

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

April 16, 2020

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

Chair Powell:

In recent weeks, the Board of Governors of the Federal Reserve System (Federal Reserve or Fed) has announced sweeping measures to respond to the economic and financial fallout from the COVID-19 global health pandemic, including a series of facilities that extend support to nearly every sector of the economy. As the Federal Reserve undertakes implementation of programs and facilities authorized by the Coronavirus Aid, Relief and Economic Security Act (CARES Act), with the approval of the Secretary of the Treasury and utilizing funds appropriated by Congress, I urge you to consider and address the following concerns.

Municipal Liquidity Facility

States, territories, tribes, and cities are on the front lines responding to the COVID-19 public health emergency pandemic. This is why in the CARES Act, in addition to providing other forms of support,¹ Congress directed the Treasury Secretary to utilize the \$500 billion of newly appropriated funds added to the Exchange Stabilization Fund and work with the Federal Reserve, “to seek the implementation of a program or facility in accordance with subsection (b)(4) that provides liquidity to the financial system that supports lending to States and municipalities.”² While the newly announced Municipal Liquidity Facility appears intended to fulfill this obligation, there are glaring omissions and shortcomings that should be promptly addressed.

Importantly, Congress included all U.S. territories in this provision,³ any Indian Tribe,⁴ as well as bi-State and multi-State entities.⁵ Unfortunately, the initial design of the Municipal Liquidity Facility completely excludes territories and tribes, and is limited to a single issuer at the State, county, or city level. With respect to the exclusion of territories, these jurisdictions include millions of Americans that have been equally confronted by this crisis with more than a thousand COVID-19 cases and dozens of deaths, according to the Centers for Disease Control and Prevention (CDC).⁶ Although the CARES Act sought to support states and localities through \$150 billion in

¹ For example, the creation of the Coronavirus Relief Fund as authorized by §5001 of the CARES Act

² §4003(c)(3)(E) of the CARES Act

³ §4002(10)(C) of the CARES Act

⁴ §4002(10)(E) of the CARES Act

⁵ §4002(10)(D) of the CARES Act

⁶ CDC, “Cases in U.S.,” (last accessed Apr. 15, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>; and CDC, “Morbidity and Mortality Weekly Report,” (Apr. 10, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6915e4-H.pdf>.

grants, estimates of how this money will be distributed show that territories are likely to lag significantly behind. There have been too many occasions where federal policymakers have excluded or provided fewer benefits and support for territories, including Guam and American Samoa, and those decisions can have significant impacts on Americans who live in the territories, such as limiting cancer treatment or other health care options.⁷ In the instance of Puerto Rico, Congress has found that these kind of policy disparities and lack of support, in recent years, meaningfully contributed to the territory's fiscal challenges.⁸ Territories should not be excluded from this Fed facility to help ensure they have access to the resources they need at this critical time.

Furthermore, Congress made no distinction regarding the size of a municipality that should directly benefit from such a program.⁹ Unfortunately, only the largest cities with more than one million residents and the largest counties with more than two million residents would be eligible under the Fed facility for direct support. Most other cities – including Atlanta, Boston, Baltimore, Columbus, and Detroit – and counties would have to seek indirect support from their State. This approach risks exacerbating racial disparities in the federal government's response to COVID-19. A recent analysis noted the program's exclusion of the thirty-five most heavily African-American cities in the country, and found that: "For every ten percent more Black the city's population, it is ten percent less likely to qualify for the Fed's program."¹⁰

Moreover, this facility would support only new debt issuances with maturity dates less than 2 years, but the municipal bond market has experienced significant disruption in recent weeks.¹¹ Support for secondary market borrowing would help provide liquidity and arguably help the issuers that are unable to go directly to the Fed because of the Fed's proposed population thresholds. In addition, an economic projection estimated that states will face budget shortfalls of \$500 billion between now and 2022, and that state rainy day funds will be insufficient to close

⁷ Selena Simmons-Duffin, "America's 'Shame': Medicaid Funding Slashed In U.S. Territories," National Public Radio Morning Edition (Nov. 20, 2019), <https://www.npr.org/sections/health-shots/2019/11/20/780452645/americas-shame-medicaid-funding-slashed-in-u-s-territories>. Also see Judith Solomon, "Medicaid Funding Cliff Approaching for U.S. Territories," Center on Budget and Policy Priorities (Jun. 19, 2020), <https://www.cbpp.org/blog/medicaid-funding-cliff-approaching-for-us-territories>.

