings and the manner in which an adjusted EBITDA is calculated is clearly disclosed therein. This would permit loans made under these facilities to better reflect the economic realities of borrowers by better accounting for the types of metrics employed in different industries as indicators of a company's financial health, without allowing potential borrowers to make new adjustments to the EBITDA calculation solely for purposes of obtaining a larger loan. It would also be consistent with lender practices, as oftentimes loan covenants use alternative measures of EBITDA as a means of restricting a borrower's activities. Not permitting any adjustments to EBITDA would significantly limit the loan size for many potentially eligible borrowers.

* * * * *

PPHI appreciates the opportunity to provide these comments. If you have any questions regarding our comments, please do not hesitate to contact the undersigned at (281) 899-4834, or by email at wmonteone@parpacific.com, or our counsel in this matter at Sidley Austin LLP, Michael Lewis, at (202) 736-8959.

Very truly yours,



William Monteleone
Chief Financial Officer
Par Pacific Holdings, Inc.

cc: Secretary Steven T. Mnuchin, Department of the Treasury
Michael Lewis, Sidley Austin LLP



PBF Energy Inc.
One Sylvan Way, 2nd Fl.
Parsippany, NJ 07054
PH: 973-455-7500
www.pbfenergy.com

April 16, 2020

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551

Re: Main Street Expanded Loan Facility

Dear Secretary Mnuchin and Chairman Powell:

On behalf of the more than 4,000 employees at PBF Energy Inc. ("PBF"), we would like to thank you for your leadership during this tumultuous time. We commend you both for your unwavering dedication in combating the coronavirus pandemic's adverse impacts on the U.S. economy. We would like to take this opportunity to offer comments regarding the Main Street Lending Program ("MSLP"), and specifically, the Main Street Expanded Loan Facility ("MSELF").

PBF operates six highly complex petroleum refineries in New Jersey, Delaware, Ohio, Louisiana and California, with a nameplate throughput capacity of more than one million barrels per day. Significant capital investment and high fixed costs are a prerequisite to maintaining a safe operating envelope in our industry, and our business requires a highly skilled labor force to manufacture the highest quality gasoline, diesel and jet fuel that truly fuels the quality of life in America and worldwide.

Travel and lifestyle restrictions necessary to combat the coronavirus pandemic have resulted in massive demand destruction for our core products. Jet fuel volumes are down more than 70 percent, with declines of more than 50 percent for gasoline throughout the country. Putting those figures in perspective, normal economic downturns would result in demand losses of approximately 10 percent. Based on yesterday's U.S. Energy Information Administration (EIA) release, trailing four-week gasoline demand is the lowest figure on record.

After reviewing the proposed terms of the MSELF, it would be helpful if the Treasury Department and the Federal Reserve ("the Fed") could clarify the "term loan" language included in the characterization of "Eligible Loan" on the program term sheet. In our experience, many companies utilize revolving, or other credit facilities in lieu of bank term loans. These credit facilities will typically have many similar characteristics to term loans in that they are originated and held by banks, are secured with various forms of collateral, contain financial covenant packages, and have a typical tenor of three- to five-years. However, revolving credit facilities may provide more flexibility for a borrower that elects to utilize the public capital markets to finance their long-term debt while relying on credit facilities to finance day to day operations.

If the phrase “term loan” is interpreted in the narrowest sense, many companies may not be able to participate based on the sole reference to “term loan” under the term sheet’s “Eligible Loan” section. As a result, it would be helpful for Treasury and the Fed to clarify that revolving credit facilities, or any credit facility that is currently secured with a company’s collateral, are eligible for inclusion in the program. Treasury and the Fed could also make it clear that the “upsized tranche” added to a term loan or an existing revolving or other credit facility that is currently secured with a company’s collateral must meet the features for an “Eligible Loan” detailed on the MSELF term sheet.

In closing, we would like to reiterate our appreciation for your continued efforts and for the hard work that you and your respective teams have undertaken to implement the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) and keep our economy positioned for a speedy rebound. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Erik Young', written in a cursive style.

Erik Young
Chief Financial Officer



RANGE RESOURCES®

Jeffrey L. Ventura
Chief Executive Officer and President
Jventura@rangeresources.com
817-869-4289

April 16, 2020

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

The Honorable Steven Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Main Street Lending Program

Dear Chairman Powell and Secretary Mnuchin,

Thank you for your leadership during this turbulent time. Personally, and on behalf of our 649 employees, we appreciate the extraordinary actions taken by the Federal Reserve and U.S. Department of the Treasury to support the economy, assist employers of all sizes, and bolster the ability of government to deliver critical services in response to the coronavirus pandemic.

As you proceed in your plans for the Main Street Lending Program, we know you recognize businesses vary widely in their financing needs, and we appreciate the opportunity to provide input to help ensure the program supports the economy as effectively, efficiently and responsibly as possible.

Businesses Like Range Resources Are the Main Street Economy's Backbone

As you and your colleagues at the Federal Reserve and Treasury continue to work on relief measures to mitigate the effects of the pandemic on our economy, we know that you are seeking to create programs that provide flexible support for critical industries that make up our nation's economy.

We appreciate the opportunity to share with you the way our business operates, as well as the importance of America's energy sector within the U.S. economy. As a result, we hope that you keep in mind the key role that businesses like Range Resources play in supporting America's economy.

The economic impact of America's energy sector is considerable, and it is U.S.-based independent natural gas producers, such as Range, and their diverse supply chains that are the

economic lifeblood of the industry. America's natural gas and oil industry supports more than 10 million jobs and nearly eight percent of our nation's Gross Domestic Product. Independent U.S.-based producers like Range produce 90 percent of America's natural gas.

Energy companies like ours also reinvest billions of dollars back into the American economy. In Pennsylvania where our operations are centered, Range has delivered significant economic benefits to our local communities, including \$3.5 billion in leasing and royalty payments since 2006.

We deeply value local business partnerships and strive to improve employment and economic opportunity for the communities in which we operate. We assume the aim of the Main Street Lending Program is to help companies like ours that deliver meaningful economic impacts to their local communities.

The Story of Range is the Story of American Small Business

From pioneering the first successful Marcellus Shale well in 2004 to becoming the first U.S.-based company to export ethane via the Port of Philadelphia, Range has been a distinctly American success story. Range continues to be a leader in U.S. natural gas production, supplying domestic and international industry. America's role as the world's top natural gas and oil producer is strong because of independent U.S.-based natural gas producers like Range, and that strength contributes to U.S. geopolitical resilience and economic security.

With the majority of the company's workforce and operations in Southwestern Pennsylvania, Range directly employs 649 individuals and supports the jobs of thousands of people who are employed by our various service providers. Unfortunately, small businesses like ours are not immune to the harsh realities impacting the American economy due to the COVID-19 pandemic.

As we navigate the effects of the pandemic, including temporarily decreased demand for our products, there are many difficult decisions that Range and other businesses our size are facing. Now more than ever, support for job-creators like Range is essential to ensuring our economy is prepared to rebound as we transition through this health and economic crisis.

Main Street Lending Program Flexibility

We applaud the Federal Reserve for using its full range of authorities to provide powerful support for the flow of credit in the economy, and for creating a program aimed at assisting small and mid-sized businesses. This has had immediate impact in stabilizing the credit markets, although those markets are not currently available to companies like ours to refinance short and near term debt maturities.

Unfortunately, the current restrictions on the use of funds made available through the Main Street Lending Program would prevent companies like Range from effectively utilizing Federal Reserve assistance in ways that would provide the most help to our business.

The draft term sheet for the Main Street New Loan Facility includes provisions that borrowers "must commit to refrain from using the proceeds of the Eligible Loan to repay other loan balances" and "must commit to refrain from repaying other debt of equal or lower priority, with the exception

of mandatory principal payments, unless the Eligible Borrower has first repaid the Eligible Loan in full.”

We ask that you provide additional flexibility regarding this restriction for borrowers that would otherwise qualify for the Main Street Lending Program. The launch of both the Primary Market Corporate Credit Facility and the Secondary Market Corporate Credit Facility demonstrate the recognition on the part of the Federal Reserve and the Treasury that disruptions to economic activity have heightened the need for companies to obtain financing in order to pay off existing short and near term debt maturities and therefore sustain themselves until economic conditions normalize and the credit markets are once again available.

Many small businesses, like Range, are seeking a bridge from crisis to recovery, and allowing the use of Main Street New Loan Facility funds for debt payments will help keep these engines of America’s economy afloat.

A Stronger American-Focused Recovery

As we look ahead, businesses like Range will be integral in helping our nation regain its post-crisis footing.

Through partnerships and a robust energy infrastructure across Southwestern Pennsylvania, Range safely produces clean natural gas that provides affordable, reliable power for consumers, small businesses and hospitals.

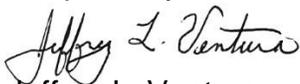
Range-produced natural gas also serves as a key input for domestic manufacturers that utilize the resource to create life-saving products, including critical pharmaceuticals and plastics for medical devices as well as military equipment and supplies.

Through this crisis and as our economy rebounds, natural gas producers like Range will be critical in providing energy to meet America’s agricultural and food needs as well as the growing energy demands of our allies around the world.

There’s no question that this affordable and abundant energy resource will be crucial in jumpstarting the economy in the COVID-19 aftermath. As the Federal Reserve and Treasury move forward with plans for the Main Street Lending Program, we ask that you take into consideration the importance of small businesses to the American economy, and you ensure that these businesses are able to access the capital they need to withstand these challenges and play their part in boosting the U.S. economy as we turn the corner on this challenging period.

With your support, Range and smaller businesses like ours will help the American economy maintain its position of strength in the months and years that follow this crisis. Thank you again for your leadership and for considering these comments. Please contact me with any questions.

Respectfully,



Jeffrey L. Ventura
Chief Executive Officer and President
Range Resources Corporation

April 16, 2020

Honorable Jerome Powell, PhD
Chairman
The Board of Governors for the Federal Reserve System
20th Street and Constitution Avenue N.W.
Room B-2052
Washington, DC 20551

Dear Chairman Jerome Powell,

To combat the COVID-19 crisis, the Federal Reserve [announced](#) that through its Main Street Loan Facility and Main Street Expanded Loan Facility it will purchase a combined total of \$600 billion of conforming, non-forgivable loans to entities with up to 10,000 employees or up to \$2.5 billion in annual revenues.

We are deeply concerned by the Federal Reserve's intent to exclude nonprofit organizations from these loans. This is particularly concerning for a number of nonprofits that are also not eligible for forgivable loans under the Small Business Administration's Paycheck Protection Program (PPP), created by the [CARES Act](#). We urge the Federal Reserve to immediately address this omission and make nonprofit organizations eligible under the Main Street lending facility.

The PPP currently excludes most nonprofits with over 500 employees. This includes some of the most effective nonprofits working to help vulnerable individuals find and maintain employment in communities across America, including several major employment social enterprises (ESEs). These ESEs are mission-driven, revenue-generating entities that provides employment and on-the-job work and life skills training to participants who face barriers to employment (e.g. formerly incarcerated individuals, recently homeless individuals, or opportunity youth). There are over 400 ESEs in 43 states. [Research](#) has shown that 215 ESEs have employed, trained, and supported over 50,000 workers and have helped individuals overcome significant barriers to work while earning almost \$1 billion in wages, support services, on-the-job training, and expand economic opportunities.

We note that Section 4003 of the CARES Act provides for a separate lending program for "mid-sized" businesses and other entities with between 500 and 10,000 employees, and specifically mentions nonprofits as eligible entities. The legislation caps interest payments under this program at two percent and defers principal and interest payments for at least six months. We further urge the Federal Reserve and the Department of Treasury to coordinate, announce, and implement this program expeditiously, as many ESEs and other nonprofits need access to this lending with great urgency.

We also note that this second "mid-sized" section 4003 lending program is not available to entities with fewer than 500 employees. Although smaller nonprofits are eligible for the PPP, given some of the PPP's limitations, including backlogs associated with its initial implementation, caps on maximum

loans under the program, and limited funding for a vast pool of applicants, it is critical that these smaller nonprofits (including many ESEs) have access to the Federal Reserve's Main Street Lending program.

ESEs need help now, like so many other businesses and nonprofits, that are being hit hard during the COVID-19 crisis. ESEs operate in wide ranges of industries, including maintenance and landscaping, retail, e-Commerce, warehouse and logistics, trucking, computer refurbishing, food service, consumer packaged goods, recycling, and staffing industries, all of which have seen scaled back operations or shutdowns, thus suffering major revenue losses. The closure of these organizations could eliminate community assets that are a critically important part of economic recovery. These businesses can rapidly reach the people in greatest need with productive employment and provide immediate income.

For all these reasons, we urge you to expeditiously issue guidance expanding the Main Street Lending programs to nonprofits.

Sincerely,

America Forward
Center for Employment Opportunities
Chrysalis
Goodwill of Central Texas
Goodwill of San Francisco, San Mateo and Marin
Goodwill Silicon Valley
Juma Ventures
Project Evident
REDF (Roberts Enterprise Development Fund)
Results for America
UTEC
Year Up

CC: Lael Brainard, Angela Ford, Ingrid Naylor, and Kipp Kranbuhl



Revel Transit Inc.
68 3rd Street
Brooklyn, NY 11231

April 16, 2020

The Honorable Jerome H. Powell, Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Dear Chairman Powell:

We appreciate the Federal Reserve's announcement of the Main Street (new and expanded) Loan Programs. We are submitting this letter in response to your call for comments on the programs. Our goal is to ensure companies that need it can access these programs while also ensuring that there are safeguards in place with regards to taxpayer funds.

Revel Transit Inc. (Revel) is a Brooklyn-based operator of shared electric moped services. Founded in Brooklyn in March of 2018, Revel has grown its operations from a small pilot of 68 mopeds operating in Brooklyn to over 1,300 mopeds in New York City (Brooklyn, Queens and Manhattan) and additional fleets in Washington, D.C., Austin, Miami and Oakland.

We currently employ over 146 workers across four states and the Washington D.C. territory. We have been growing rapidly and, prior to the COVID-19 pandemic, had been anticipating significant additional growth in the months and years to come.

Our business, like that of many other companies, has been severely impacted by COVID-19. The demand for our services has decreased significantly and our revenues have drastically declined as a result. In response, we have taken necessary steps to cut costs and without additional funding, further reductions may become inevitable in the coming months.

As it currently stands, Revel is not eligible to apply for either of the Main Street Loan programs because the programs require borrowers to have positive EBITDA. It is possible that this requirement aims to address the solvency requirements under Section 13(3) of the Federal Reserve Act. Unfortunately, most start-ups cannot meet this test, but they regularly verify solvency with lenders, investors and business counterparties by other means.

We therefore recommend the following changes:

- **EBITDA Test.** We urge you to ensure that both Main Street Loan programs are available to growing, entrepreneurial companies with negative EBITDA by focusing instead on maximum loan amounts (i) as a percentage of enterprise valuation, (ii) determined by commonly accepted debt/equity metrics on a per industry basis and/or (iii) as determined by the lending bank (who

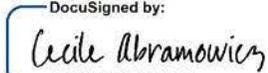


Revel Transit Inc.
68 3rd Street
Brooklyn, NY 11231

retains 5% risk) in applying reasonable underwriting criteria relevant to growth-stage companies, such as cash on hand, revenue growth, existing debt, operating costs, gross margins, etc.

Mr. Chairman, we appreciate the opportunity to provide feedback on the Main Street Lending programs and are thankful for the Federal Reserve's efforts to support firms such as ours during this economic crisis.

Sincerely,

DocuSigned by:

A067ABD13FA7442...
Cécile Abramowicz
General Counsel

cc: Congresswoman Nydia M. Velasquez



Jerome H. Powell
Chair, Board of Governors
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

April 14, 2020
Re: Comment on Main Street Lending

Dear Chairman Powell:

I am writing to you on behalf of Robin Hood, New York City's largest organization focused on lifting families out of poverty, to express our deep concern that large non-profit organizations with more than 500 employees are ineligible for the Federal Reserve System's Main Street Lending program to stabilize organizations impacted by the COVID-19 pandemic. Furthermore, no other lending facility has been announced or implemented to comply with the CARES Act §4003(c)(3)(D) to support this vital sector of the economy and response to this public health and economic crisis.

Nationally, non-profits contribute \$900 billion to GDP and employ 12 million workers. These organizations are critical to the emergency response, recovery, and economic stability of the country. Robin Hood funds more than 200 organizations across New York City that operate food pantries, homeless shelters, settlement houses, medical clinics, and other vital services for low-income New Yorkers who are being devastated by the public health and economic consequences of the outbreak. In New York City, especially, non-profit organizations are on the front lines of the pandemic response and may not survive the crisis's economic fallout, putting their continued service of the most vulnerable communities in jeopardy.

New York City's non-profits employ 16 percent of the city's private workforce. There are 3,000 health and human service organizations that employ more than 40,000 people alone. Much of this workforce is concentrated in non-profit organizations with more than 500 employees. According to Sea Change, a non-profit merchant bank, roughly 50 non-profits represent \$2.8 billion (about 50 percent) of New York City's \$5.8 billion in annual social service spending with non-profit partners¹. Yet these organizations have very low levels of financial reserves (below two weeks in some cases), limited access to credit, and need access to emergency loans that the Federal Reserve can and should make available to them through banks and other lenders.

The Treasury Secretary is tasked with creating a program granting loans to nonprofits and other entities that charge an interest rate of no higher than 2% and that would not accrue interest or require repayments for at least the first six months. The Main Street Lending Facilities announced by Treasury and the Federal Reserve on April 9th does not satisfy the legal mandate from Congress.