⁸ Congressional Task Force on Economic Growth in Puerto Rico (Dec. 20, 2016), <https://www.finance.senate.gov/imo/media/doc/Bipartisan%20Congressional%20Task%20Force%20on%20Economic%20Growth%20in%20Puerto%20Rico%20Releases%20Final%20Report.pdf>, page 19 ("While it would be wrong to attribute Puerto Rico's annual deficits and accumulated debt solely, or even mainly, to the disproportionate burden it bears in financing its Medicaid program, it would also be wrong to deny that this funding disparity has been a meaningful factor contributing to Puerto Rico's fiscal condition.")

⁹ §4002(7) of the CARES Act defines "municipality" as "a political subdivision of a State, and an instrumentality of a municipality, a State, or a political subdivision of a State." Neither this definition, nor §4003(c)(3)(E) states or implies that a Federal Reserve liquidity facility should be available only to the largest municipalities.

¹⁰ "Improving the equity impact of the Fed's municipal lending facility," *Brookings Institution*, (April 14, 2020), <https://www.brookings.edu/research/a-chance-to-improve-the-equity-impact-of-the-feds-municipal-lending-facility/>

¹¹ "Unprecedented conditions stagger municipal market," *BondBuyer* (March 12, 2020), <https://www.bondbuyer.com/news/unprecedented-conditions-stagger-municipal-market>

such significant shortfalls.¹² Even if tax revenues return to normal levels by 2022, states and cities will have to fund general operations at the same time that they are paying back significant shortfalls, which could prolong the effects of an economic recession.

The Federal Reserve's narrow design of the Municipal Liquidity Facility is inconsistent with the letter and spirit of the law. The facility can be immediately improved by, among other things, including territories and dramatically lowering if not eliminating the arbitrary thresholds set for eligible municipalities. These improvements would make it easier for these jurisdictions to meet new and unanticipated costs arising from overwhelmed health care systems and negative economic developments.

Main Street Lending Program

The CARES Act directed the Treasury Secretary to seek the establishment of a facility like the Main Street Lending Program. Specifically, the law stated such a program or facility should provide, "financing to banks and other lenders that make direct loans to eligible businesses including, to the extent practicable, nonprofit organizations, with between 500 and 10,000 employees...."¹³ While there are elements of the Main Street Lending Program that include these and related provisions, including deferring principal and interest payments for one year and attestation requirements that the borrower will abide by stock buyback, dividend payment, and executive compensation restrictions, there are a number of shortcomings with the initial design of the program. It is imperative that these concerns be addressed to ensure this is a more effective facility that meets the needs of small and diverse entities that require immediate financial support.

For example, even though the CARES Act explicitly references non-profit organizations, the current design of the Main Street Lending Program excludes non-profit organizations, including charitable non-profits, such as churches, as well as institutions of higher education, like Historically Black Colleges and Universities (HBCUs). These institutions should not be left behind and may warrant a segmented and less costly loan program to meet their needs consistent with their mission. Furthermore, some of the terms of the program, such as a minimum loan size of \$1 million, may skew the program toward larger entities and should be revised to have more of an emphasis on small and minority-owned businesses that may have trouble accessing credit. Relatedly, I urge you to allow ratings from smaller agencies often used by small and minority-owned businesses, not just the big three credit rating agencies. In addition, while the program requires the borrower to attest "that it requires financing due to the exigent circumstances presented by the coronavirus disease 2019 ("COVID-19") pandemic," the Federal Reserve should strengthen this requirement to not open the door to larger entities that have ample access to liquidity and capital.

The Federal Reserve should also ensure that all types of lenders that small businesses use, not just depository institutions, are able to fully participate as lenders in this facility, including certified Community Development Financial Institutions (CDFIs). Moreover, the Federal Reserve should

¹² "States Need Significantly More Fiscal Relief to Slow the Emerging Deep Recession," *Center on Budget and Policy Priorities*, (April 14, 2020), <https://www.cbpp.org/research/state-budget-and-tax/states-need-significantly-more-fiscal-relief-to-slow-the-emerging-deep>

¹³ §4003(c)(3)(D)(i) of the CARES Act

prioritize the inclusion of community banks, credit unions, and minority depository institutions (MDIs), along with CDFIs, to ensure this program reaches a wider range of businesses, especially minority-owned businesses, who want to work with their preferred lender.

Paycheck Protection Program Liquidity Facility

The Federal Reserve recently launched the Paycheck Protection Program (PPP) Liquidity Facility for depository institutions that are making forgivable PPP loans that are guaranteed by the Small Business Administration (SBA). As Congress works to ensure all community-based lenders—including community banks, credit unions, MDIs, CDFIs, certified development corporations, (CDCs) and microlenders—have a meaningful opportunity to participate as PPP lenders to quickly provide resources to small and minority-owned businesses in their communities, I also urge the Federal Reserve to promptly expand the PPP Liquidity Facility to ensure all PPP lenders, not just banks, can access this facility to support small business lending.

Primary Market Corporate Credit Facility

On March 23, the Fed announced unprecedented new support for corporate bond markets through the Primary Market Corporate Credit Facility (PMCCF). Although the PMCCF was not created by Congress, the Fed's expansion of the PMCCF on April 9 utilized funds authorized by Congress in the CARES Act. Specifically, the CARES Act requires eligible businesses receiving assistance in the form of direct loans through a Federal Reserve facility to comply with restrictions on stock buybacks, dividend payments, and executive compensation.¹⁴ On April 9, the Fed announced it would increase the size and scope of the PMCCF through a \$50 billion equity investment from the Treasury. On April 9, the Fed announced it would increase the size and scope of the PMCCF through a \$50 billion equity investment from the Treasury, which used funds authorized by Section 4003(d) of the CARES Act. This facility, which according to the term sheet is purchasing "eligible corporate bonds as the sole investor in a bond issuance," is effectively providing direct loans to eligible businesses, requiring that the CARES Act's conditions on such loans apply to all businesses receiving support through the PMCCF. If the Federal Reserve's view is that the law's restrictions do not automatically apply, I would urge you to exercise the discretion you have to apply the restrictions as a condition of the purchase, consistent with the purpose of the Act. Relatedly, I urge the Fed to use its authority to impose conditions that protect existing collective bargaining agreements and require eligible businesses to guarantee workers full paid leave, worker representation on corporate boards, and a \$15 minimum wage.

Nationally Recognized Statistical Rating Organization Eligibility Requirements

In order to access the PMCCF, Secondary Market Corporate Credit Facility (SMCCF), and the Commercial Paper Funding Facility, the Federal Reserve requires applicant companies to have achieved an investment-grade rating from a "major" nationally recognized statistical rating organization (NRSRO). Because it has not publicly defined what constitutes a "major" NRSRO, I am concerned that the Federal Reserve will only approve applications from companies with ratings from the three largest NRSROs and thereby excluding many small companies and community banks with investment-grade ratings from other NRSROs from accessing these critical facilities when they would have otherwise been eligible. This would disproportionately affect minority-

¹⁴ §4003(c)(3)(A)(ii) of the CARES Act

The Honorable Jerome H. Powell

April 16, 2020

Page 5 of 5

owned companies and would prevent a large portion of our nation's small business from accessing this important relief when they need it the most. Every NRSRO is required to go through the same certification process with the Securities and Exchange Commission and is subject to the same regulatory standards and compliance requirements. I urge the Federal Reserve to clarify its term sheets and to remove unnecessary roadblocks to this critical relief by providing access to these lending facilities to applicants that have achieved the necessary investment ratings from other NRSROs.

In closing, I urge the Federal Reserve to address these issues as quickly as possible. I look forward to your written response by April 24, 2020 to provide an update on how these matters are being addressed.