As Treasury Department and the Federal Reserve work to create a program as directed under §4003(c)(3)(D) providing financing to banks and other lenders to make loans to non-profits and other mid-size business of

¹ <http://gd7xi2tioeh408c7o34706rc-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/Too-Big-To-Fail.pdf>

826 BROADWAY 9TH FLOOR NEW YORK NY 10003 T: 212 227-6601 F: 212 227-6698 ROBINHOOD.ORG

Chair John A. Griffin • Vice Chair Dina Powell McCormick • Lee S. Ainslie III • Jacklyn Bezos • Victoria B. Bjorklund • Jeff T. Blau • Scott Bommer
Peter F. Borish • Geoffrey Canada • Cecily Carson • Anne Dinning • Glenn Dubin • Marian Wright Edelman • David Einhorn • Mary Callahan Erdoes
Roland Fryer • Doug Haynes • Kaya Henderson • Jeffrey R. Immelt • Paul Tudor Jones II • Peter D. Kiernan III • John King Jr • Joel S. Marcus
Doug Morris • Daniel S. Och • John Overdeck • Robert Pittman • David Puth • Larry Robbins • David Saltzman • Alan D. Schwartz
David M. Solomon • Barry Sternlicht • Steve Stoute • John Sykes • David Tepper • Marta Tienda • Kenneth G. Tropin • Beatrice W. Welters • CEO Wes Moore



up to 10,000 employees, we believe the program must include the following terms that satisfy the dictates of the CARES Act:

- Include an interest rate of 0.50% (50 basis points) for 501(c)(3) charitable nonprofits at a 5-year amortization
- Provide priority to 501(c)(3) charitable nonprofits responding to COVID-19 relief efforts and require lenders to make a proportionate number and value of loans to nonprofits to prevent the crowding out that is being seen in the Paycheck Protection Program
- Set a certain date for when employee retention provisions should begin
- Payments shall not be due until two years after a direct loan is made

The very existence of non-profits at the forefront of the crisis response and eventual recovery efforts is at stake. We urge the Federal Reserve to meet this emergency need in compliance with the CARES Act. Thank you for your leadership and commitment to the nation at this critical moment.

Sincerely,

A handwritten signature in black ink, appearing to read "Wes Moore", with a horizontal line underneath.

Wes Moore
CEO

826 BROADWAY 9TH FLOOR NEW YORK NY 10003 T: 212 227-6601 F: 212 227-6698 ROBINHOOD.ORG

Chair John A. Griffin • *Vice Chair* Dina Powell McCormick • Lee S. Ainslie III • Jacklyn Bezos • Victoria B. Bjorklund • Jeff T. Blau • Scott Bommer
Peter F. Borish • Geoffrey Canada • Cecily Carson • Anne Dinning • Glenn Dubin • Marian Wright Edelman • David Einhorn • Mary Callahan Erdoes
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David M. Solomon • Barry Sternlicht • Steve Stoute • John Sykes • David Tepper • Marta Tienda • Kenneth G. Tropin • Beatrice W. Welters • *CEO* Wes Moore



April 16th, 2020

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal
Reserve System
20th St. and Constitution Ave. NW
Washington, DC 20551

Re: Main Street Lending Program

Dear Secretary Mnuchin and Chairman Powell:

On behalf of our members, the Small Business Investor Alliance (SBIA) appreciates the ongoing work of the Federal Reserve and Treasury Department (“Treasury”) in responding to the unprecedented economic disruption caused by the COVID-19 pandemic. SBIA is a national association that develops and advocates policies that enable capital investments into American lower middle market business. Our membership includes funds electing to be regulated as Rural Business Investment Companies (RBIC), Business Development Companies (BDCs) under the Investment Company Act of 1940, private capital funds, Small Business Investment Companies (SBICs), and similar funds that serve the lower and middle market.

The economic stoppage caused by the pandemic is unprecedented in American history and has hit the portfolio companies of our membership particularly hard. Until the shutdown, these were the economic drivers of job creation and the future of the American economy. The extraordinary steps taken by Congress, the Federal Reserve, and Treasury are necessary to provide liquidity to businesses that were healthy before this crisis hit. Saving these economic engines will be critical to reactivating the economy and getting Americans working again.

The SBIA welcomed the April 9th announcement regarding the establishment of the Main Street Lending Program (MSLP), which will consist of the Main Street New Loan Facility (MSNLF) and Main Street Expanded Loan Facility (MSELF). The MSLP will complement the already existing Paycheck Protection Program (PPP) by providing credit to middle market businesses that employ over 60 million Americans and who are largely unable to access the PPP.

The SBIA surveyed our membership to learn how accessible the initial terms of the MSLP would be for our members’ portfolio companies, and what changes are necessary to ensure that middle market companies are able to obtain the liquidity necessary to see them through this crisis. As a general matter, we believe the terms of the MSLP should reflect the reality that many of these smaller businesses were not able to receive conventional bank capital because they were asset-

light, rooted in the service economy, or had financing structures and time horizons that were outside of the vanilla norms of conventional banking. The MSLP should be readily available to all American small and medium-sized businesses that are fighting to survive and to maintain their employees – including those for whom conventional banking services may not have been readily available even before this shutdown.

Based upon the results of our survey, the SBIA urges the Federal Reserve and Treasury to adopt the following amendments to the MSLP before it goes live:

- The current leverage limits for MSNLF (4x EBITDA) and MSELF (6x EBITDA) are too low and will shut out many lower and middle market businesses from accessing the facility. We believe these levels should be raised to 6x EBITDA for the MSNLF and 8x EBITDA for the MSELF to more accurately reflect the balance sheets of these businesses.
- Since most non-bank lenders and smaller companies typically do not utilize unadjusted EBITDA, the MSLP should allow for use of “adjusted” EBITDA, which permits customary add-backs and non-cash items.
- Earlier stage businesses that are unable to access the PPP because of affiliation rules may have generated insufficient EBITDA to access MSLP capital to save their business and protect their employees.
- Allow non-bank lenders, including Business Development Companies (BDCs) electing Regulated Investment Company status as set forth in the Internal Revenue Code Sec. 851(a)(1)(B) to be treated as “eligible lenders” under both the MSNLF and MSELF. The existing terms leave out many middle market businesses that rely on nonbank lenders for credit.
- The definition of an “eligible loan” in both the MSNLF and MSELF should be expanded to include loans made by entities electing Regulated Investment Company status as set forth in the Internal Revenue Code Sec. 851(a)(1)(B).
- Restrictions on dividends and stock repurchases under section 4003(c)(3)(A)(ii)(I) of the CARES Act should not be automatically applied, given the need for middle market businesses to attract and retain investors, and that both retail and institutional investors rely on the income generated from dividend payments as explained in greater detail below.
- At a minimum, the terms related to dividend restrictions should reflect the uniqueness of certain investment structures and pass-through entities (which make tax-related distributions to shareholders).
- Finally, in order for the Main Street Lending Program to achieve its intended goals, we urge Treasury and the Federal Reserve to issue updated guidance that allows certain entities to continue to pay dividends to investors. Among other requirements, BDCs are required to pay out at least 90 percent of their taxable income in the form of investor dividends. BDCs should not be disqualified from access to programs or facilities providing direct loans simply because they elect to pay out 90 percent of their taxable income, which ultimately goes to benefit individual investors, including in their 401(k) plans.

Regulators should allow BDCs, their portfolio companies, and other similarly situated entities to continue to serve businesses in the middle market and help sustain our economy through this unprecedented disruption.

We respectfully urge the Federal Reserve and Treasury to issue updated terms that reflect these changes so that the portfolio companies of our members can weather this unprecedented crisis until they are able to fully operate once again. The SBIA commends you for your leadership and is ready to assist in any way that we can.

Sincerely,

A handwritten signature in blue ink that reads "Brett Palmer". The signature is fluid and cursive, with the first name "Brett" and last name "Palmer" clearly distinguishable.

Brett Palmer
President
Small Business Investor Alliance

MANAGEMENT COMMITTEE**PRESIDENT**
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OTTERBOURG P.C.**CO-GENERAL COUNSEL**
RICHARD KOHN
GOLDBERG KOHN LTD.**GEO & SECRETARY**
RICHARD GUMBRECHT,
SECURED FINANCE NETWORK

April 15, 2020

Via Email:

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington D.C., 20220

The Honorable Jerome H. Powell
Chairman
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

RE: Response to Main Street Lending Program Guidance

Dear Secretary Mnuchin and Chairman Powell:

I am writing on behalf of the Secured Finance Network (formerly known as the Commercial Finance Association) (“[SFNet](#)”), representing the \$4T secured finance industry to respond to the request for comments and suggestions to facilitate the objectives of the Main Street Expanded Loan Facility and the Main Street New Loan Facility as set out in last Thursday’s publication by the Federal Reserve (the “Programs”).

SFNet congratulates and supports the extraordinary and groundbreaking efforts being undertaken by the United States Treasury Department and the Federal Reserve Board to provide capital to companies impacted by these unprecedented times. However, it is our belief that the majority of

potentially Eligible Borrowers who would benefit from the Program have existing secured/collateralized debt so it is critical that the Program specifically address the relationship between these existing secured loans and the additional loans provided for in the Programs in order to meet its stated objectives.

SFNet is a trade organization founded in 1944 representing depository and non-depository lenders engaged in asset-based lending, factoring, trade and supply chain finance with 1,000 member organizations throughout the United States. Our network of secured lenders, finance companies, service providers and others do the essential work of providing capital that fuels our nation's economy.

The secured finance industry underpins, either directly or indirectly, about one-fifth of the transaction volume that makes up the \$20 trillion US gross domestic product. We estimate the number of those directly employed in either providing or supporting secured financing activity is approximately 60,000 individuals at over 5,000 commercial banks and another approximately 1,500 non-depository lenders across the US.

Secured transactions provide financing to over 1 million US commercial entities, ranging from single-employee firms to large corporate and public enterprises. Roughly one-third of the approximately 4.6 million firms in the US with at least two employees directly feel the impact of secured finance. And the benefits affect not only the enterprises, but also more broadly their employees, customers, communities and the economy as a whole.

As you prepare to implement regulations in support of the Program, we urge you to consider the following recommendations in order to integrate the potentially Eligible Borrowers' pre-existing and future secured loans into the Program.

1. Allow for non-depository lenders to be Eligible Lenders under the Program. This community provides well in excess of \$100B in capital to the small and middle market businesses which the Program is intended to protect with most of these loans being secured by the borrower's collateral. Failure to include these critical sources of funding would materially limit accessibility to the Program facilities for Potential Borrowers for the following reasons.
 - a. Existing Potential Borrowers who have existing secured loans from non-depository lenders would now be forced to re-affiliate their lending relationship and their existing facilities with a new depository lender during a crisis environment and who, at the same time, are trying to service their existing borrowers under the Program facilities making it unlikely or causing long delays before the Potential Borrower would be able to enter into a Program facility, if at all.
 - b. Allowing the non-depository lenders to be Eligible Lenders would minimize the integration between the existing or future secured loan and a Program facility as it would be handled by just one institution.
 - c. These non-depository lenders are, for the most part, well capitalized and enjoy unique skills and expertise in servicing middle market borrowers and would therefore expedite the process of achieving a Program facility.
2. As the Eligible Borrower in most instances already has secured or possibly unsecured lines of credit in existence at the time the Program facility is being provided, it is imperative that it be a requirement that the SPV "participant" not be allowed to cancel, amend, modify or reduce

any existing lines of credit and that upon a default under the pre-existing credit facility by the Eligible Borrower the rights and remedies of the pre-existing lender are not adversely affected or otherwise modified, amended or vitiated with respect to the terms of the applicable pre-existing credit facility.

3. In order to facilitate the implementation of the Programs, and for ease of execution and certainty with regard to preserving the existing terms of the current capital structure and loan facilities of an Eligible Borrower, the guidance for the Programs should expressly provide that the rights of the government SPV are as is customarily provided to a "participant" rather than as a direct lender such that the SPV will be a purchaser of an interest in the loans made by the Eligible Lender, the SPV is not in privity with the Borrower, and the Eligible Lender may manage the lending relationship, including with respect to amendments, waivers and other aspects of the administration of the facility, including as to the assignability of the Eligible Lender's debt and for purposes of dealing with other creditors of the Eligible Borrower.
4. In order to facilitate the Program's aims provide that the Eligible Lender does not make any representations or warranties, and has no liability to the SPV participant, with respect to the value or collectability of the debt or any collateral, the information provided by the Borrower, performance of the Borrower under the credit facility, the financial condition of the Borrower and similar matters and actions of the Eligible Lender taken in the administration of the credit facility in its reasonable judgment.
5. For a revolving asset-based credit facility, the proposal that the term loans made under the Main Street Expanded Loan Facility be *pari passu* with the revolving loans made by the lender will actually reduce the amounts available to the Eligible Borrowers rather than increase them, which is obviously the exact opposite of the purpose of such Program. Without clarification this will be a significant adverse unintended consequence. The asset-based lender determines how much credit it can make available to a borrower for its working capital based on the ability to be repaid from the sale of the collateral first. For any debt that shares that position, as is proposed for the Expanded Loan Facility, the asset-based lender will because of the fundamental mandate of the product, reduce the amount it will lend by the amount of such debt. Therefore, the Program needs to expressly shift the priority of the repayment of the participation by the SPV.
6. Allow Eligible Lenders to continue to use LIBOR for some period of time before being required to use SOFR. The transition to SOFR is not anticipated until January 1, 2022 and banks have not yet established appropriate processes and controls around the new reference rate.

Uncertainty as to the protections available to secured lenders under the Program may lead to a failure among some potentially Eligible Borrowers or potentially Eligible Lenders to participate in the Program facilities or restrict their participation. These negative consequences would have a direct impact on these potentially Eligible Borrowers by limiting access to this critical source of capital, imperiling jobs and jeopardizing economic recovery. The benefit of clarifying and amending these protections, as suggested above, would, in our opinion, mitigate the current economic hardship being experienced by Eligible Borrowers and bolster this critical part of the capital supply chain.

Thank you for your consideration of our concerns and for your continued support of our country during these unprecedented times. If you have questions regarding this urgent request for critically needed action, I may be reached at rgumbrecht@sfnet.com or 212.792.9391.

Respectfully,

A handwritten signature in black ink, appearing to read 'R. Gumbrecht', with a horizontal line extending to the right.

Richard D. Gumbrecht
CEO
Secured Finance Network



Lexmark™

April 16, 2020

The Honorable Addison Mitchell McConnell, Jr.
United States Senate
Washington, DC 20510

Dear Leader McConnell,

Thank you for your ongoing efforts to deliver urgently needed assistance to America's working families and businesses in response to the coronavirus crisis, and for your extraordinary effort to negotiate and pass the historic and critical Coronavirus Aid, Relief, and Economic Security (CARES) Act. As the Treasury crafts guidance to implement the Main Street Lending Program (MSLP) as part of the CARES Act, we respectfully ask you to help secure coverage for as many U.S. small to medium sized businesses and employees as possible. I had comments submitted directly to the Federal Reserve and have enclosed them with this letter for your reference.

We are concerned that many small to medium sized U.S. businesses (including Lexmark) will be prevented from fully benefiting under the MSLP because of the Main Street Expanded Loan Facility's (MSELF) term loan requirement. According to the MSELF Term Sheet, to qualify as an eligible borrower, the company must currently have a term loan outstanding with an eligible lender. While it is understandable that adding on to a current credit relationship is less risky than providing a loan to a new borrower, it is not clear why a term loan, and not an existing credit line, letter of credit, credit facility, or other form of lending, is the only means to qualify for participating in the MSELF.

The term loan requirement will prevent many U.S. small to medium sized businesses that need relief loans greater than the \$25 million cap for the Main Street New Loan Facility from obtaining larger loans under the MSLP. Lexmark, with 2,000 US-based employees, is exactly the kind of business the MSLP is intended to help. We have suffered a huge loss of business due to COVID-19 and related disruptions to economic activity and need more than \$25 million in government assistance to get us through this crisis and avoid painful layoffs. We have an existing credit line with an eligible lender, but we are prevented from obtaining a loan under the MSELF because we do not have a term loan.

Clearly, the principles underlying know-your-customer policies and traditional credit evaluation may favor higher caps or limitations on available loans to borrowers who have existing relationships with federally insured depository institutions. However, limiting those able to participate in the MSELF by requiring the existence of a term loan rather than other forms of credit unnecessarily restricts the program's ability to assist businesses that are in need during this time of crisis. Lexmark would greatly appreciate it if you could help correct this in the implementation regulation language so that it would make it clear that a term loan will not be the only path to relief for companies needing more than \$25 million, and that other credit facilities can also be used.

Thank you for helping Lexmark remain a strong part of the Kentucky economy and community.

Allen Waugerman
President & Chief Executive Officer

Lexmark International, Inc
740 West New Circle Road
Lexington, KY 40550
USA

1.859.825.4744
allen.waugerman@lexmark.com
lexmark.com

The economic shutdown related to Covid-19 has been devastating to a number of our clients, who need CARES Act relief. Given their size and the loan amounts they need, the only program available to many is the Main Street Expanded Loan Facility (MSELF). However, as currently described in the Term Sheet, several cannot participate in the MSELF because they do not have a term loan outstanding with an eligible lender. They do, however, have other forms of credit, such as lines of credit or credit facilities, with eligible lenders. The term loan qualification to participate in the MSELF unnecessarily restricts the program's ability to assist businesses that are in need during this time of crisis. A term loan should not be the only form of credit that permits an eligible borrower to participate in the MSELF. Letters of credit, credit facilities, credit lines and other forms of lending with an eligible lender should also allow an eligible borrower to borrow under the MSELF. Clearly, the principles underlying know-your-customer policies and traditional credit evaluation may favor higher caps or limitations on available loans to borrowers who have existing relationships with federally insured depository institutions. But, these same principles apply to all types of credit, not just term loans. Therefore, by requiring the existence of a term loan with an eligible lender, rather than any other form of credit, the MSELF is unnecessarily limiting the amount of support that will be given to small and mid-sized businesses, a direct contradiction to its stated goal to "enhance support for small and mid-sized businesses" and help "businesses keep their workers on payroll."



April 16, 2020

The Honorable Jerome H. Powell, Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Dear Chairman Powell:

We appreciate the Federal Reserve's announcement of the Main Street (new and expanded) Loan Programs. We are submitting this letter in response to your call for comments on the programs. Our goal is to ensure that start-ups like ours can access these programs while also ensuring that there are safeguards in place with regards to taxpayer funds.