Sincerely,

A handwritten signature in blue ink, reading "Maxine Waters". The signature is fluid and cursive, with the first name "Maxine" written in a larger, more prominent script than the last name "Waters".

MAXINE WATERS
Chairwoman

CC: The Honorable Steven T. Mnuchin, Secretary, U.S. Department of the Treasury

United States Senate

WASHINGTON, DC 20510

April 10, 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. 205

Dear Secretary Mnuchin and Chairman Powell:

Thank you for all of your work and dedication to address the economic consequences of the COVID-19 outbreak on behalf of the severely distressed sectors of our nation's economy. The "Coronavirus Aid, Relief, and Economic Security (CARES) Act" includes an appropriation of \$454 billion for purposes of economic stabilization activities under Section 4003. We write to urge that the broad authority for implementing the lending facilities authorized by the CARES Act and the Federal Reserve's existing 13(3) authority enable access to credit for qualifying businesses, including movie theaters and similar entertainment exhibitions.

On April 9, the Federal Reserve announced the creation of the Main Street Lending Program for small and mid-sized businesses and the expansion of lending facilities for investment-grade borrowers, many of whom do not need or want federal assistance at this time. Some movie theater companies, together with thousands of other employers, may be ineligible for the Fed's new lending programs which could imperil jobs in our home state, Kansas, and across the nation.

The Federal Reserve and Treasury have committed about half of the \$454 billion in CARES Act money for these programs. The agencies should consider remaining funds to make loans available to other non-investment-grade companies, both small and large, on flexible terms designed to (i) afford the Federal Reserve sufficient security for their investment in movie theaters and other businesses, and (ii) maximize the loan funds available to America's job creators. This program could, for example, permit a borrower to work with its existing secured creditors and offer a valuable security interest to the Federal Reserve in lieu of a total debt-to-EBIDTA ratio. This type of secured lending program would enable Treasury's Exchange Stabilization Fund contributions to continue to attract ample Federal Reserve leverage to create a large enough lending program for companies that do not 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). Flexibility on loan terms should be a primary driver of any such lending fund.

Title IV of the CARES Act is captioned "Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy". State issued closures have turned otherwise healthy companies into distressed companies overnight. These companies require sufficient funding to cover payroll, rent, mortgages, accounts payable, and other contract obligations. With zero income from movie ticket sales, it likely won't be long until movie theaters will be forced to close permanently. The negative repercussions on the economy would be massive and are avoidable.

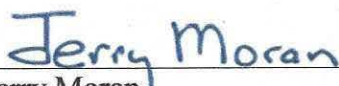
In a March 29, 2020 letter to Deputy Secretary Muzinich, the National Association of Theatre Owners (NATO), explained that, in addition to the 150,000 theater jobs at stake:


The failure of movie theaters to survive this crisis will have significant negative consequences beyond the theaters themselves. Theaters are crucial to boosting foot traffic to nearby retailers, providing a lift to neighboring businesses. Landlords and property owners view movie theaters as desirable and stable anchor tenants, considering theaters "a major draw" that contribute "significantly" to the success of mixed-use developments and shopping centers. In addition, filmmakers, producers, and artists depend on successful theatrical releases to drive sales in downstream markets.

Movies and movie theaters are quintessentially American and part of the fabric of our shared experience. Movies and the theaters in which they are exhibited have comforted Americans through the most trying times in our nation's history. Congress intended to help distressed businesses get through this trying period and the Fed's measures can help movie theaters bridge this temporary, but significant, economic disruption.

Again, we urge you both to ensure that Treasury and the Federal Reserve establish a lending facility available to companies in a distressed financial condition directly tied to the global pandemic like the movie exhibition industry. It would be detrimental to the overall economy if businesses that were paying their workers and other obligations are not supported by the broad authorities granted to Treasury and the Federal Reserve.

Sincerely,


Jerry Moran
United States Senator


Pat Roberts
United States Senator

ANTHONY BRINDISI

22ND DISTRICT, NEW YORK

COMMITTEE ON AGRICULTURE

COMMITTEE ON VETERANS' AFFAIRS



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Washington, DC 20515

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April 16, 2020

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

RE: Comment on Main Street Lending Program

Dear Chairman Powell,

I write today to comment on the Federal Reserve's proposed implementation of the Main Street Lending Program as authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act. I applaud the introduction of the program and the urgency with which the Federal Reserve is working to make loans available to businesses with fewer than 10,000 employees.

It has come to my attention that the preliminary guidance released by the Federal Reserve may inadvertently exclude businesses with substantial research and development costs or other innovation strategies which result in negative earnings before interest, tax, depreciation and amortization (EBITDA).

The current guidance stipulates that a loan shall be a minimum of \$1 million, and a maximum of the lesser of \$25 million or an amount that, when added to the borrower's existing outstanding and committed but undrawn debt, does not exceed four times the borrower's 2019 EBITDA. However, for businesses with a negative 2019 EBITDA, it is unclear if they would qualify for the minimum of \$1 million or be ineligible for the program.

I recommend that the Federal Reserve either:

- 1) Include a clarification that businesses with a negative 2019 EBITDA, which otherwise qualify for the program, shall be eligible to receive the \$1 million loan minimum; or
- 2) Produce a new test to replace the EBITDA standard to judge a business's creditworthiness.

Thank you for the opportunity to comment on this vital program.

Sincerely,

A handwritten signature in black ink that reads "Anthony Brindisi".

Anthony Brindisi
Member of Congress

EMANUEL CLEAVER, II

FINANCIAL SERVICES COMMITTEE
NATIONAL SECURITY, INTERNATIONAL DEVELOPMENT,
AND MONETARY POLICY SUBCOMMITTEE
CHAIRMAN

HOUSING, COMMUNITY DEVELOPMENT,
AND INSURANCE SUBCOMMITTEE



Congress of the United States
House of Representatives

FIFTH DISTRICT, MISSOURI

HOMELAND SECURITY COMMITTEE

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April 17, 2020

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

Dear Chairman Powell,

I write to request the Federal Reserve Board adjust the population thresholds for your municipal facility, and broaden existing facilities to better serve religious institutions, nonprofits and very small, less-formalized businesses who are in desperate need of liquidity during this unprecedented crisis.

As chair of the Financial Services Subcommittee on Monetary Policy I would like to commend the Federal Reserve on its effort to design financial facilities to meet the needs of Americans suffering under the weight of the coronavirus financial crisis. Among the facilities created were the municipal facility, which set a one million population threshold on cities and two million for counties—locking out a large number of municipalities beset by the COVID-19 crisis. An April 14th Brookings report titled “Improving the equity impact of the Fed’s Municipal Lending Facility” noted that this facility, perhaps unintendedly, presented a disparate harm to minority communities and locked out a number of cities within states entirely. My home state of Missouri was among those that did not meet any metropolitan thresholds within the entire state, along with Ohio, New Jersey, and Georgia. As the ~~same~~ Brookings report notes, local constraints may impinge upon municipalities’ ability to use their state government as an intermediary to access this facility. The National League of Cities surveyed over 2,400 local officials and found that three-fourths of large municipalities that responded to the survey are planning to cut public services. Almost half of communities with more than 500,000 residents say they will have to lay off employees. This will expand the pain felt into previously insulated segments of our economy. To that end, I urge the Federal Reserve to lower the population threshold to 20,000 for counties and 10,000 for cities so that a larger share of municipalities in crisis now may have access to this facility.

As you are well aware, religious institutions and other nonprofit organizations are among those on the front lines protecting the most vulnerable segments of our communities—offering aid and comfort to all ~~of our countrymen~~ during this time of crisis. Religious institutions and other nonprofits make up approximately 10 percent of our gross domestic product (GDP) and employ approximately 12 million workers. They are a vital component of the American economy and my home district. During the Financial Crisis of 2008, according to reporting from the National Council of Nonprofits and Nonprofit Financial Fraud, religious institutions and other nonprofits saw an increased demand for services accompanied with escalating operating costs and

decreasing revenues. My office is seeing even greater waves of strain on these frontline public servants—particularly small and mid-sized nonprofit institutions. I request that the Federal Reserve adjust existing programs to allow access to a highly concessionary facility to these nonprofit's doing this important work for all our communities.