Shift Technologies, Inc. (Shift) is a multi-city West Coast online auto retail company. Our aim is to make the used car industry consumer-friendly by making the purchase or sale of a used vehicle simple, fair, and accessible to all. Despite our small size relative to the larger legacy auto retailers, we are becoming a leader in this space, with over 11,000 vehicles sold in 2019 and a Confidential Business Information

We currently employ over 350 workers in the United States and through our contract relationships have created hundreds of more jobs domestically. We have been growing rapidly and, prior to the COVID-19 pandemic, had been anticipating significant additional growth and domestic, low-to-med skilled job creation in the months and years to come.

Like thousands of other companies around the United States, Shift has found itself in an unprecedented situation as a result of the economic crisis being caused by COVID-19. The collapse in demand for vehicles is having a severe impact on our revenues and putting the jobs of our employees and the company's future at risk. It is critically important that our employees and their families have access to fast and effective government support to help our communities cope with the unprecedented challenges we are all facing. And while we have stretched as far as we can to avoid implementing lay-offs to date, it is also critical that, as an employer, we obtain alternative sources of liquidity.

As it currently stands, Shift is not eligible to apply for either of the Main Street Loan programs because the programs require borrowers to have positive EBITDA. It is possible that this requirement aims to address the solvency requirements under Section 13(3) of the Federal Reserve Act. Unfortunately, most fledgling businesses cannot meet this test, but they regularly verify solvency with lenders, investors and business counterparties by other means.

The ecosystem built around high growth technology businesses or companies that are utilizing

technology in novel ways, like Shift, has been at the forefront of economic growth in the U.S., for nearly 40 years. Profitability is not a useful metric to measure the societal value and job creation potential of these companies that are investing their equity resources into growth. Without ensuring that high growth technology-driven companies investing in R&D to the detriment of EBITDA have access to capital like other businesses during this crisis, we set up a situation that could cede America's leadership in innovative technology to countries where such support has been more forthcoming, including China. That has obvious long-term detriments to our country that we should aim to avoid.

We therefore urge you to eliminate the positive EBITDA test and ensure that both Main Street Loan programs are available to growing, entrepreneurial companies with negative EBITDA by focusing instead on maximum loan amounts (i) as a percentage of enterprise valuation or (ii) determined by commonly accepted debt/equity metrics on a per industry basis.

Mr. Chairman, we appreciate the opportunity to provide feedback on the Main Street Lending programs and are thankful for the Federal Reserve's efforts to support firms such as ours during this economic crisis.

Sincerely,



George Arison, Co-CEO



Toby Russell, Co-CEO



Amanda Bradley, Head of Legal

Thursday, April 16, 2020

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551
The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220
Dear Chairman Powell and Secretary Mnuchin:

Ref: An Urgent call to action: Saving our small and middle market businesses, and our economy, by focusing on solutions for diverse businesses, including Latino, African American, Asian American, Disabled, Veterans who represent approximately half of small and middle market business owners in the country.

Dear Madams and Sirs:

My name is Monika Mantilla, and I am a Managing Partner at Small Business Community Capital (“SBCC”), an SBIC Impact Fund. I’m also the CEO at Altura Capital Group. I was born in Colombia and came to this country 27 years ago following a dream. I first had a working visa and then became a proud US Citizen. I have a law degree from Universidad del Rosario, Bogota Colombia, and an MBA from Columbia Business School, which tuition cost was paid by the company I worked for. This education and this amazing country have granted me the opportunity to maximize my potential. My deepest desire is to serve my country through my profession as an investment manager, and as a business growth advocate.

I’ve dedicated the last 25 years of my life to building financial capacity in underserved communities, which often consist of low- or moderate-income (“LMI”) persons or areas. I am also on the Board of a number of industry and business organizations that advocate for small and minority entrepreneurs. Investing in them and helping them grow and succeed is my passion. These times of crisis require all the support we can provide to small and middle market business, and to allow banks and other valuable capital providers to invest in qualified activities that advance our communities and our economy, especially those underserved and with high potential.

Our passion for helping underserved small businesses is demonstrated by our SBCC fund’s LMI and Small businesses successful investment metrics:

- LMI Enterprises – Currently 62% of our SBIC Impact Fund investments have been invested in LMI Enterprises.
- Diverse Entrepreneurs – We recognized that underinvestment in women and minority-owned businesses by peers in the SBIC program represented (and still represents) a tremendous opportunity. In 2018, minority-owned businesses received only 4.8% of SBIC Financings and women-owned businesses received only 2.2% - continuing to demonstrate that the market fails to recognize

the value of these companies. By specifically seeking out opportunities to invest with diverse entrepreneurs, we sought to take advantage of this gap. To date, 60% of our investments have diverse ownership, and 90% have counted minorities or women in ownership roles.

- High Quality Job Creation – SBCC believes that a successful small business lies at the core of addressing people's educational, housing, healthcare, and financial stability needs and aspirations, all while building a more inclusive society. Moreover, we have experienced firsthand that sustainable small business growth comes as a result of employees that feel valued by and invested in their company – not at their expense. Our LPs ask us to track certain job quality and creation metrics across all of our portfolio companies, and we are proud to report that according to our most recently available data, SBCC's portfolio companies support 427 jobs and have created 47 new jobs since inception. Moreover, as of year-end 2018, full time employees at our portfolio companies saw 88% of their healthcare premiums covered by their employers, 100% received supplemental benefits including dental, disability, life insurance, maternity/paternity leave, and retirement savings plans.

Sixteen years ago, I was invited by the United States House of Representatives to present to them my views regarding Latinos in financial services. At that time, I thought that we had two angles to share: Latinos as financial service users, but also as financial service providers. It was then that I created a commitment to help build financial capacity in minority communities to enable business owners maximize their growth potential. A lot of work still awaits us, but I know the demographics shifts that are happening in our country require that all communities become active economic players and contributors. Meritocracy and access to opportunity is the biggest strength of our country. Fifteen years ago, I lead and co-wrote a white paper about [Hispanics in Financial Services](#). It was an attempt to map out what needed to happen for Hispanic American to step up to their role in the asset management arena. We have experienced great progress but at the same time we are still behind in numbers, both of Hispanic asset managers, MDI's, community banks and CDFI owners or managers, and the assets we manage. However, I believe the incredibly rich entrepreneurial strength of our community will allow for significant Hispanic money managers to flourish. A great example is Jose Feliciano from Clearlake Capital who in the middle of Covid1-9 closed, this week, a \$7 billion fund, managing \$18 Billion. Ten years ago, I became the first Latina to ever receive the Hispanic Business Award by the Hispanic Heritage Foundation. The then US Treasurer bestowed me such an honor. I then gave [a speech](#) that still informs my thinking: the dream that we could be architects of our own solutions. Six years ago, I wrote a paper that was titled "What we need to do about capital". I also attempted to design the architecture that was needed to significantly advance the Capital Agenda in underserved communities. My ideas around this subject have evolved but in some ways continue to be the same: provide capital to the prepared and capable entrepreneur, driven by discipline and clear principals, help her/him grow his/her business, facilitate her/his path to success, and open him/her opportunities with Corporate America and Government. That recipe has proven to us again and again to be a winning recipe to achieve above market returns and societal transformation. Two years ago, I did a Ted talk style [presentation at USHCC Legislative Summit](#) about closing the \$1.4 trillion gap. Recently I ended a Chapter in the soon to be published book "[Advancing US Latino Entrepreneurship](#)", about the fastest growing segment of businesses in the country . I also have been part of the Aspen Latinos in Society working group. We recently published a [playbook](#) to help Latinos scale.

Thirteen years during the last recession our Company Altura Capital helped successfully co-manage to significant programs: The Capital Purchase program, CPP, and the Public Private Investment Program, PPIP, that helped salvage the CMBS RMBS market. It was an extraordinary opportunity to help our country and deliver great performance and financial returns to the US Treasury, the Federal Reserve and Institutional Investors. These programs taught us important lessons of how public private initiative could work effectively to reestablish and rebuild markets.

I've been in Finance for 20 years, prior in operations and business management for 9 years, and before as lawyer.

Navigating through CovidWar times

As we help our portfolio and network companies navigate liquidity and reinvent themselves during these times of challenge, through multiple town halls and virtual sessions we have been in close contact with our industry partners, a large group of business owners, and industry associations. Our goal has been to help companies navigate through these times of turbulence with management tools and all the resources we can provide, and assess their liquidity issues and possible short, mid and long-term debt and equity solutions.

Given our role as an SBIC Impact fund, where we manage \$148 million and have access to \$750 million in co-investment dollars, our relationship with large Institutional investors and financial institutions that back our work, our visibility on liquidity challenges of approximately 8 million businesses that in aggregate represent approximately \$1.4 trillion in annual gross receipts through the organizations we belong to, collaborate with and help lead (including the Stanford Latino Entrepreneurship Initiative, the United States Hispanic Chamber of Commerce, the Billion Dollar Roundtable, Impact Capital Managers, the Aspen Institute and NMSDC) and our experience on the last recession effectively managing TARP programs (both CPP and PPIP), we believe our perspective can be invaluable and helpful.

The sentiment we gather from the market we so actively participate in is that there is a deep desire to go back to work, to go back to productivity. We also understand America needs to become a much stronger manufacturer, and that we need to find a way to effectively compete with China. The only way we will be able to do that is through making our manufacturing fixed costs more competitive. That is the only way to level the playing field.

My feedback

I am grateful for the opportunity to provide feedback and perspective regarding the Main Street New Loan Facility and Expanded Loan facility.

1. **My first comment is that this facility should not be restricted to banks.** It should be open to all debt providers, or at least a group of them that fulfill certain qualifications, for example at least \$100 million in AUM, as where the minimum levels of AUM during the last recession. Some of our institutional investors are banks, and we get to work with them frequently. Banks by design and due to regulatory restrictions can only take certain risks that we as private lenders can address in a much more proactive and flexible way. Restricting private debt funds to participate will significantly narrow the distribution channels and the opportunity for many firms to receive the patient capital they need, and the value added that alternative lenders like us can provide. Our hands-on approach and effective shepherding allow us to be value added investors. The times we are living definitely call for these types of hands on capital providers to lend their expertise and support.

Our goal is to serve as a catalyzer to reactivate the economy and avoid further job losses and business downturns, while providing effective tools to valuable enterprises across all sectors including manufacturing, healthcare, retail and consumer so they can continue to compete, reinvent themselves and thrive. The rebuilding that will need to happen in our country is massive, and we

need to activate **all sectors of the economy to ensure we recover as fast and effectively as possible** and achieve long term growth and prosperity, while supporting the most vulnerable.

2. **Public Private Initiative to assist the most vulnerable:** Taking advantage of this valuable opportunity to share our view of the current market. I must present to you a deep concern regarding our most vulnerable communities across America. The PPP solutions have yet to arrive to a vast portion of our communities. It is imperative that the next batch of legislation somehow channels these resources effectively and especially to the most vulnerable. I have painfully had conversations with hundreds of business owners who have severely felt the effects of significant revenue losses, yet have very thin to no savings and are in dire need to receive support to be able to put food at the table and to pay their employees so they can put food at the table. According to a Pew Research Center survey conducted March 19-24, the need is [dire and real](#). This is why a group of us entrepreneurs from finance, technology, marketing and advertising have created a mechanism to solution to raise assets, develop an elegant fin tech solution and distribute resources. The initiative is called **LendaMano**, a lending hand. It aims to target the most vulnerable business owners around the country. We are happy to share detailed information via zoom at your earliest convenience. We are expecting to launch within the next 10 days in the Tri-state Area, one of the most hardly hit by Covid-19, and then LA, then Texas and Florida and then national. We would truly welcome the support from the Federal Reserve to match 3 dollars for every 1 dollar we raise, up to \$11.1 billion the resources we rally from the private sector, and to invite banks and their foundations to support us by granting them CRA credit. This would allow us to provide 30-day advance money to 200,000 business owners that make anywhere between \$24,000 to \$2,000,000 a year.

3. **Public Private Initiatives to ensure the short, medium- and long-term liquidity for vibrant and resilient small and middle market businesses**

Having had the experience of assisting US Government to manage the allocation of resources both during normal market conditions and during times of recession, there are lessons, contrasts and differences to the existing challenges. I would like to focus my comments to what I believe in this moment is most needed: **ensuring the short, medium- and long-term liquidity for vibrant and resilient small and middle market businesses.**

Below please find 3 specific programs we propose that would address specific capital needs for small and mid-sized business owners:

- a) **Provide asset managers (including minority asset managers) the funding to offer innovative solutions and provide short term liquidity, mid-term liquidity and long-term debt and equity investment vehicles for small and middle market business.** This should include the creation of a meaningful allocation of at least \$50 billion through a public/private initiative that can raise another \$25 billion in private dollars, managed or led by minority and diverse managers in partnership with other non-minority partners, so that they can deploy this capital by making both debt and equity investments in diverse businesses across the country. This program could be supported by all the Diverse business organizations that provide technical assistance and exposure opportunities for diverse entrepreneurs to work with both government and Corporations. I will be happy to present a detailed proposal.

- b) **A Public Private Partnership to promote Manufacturing in America.** Given the desired shift to manufacture healthcare products in America, that a program is designed to provide Private equity Funds and investors and SBIC funds the ability to access “Promote Manufacturing Relief Dollars” for long term investments, for companies that commit to employ at least 50 employees. These dollars would be 2x the amount of Private dollars, up to \$50 million per investment.
 - c) Coordinate with the SBA so that SBIC funds are granted the opportunity to access fast additional 1x leverage, asset relief capital at the rate of 1 x leverage, alongside relief equity capital, and micro-sbics can be created by utilizing a “mothership” mentoring model.
4. **Public/Private Initiative to ensure that small and middle market businesses can sell to government in a more expedited manner.** Ensure that all Corporations bring along a meaningful participation/JV partners that is diverse owned.
 5. **Ensuring Participation of diverse organizations both as solution providers and beneficiaries of programs:** Ensure that CDFI’s, community banks, small and regional banks, credit unions, minority depository institutions and diverse asset managers, all an important part of the financial system that will help address small business financing. Our recommendation is that they are activated and provided adequate expedited licensing and funding to act as effective sources both short term relief and longer-term liquidity, equity and debt solutions and financing solutions for both the businesses and the non-profits (both 501 c6 and 501 c3s) for our communities. Speed of solutions is key.

Mainstream IS Multicultural

Diverse communities in America play a central and mainstream part of the economy. According to Latitude, six million immigrant workers are at the frontlines keeping U.S. residents healthy and fed during the COVID-19 pandemic. This number includes 29% of all physicians and 38% of home health aides. This number also represents the significant shares of workers cleaning hospital rooms, staffing grocery stores, producing food and so much more. Latinos make up a significant number in this group. We are grateful for the talent and diversity in the United States, and we are grateful for all the unsung heroes. We salute you each day for your bravery and hard work.

According to Nielsen, “ [Multicultural consumers](#) are the fastest growing segment of the U.S. population. Already over 120 million strong and increasing by 2.3 million per year, multicultural populations are the growth engine of the future in the United States. Hispanics, African Americans, Asian-Americans and all other multicultural already make up 38% of the U.S. population, with Census projections showing that multicultural populations will become a numeric majority by 2044. ...Further data from the U.S. Census American Community Survey shows that between 2006 and 2014, multiple race populations grew 77%, while NHWhites in multicultural households increased by 30%. This indicates a stronger opportunity through proximity for cultural sharing and blending that increases the pool of consumers with a multicultural mind set”. According to [MBDA](#) there are 8 million minority owned firms in the country, a 38% increase since 2007. 11% of minority owned firms have paid employees, compared to 22% for non-minority firms. Minority owned firms generate 1.4 trillion annual gross receipts (with top industries being wholesale \$297 billion, retail \$278 billion, professional scientific and tech \$121 billion, healthcare and social assistance \$118 billion, accommodation and food services \$115 billion, construction \$90 billion, manufacturing \$80 billion,

transportation \$59 billion, administrative support, waste management and remediation \$57 billion and real estate and rental leasing \$38 billion) and employ 7.2 million people.

We stand ready to be of assistance during these times in which we all need to come together to build meaningful solutions for our country and our economy.

I can be reached at 6462074836 or through this email.

I thank you for the opportunity to share my perspective and vision around practical solutions.
I stand ready to work with you.

Sincerely yours,


A handwritten signature in blue ink, appearing to read "Monika Mantilla", is positioned to the left of a vertical line that extends downwards.

Monika Mantilla

Managing Partner [Small Business Community Capital](#)
CEO Altura Capital
Board member [USHCC](#), Chair USHCC Foundation
Board Member [Stanford Latino Entrepreneurship Initiative](#), Lban
Capital Advisor to the [Billion Dollar Roundtable](#)
[NMSDC](#) Certified
Aspen Latinos in Society working group member
Committed Citizen



April 15, 2020

The Honorable Jerome H. Powell, Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Dear Chairman Powell:

We appreciate the Federal Reserve's announcement of the Main Street (new and expanded) Loan Programs. We are submitting this letter in response to your call for comments on the programs. Our goal is to ensure companies like ours, in the start-up hospitality industry, can access these programs while also ensuring that there are safeguards in place with regards to taxpayer funds.

Sonder Hospitality USA Inc. (Sonder) is a San Francisco-based hospitality start-up. Our aim is to be the next-generation global hotel brand that operates hotels, apartments and villas and other types of accommodations. Sonder is the global market leader in this space, with over \$2.6 billion worth of real estate under management and a **Confidential Business Information**

We currently employ over 700 workers across 17 states and almost 1000 workers around the world. We have been growing rapidly and, prior to the COVID-19 pandemic, had been anticipating significant additional growth in the months and years to come.

Like thousands of other companies around the United States, Sonder has found itself in an unprecedented situation as a result of the economic crisis being caused by COVID-19. The collapse in demand for hotel rooms is having a severe impact on our revenues and putting the jobs of our employees and the company's future at risk. It is critically important that our employees and their families have access to fast and effective government support to help our communities cope with the unprecedented challenges we are all facing. It is also critical that, as an employer, we obtain alternative sources of liquidity.

As it currently stands, Sonder is not eligible to apply for either of the Main Street Loan programs because the programs require borrowers to have positive EBITDA. It is possible that this requirement



aims to address the solvency requirements under Section 13(3) of the Federal Reserve Act. Unfortunately, most start-ups cannot meet this test, but they regularly verify solvency with lenders, investors and business counterparties by other means.