I would also like to bring to the Board's attention that there are a number of small businesses within urban and rural areas that do not have regular or consistent banking relationships. Many of these small businesses are centered in communities under strain due to limited resources or their remote nature. For those small businesses that are falling in the gaps of the existing crisis lending programs and facilities—like barbershops, , stores and taverns—I request that the Federal Reserve develop a new facility or adjust existing facilities to allow access for the less formalized and more vulnerable segments of communities. An instrument that may help better formalize them and offer them needed access to capital.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Emanuel Cleaver, II". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Emanuel Cleaver, II
Member of Congress

COMMITTEES:

ARMED SERVICES

SUBCOMMITTEES:

CHAIRMAN

SEAPOWERS AND PROJECTION FORCES
TACTICAL AIR AND LAND FORCES

EDUCATION AND LABOR

SUBCOMMITTEES:

HIGHER EDUCATION AND WORKFORCE INVESTMENT
HEALTH, EMPLOYMENT, LABOR, AND PENSIONS



Joe Courtney
Congress of the United States
2nd District, Connecticut

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April 20th, 2020

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

Dear Chair Powell:

I want to thank you in advance for the work that the Federal Reserve has done to help our economy during these unprecedented times of global pandemic and economic downturn.

As the Federal Reserve implements measures to assist businesses, lenders, and consumers with the effects of the economic downturn, I am writing to request that the Federal Reserve ensures that the Main Street Lending Program be open to non-profit organizations of between 500 and 10,000 employees, in addition to for-profit businesses. The CARES Act (Section 4003) specifically stipulates that the Federal Reserve may create a lending facility that provides finances to “eligible businesses including, to the extent practicable, nonprofit organizations, with between 500 and 10,000 employees”.

I applaud the Federal Reserve for establishing the Main Street Lending Program – a similar facility to what the CARES Act describes in Section 4003. However, I remain concerned that the Main Street Lending Program as written does not explicitly include non-profit organizations. In Connecticut, our non-profit organizations are in desperate need of this assistance. Any additional liquidity that the Federal Reserve can provide will ensure that our non-profit organizations in Connecticut and throughout the country can continue to serve the needs of local communities and the nation as a whole during this extremely difficult time.

Sincerely,


JOE COURTNEY
Member of Congress

Congress of the United States
Washington, DC 20515

April 21, 2020

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

The Honorable Randal Quarles
Vice Chairman for Supervision
Federal Reserve Board of Governors
20th Street and Constitution Avenue NW
Washington, D.C. 20551

Dear Secretary Mnuchin and Vice Chairman Quarles:

Thank you for your continued efforts to support American businesses and workers during the COVID-19 pandemic, and in particular for your work to stand up the Federal Reserve's Main Street Lending Program. We write to bring to your attention language within the CARES Act and Federal Reserve term sheets that may unnecessarily prohibit millions of small and medium-sized businesses that are organized as pass-through businesses from being able to participate in the program and request your assistance in ensuring their eligibility.

Section 4003(c)(3)(D)(i)(VII) of the CARES Act restricts companies that receive loans under the Federal Reserve's lending program intended for mid-sized businesses from paying dividends on common stock. Similarly, the Federal Reserve's term sheets issued for the Main Street Lending Program reflect these requirements by citing a similar provision elsewhere in the legislation. However, pass-through entities such as S corporations, LLCs and partnerships may make quarterly distributions to shareholders in order to satisfy the business taxes that they owe. Additionally, these distributions are often required under a business's established shareholder agreement. Including these capital distribution prohibitions within the terms of the Main Street facility loans will effectively block numerous businesses from accessing much needed relief provided through these small and medium-sized business loans.

Certainly, it was not the intent of Congress to restrict these businesses from accessing the supports available through these loans. To the contrary, it was exactly these types of businesses that were in mind when Congress provided resources to the Exchange Stabilization Fund and encouraged the Federal Reserve to establish a lending program to support mid-sized businesses that would have too many employees to qualify for other lending programs within the CARES Act. Numerous pass-through businesses are too large to qualify for the SBA Paycheck

Protection Program, but they serve as a key element of America's Main Street, having operations in every state and employing millions of workers.