We therefore recommend the following changes:

- **EBITDA Test.** We urge you to ensure that both Main Street Loan programs are available to growing, entrepreneurial companies with negative EBITDA by focusing instead on maximum loan amounts (i) as a percentage of enterprise valuation or (ii) determined by commonly accepted debt/equity metrics on a per industry basis.

Mr. Chairman, we appreciate the opportunity to provide feedback on the Main Street Lending programs and are thankful for the Federal Reserve's efforts to support firms such as ours during this economic crisis.

Sincerely,

A handwritten signature in black ink, appearing to read "Mèlika D Carroll". The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Mèlika D Carroll
VP Public Affairs
Sonder



Richard D. Lara
Executive Vice President & General Counsel
Phone: 305-644-4824
rlara@sbscorporate.com

April 30, 2020

The Honorable Jerome H. Powell, Chairman
Board of Governors of the Federal Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551

VIA FEDERAL EXPRESS

The Honorable Steven T. Mnuchin, Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

**Re: AN URGENT REQUEST FOR FINANCIAL ASSISTANCE ON BEHALF OF
MINORITY-OWNED AND WOMEN-OWNED BROADCASTING COMPANIES**

Dear Chairman Powell and Secretary Mnuchin,

The undersigned write to you as representatives of the leading minority and women-owned broadcasting companies, as well as the sector's trade and nonprofit associations, who collectively employ hundreds of people and play an important role as FCC licensees in providing news and information to those millions of listeners and viewers most devastated by the COVID-19 pandemic. It should also be noted that the workforce we speak to plays an important role in providing basic health care and supply-chain services to the general population, oftentimes at the expense of their own well-being. The undersigned have all been severely impacted by the COVID-19 pandemic and are in need of immediate governmental financial assistance to continue in our mission as FCC-licensed stewards of news and information for our disadvantaged and underserved citizens throughout the country.

We have reviewed the requirements published by the Treasury Department for both the Main Street New Loan Facility ("MSNLF") and the Main Street Expanded Loan Facility ("MSELF") and while we applaud the government's efforts to extend relief to businesses – like ours – which are experiencing substantial liquidity issues solely as a result of the COVID-19 crisis, we believe that, as drafted, there are significant issues with certain details of the announced programs that will limit the ability to provide the benefits intended. Indeed, the application of certain of the programs' current requirements to the broadcast industry could imperil jobs – not just at our companies but also at thousands of other radio and TV stations – businesses deemed "*essential service providers*" under the 2018 amendments to the Stafford Disaster Relief and Emergency Assistance Act. (See §5189e, definition of "*Essential Service Providers*" which includes radio and television broadcasting, cable service, and direct broadcast satellite service). Moreover, as currently drafted, the programs could further imperil access for millions of listeners who depend on their local media for news and information—especially disenfranchised and underrepresented minority audiences. By way of example:

- Both programs have a leverage limit. For new loans under the MSNLF, a borrower would be limited to no more than four times leverage, including the amount of the new loan. According to Capital IQ, more than 800 companies already have leverage in excess of four times and would therefore be unable

Spanish Broadcasting System, Inc.

PABLO RAÚL ALARCÓN MEDIA CENTER 7007 NW 77TH AVENUE, MIAMI, FL 33166

to access funds under this program. While the MSELF program allows a borrower to upsize an existing loan up to six times leverage, that still excludes almost 400 companies, according to Capital IQ, based on that leverage test. In other words, the companies that are in the most danger are precisely the ones unable to procure the necessary funding. Many of us may be precluded from accessing the needed capital under either program due to our existing loans. We respectfully suggest that these leverage ratios should be raised significantly.

- The leverage calculations under the stimulus programs should be based on net leverage, allowing borrowers to reduce debt by deducting their cash on hand.
- The amortization of loans under MSNLF should improve upon the amortization terms of any pre-existing debt.
- Given that many of us have collateral agreements in place, it would be complicated, if not impossible, to grant collateral for these new stimulus loans. We recommend that these loans should be provided on an *unsecured* basis.
- We propose allowing that proceeds from these loans be used to repay/refinance *existing* debt so as to make the program more inclusive, given the severity of the circumstances and the indications that credit conditions are beginning to tighten and will worsen if we enter into a prolonged recession.
- We are also concerned with the proposed limitations on compensation. Overly burdensome compensation limitations will create barriers that will inhibit the ability to retain popular on-air hosts, sales employees and skilled managers in a highly competitive marketplace. We propose limiting the timeframe to two years with express carve-outs for talent, managers, and sales employees.

Gentlemen, we are all truly appreciative of the response from the Federal Reserve and the Treasury Department in supporting businesses in their time of need. We remain optimistic that, with the minor revisions suggested herein, minority and women broadcasters will be able to access the capital we need and continue to serve the public interest by assisting and informing our communities across the country during this unforeseen and unprecedented time of upheaval and isolation.

We thank you for your attention and efforts at addressing these pressing concerns, in the name of millions of citizens whose voices are rarely, if ever, heard.

Respectfully,

Richard D. Lara
EVP and General Counsel
Spanish Broadcasting System, Inc.

Raul Alarcon, Chairman and CEO
Spanish Broadcasting System, Inc.

BROADCASTING COMPANIES and SUPPORTERS

(In alphabetical order)

Michael Chandler, CEO
Rejoice Musical Soul Food Radio Network

Art Gilliam, Chairman and CEO
Gilliam Communications

Steve Hegwood, CEO
Core Broadcasting Group

David Honig, President Emeritus and Senior Advisor
Multicultural Media, Telecom & Internet Council (MMTC)

Sherman K. Kizart, Managing Director
Kizart Media Partners

Alfred Liggins, President and CEO
Urban One

Chesley Maddox-Dorsey, President and CEO
American Urban Radio Networks and Superadio Networks

Ms. Aama Nahuja, Legal Counsel
A Wonderful Media Company

Russell Perry, Chairman and CEO
Perry Broadcasting and Publishing

Steven C. Roberts, CEO and President
Roberts Broadcasting Company

Howard Robertson, CEO
Spotset Networks

Dr. Nimisha Shukla, Fellow of the American Academy of Pediatrics &
Owner and Managing Partner of NJ Broadcasting LLC/South Asian Broadcasting

Frank Washington, Chairman and CEO
Crossings Television Network

Robert Wingo, Chairman and CEO
Sanders Wingo Advertising

James Winston, President
National Association of Black Owned Broadcasters

Spanish Broadcasting System, Inc.

PABLO RAÚL ALARCÓN MEDIA CENTER 7007 NW 77TH AVENUE, MIAMI, FL 33166



April 15, 2020

The Honorable Jerome H. Powell, Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

RE: Main Street Lending Facility - EBITDA Should Not Be the Sole Criteria of Loan Eligibility / Size

Dear Chairman Powell:

We appreciate the opportunity to comment on the Federal Reserve's Main Street (new and expanded) Loan Programs.

As a community of growth-stage technology startups, we are concerned that the utilization of EBITDA as the sole metric to determine loan eligibility and size will inadvertently and inappropriately exclude many companies who were intended to be eligible for this program.

Growth-stage technology startups generally reinvest all of their potential profits into hiring new employees (and not dividends or stock buybacks) and thus often will have no EBITDA. These are the American businesses that often generate exponential job growth and have the most potential to positively and disproportionately contribute to the economy in the future.

Many of these companies have also been excluded from the Paycheck Protection Program (PPP) due to the affiliate rules and so they have not been addressed by any existing economic relief program. Therefore, we do not believe Congress intended that growth-stage technology startups with no EBITDA be excluded from the Main Street Lending program.

In light of this, we request that you consider adding other metrics (in addition to EBITDA) as alternatives for banks to use in determining loan eligibility and size under the Main Street Lending Facilities. Some of examples of additional alternative metrics might include:

- Percentage of Enterprise Value (e.g., a market capitalization or a recent arms-length or independent valuation)
- A metric based on a combination of revenue, gross margin, and commonly accepted debt/equity metrics on a per industry basis
- As determined by the lending bank (who retains 5% risk) in applying reasonable underwriting criteria relevant to growth-stage companies, such as cash on hand, existing debt, operating costs, gross margins, etc.

Mr. Chairman, we appreciate the opportunity to provide feedback on the Main Street Lending program and are thankful for the Federal Reserve's efforts to protect growth-stage technology startups during this economic crisis, so they can bolster our global competitive advantage in a time when it is needed more than ever.

Sincerely,

Kiran Lingam
Co-Founder and President
TechGC

April 16, 2020

The Honorable Jerome H. Powell, Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Dear Chairman Powell:

We appreciate the Federal Reserve's announcement of the Main Street Loan Programs. We are submitting this letter in response to your call for comments on the programs. Our goal is to ensure companies that need it can access these programs while also ensuring that there are safeguards in place with regards to taxpayer funds.

ThredUp Inc. operates a leading technology-enabled e-commerce apparel resale marketplace. Based in Oakland, California, we employ approximately 1,500 people across our offices and distribution centers which are located in California, Pennsylvania, Arizona, Georgia and Illinois. With aspirations of becoming a publicly traded company, we have been growing rapidly and, prior to the COVID-19 pandemic, had been anticipating significant additional growth in the months and years to come.

In response to the COVID-19 pandemic and the stay-at-home orders that have brought our economy to a near-standstill, we have taken drastic measures to protect our business. We implemented corporate furloughs and hiring freezes and have also reduced our discretionary spending in virtually every category in order to make sure our company is able to survive this pandemic. However, in the current environment, the path to recovery appears uncertain.

As it currently stands, ThredUp Inc. is not eligible to apply for either of the Main Street Loan programs because the programs require borrowers to have positive EBITDA. It is possible that this requirement aims to address the solvency requirements under Section 13(3) of the Federal Reserve Act. Unfortunately, most startups and growth-stage companies cannot meet this test, but they regularly verify solvency with lenders, investors and business counterparties by other means.

We therefore recommend the following changes to the EBITDA Test.

We urge you to ensure that both Main Street Loan programs are available to growing, entrepreneurial companies with negative EBITDA by focusing instead on maximum loan amounts (i) as a percentage of enterprise valuation, (ii) determined by commonly accepted debt/equity metrics on a per industry basis and/or (iii) as determined by the lending bank (who retains 5% risk) in applying reasonable underwriting criteria relevant to growth-stage companies, such as cash on hand, existing debt, operating costs, gross margins, etc.

Mr. Chairman, we appreciate the opportunity to provide feedback on the Main Street Lending programs and are thankful for the Federal Reserve's efforts to support firms such as ours during this economic crisis.

Sincerely,



Alon Rotem
General Counsel
ThredUp Inc.

cc: Members of Congress



April 16, 2020

The Honorable Jerome H. Powell, Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, DC 20551

Dear Chairman Powell:

I write on behalf of TripActions, Inc. We appreciate the actions the Federal Reserve has taken to support the US economy through the coronavirus pandemic, including the proposed Main Street Lending Program. We submit this comment letter to explain how the Program's proposed use of EBITDA to determine maximum loan size excludes midsize growth-stage companies from participation. We offer suggested alternatives to EBITDA to support effective and efficient lending while safeguarding taxpayer funds.

TripActions is a US-based corporate travel management technology company. Customers trust our travel and payments platform to manage their business travel programs. Our innovative platform helps companies create tailored policies, seamlessly reconcile expenses, ensure traveler safety, and manage the financial impact of travel disruptions. In response to the current pandemic, we have released new platform tools to help companies stay informed about changes in global travel conditions and react quickly to protect the health and safety of their employees.

The coronavirus pandemic is having a particularly devastating effect on the business travel sector in the United States. TripActions offers a usage-based pricing model, which means that as corporate travel stopped, so did our revenues. We currently employ over 700 people in the US, and our platform supports over 4,000 corporate customers and their travelers. Fast, efficient and effective government support is critical to help companies like TripActions weather the impact of the coronavirus pandemic until US businesses start running (and traveling) again.

The Main Street Lending Program currently proposes the use of 2019 EBITDA to calculate the maximum size of an Eligible Loan. Effectively, the Program requires the borrower to have positive EBITDA for its loan to be eligible. Unfortunately, this has the consequence of excluding growth-stage companies -- many of whom, like TripActions, are innovators in otherwise mature industries -- from eligibility in the Program.

As a growth-stage company, TripActions has invested heavily in product development, sales and marketing, and other growth functions ahead of revenue. These crucial investments have allowed us to rapidly release new product features and tools that help our customers manage the disruptions to global travel -- but these same investments resulted in negative EBITDA in

2019. Under the proposed terms of the Main Street Lending Program, TripActions and similar growth-stage companies, who are too large to qualify for Small Business Administration relief, are left out of the Program as well.

There are other means of calculating appropriate loan sizes for the Main Street Lending Program while also assessing whether potential borrowers have the financial standing to ensure that taxpayer funds are protected. **We urge you to consider the following changes to the Main Street Lending Program eligibility requirements:**

- For companies with negative EBITDA, lending banks should apply industry-specific criteria such as debt/equity ratio, cash on hand, free cash flows over the loan term, and/or an assessment of operating costs and gross margins to evaluate borrower solvency and ability to service the loan.
- Similar to the Paycheck Protection Program administered by the SBA, maximum loan amounts should be calculated based on payroll and other operating costs.

When the Federal Reserve announced the Main Street Lending Program, you articulated the overarching goal to “support lending to small and medium-sized businesses that were in good financial standing before the onset of the COVID-19 pandemic.” TripActions is a perfect example of the type of company this Program should be helping: a company whose revenue dropped precipitously as the coronavirus pandemic spread around the world, but with the infrastructure to quickly pick back up as the economy begins to reopen. Please consider our proposed changes to the Program’s eligibility requirements to avoid disqualifying innovative growth-stage companies who have invested in products and services that bring real value to the US economy.

We appreciate the opportunity to provide feedback on the Main Street Lending Program and how it might unintentionally exclude growth-stage companies from Program financing. We thank you for your consideration, and for your continued support of US firms during the coronavirus pandemic.

Sincerely,



Sai Jahann
General Counsel
TripActions, Inc.



45 Broadway, 22nd Floor, New York, NY 10006

Tel: 212-967-0322 | www.unhny.org

April 16, 2020

The Honorable Jerome H. Powell, Chair, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W., Washington, DC 20551

Re: Main Street New Loan Facility

Dear Chairman Powell:

On behalf of United Neighborhood Houses of New York, I write to offer comments in opposition to the proposed rule regarding nonprofit ineligibility for the Main Street Lending Program, which is supposed to provide crucial economic relief to organizations with over 500 employees that continue to operate in the wake of COVID-19. United Neighborhood Houses (UNH) is the association of 40 nonprofit settlement houses and neighborhood centers in New York City and three in upstate New York, reaching over 765,000 New Yorkers every year. We strongly urge the Federal Administration to ensure that emergency relief funds reach the nonprofit sector, such as in the form of emergency relief, to keep a low-paid workforce economically stable and available to deliver services to those in need.

The Federal Administration's decision to cut out nonprofits from the Main Street Lending Program would be a devastating blow to human services providers that are also ineligible for the Paycheck Protection Program. Nonprofit human services providers with over 500 employees are critical partners to federal, state, and local governments in maintaining the social safety net. Excluding large nonprofits from this initiative would have a devastating impact not only on struggling New Yorkers, but would wreak havoc on our state budget as well. Failure to save large nonprofits would shift billions in costs to our state, leaving us with the choice of throwing people off of assistance or raising revenues at the local level to make up the shortfall.

Nonprofit human services providers in New York City with over 500 employees represent \$2.8 billion (about 50%) of the City's \$5.8 billion in annual social service spending with nonprofit partners.¹ Yet, larger nonprofits have been excluded from the Paycheck Protection Program because of their size. Their operating margins are thin (an average of 1%), even before the reduction of revenue and increase in expenses associated with COVID-19. Without immediate assistance, some large nonprofits may not make it through May; few, if any, will be in a position to continue services that will be needed more than ever during the COVID-19 crisis and its aftermath.

¹ ["Too Big to Fail."](#) *SeaChange*, 2020.



45 Broadway, 22nd Floor, New York, NY 10006

Tel: 212-967-0322 | www.unhny.org

Economic recovery from the COVID-19 crisis will only be possible if nonprofit organizations receive funding to continue serving low-income individuals and families in need of housing assistance, healthcare, workforce development, childcare, food security, education, and case management. UNH urges the Federal Administration and Congress to make nonprofits with over 500 employees eligible for the Main Street Lending Program so that the human services sector can remain financially stable throughout the remainder of the COVID-19 crisis and beyond.

Sincerely,

Susan Stamler
Executive Director
United Neighborhood Houses of New York

United Neighborhood Houses (UNH) is a policy and social change organization representing 42 neighborhood settlement houses that reach 765,000 New Yorkers from all walks of life. A progressive leader for more than 100 years, UNH is stewarding a new era for New York's settlement house movement. We mobilize our members and their communities to advocate for good public policies and promote strong organizations and practices that keep neighborhoods resilient and thriving for all New Yorkers. UNH leads advocacy and partners with our members on a broad range of issues including civic and community engagement, neighborhood affordability, healthy aging, early childhood education, adult literacy, and youth development. We also provide customized professional development and peer learning to build the skills and leadership capabilities of settlement house staff at all levels. For more information, visit <http://www.unhny.org>.

UNITEHERE!
Local 737

1255 La Quinta Dr., Suite 214
Orlando, FL 32809
(407) 857-0737



UNITEHERE!

UNITEHERE!
Local 362

Orlando, FL 32809
(407) 851-0626

April 27, 2020

The Honorable Steven Mnuchin
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Jerome H. Powell
Chair of the Board of Governors
Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, DC 20551

Re: **Opposition to SeaWorld Enterprises Receiving Federally-backed Emergency Loan from Main Street Lending Program Unless Company Rehires Its Workforce and Restores Employee Health Benefits**

Dear Secretary Mnuchin and Chairman Powell,

We are writing to you as leaders of the hospitality union UNITE HERE in Florida to express our concern about how certain companies may intend to use emergency funding provided by the Main Street Lending Program, and how that could affect thousands of hospitality workers in Florida.

Specifically, we are concerned that SeaWorld Enterprises, which has distinguished itself as a particularly irresponsible employer by laying off 95% of its employees and canceling their health insurance in the midst of a pandemic, has told investors the company has been “actively engaged” in pursuing a loan through the Program.

In late March, SeaWorld began furloughing 95% of its 15,000 full and part-time employees nationwide and discontinued their health insurance. Less than two weeks later, the company granted restricted stock awards worth \$6.8 million to its top six executives.

The Main Street Lending Program as you know was established by Congress primarily to help mid-size businesses severely affected by the Coronavirus crisis keep workers on their payrolls. Under the program, businesses with fewer than 10,000 employees or less than \$2.5 billion in 2019 revenue, can receive low-cost loans of up to \$25 million, or they can refinance and “upsized” existing loans of up to \$150 million. Principle and interest payments are deferred for one year.

We understand Treasury and the Federal Reserve has not yet issued final Program guidelines, and participating banks have not yet begun accepting applications. Nevertheless, SeaWorld’s professed active engagement with this program concerns us.

In our view, SeaWorld Enterprises or its affiliates, should not receive any taxpayer-supported benefits or loans until the company puts workers back on payroll and restores their healthcare.

Disney, SeaWorld’s larger competitor, provides an interesting contrast to SeaWorld’s irresponsible behavior. Disney provided its idled workforce five weeks of full pay and pledged to continue employee health insurance for the duration of the shutdown. Disney also worked cooperatively with its unions to ensure that when workers were recently furloughed, they were automatically enrolled for Florida state unemployment insurance.

Although the loan guidelines for the MSLP are not yet published, the provision of the CARES Act that created the program provides that a “borrower must make a good-faith certification that the funds it receives will be used to retain at least 90 percent of the recipient’s workforce, at full compensation and benefits, until September 30, 2020,” and intends “to restore all compensation and benefits to the workers of the recipient no later than 4 months after the termination date of the public health emergency declared by the Secretary of Health and Human Services.”

Given SeaWorld’s behavior, we respectfully suggest that if the company applies for a loan, and if an underwriting bank determines that the company is otherwise eligible for such a loan, that no funds be disbursed until the company has produced documentation to the bank demonstrating that it has rehired all of its workers at their full pre-crisis pay, and that all benefits to which those workers were entitled have been restored. Additionally, the company should establish a hardship fund for those employees who accrued medical costs during the time they were without benefits, and for workers who cannot afford or are not eligible for the company-sponsored healthcare plan.

As of December 31, 2019, SeaWorld employed approximately 4,300 full-time employees and 11,000 part-time employees, 44% of whom were minorities.

Florida state unemployment pays out a maximum total of \$275 a week, among the lowest in the nation. Under the CARES Act, full-time employees also qualify for a \$600-a-week federal bonus through July 31, for those who successfully register. But as of April 23, only 17% of the pending applications in Florida had been processed – which means that many SeaWorld employees are undoubtedly among the hundreds of thousands of Floridians who have yet to receive **any** unemployment benefits since the shutdown.

We oppose any federal aid or loan to SeaWorld until the company can prove it has rehired its workers and restored their benefits. And we urge you to provide guidance to participating Program lenders that upholds the intent of the CARES Act to encourage all Program loan recipients to keep people on payroll with full pay and benefits.

Sincerely,



Wendi Walsh
President Local 355
Miami



Eric Clinton
President Local 362
Orlando



Jeremy Haicken
President Local 737
Orlando

cc: The Honorable Donna Shalala
Mr. Bharat Ramamurti

COUNTY COMMISSIONERS
DIANA IREY VAUGHAN
CHAIR
LARRY MAGGI
VICE CHAIR
NICK SHERMAN
724-228-6724



County of Washington

COMMONWEALTH OF PENNSYLVANIA
100 WEST BEAU STREET, SUITE 702
WASHINGTON, PA 15301

CHIEF OF STAFF
JOHN W. HAYNES
724-228-6725
CHIEF CLERK
CYNTHIA B. GRIFFIN
724-228-6723
FAX: 724-228-6965

April 13, 2020

The Honorable Jerome Powell, Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Dear Chairman Powell:

Thank you for your work in passing the Coronavirus Aid, Relief, and Economic Security (CARES) Act, so we can begin to resolve the human and economic consequences created by this global pandemic.

As you are aware, Section 4003 (b)(4) of the CARES Act makes \$454 billion available in loans, loan guarantees, and other investments to programs or facilities established by the Board of Governors of the Federal Reserve System. It is critically important for the oil and natural gas producers that have made our country energy secure and continue to be an engine for economic growth to be considered.

America's energy sector is facing challenging markets associated with COVID-19 sapping demand. In Washington County, Pennsylvania, shale development – and the tens-of-thousands of jobs it supports for hard-working Pennsylvanians – plays a key role in Western Pennsylvania's economic success. As the county commissioners for Pennsylvania's second-largest natural gas producing county, shale development has been an absolute blessing and continues to deliver positive benefits for our communities.

Washington County is home to the first Marcellus Shale well drilled by Range Resources in 2004. Sixteen years later, we are the second largest producing county in Pennsylvania and have invested more than a half billion dollars in infrastructure and economic development.

Thanks to shale development, we've seen increased tax revenues without raising taxes and employment levels have surged, all while residents enjoy significant home energy savings. Over the years, we have worked to do all we can at the county level to attract investment, grow our economy and ensure the energy produced in Washington County is done safely and responsibly.

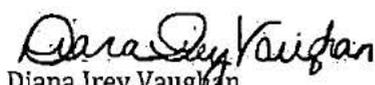
We now ask that you do the same at the federal level.

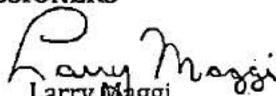
Range Resources has helped Washington County grow into what it is today, which is why we encourage you to make the tax and loan relief provisions included in the CARES Act available to Range and other companies that are critical to Western Pennsylvania's economy. Support for these companies means thousands of hardworking men and women in Southwestern Pennsylvania are getting much needed assistance.

We appreciate your leadership during this national emergency and thank you for your consideration.

Sincerely,

WASHINGTON COUNTY BOARD OF COMMISSIONERS


Diana Irey Vaughan
Chair


Larry Maggi
Vice Chair


Nick Sherman
Commissioner

/jht



STATE OF WASHINGTON
WASHINGTON STATE ARTS COMMISSION
711 Capitol Way S, Suite 600, PO Box 42675 Olympia, WA 98504-2675
(360) 753-3860 • FAX (360) 586-5351

April 17, 2020

The Honorable Jerome Powell
Chairman, Board of Governors
Federal Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear Chairman Powell and Secretary Mnuchin:

On behalf of Washington State's nonprofit Arts, Cultural and Creative sectors, I thank you for the opportunity to provide input into potential eligibility changes to the "Main Street" business lending facilities. The CARES Act clearly reflected Congress's intent that nonprofits of qualifying size be eligible for this funding "to the extent practicable". The proposal to leave nonprofits out entirely is clearly incompatible with the spirit of the legislation.

We respectfully and urgently request that nonprofits of all kinds be included in the language of this new and very important initiative.

Specifically, we request that you:

- Provide forgivable emergency assistance loans to nonprofit organizations of all sizes.
- Provide forgivable loan assistance to self-employed workers, sole proprietors, small LLC's and small 501(c)(3) organizations to offset fixed overhead costs such as rent, utilities, insurance and debt service without per employee limits.

As the Washington State Arts Commission (ArtsWA), we know that the Arts and Creative Sectors are enormously important to our state's economy, quality and vibrance of life, and community identity. Statewide, the sector comprises nearly 18,000 businesses, with 70,000 employees, and countless creatives and contractors. The sector drives significant economic activity and spurs tremendous social impact. It has a significant economic multiplier effect on other business activity such as restaurants and lodging. It supports not only nonprofit arts jobs, but jobs at surrounding businesses. As an economic sector, arts and culture workers add remarkable and recognizable value to Washington's high quality of life.

Washington's Arts and Culture sector is valued at more than \$44 billion dollars (2017 data). Compared to other sectors of Washington State's economy, Arts and Culture ranks number one at \$44 billion dollars. Retail ranks second at just over \$43 billion dollars, followed by construction at \$22 billion dollars. Washington State's Arts and Culture sector increased in value by 11.48% between



STATE OF WASHINGTON
WASHINGTON STATE ARTS COMMISSION
711 Capitol Way S, Suite 600, PO Box 42675 Olympia, WA 98504-2675
(360) 753-3860 • FAX (360) 586-5351

2016 and 2017. (Source: *Arts and Cultural Production Satellite Account (ACPSA)*, a partnership between the *National Endowment for the Arts (NEA)*, *Office of Research & Analysis*, and the *U.S. Bureau of Economic Analysis*)

Clearly, the nonprofit arts sector is critical to the state. But it is being devastated economically by COVID-19 and needs federal assistance in the same way as its for-profit counterparts. Since the first U.S. COVID-19 case was reported on January 20, almost all arts and cultural events have been cancelled statewide. Closures of facilities and buildings have been reported in thousands of communities. Current indications from the Administration and the CDC suggest that some kind of social distancing and other measures could extend through the summer. This will mean billions in additional revenue losses for the nonprofit arts and culture field.

One remedy immediately available is to include the nonprofit arts, cultural, creative sectors, local chambers, civic organizations, and nonprofits of all kinds in the "Main Street" business lending facilities. The non-profit arts and cultural sector in Washington State is important to the communities they serve. They attract cultural tourists, drive business to restaurants, employ full and part-time workers, and partner with schools to help educate our children. By receiving support in the same way as the for-profit sector, nonprofit businesses will be given a fair and fighting chance to survive the COVID-19 crisis.

Thank you in advance for your positive response and for the inclusion of nonprofits of all kinds in the "Main Street" business lending facilities.

Sincerely,

Karen Hanan, Executive Director
Washington State Arts Commission
karen.hanan@arts.wa.gov / 360-586-2423

Cc: Members of the Washington State Congressional Delegation
Cc: Casey Katims, Director, Governor Jay Inslee's Washington, D.C. Office



FOR YOUTH DEVELOPMENT®
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

April 16, 2020

To: Board of Governors of the Federal Reserve System
Via Email

On behalf of YMCA of the USA, the resource office for the nation's 2,600 YMCAs, I urge you to include nonprofits in the Main Street lending program. YMCAs across the country are on the frontlines of the response to the COVID-19 crisis, providing care to children of health care workers and first responders, food to the hungry and support to the isolated, homeless and most vulnerable. In communities large and small, YMCAs are particularly focused on delivering essential services and resources to those who have been disproportionately affected by this pandemic – communities of color and the underserved. The pandemic has simultaneously increased the demand for the services that the Y offers while having an extreme negative impact on the finances of both the organization and our employees. It is essential that Ys are able to participate in government relief programs so we can continue to operate in the future.

While we are saddened by the toll the COVID-19 pandemic has taken, we are also heartened by the powerful stories of service and sacrifice in our communities. We are inspired by the work that the YMCA and other community nonprofits are doing, and the hope they are providing in our hometowns.

However, at this crucial moment, when our communities need us more than ever, nonprofits like the Y are struggling, and we need help on a scale that only the federal government can provide. The CARES Act represented progress, but we need more help. If we don't get it, many communities will lose their essential nonprofit organizations, including YMCAs.

As the Treasury Department works to create the program directed under the CARES Act to provide loans to nonprofits and other mid-size business of up to 10,000 employees, we request that the program:

- Model the SBA PPP program approach by forgiving loan amounts that meet certain criteria around employment.
- Include a 0.50% interest rate (50 basis points) for 501(c)(3) charitable nonprofits at a 5-year amortization
- Give priority to 501(c)(3) charitable nonprofits responding to the COVID-19 crisis.
- Provide that payments shall not be due until two years after a direct loan is made
- Stipulate that employee retention provisions begin on the date that loan funding is received by the borrower
- Define "workforce" as full-time employees or full-time equivalents for the purposes of implementing any workforce restoration and retention provisions

Many YMCAs, especially those in larger metropolitan areas, employ more than 500 staff in aggregate across multiple locations and are not eligible for the Paycheck Protection Program. Their size is consistent with the communities they serve and provides them scale to deliver services. However, much like a small business, their cashflows are severely stressed due to the pandemic, with no ability to recoup lost inflows, and their primary lever to manage all this is furloughing or laying off employees. Including these larger nonprofit organizations in the Main Street lending program would afford the same relief for their employees that is available to smaller organizations and ensure that these important community anchors can continue to provide urgently needed services for their neighbors.

It's important that you include loan forgiveness for nonprofits, similar to the Paycheck Protection Program, to eliminate the burden of repayment in these uncertain times. While Ys are closed to members and programming is paused, membership and program fees are permanently lost. Loan forgiveness will help stabilize these organizations so they can reopen.

Nationwide, 2,640 YMCAs across the country serve 10,000 communities. In 2019, the Y served over 22 million meals to over 611,000 youth in families facing food insecurity. The Y is the nation's largest nonprofit provider of child care and out-of-school time programs, with 1,400 early learning sites, 7,360 afterschool program sites, 1,870 summer day camp programs and 266 resident camps. These programs not only give parents and caregivers the peace of mind that comes with knowing their children are in a safe place when they go to work, but also provide children with an enriching environment where they can achieve their fullest potential.

Ys also help millions of individuals prevent and control chronic disease through evidence-based health interventions. Those living with hypertension, arthritis and cancer manage their condition and restore their health through these interventions. And individuals with pre-diabetes are able to avoid developing diabetes, one of the leading drivers of health costs in our country. These community-based interventions are an important component to supporting the health system and controlling escalating health care costs.

But today, things look very different. With membership facilities closed and most of our preschool and school age child care not operating, overall the Y expects in excess of \$400 million of lost operating revenue in April alone. Additionally, nonprofits already were seeing declines in donations due to the new tax law, and those declines have accelerated due to coronavirus. If facility closings continue throughout the summer, YMCAs collectively could see lost revenue as high as \$2.5 billion.

Prior to the pandemic, the Y network employed more than 500,000 staff members. YMCAs already have laid off hundreds of thousands of employees in communities large and small. In fact, we know that **many** Ys have laid off and furloughed most of their staff, up to 95% in some cases.

But Ys are always here for our communities. Despite facilities being closed, Ys are continuing to find ways to help those in need by providing emergency child care for health care workers and first responders, food programs to children without access to school meals, housing for at-risk populations, socialization services for seniors facing isolation, virtual fitness and youth programs, blood drives for community partners and holistic health and wellness support for all ages.

Nonprofits are part of the essential fabric that holds communities together. Without them, our communities will struggle to recover and may never be the same. Please take steps to ensure that all nonprofits, large and small, have access to the support they need to survive this crisis and help their communities recover and thrive again.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Washington', written in a cursive style.

Kevin Washington
President and Chief Executive Officer
YMCA of the USA



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

TOM QUAADMAN
EXECUTIVE VICE PRESIDENT

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(202) 463-5540
tquaadman@uschamber.com

April 16, 2020

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal
Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

The Honorable Steven T. Mnuchin
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Chairman Powell and Secretary Mnuchin:

The U.S. Chamber of Commerce's ("the Chamber") Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to comment on programs announced by the Federal Reserve Board ("Federal Reserve"), with the support of the Treasury Department ("Treasury"), to promote liquidity to different corners of the economy. These programs are extremely important to support businesses struggling with the cashflow challenges caused by the coronavirus pandemic. The guiding principle of the U.S. Chamber of Commerce ("the Chamber") during this crisis is that no family and no business should go bankrupt because of the financial hardships caused by the coronavirus pandemic.

The uncertainty that has been thrust upon the business community by the pandemic has required the private sector to turn to the federal government to provide resources and reassurances in the short-term so our financial markets can function efficiently. Liquidity in many corners of our financial markets have dried up in recent weeks as issuers and investors grapple with understanding their individual circumstances and the direction overall economy. The Federal Reserve will, and already is, playing a key role for restoring confidence to the business community and financial markets.

The comments in this letter reflect the Chamber's view on the Paycheck Protection Program Lending Facility (PPPLF), the Term Asset-Backed Securities Loan Facility (TALF), the Primary Market Corporate Credit Facility (PMCCF), the Secondary Market

Corporate Credit Facility (SMCCF), the Municipal Liquidity Facility (MLF), the Commercial Paper Funding Facility (CPFF), and liquidity challenges for mortgage servicers. The Chamber is providing feedback on the Main Street Lending Program under separate cover.

Paycheck Protection Program Lending Facility

We commend the Federal Reserve and Treasury for authorizing the Paycheck Protection Program Lending Facility (PPPLF). The effectiveness of the Small Business Administration's Paycheck Protection Program (PPP) is a top priority of the Chamber. The PPP is a lifeline for countless small businesses, and it is therefore appropriate the Federal Reserve would offer liquidity to financial institutions issuing these loans. The below recommendations are intended to enhance the impact of the PPPLF.

The Federal Reserve should clarify "eligible borrowers" for the purposes of the PPPLF. The term sheet notes that all depository institutions that originate PPP loans are eligible and that the Board is "working to expand eligibility" to other lenders that originate PPP loans. Non-depository lenders approved by the Small Business Administration (SBA) to issue PPP loans should automatically gain access to the PPPLF.

The Federal Reserve should facilitate the secondary market by addressing eligibility for depository institutions that are not PPP approved lenders. The PPPLF term sheet appears to only contemplate the pledging of PPP loans by the lenders that originate them, excluding the ability of non-originating depository institutions from holding loans, loan participations, or other securitization interests to access the PPPLF by pledging those instruments. Such a narrow approach would inhibit the robust development of a secondary market in PPP loans, which is necessary in order to fully allow all PPP lenders (particularly non-bank lenders who are currently unable to directly access the PPPLF) to maximize their balance sheet and maximize PPP lending to small businesses in need of funds on an urgent basis.