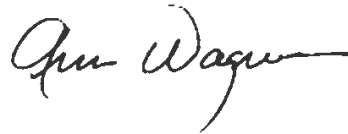
The CARES Act specifically acknowledged the wide discretion already available to the Federal Reserve under Section 13 (3) of the Federal Reserve Act in establishing its Main Street Lending Program that was already being considered prior to the passage of the CARES Act. While we appreciate both the Treasury and Federal Reserve's attempt to conform its Main Street Lending Program to provisions set forth by Congress, we believe an exception to ensure pass-through businesses can participate is clearly warranted. Therefore, we respectfully request that Treasury and the Federal Reserve modify the term sheets to provide a narrow exception to capital distributions made by pass-through entities solely for the purposes of paying taxes owed by the entity.

Such a change would bring the program in line with Congress's objective in providing relief to our nation's businesses as they manage the fallout from state requirements to shutter their businesses or orders for individuals to stay home. We are grateful for your leadership during these troubling times and appreciate your consideration of this proposed modification.

Sincerely,



Warren Davidson
Member of Congress



Ann Wagner
Member of Congress



Brian Fitzpatrick
Member of Congress



Jodey Arrington
Member of Congress



Louie Gohmert
Member of Congress



Lance Gooden
Member of Congress



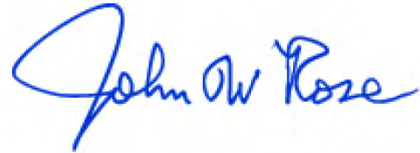
Darin LaHood
Member of Congress



Tom Emmer
Member of Congress



Neal P. Dunn, M.D.
Member of Congress



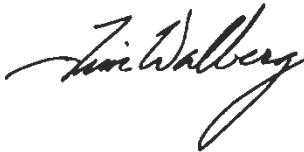
John Rose
Member of Congress



Ted Budd
Member of Congress



Steve Stivers
Member of Congress



Tim Walberg
Member of Congress



David P. Joyce
Member of Congress



Earl L. "Buddy" Carter
Member of Congress



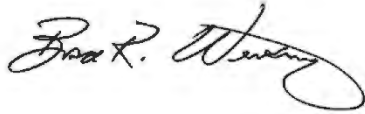
Van Taylor
Member of Congress



William Timmons
Member of Congress



Blaine Luetkemeyer
Member of Congress

A handwritten signature in black ink, reading "Brad R. Wenstrup".

Brad R. Wenstrup, D.P.M.
Member of Congress

A handwritten signature in blue ink, reading "Dan Bishop".

Dan Bishop
Member of Congress

A handwritten signature in black ink, reading "Lee Zeldin".

Lee Zeldin
Member of Congress

A handwritten signature in black ink, reading "Alex X. Mooney".

Alex X. Mooney
Member of Congress

A handwritten signature in black ink, reading "A. Drew Ferguson, IV".

A. Drew Ferguson, IV
Member of Congress

A handwritten signature in blue ink, reading "Rick Crawford".

Rick Crawford
Member of Congress

Scott Perry
Member of Congress

Will Hurd
Member of Congress



Congress of the United States
House of Representatives
Eliot L. Engel
16th District, New York

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April 16, 2020

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

Dear Chairman Powell,

The unprecedented COVID-19 pandemic has thrown our economy into dangerous, uncharted waters. As such, it is incumbent upon the federal government to take drastic action to help American workers, businesses, and organizations through this difficult time. That must include non-profit organizations.

The Federal Reserve's recently announced Main Street Lending Program will support up to \$600 billion in bank lending to small and mid-sized businesses. This is a helpful move by the Federal Reserve, but it does not include lending options for the non-profits. The non-profit community, and higher education institutions in my district and across the country, are doing everything they can to both help people in their urgent time of need, and survive the economic fallout of this global pandemic. These institutions, which are often educationally based and serve minority communities, employ millions of Americans and are in desperate need of the type of federal support the business community is currently receiving. We cannot turn our backs on them, especially at this critical moment in our history.