The PPPLF should contemplate additional guidance on SBA affiliation rules under the PPP. The Chamber has advocated for clarification of these rules, including for borrowers backed by angel investors, venture capital and private equity, so more businesses can access the loans available under the PPP.¹

¹ U.S. Chamber of Commerce, other trade associations, Small Business Administration Affiliation Rules Applicability to Paycheck Protection Program [Letter written April 10, 2020 to the Small Business Administration and Treasury Department] available at http://www.centerforcapitalmarkets.com/wp-content/uploads/2020/04/200410_Coalition_PPPAffiliationRules_Fed_Treasury_SBA.pdf?#

Finally, the Federal Reserve should clarify available relief from applicable leverage and capital requirements for depository institutions that hold PPP loans on their balance sheet. The risk weight of PPP loans under the CARES Act is zero. And, on April 9, 2020, the federal banking regulators issued an interim final rule to allow banking organizations to neutralize the effect of PPP loans financed under the PPPLF on leverage capital ratios, but this would effectively require lenders to pay 35 basis points for regulatory relief. However, if the lender funds the loan the risk, weighting is zero but there is no relief for leverage. The Federal Reserve should reconcile this discrepancy for regulatory relief in order to encourage banks to use the PPPLF.

Term Asset-Backed Securities Loan Facility

The Chamber supports the Federal Reserve establishing a Term Asset-Backed Securities Loan Facility (TALF). The Federal Reserve announced the establishment of the TALF on March 23, 2020,² wherein it noted it would lend up to \$100 billion on a non-resource basis – an amount equal to the market value of the asset-backed securities (ABS) less a haircut – to holders of certain AAA-rated ABS backed by newly and recently originated consumer and small business loans. This announcement noted that eligible securities will include those backed by student loans, auto loans, credit card loans, loans guaranteed by the SBA, and other certain asset classes – all of which support critical aspects of our economy.

The commercial real-estate industry has faced a number of unexpected yet severe headwinds in recent weeks as a result of the pandemic. In general, tenants that were otherwise creditworthy before the crisis are unable to pay rent due to disruptions in their business including government orders to limit their operations. The cashflow challenge is especially acute for nonbank lenders that depend on lines of credit and repurchase agreements with depository institutions that are oftentimes secured by assets with valuations tied to commercial real-estate; the liquidity challenges for these lenders appear to be compounded by the simultaneous demand for liquidity by nearly every sector of the economy.

The Federal Reserve's April 9, 2020 announcement, which includes changes to the TALF term sheet, while positive, appears to fall short of ameliorating major liquidity issues. Importantly, the updated term sheet indicates that TALF-eligible collateral will now include

² Board of Governors of the Federal Reserve System, Federal Reserve announces extensive new measures to support the economy (March 23, 2020), available at <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200323b.htm>

the AAA rated tranches of both outstanding commercial mortgage-backed securities (CMBS) and newly issued collateralized loan obligations (CLOs). There is evidence to suggest that the announcement to add AAA legacy CMBS to the program has already improved liquidity in the sector. The Chamber supports this expansion of TALF, which we believe would help alleviate the extreme funding pressures in the commercial real-estate market during this period of uncertainty.

The Chamber recommends further expansion of the eligible collateral that may be pledged by borrowers under TALF. First, it should be expanded to include new issue conduit CMBS. Second, it should be expanded to include conduit and single asset single borrower (SASB) securities. The Federal Reserve should consider the merits of expanding TALF to non-investment grade securities that support the commercial real-estate market to ensure liquidity is available where it is needed the most without exposing itself to credit losses that would cause a net loss for the program. Furthermore, to the degree possible, information made available to the public about participants in the program should distinguish the credit risk and performance of pledged assets.

The Chamber also broadly supports the Federal Reserve providing liquidity to the secondary market for consumer debt via TALF. At least one asset class that merits clarification is those securities backed by student loans. This market can generally be classified as 1) Federal Family Education Loan Program (FFELP) loans; 2) in-school private student loans; and 3) refinanced private student loans; all of which have distinct characteristics and credit risk. For example, FFELP loans include a guarantee from the federal government, and in-school generally have a higher credit quality than other student loans. Therefore, these securities should be itemized separately and provided the appropriate collateral treatment in order to maximize liquidity for this market.

Additionally, the Federal Reserve should consider simplified customer agreements and documentation requirements for participating in TALF. One of the most time-consuming aspects of the TALF program announced in 2008 was the time it took to get investors onboarded and ready to participate in the program.

Finally, the Federal Reserve should clarify that a U.S. branch or agency of a foreign bank is eligible to participate in TALF. Any limitation would undermine the intent of the CARES Act, which is to quickly provide lending and liquidity to businesses in the U.S., many of which choose to bank with a U.S. branch or agency of a foreign bank. The term sheet released on March 23, 2020, notes “A U.S. company would be defined as a U.S. business entity organized under the laws of the United States or a political subdivision or territory thereof (including such an entity that has a non-U.S. parent company), *or a U.S.*

branch or agency of a foreign bank.” The revised April 9, 2020 term sheet removes the explicit reference to a U.S. branch or agency of a foreign bank.

Primary Market Corporate Credit Facility

The Chamber commends the Federal Reserve, with the support of Treasury, for providing up to \$750 billion in combined support to eligible lenders through both the Primary Market Corporate Credit Facility (PMCCF) and the Secondary Market Corporate Credit Facility (SMCCF). We support the PMCCF as it will provide an important source of liquidity to companies navigating business challenges as a result of the pandemic. The PMCCF, by directly purchasing corporate debt of eligible domestic investment grade issuers, will serve as an important backstop for corporate debt. However, the Chamber encourages the Federal Reserve to bring greater clarity to the terms and conditions surrounding limits per issuer, the eligibility of issuers, and the documentation, disclosures, and operational mechanics required to access the PMCCF.

Limits per issuer

According to the PMCCF term sheet, the maximum amount of outstanding bonds or loans of an eligible issuer that borrows from the facility may not exceed 130% of the issuer’s maximum outstanding bonds or loans on any day between March 22, 2019 and March 22, 2020. Given the importance of the 130% test to issuers as they consider their funding plans, we believe greater clarity is required to address the following questions.

- Is the 130% test applicable only while the issuer has bonds / loans held by the facility?
- Is this percentage a maintenance or incurrence test?
- What are the repercussions of breaching the 130% limit?
- Is the 130% test based on notional value, balance sheet value or another methodology?

Eligibility considerations

The PMCCF is an important component of the Federal Reserve’s actions to support businesses during this unprecedented time. However, a number of unanswered questions remain as to eligibility for the PMCCF as pertains to affiliate issuers, holding companies, U.S. subsidiaries of foreign parents, and ratings considerations.

- Are affiliate issuers with the same parent able to access the PMCCF if they independently meet the criteria? Is an issuer rating sufficient or must individual bonds be rated?

- If the holding company is assumed to be the issuer, how does the issuer account for bonds and loans issued to third parties via subsidiaries? Is an issuer rating sufficient or must individual bonds be rated?
- For split-rated issuers, should the higher or lower rating be referenced?
- Are U.S. subsidiaries of foreign parents, with operations primarily in U.S., eligible?
- Is eligibility impacted if an issuer is either (i) owned by a foreign parent or (ii) receives a guarantee from a foreign parent of a U.S. issuer?
- Do secured forms of debt / loans qualify? Do subordinated bonds / loans qualify?
- Will the Federal Reserve consider amending the ratings eligibility to include additional issuers?

Documentation, disclosures, and operational mechanics

Several key implementation questions remain outstanding as issuers consider accessing the PMCCF.

- Who is responsible for setting and approving the list of participants?
- What documentation, disclosures or other readiness must be undertaken by participants?
- Is there a date by which participants need to sign up to access this facility?
- Is the PMCCF available to participants during an issuer's blackout periods?
- Does the facility intend on lending out the securities at a future date?

Secondary Market Corporate Credit Facility

The Chamber supports the Secondary Market Corporate Credit Facility (SMCCF) as it will provide an important source of liquidity in the secondary market to companies navigating business challenges as a result of the pandemic. The SMCCF, by directly purchasing corporate bonds and corporate bond portfolio ETFs, will serve as an important backstop for corporate debt markets. However, the Chamber encourages the Federal Reserve to consider (1) certain modifications to eligible assets and limits per issuer to improve access to the SMCCF and (2) clarifying the terms surrounding eligible issuers, pricing and limits per issuer/ETF, eligible sellers, and documentation, disclosures, and operational mechanics required to access the SMCCF.

Modifications to eligible assets and limits per issuer

The SMCCF has the capacity to help a large portion of the market. However, we are concerned that given the terms and conditions of the facility only a small portion of the

market that requires assistance will actually be able to avail themselves of the SMCCF. To ensure that the facility is as impactful as intended, we recommend that the Federal Reserve consider increasing from 5 to 10 years the final maturity of eligible bonds to expand the reach of the program. We also recommend an increase from 1.5% to 2.0% the per issuer cap of the total program size to accommodate issuers with larger debt footprints in the market.

Other eligibility, pricing, and limits per issuer / ETF considerations

We believe greater clarity is required to address the following additional eligibility, pricing, and limits questions.

- Who is responsible for setting and approving the list of participants?
- Are U.S. investors with a foreign parent considered eligible sellers?
- How will “fair market value” pricing be determined?
- Could issuers sell their own debt to the facility that have been purchased in the secondary markets through the ordinary course of market-making?
- How will the Fed allocate the capacity firms could utilize by issuer or seller?

Participation of U.S. branch or agency of a foreign bank

The revised term sheet published on April 9, 2020, now includes a definition of eligible seller.³ The eligibility of a branch or agency of a foreign bank should be clarified.⁴

Documentation, disclosures, and operational mechanics

Several key implementation questions remain outstanding as issuers consider accessing the SMCCF.

- What documentation, disclosures or other readiness must be undertaken by participants?
- Is there a date by which participants need to sign up to access this facility?
- Does the facility intend on lending out the securities at a future date?
- Does the Fed intend on holding these purchased assets to maturity?

³ The term sheet for the SMCCF now notes “[e]ach institution from which the Facility purchases securities must be a business that is created or organized in the United States or under the laws of the United States with significant U.S. operations and a majority of U.S.-based employees.”

<https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a2.pdf>

⁴ See similar comments above regarding the eligibility of a U.S. branch or agency of a foreign bank to participate in TALF

Municipal Liquidity Facility

The Chamber supports the Federal Reserve establishing the Municipal Liquidity Facility (MLF). The facility will purchase up to \$500 billion of short-term notes directly from U.S. states (including the District of Columbia) and certain cities and counties. The revenue disruption caused by the coronavirus crisis has severely strained the short-term finances of state and local governments. Businesses of all sizes depend on the critical services provided by state and local governments – maintaining roads, public safety, healthcare, etc. – to operate their businesses. The continuity of these critical services is especially important during this time of uncertainty. The below recommendations are intended to enhance the MLF.

Expand to more issuers

The Municipal Liquidity Facility is restricted to only the largest issuers.⁵ This means the vast majority of cities and counties will be ineligible for their debt to be purchased by the MLF. It appears that independent authorities and nonprofit entities are also excluded from the definition of eligible issuer, but this is not clear on the term sheet.

The MLF term sheet suggests eligible issuers may provide liquidity to other issuers.⁶ We welcome this suggestion, but it is not immediately clear to us that that eligible issuers would make use of this option. Using eligible issuers as intermediaries is impractical and would likely distort the market. Most states and large cities – the eligible issuers – are facing their own fiscal challenges and thus will not likely be completely ameliorated by the MLF. Therefore, it is highly unlikely they would provide liquidity to other issuers. Furthermore, this would require eligible issuers to assume the credit risk of non-eligible issuers, which seems unlikely given the economic uncertainty. Additionally, it is unclear how many states have the authority in their constitutions to lend to cities and municipalities. It is also not immediately clear if eligible issuers have the operational capability to facilitate liquidity for other issuers, but it is reasonable to conclude they would endeavor to do so if provided additional funding.

⁵ MLF term sheet states Eligible issuers include “U.S. states, counties with a population of at least two million residents, and U.S. cities with a population of at least one million residents.”

<https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a3.pdf>

⁶ Ibid. “An Eligible Issuer may use the proceeds of the notes purchased by the SPV to purchase similar notes issued by, or otherwise to assist, political subdivisions and instrumentalities of the relevant State, City, or County for the purposes enumerated in the prior sentence.”

The MLF should include an additional allocation of funds to eligible issuers providing liquidity to other issuers. In other words, eligible issuers should be permitted to sell notes to the MLF from other issuers that do not count towards the cap of “up to an aggregate amount of 20% of the general revenue ... for fiscal year 2017.” Otherwise, it seems unlikely that eligible issuers will allocate funding away from their own financing challenges.

Clarify the funding rate

The term sheet does not describe the interest cost to the issuer. The term sheet simply states that “Pricing will be based on an Eligible Issuer’s rating at the time of purchase with details to be provided later.” The MLF’s required return will clearly determine how much it is used by issuers compared to other funding options.

Commercial Paper Funding Facility

The Chamber wrote to the Federal Reserve Board and the Treasury Department on March 31, 2020, regarding the Commercial Paper Funding Facility. Our letter requested the CPFF be expanded to include Tier 2 issuers and split issuers of commercial paper in order to promote more liquidity in this market without subjecting the facility to substantially higher credit risk.⁷ The Federal Reserve – including in its April 9, 2020 announcement regarding other 13(3) facilities – has not indicated if the CPFF will be expanded.

Mortgage Servicing Liquidity

Notably absent from the Federal Reserve’s announcement is a liquidity facility to manage the challenges facing servicers in the mortgage market. The federal government has instituted broad forbearance policies but has not provided any liquidity backstop to support the market. Forbearance imposed by the federal government temporarily disrupts the necessary cashflow to for payments that are obligated to investors. The Chamber recommends the Federal Reserve work with the Treasury Department reduce the uncertainty that is currently plaguing this market by providing a liquidity backstop through the creation of an additional 13(3) facility.

⁷ U.S. Chamber of Commerce, Commercial Paper Funding Facility issuer eligibility, [Letter written March 31, 2020 to the Federal Reserve Board and Treasury Department] available at http://www.centerforcapitalmarkets.com/wp-content/uploads/2020/04/200331_CoalitionComments_CommercialPaperFundingFacility_Fed_Treasury-Final-3.31.20.pdf?#

This facility should not include any of the corporate governance restrictions that are described in the CARES Act. The CARES Act does not specifically contemplate a mortgage servicing liquidity facility and therefore there is no clear direction from Congress about imposing restrictions on the firms that may elect to use this funding source. Furthermore, where the CARES Act does contemplate corporate governance restrictions (which the Treasury Secretary authority has the authority to waive), they are only applicable to *lending* programs; they are not applicable to *securities*.

Closing

Thank you for considering our input regarding liquidity challenges in our financial markets and our comments on the programs you have proposed to ameliorate these issues. The Chamber is supportive of your efforts and stands ready to assist you with maximizing the benefits of these programs.

The Chamber supports the Federal Reserve providing short-term liquidity during this time of crisis, but we believe it is important that the private market remain the long-term provider of liquidity to the economy. The Federal Reserve serves a vital role as the lender of last resort, which is absolutely required under current economic conditions. Private capital should not be crowded in the long run including when the market is not demonstrating signs of severe stress.

Finally, we are prepared to work with the Treasury Department and the Federal Reserve to request more funding from Congress to backstop 13(3) programs if it becomes clear the liquidity challenges facing the market are more severe than have been previously contemplated.

Very Respectfully,

A handwritten signature in black ink, appearing to read 'T. Quadman', with a long horizontal flourish extending to the right.

Tom Quadman

Cc: Peter Phelan, Deputy Assistant Secretary, U.S. Department of the Treasury



April 16, 2020

The Honorable Steven T. Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

The Honorable Jerome H. Powell
Chairman
Board of Governors of the Federal Reserve
20th Street and Constitution Avenue NW
Washington, D.C. 20551

Dear Secretary Mnuchin and Chairman Powell:

The Board of Governors of the Federal Reserve System (the “Board”) and the Department of the Treasury have taken extraordinary, unprecedented steps in recent weeks to facilitate the recovery and reopening of the American economy. Despite the creation of numerous loan and liquidity facilities, however, including two “Main Street” loan facilities, there is presently no facility through which AMC Theaters—the quintessential Main Street business—is eligible to borrow. With movie theaters shut down by government orders to prevent the further spread of COVID-19, AMC has no revenue. And with no relief available from CARES Act programs designed to provide “economic stabilization and assistance to severely distressed sectors of the U.S. economy,” AMC will soon have no choice but to shut its doors permanently, forcing not only the permanent layoff of tens of thousands of workers but also significant changes in the American cultural landscape.

As you are aware, there is presently a gap in the Board’s economic recovery programs that jeopardizes hundreds of thousands of American jobs. Larger non-investment-grade employers with more than 10,000 employees and \$2.5 billion in 2019 revenue do not qualify for the Paycheck Protection Program, the Main Street New Loan Facility, the Main Street Expanded Loan Facilities, or the Primary Market Corporate Credit Facility



(unless those companies were recently downgraded from an investment-grade rating). Beyond AMC, this class of businesses includes many well-known household brands across virtually every American industry—from manufacturing to services providers to gaming to retail.

Given that only about half of the \$454 billion Congress appropriated to the Treasury Department in the CARES Act is providing credit support to these existing facilities, it is possible that the Board and Treasury are currently considering a lending facility that would be available to AMC and other larger employers. AMC appreciates the considerations your agencies undertake when creating emergency lending programs, principally the Board's exposure to credit risk. Sensitive to this dynamic, AMC urges your agencies to use the remaining money to establish a new lending facility (or expand existing facilities) to permit borrowing to larger non-investment-grade companies on terms that maximize leverage of the Treasury's equity contributions. These terms could include a requirement that the borrower provide new security for the loan, such as a lien, bond, secured affiliate guarantee, or other credit support. The lending program could also require that the government's position in the borrower's capitalization not exceed a specific leverage. This type of secured lending program would enable Treasury's limited CARES Act funds to continue to attract relatively high Federal Reserve leverage to create a large enough lending program for companies that don't otherwise qualify for assistance. Borrowers that are not able to offer security would either not qualify or would be subject to other covenants to provide the Federal Reserve additional credit support (e.g. an overall debt coverage ratio). In any case, flexibility on loan terms should be the primary driver of any such lending fund.

We also suggest that you waive any existing rules that may impede recovery due to the current pandemic. For example, because the CARES Act (Section 4003(c)(3)(C)) applies all applicable requirements of section 13(3) of the Federal Reserve Act to CARES Act section 4003(c) loans, the solvency requirements contained in 12 C.F.R. § 201.4(d)(5)(iii)(B) may prevent closed consumer facing businesses from qualifying for a lending facility. Clearly, companies that have been ordered closed by state governments and have no income may not be able to overcome the strict definition of "insolvency" in regulations not meant to address the need to stabilize a pandemic induced economic shutdown.



We appreciate all you are doing to both stabilize the economy and position it for a rapid recovery. AMC Theatres should be part of that recovery because of our important role in local economies, including boosting foot traffic to nearby retailers and serving as desirable anchor tenants in mixed-use developments and shopping centers. The movie exhibition business is in distress and is the very types of business Congress intended to help with the CARES Act. Therefore, we urge you to ensure that Treasury and the Federal Reserve establish a flexible lending facility available to companies in a distressed financial condition directly tied to the global pandemic.

I appreciate your attention to these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Aron". The signature is fluid and cursive, with a long horizontal stroke at the end.

Adam Aron
CEO and President
AMC Entertainment Holdings, Inc.



1333 H Street, NW
Suite 400W
Washington, DC 20005
Phone (202) 354-7171
Fax (202) 354-7176
www.medicaldevices.org

April 16, 2020

Via Electronic Submission

The Honorable Steven Mnuchin
Secretary of the Treasury
U.S. Department of Treasury
1500 Pennsylvania Avenue N.W.
Washington, D.C. 20220

The Honorable Jerome Powell
Chairman of the Board of Governors
Federal Reserve System
20th Street & Constitution Avenue N.W.
Washington, D.C. 20551

**RE: Recommendations for Updating Main Street Business Lending Program
(MSLP) Term Sheets to Provide the Greatest Access to the Program**

Dear Secretary Mnuchin and Chairman Powell,

On behalf of the Medical Device Manufacturers Association (MDMA), a national trade association representing hundreds of innovative and entrepreneurial companies in the field of medical technology, I want to thank you for your coordinated and decisive actions to address the unprecedented economic challenges our country is facing as a result of the COVID-19 pandemic. Initiatives underway at the Department of Treasury and the Federal Reserve will serve as the financial backbone to support and help small, medium and large companies. More importantly, the programs enacted under the “Coronavirus Aid, Relief, and Economic Security (CARES)” Act will help medical technology employees weather this crisis, while empowering our members to continue developing lifesaving and life-changing innovations, and bridging the gap with the necessary liquidity that will allow our economy to thrive once again. I am writing to provide term sheet recommendations, for both the new and expanded loan facilities, that will ensure the program functions in an effective and efficient manner and is accessible to all companies within specified employment ranges and revenue thresholds.

MDMA provides educational and advocacy assistance to innovative and entrepreneurial medical technology companies, and it is our mission to ensure that patients have timely access to safe and effective medical products that improve health outcomes. Our members, the majority of which are small to mid-sized medical device companies, have a strong record of delivering innovative therapies to patients suffering from chronic diseases and life-threatening conditions, while lowering the cost of care. Our industry is responsible for significant advances in patient care over the years, including transcatheter heart valves, implantable cardiac defibrillators, cochlear implants and countless other innovations. Such advances have vastly improved treatments for medical conditions like heart disease, cancer and stroke – annually among the leading causes of death for Americans each year.

Small to mid-sized medical technology companies are an integral part of the medical device industry ecosystem and responsible for a majority of the truly novel and disruptive

medical technology innovations that have improved the way of life for so many patients. These efforts can take many, many years and hundreds of millions of dollars before an idea can ultimately reach patients and address unmet needs. It can take decades for these highly regulated and capital-intensive companies to reach profitability and sustainability. Swift and meaningful action to meet the current health and economic crisis is paramount to help these companies survive and ultimately fulfill their mission to deliver new therapies to patients in need.

As you can imagine, the road for these small to mid-sized medical technology companies includes a significant number of challenges in the best of times. However, the COVID-19 pandemic has materially increased these uncertainties. Like many other sectors of our economy, the pandemic is adversely impacting many of our members' businesses. At a White House Task Force Press Briefing on March 18th, Centers for Medicare & Medicaid Services (CMS) Administrator Seema Verma announced a federal directive recommending a deferral of all adult elective surgeries, non-essential medical, surgical, and dental procedures during the COVID-19 response. We understand the necessity of these actions and support them; however, we also believe reciprocal action is warranted to ensure that the companies MDMA represents, which also supply the products for these deferred procedures, can survive until COVID-19 countermeasures are lifted and elective procedures are allowed to resume.

As currently structured, the draft terms sheets for both the Main Street "new" loan facility and the "expanded" facility appear to exclude many innovative medical technological companies that treat cancer, cardiovascular disease, neurological disorders and other critical conditions. Specifically, all companies who have expenses that exceed revenues would be excluded under the threshold set to establish the maximum amount for a loan. Terms in the new loan specify that the maximum loan size cannot exceed four times 2019 EBITDA and expanded loan terms indicate that the maximum loan size cannot exceed six times 2019 EBITDA. In addition, successful companies prior to the COVID-19 pandemic with greater leverage would be excluded. It is understandable that the Federal Reserve and Treasury need to explore ways to minimize risk for loans. However, many emerging and successful medical technology companies would be excluded from this critical liquidity lifeline without modifications.

In an effort to realize the full impact of the Main Street program and the Administration's desire to ensure liquidity for all small to mid-sized businesses that need it, MDMA strongly encourages the Federal Reserve and Treasury to make the following improvements to the Draft Term Sheets for the Main Street New Lending Programs:

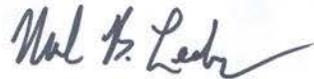
- 1) Modify the current methodology for the maximum loan amount under MSNLF to include two additional options: 1) an unsecured loan up to \$15M that would not require the EBITDA/leverage analysis (the \$25M maximum would remain with the current thresholds in place); and 2) an unsecured loan of up to 0.5xEBITDA for companies that are currently above the EBITDA/leverage thresholds;
- 2) The loan should be subordinate to any other loans;
- 3) Participating banks would be a) required to provide such loans outside of any existing debt covenants and not accelerate any existing covenant provisions, and b) prohibited from increasing interest rates on any existing loans due to perceived increased risk;
- 4) Loans would be structured as cash or paid-in-kind interest, due upon a change-in-control or after any existing credit facilities; and

- 5) Loans would not be overly restrictive, including limitations that increase the amount of debt required to stay afloat. We encourage the administration to allow companies to utilize the necessary tools to lower the amount of debt needed for liquidity and sustainability.

Thank you for the consideration of our comments and perspectives. I hope you will move quickly to update the Main Street Lending Program Term Sheet to ensure that all small and mid-sized medical technology companies and their employees have the opportunity to access these critical funds and continue their important work to improve patient care.

Please email me at mark.leahey@medicaldevices.org with any follow up questions, concerns or clarifications.

Sincerely,

A handwritten signature in black ink that reads "Mark B. Leahey". The signature is written in a cursive style with a long, sweeping underline.

Mark B. Leahey
President & CEO, MDMA



UNIBAIL-RODAMCO-WESTFIELD

April 15, 2020

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave NW
Washington, DC 20220

The Honorable Jerome Powell
Chair
Federal Reserve Board of Governors
20th Street and Constitution Avenue NW
Washington, DC 20551

The Honorable Jovita Carranza
Administrator
U.S. Small Business Administrator
409 3rd Street SW
Washington, DC 20416

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
S-230, U.S. Capitol
Washington, D.C. 20510

The Honorable Charles Schumer
Minority Leader
U.S. Senate
S-221, U.S. Capitol
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H-232, U.S. Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
H-204, U.S. Capitol
Washington, DC 20515

Dear Secretary Mnuchin, Administrator Carranza, Leaders Pelosi and McCarthy, and Leaders McConnell and Schumer:

On behalf of the employees and leaders at Unibail-Rodamco-Westfield (“Westfield”), I would like to thank each of you for your leadership and dedication in crafting urgent responses to the COVID-19 crisis (the “crisis”). As your negotiations continue, I implore you to pursue policies aiding the brick-and-mortar shopping center industry significantly impacted by the crisis.

Westfield’s 32 U.S. shopping centers and retail operations at five major airports encompass a myriad of small and mid-sized businesses, with our tax and infrastructure investments directly supporting our communities. In the past year, Westfield centers in the U.S. hosted more than 100,000 retail employees and welcomed over 400 million visitors, generating more than \$1.1 billion in annual sales tax. In Los Angeles, home to our U.S. headquarters, Westfield is the second-largest private employer when aggregating the workforce at our six centers in Los Angeles County. Additionally, in New York City, Westfield World



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Trade Center's famous Oculus welcomes millions to the city. Westfield's centers also yield tangible social and environmental benefits, by committing to reduce its carbon emissions globally by 50% through its Better Places 2030 CSR strategy and engaging locally with more than 100 charitable partners in the U.S.

Early in the crisis, Westfield joined the collective fight against the coronavirus outbreak and temporarily closed its operations to protect its customers, employees, tenants, and broader communities. The ripple effect from the crisis is clear and immediate: our employees, tenant businesses, and local municipalities are all suffering. Support for Westfield and similar organizations is especially urgent because it will bring tangible benefits to our retail partners and the communities in which we operate. To ensure Westfield and its partners the best chance of effective recovery, we urge you to consider the priorities below.

Treasury, SBA, and Congress should adjust the Paycheck Protection Program (PPP) to support retail businesses: Westfield confronts a simple truth: many of our small business tenants and partners cannot pay their rent obligations and will continue to delay such rental payments until after their businesses are no longer affected by the crisis. We are trying to support our tenants during this time and have provided them with resource materials to help them navigate through the federal lending programs such as the PPP loan program. However, in its interim final rule for PPP, Treasury and SBA limited 25% of the loan's forgivable amount to non-payroll costs, in a departure from the guidelines underlying the CARES Act.

[We agree with a recent communication](#) from colleagues at the National Retail Federation (NRF), American Hotel and Lodging Association (AHLA), the US Travel Association (USTA), the National Restaurant Association (NRA), and the International Franchise Association (IFA) who argue that the 25% limitation takes away small business owners' discretion to use funding as they need. In fact, this requirement could encourage borrowers to neglect their rent and debt obligations out of worry this spending would not be forgiven. This is a counterproductive idea that would place businesses at further risk. **Retail tenants, and small business owners overall, should have as much flexibility as possible to use forgivable PPP funds towards any allowable use of a covered loan described in 1102 of the CARES Act.**

Westfield further agrees with colleagues in NRF, AHLA, USTA, IFA, and the NRA in urging Congress to amend Sec.1102(a)(D)(iv) of the CARES Act to allow businesses in retail trades (NAICS 44-45), with multiple physical locations, but less than 500 employees per location, to receive PPP loans.

Treasury should include retail shopping centers as eligible for Title IV aid: As Treasury prepares aid to distressed industries under Title IV of the CARES Act, we add Westfield's voice to retail and real estate industry leaders such as the [International Council of Shopping Centers \(ICSC\)](#), the National Retail Federation, and others seeking the explicit inclusion of retail shopping centers as eligible for the evolving Title IV loans and loan guarantee programs. Specifically, Westfield asks for the following clarifications:

Ensure that the proceeds from Title IV loans can be used to refinance or pay-off CMBS debt of the eligible business entity borrower or its subsidiaries before the debt maturity date. Given the nature of retail real estate, the unforeseen crisis has led to significant near and mid-term uncertainties that could not



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have been contemplated when prudent borrowers and conservative lenders entered into CMBS financing arrangements prior to the crisis. Congress' intent in Title IV is to create liquidity and stabilize the economy. We believe this clarification will support those goals by allowing retail real estate borrowers to refinance the terms of CMBS debt and prevent potential defaults and foreclosure under existing loan documents while their traditional business models reliant on social gathering and human connection normalize after this crisis.

Ensure that an SPE Borrower or a Joint Venture owning an SPE Borrower which existed before the crisis qualifies as an eligible business: Westfield, like many retail real estate investors, invests in Joint Ventures with other investors, and those JVs in turn hold 100% of the equity in special purpose entities (an SPE Borrower) that hold the fee simple interest in the shopping malls that have been prudently financed with commercial mortgage backed securities (CMBS) loans secured by the real estate. We urge Treasury to account for this reality in its forthcoming eligibility rules to ensure that the JVs and entities that have legal ownership of retail shopping centers may apply for loans and loan guarantees under this program to help preserve jobs and local tax revenue and keep the shopping centers out of possible foreclosure in this unprecedented health and economic crisis.

Clarify that the 4003(b)(4) requirements apply to an eligible business entity borrower and not its investors, contractors, vendors and tenants. Given the equity ownership structure of a shopping center, different investors have different economic situations and legal requirements and could not feasibly be bound by the requirements of the Title 4 programs for their separate enterprises. For example, many investors may be REITs that could not be bound by restrictions on dividends and other capital distributions, especially as a result of an action taken by one of many lower tier investments. Accordingly, it is important to clarify that the Title 4 requirements only apply to the eligible business entity that is the borrower under the Title IV loans and loan guarantee programs, and not to its investors, contractors, vendors, and tenants .

Use the definition of “effectively connected” under U.S. tax principles for an otherwise-eligible business entity to meet the US-based employee, organization and operation requirements of the program. As discussed above, Westfield centers provide significant U.S. employment platforms, with U.S. based operations domiciled and physically located in US communities, creating substantial local tax revenues for governments across the country. While the CARES Act, as written, appears to include U.S. mall owning entities in its definition of U.S. companies, as Treasury negotiates the details, we urge your offices to consider using the definition of “effectively connected” under the U.S. tax principles to designate an eligible U.S. business.

Additional considerations critical to the Retail Real Estate Industry. The crisis has led to an emergency situation today that may or may not abate in the near future. However, shopping centers in particular rely on social gathering and human connection and it will take some time after the crisis for that to normalize. In fact, it could take quite a bit more time than the rest of the economy to recover after the shelter in place orders are lifted. In light of that mid-term uncertainty, we are urging the government to step in and bridge the gap and help the industry modify inflexible legacy CBMS debt agreements that were entered into



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between prudent borrowers and lenders at a time when they never could have reasonably contemplated this risk. Over the long term the properties are vital and viable businesses and can conservatively support debt financing. The following considerations should be prioritized by Congress in future legislation: (a) industry wide economic and noneconomic forbearance or deferral on commercial CMBS debt for the retail real estate industry, (b) measure to grant the master servicers the authority to make modifications to CMBS loans to address issues resulting from this crisis without transferring loans to special servicing, and (c) measures to permit the modification of CMBS loans to allow early pay-off/refinancing without a prepayment penalty.

Congress should create a Business Resumption Fund and PRIA protection against future interruptions: Retail centers, along with many of our tenants, are negotiating with our insurance providers to file claims for business interruptions resulting from the COVID-19 pandemic, especially government-ordered closures. We join with [colleagues at the ICSC](#) in urging Congress to develop a vehicle to guarantee or directly support business interruption coverage for shopping centers, retailers, restaurants, and similar businesses still reeling from the current pandemic.

Further, Westfield supports a now-circulating proposal to create a Pandemic Risk Insurance Act (PRIA), modeled on the post-9/11 Terrorism Risk Insurance Act (TRIA). While establishment of PRIA would not address the retail sector's most recent concerns with business interruption insurance, the next COVID-19 response bill presents a clear opportunity for Congress to move proactively to prevent a similar blow to the U.S. economy in the future.

Again, we thank you for your leadership, time, and attention as you develop additional responses to COVID-19. Should you have any questions or feedback to Westfield's priorities, please contact Westfield's Executive Vice President for Public Affairs Marcus Reese at marcus.reese@urw.com

Sincerely,

Jean Marie Tritant
President, United States
Unibail-Rodamco-Westfield



April 15, 2020

VIA ELECTRONIC SUBMISSION

Chair Jerome H. Powell
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.,
Washington, DC 20551

Re: Federal Reserve's Main Street Lending Program

Dear Chair Powell:

The Consumer Bankers Association (“CBA”)¹ appreciates the opportunity to comment on the Federal Reserve’s Main Street Lending Program (“Main Street”). CBA applauds the Federal Reserve for swiftly acting to aid America’s small- and mid-sized businesses as we endure the uncertainties presented by the COVID-19 crisis. CBA has reviewed the details of the Main Street Lending Program (“the Program”) and has some suggestions the Federal Reserves should consider before finalizing the details of the Program.

Maximum Loan Size

To begin, both the Main Street New Loan Facility (“MSNLF”) and the Main Street Expanded Loan Facility (“MSELF”) base their maximum loan size on the 2019 EBITDA. The maximum loan for new loans under the MSNLF is the lesser of (a) \$25 million, or (b) an amount that, when added to the borrower’s existing outstanding and committed but undrawn debt, does not exceed four times its 2019 EBITDA.² Similarly, the maximum loan size for an upsized existing loan under the MSELF is the lesser of (a) \$150 million, (b) 30% of the borrower’s existing outstanding and committed but undrawn bank debt, or (c) an amount that, when added to the borrower’s existing outstanding and committed but undrawn debt, does not exceed six times the borrower’s 2019 EBITDA.³

In regards to the MNSLF, CBA believes the requirement stating Eligible Borrowers may only have debt to EBITDA of four times and under should be changed. We recognize this requirement is intended to keep riskier borrowers out of the program, but we believe the terms as written will have the opposite effect. High leverage is not an indicator of borrower weakness. On the contrary, high leverage occurs because sophisticated lenders are prepared to put a great deal of money at risk on a non-recourse basis and with little in hard assets because they are confident borrowers, in normal circumstances, will be able to service and repay the debt. However, it is the more risky, cyclical borrowers who have debt levels below four times. We encourage the Federal Reserve to increase the maximum loan size for the MNSLF to a level which better considers the appropriate amount of leverage in the respective industry. If thousands of companies are unable to access these resources, the consequences could be catastrophic in terms of endless downsizings and a massive and permanent loss of investment capital.

Furthermore, the Federal Reserve may want to consider sector specific guidance, specifically for industries with higher leverage. For example, many businesses suffering from the COVID-19 pandemic also suffered in 2019 due to the trade war with China and felt the early supply chain disruptions in China. Some China exposed firms would presumably not qualify, unless EBIDTA allows legitimate defined adjustments. Another industry which seems to have been overlooked is the Commercial Real Estate Industry. Owner occupied or investor deals, including development, which would not be measured on an EBITDA basis, but ideally, they would be eligible for assistance if the firms have employees and/or an impaired rental income flow due to the pandemic.