The non-profits in my district have been hit particularly hard as we have been the epicenter of the COVID-19 outbreak in the country. The non-profit community has been reeling as early as March 9th and they need additional federal assistance. It is unacceptable that these groups are left out of this relief effort by the Federal Reserve. The work these groups do not only generates economic opportunities, but also provides important assistance to the community and strengthens community engagement. Supporting our non-profits is critical and essential work.

I urge the Federal Reserve to provide substantial lending options to non-profit institutions as part of the Main Street Lending Program.

Sincerely,

Eliot L. Engel
Member of Congress

Congress of the United States
Washington, DC 20515

April 23, 2020

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

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

Dear Chairman Powell and Secretary Mnuchin,

Thank you for your timely efforts to implement the provisions of the CARES Act that provide liquidity to businesses, local governments, and nonprofits. The law's unprecedented lending facilities have the potential to protect the livelihoods of millions of Americans whose jobs have been jeopardized by the economic fallout of the COVID-19 pandemic. However, we're concerned that the terms you established for the Main Street Lending Program prevent emerging businesses from accessing this financial lifeline.

The maximum loan size under both of the Main Street Lending Program's facilities is calculated using the borrower's earnings before interest, taxes, depreciation, and amortization (EBITDA), a measure that approximates a firm's profitability. As a result, the Federal Reserve effectively requires borrowers to have a positive EBITDA in 2019 to access these loans.

The Federal Reserve stated that the purpose of the Main Street Lending Program is to "support lending to small and medium-sized businesses that were in good financial standing before the onset of the COVID-19 pandemic." The Federal Reserve has a responsibility to ensure that loans made with taxpayer dollars are repaid, but requiring that lenders only consider EBITDA unnecessarily limits lenders from providing funding to firms that would otherwise be able to repay loans.

Many startups and growth-stage businesses have a negative EBITDA in 2019 because they invested in growth before the pandemic. These investments are vital for a business's long-term success and that of our economy, even though they result in an accounting loss in the short term. Instead of punishing businesses for investing in growth, the Federal Reserve should allow lenders the flexibility to use alternative metrics such as a recent month's EBITDA, EBITDA discounting other investments (e.g., investment in growth), a multiple on revenues, month-over-month growth of revenue, or company valuation. Because private lenders retain a five percent stake in these loans, they have an incentive to lend to borrowers that are able to repay loans.

Without changes to the Main Street Lending Program, many emerging midsize businesses will be ineligible for this program which could have devastating effects on the employees of many otherwise successful companies. Lending to midsize startups does not pose a moral hazard or constitute a bailout because a negative EBITDA does not reflect on whether the business would have been viable had the pandemic never occurred. In fact, the Program's current terms create a disincentive for firms to invest in growth in normal times since the federal government is effectively punishing such investments.

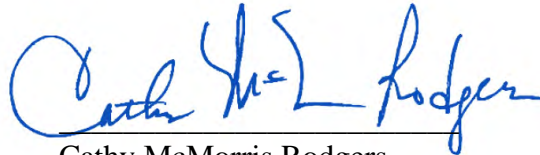
The Main Street Lending Program should not only ensure that today's thriving businesses survive but also support those businesses with the potential to drive expansion when the economy recovers.

Thank you for your consideration of our important request, and we look forward to your prompt reply.

Most gratefully,



Anna G. Eshoo
Member of Congress



Cathy McMorris Rodgers
Member of Congress



Zoe Lofgren
Member of Congress



Will Hurd **M.C.**
Member of Congress



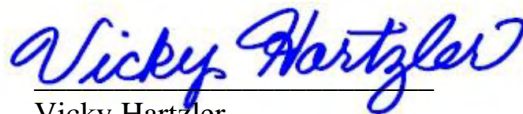
Ro Khanna
Member of Congress



Earl L. "Buddy" Carter
Member of Congress



Jackie Speier
Member of Congress



Vicky Hartzler
Member of Congress



Mike Thompson
Member of Congress

_____/s/

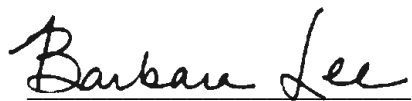
Ted W. Lieu
Member of Congress