1 1 The Consumer Bankers Association partners with the nation's leading retail banks to promote sound policy, prepare the next generation of bankers, and finance the dreams of consumers and small businesses. The nation’s largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding two thirds of the industry’s total assets.

2 Federal Reserve, *Main Street New Loan Facility Term Sheet*, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a7.pdf> (April 9, 2020).

3 Federal Reserve, *Main Street Expanded Loan Facility Term Sheet*, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a4.pdf> (April 9, 2020).

Minimum Loan Size

CBA believes the Federal Reserve should lower its minimum loan amount to significantly less than \$1 million. Based on the current terms, there is a potential for a “donut hole” with businesses potentially falling between the Small Business Administration’s (“SBA’s”) Paycheck Protection Program (“PPP”) and Main Street. Rather than focusing on excluding risk businesses, the Federal Reserve should identify the overlap where “large” small businesses and small “mid-size” businesses meet.

If the Federal Reserve plans to use loan size as a proxy for Main Street, then it should look at the SBA’s PPP loans as a metric for where to set the minimum loans amounts for the Main Street Lending Program. SBA released data on April 13, 2020 detailing the loans approved through ETRAN. 70% of the loans were less than \$350k. While an imperfect comparison, this presents sound reasoning to reduce the minimum loan amount for the Main Street Lending program to roughly \$350k. CBA believes a concentric circle of overlap between the programs would be ideal, while a gap would leave businesses without adequate support in the midst of an unprecedented crisis.

In addition, CBA performed a cursory analysis of its membership to help quantify the donut hole between the Main Street Lending Program and PPP. We identified the dominant cause of the gap is the interaction between the EBITDA and the \$1 million minimum in the Main Street Lending Program. Analysis from our membership suggests thousands of mid-size companies could be too large for the SBA program yet fall below the \$1 million loan minimum. One estimate indicates that 175,000 businesses, with an average annual revenue of \$15 million, would be served by reducing the loan minimum to \$500,000. Furthermore, we believe there should be flexibility in the length of the loans of the Main Street Lending Program. CBA would prefer to see loan terms range from four to six years.

Clarity in Terms

The Federal Reserve should clearly define terms for banks to operationalize the Main Street Loan Program. CBA encourages the Federal Reserve to define “debt.” EBITDA is not a defined term under GAAP. Also, based on the Federal Reserve’s current guidance about the Program, it seems if the definition of debt includes senior, mezzanine and subordinated debt, it may exclude many businesses in need. In addition, the Federal Reserve states the pricing on loans will be an adjustable rate of SOFR+250-400 bps, but there is no indication how SOFR is calculated, e.g. SOFR Compounded in Advance, SOFR Compounded in Arrears, or Daily Simple SOFR in Arrears.

Official Guidance

CBA urges the Federal Reserve to issue guidance to eligible lenders and borrowers in a prompt and complete manner. CBA member banks are ready to do their part to help stabilize and restart the economy, but we will need timely and thorough guidance to help our banks lend and to help America’s businesses responsibly borrow. CBA also implores the Federal Reserve to continue to seek feedback once the facility is open to continue to ensure the Main Street Lending Program is working as intended. Please provide more clear guidance. CBA has included an appendix with a list of technical questions intended to generate clear and comprehensive guidance for financial institutions.

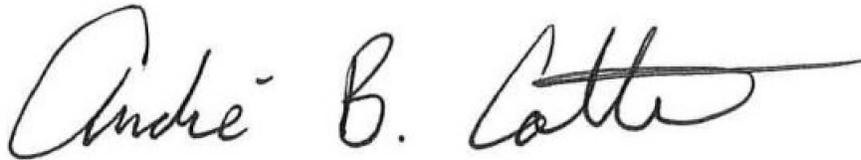
On a separate but related issue, CBA encourages the Federal Reserve to not change any existing regulatory tiers for financial institutions who choose to participate in this facility. During the duration of the Main Street Lending Program, banking organizations should retain their respective category in regards to the application of enhanced prudential standards. Asset sizes of banks will likely increase dramatically during the duration of the COVID-19 crisis as they participate in the Main Street Lending Program and

other Federal Reserve and government-sponsored programs aimed at supporting the American economy during this time.

Again, CBA fully supports the Federal Reserve's efforts to aid small- and mid- sized businesses during these unprecedented times. CBA sincerely wants to see the Federal Reserve's Main Street Lending Program as effective as possible for the countless American businesses who stand in need.

If you have any additional questions or concerns, please do not hesitate to contact André Cotten at 202-552-6360 or at Acotten@consumerbankers.com.

Sincerely,



André B. Cotten
Assistant Vice President, Regulator Counsel
Consumer Bankers Association
1225 New York Avenue
Suite 1100
Washington, DC 20005

Appendix to the CBA's Comment on the Main Street Lending Program

Borrower Eligibility

- How are 10,000 employees calculated? Are their affiliation rules similar to the SBA's Paycheck Protection Program?
- Will U.S. based subsidiaries of non-U.S. parent companies be deemed eligible borrowers if the majority of its employees are located in the U.S.?
- Can Main Street Loans be made on a consolidated basis to co-borrowers or must it be to a single-borrower?

General Loan Features

- Will the Federal Reserve provide standard loan documents or will documents be negotiated by each lender?

- Will the Federal Reserve provide a standard participation agreement for each loan or will the participation terms be set out as part of the program guidance? Will SPV's participation function as a true sale of the loan? Will the SPV have voting and consent requirements in the servicing of the loan?
- What are the mechanics of funding and the participation purchase? What conditions precedent exist for funding?
- What risk weighting will be assigned to these loans?
- Are the loans fully funded at closing or may the loans have a draw feature?
- Does the loan have to amortize over the 3 year payment period or may there be a balloon? Straight line or escalating?
- Are there loan to value or any other credit qualification requirements?
- How will SOFR be defined or measured? Who sets the pricing between 250 and 400 bps?
- EBITDA calculations:
 - o Does the EBITDA have to be determined from 2019 audited financial statements subject to GAAP? What if audits have been delayed due to COVID-19?
 - o How will one-time 2019 expenses be handled when calculating EBITDA?
 - o Will EBITDA be allowed to be defined based on existing lending facilities?
 - o Will there be any leverage exceptions for commercial real estate companies, non-profits or other industries, which are not typically measured by EBITDA?
- Fees
 - o Are closing costs and outside counsel fees permitted?
 - o How are servicing fees paid out? Up front or at the end of the year?

Expanded Loan Facility

- What is the definition of "existing, outstanding and committed but undrawn debt"? Are these limited to committed sub-facilities or all revolving lines? To clarify, discretionary, uncommitted lines of credit would not be considered?
- Will the SPV provide consents and waivers in loan arrangements where all lenders must consent? If not, it could create risk on existing loan documentation?
- Existing loans that are part of a syndicated facility or subject to intercreditor agreements may be excluded from the program without clear guidance on the management by SPV and use of proceeds.
- Can lenders lower the loan to a lower leverage?
- Should the terms, amortization and other covenants match the existing facility or is the upsize tranche option meant to be a separate "cleaner" arrangement?
- How will the "pro rata" security interest requirement be implemented? Any exemptions caused by the dilution of collateral under the terms of existing facility?

Required Attestations

- How can a lender attest that loan proceeds will not be used to repay or refinance pre-existing loans or lines of credit other than not accepting payments on such loans for the entirety of the Main Street Loan? If proceeds are commingled with other Borrower funds, the lender is not in a position to attest that payments to existing loans or lines were not from Main Street Loan proceeds. Can revolving credit facilities and other working capital loans be repaid?
- What is lender's role in oversight of borrower's attestations/covenants in the loan documents?
 - o Does a lender have to verify use of proceeds, both in the prohibition of the payment of other loans or COVID-19 related expenses?
 - o What level of record-keeping is required to demonstrate the use of loan proceeds?

- o Does a lender have to investigate that the need for financing was due to COVID-19?
- o Does a lender have to review borrower’s efforts in maintaining payroll and employment levels?
- o What is a lender’s responsibility in monitoring compensation, stock repurchase and capital distribution restrictions? If it does, how and under what authority does a lender have to enforce restrictions for the year following repayment?
- o Are tax distributions allowed?
- What is the definition of “debt of equal or lower priority”? What constitutes a mandatory principal payment?
 - o If debt of equal priority may not be paid, does this requirement forbid PPP loans to the same borrower?
 - o If a bank has a loan to a borrower who receives a Main Street Loan from another lender and borrower breaches the covenant of using Main Street Loan proceeds from paying off pre-existing loans, does the SPV have the right to come after the bank who received the proceeds?
- The summary of the program states that lenders are not able to reduce line of credit availability after the borrower receives funds. Does this include the situation where the borrower subsequently defaults? Can a lender enforce its rights under the existing line of credit?
- If a borrower obtains a loan via the Programs and later defaults on pre-existing debt with the bank, is the bank precluded from enforcing defaults on the pre-existing debt? Any limitations in place?



INDEPENDENT COMMUNITY
BANKERS of AMERICA®

April 16,
2020

Noah W. Wilcox, *Chairman*
Robert M. Fisher, *Chairman-Elect*
Brad M. Bolton, *Vice Chairman*
Gregory S. Deckard, *Treasurer*
Alice P. Frazier, *Secretary*
Preston L. Kennedy, *Immediate Past Chairman*
Rebecca Romero Rainey, *President and CEO*

The Honorable Jerome H. Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Comments Concerning the Main Street Lending Program

Dear Chairman Powell:

The Independent Community Bankers of America (“ICBA”)¹ appreciates this opportunity to provide comments concerning the Federal Reserve’s Main Street Lending Program (the “Program”). The Federal Reserve announced on April 9, 2020 that it was establishing the Program to support lending to both small and medium-sized businesses that were in good financial standing before the onset of the COVID-19 pandemic. The Program will operate through two facilities: the Main Street New Loan Facility (MSNLF) and the Main Street Expanded Loan Facility (MSELF).

As described in the term sheets, U.S. businesses are eligible for loans under the Program if they meet either of the following conditions: (1) the business has 10,000 employees or fewer; or (2) the business had 2019 revenues of \$2.5 billion or less. Loans would have a four year maturity, and principal and interest payments on the loans will be deferred for one year. The minimum loan size would be \$1 million and the interest rate would be an adjustable rate of SOFR plus 250-400 basis points. Eligible lenders may originate new loans under the MSNLF or increase the size of (or "upsized") existing loans to eligible borrowers under the MSELF. To implement the Program, a Reserve Bank will set up a special purpose vehicle (SPV) to purchase 95 percent participations in loans originated by eligible lenders. Lenders will retain the other 5 percent of the loans.

¹ The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ nearly 750,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than \$5 trillion in assets, nearly \$4 trillion in deposits, and more than \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services.

The Nation's Voice for Community Banks

WASHINGTON, DC 1615 L Street NW Suite 900 Washington, DC 20036	SAUK CENTRE, MN 518 Lincoln Road P.O. Box 267 Sauk Centre, MN 56378	866-843-4222 www.icba.org
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ICBA's Comments

While ICBA is very appreciative of the Federal Reserve's Payroll Protection Program Lending Facility (PPPLF) and how it will help Main Street and the liquidity needs of both community banks and small businesses, we are less enthusiastic about the Program. Although the Program is referred to the "Main Street Lending Program," it appears to be focused mainly on the mid-sized businesses when it should be focused on both small and mid-sized businesses.

Our chief concern with the Program is the minimum loan amount of \$1 million. If the Program is going to support both small and medium sized businesses, the minimum loan amount should be no higher than \$100,000. Otherwise, Main Street businesses and community banks will not participate. For community banks, the average size of an SBA PPP loan has been around \$100,000 and a number of ICBA members have even made PPP loans for less than \$10,000. ICBA surveyed its Board members and few of them expressed any interest in the Program because of the high minimum loan amount of \$1 million even though many of these bankers were very active lenders in the SBA PPP.

Community banks are also concerned that the Program is too complicated and that there are too many responsibilities placed on the Lender. **To simplify the program and to make it more attractive, we recommend dropping the requirement that Lenders retain a 5% interest in the loan it originates.** We believe the loan retention requirement and the risk sharing involved after the sale unnecessarily complicates the loan sale and the accounting of the transaction without making the lender any more prudent with its underwriting of the loan.

Furthermore, both facilities--the MSNLF and the MSELF--place a number of restrictions on both the borrower and the lender. One requirement in the Program requires that the borrower attest that it will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act. These types of restrictions raise concerns about the responsibilities of the lender and the extent to which the lender needs to monitor the corporate activities of the borrower following the origination of the loan. **We strongly recommend that the lender be fully indemnified for all attestations that the borrower is required to make with respect to Program loans.** Lenders do not want to be responsible for ensuring that the borrower is complying with restrictions on compensation or capital distributions following the closing of the loan.

We also recommend that the Federal Reserve allow as much flexibility with the terms of Program loans as possible. For instance, with regard to the 4-year maturity limit, lenders should be allowed to make loans with different maturities provided that no Program loan exceeds a term of 4 years. Since borrowers are allowed to defer principal and interest for one year, lenders should be allowed to amortize the deferred amount over the remaining period of the loan or alternatively, have the borrower pay it off in one lump sum at the end of the loan.

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In short, now that the SBA PPP has run out of money and it is unclear whether Congress will authorize any more funds for the program, it is critical that the Federal Reserve turn its attention to making the Main Street Lending Program more attractive to both community banks and small businesses. Substantially lowering the minimum loan amount, making the Program as flexible as possible, and providing appropriate indemnities for the lender will go along with towards achieving that goal.

Sincerely,
/s/ Rebeca Romero Rainey

Rebeca Romero Rainey
President and CEO

The Nation's Voice for Community Banks.[®]

WASHINGTON, DC
1615 L Street NW
Suite 900
Washington, DC 20036

SAUK CENTRE, MN
518 Lincoln Road
P.O. Box 267
Sauk Centre, MN 56378

866-843-4222
www.icba.org



April 16, 2020

The Honorable Jerome H. Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Via email: regs.comments@federalreserve.gov

Subject: Comment in Support of Restoring Transparency at the Federal Reserve During the COVID-19 Pandemic

Dear Chairman Powell:

The Project On Government Oversight (POGO) submits the following comment in support of restoring some transparency requirements for the Federal Reserve that have been suspended during the COVID-19 pandemic. Recent changes meant to provide the Federal Reserve with flexibility are too broad, and we urge the Federal Reserve to continue following the record-keeping requirements per the Government in the Sunshine Act.

POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

Section 4009 of the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116-136) exempted the Federal Reserve from key provisions of the Government in the Sunshine Act should the chairman determine there were “unusual and exigent circumstances.”¹ The landmark Government in the Sunshine Act governs public notice and record-keeping requirements for meetings of federal agencies. These transparency rules allow the public to know the workings of the federal government.

During the 2008 financial crisis, the Federal Reserve was unable to act quickly because the law required advance public notice before meetings took place. This requirement kicked in when at least three out of the five board members met. As then-Vice Chairman Donald Kohn described, if the board wanted to discuss a matter immediately, members were required to get together in small groups and cycle in and out so others could participate.² This was an inefficient and

¹ Coronavirus Aid, Relief, and Economic Security Act of 2020, Pub. Law No. 116-136, 198. Sec. 4009. <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>

² Maggie Severns and Victoria Guida, “Recovery law allows Fed to rope off public as it spends billions,” *Politico*, April 9, 2020. <https://www.politico.com/news/2020/04/09/coronavirus-recovery-bill-fed-records-176371>

ineffective process as the Federal Reserve tried to save the economy from utter collapse.

POGO agrees that as a crisis rapidly evolves, agencies need the flexibility to be able to meet without having to wait. Although the Federal Reserve has procedures in place to allow meetings to take place on an expedited timeline, usually two business days,³ one can see how this could be too long during an unfolding crisis. Section 4009 allows the members of the Federal Reserve to meet without public notice.

While increased flexibility may be needed for public notice requirements, another flexibility measure in Section 4009 is not: the exemption from the requirement to keep public records of the meeting. Section 4009 only requires votes “and the reasons for such votes” to be recorded; staff memoranda, meeting minutes, transcripts, and recordings would no longer have to be kept. Without those records, there will be no way for the public to know what was discussed. If an emergency requires the Federal Reserve to meet in secret, notwithstanding the exemptions for open meetings outlined in the Government in the Sunshine Act,⁴ the public should at the very least know why the Federal Reserve met and what they discussed.

In recent weeks, the Federal Reserve has taken unprecedented actions that are worth trillions of dollars to stabilize the economy.⁵ The Paycheck Protection Program Liquidity Facility, the Municipal Liquidity Facility, and the Main Street Lending Program will all help support the nation’s financial institutions, small and medium sized businesses, and state and local municipalities.⁶ Given the trillions of new dollars under the Federal Reserve’s purview, the public has a vested interest in knowing why the Federal Reserve is meeting, and what they are discussing. Although the Federal Reserve is now exempted from transparency laws, the Federal Reserve should continue to keep records and make them accessible to the public if it meets under “unusual and exigent circumstances.”

Thank you for your consideration of this comment. Should you have any questions, please contact Tim Stretton at (202) 347-1122 or at tstretton@pogo.org.

Sincerely,



Danielle Brian
Executive Director

³ “Government in the Sunshine Meeting Memorandum,” Board of Governors of the Federal Reserve System, June 27, 2013. <https://www.federalreserve.gov/aboutthefed/boardmeetings/sunshine.htm>

⁴ 5 U.S. Code § 552b(c) (2020). <https://www.law.cornell.edu/uscode/text/5/552b>

⁵ Jeff Cox, “The Fed is providing way more help for the markets now than it did during the financial crisis,” CNBC, March 24, 2020. <https://www.cnbc.com/2020/03/23/fed-is-helping-the-markets-more-than-it-did-during-the-financial-crisis.html>

⁶ Board of Governors of the Federal Reserve System, “Press Release: Federal Reserve takes additional actions to provide up to \$2.3 trillion in loans to support the economy,” April 9, 2020. <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm>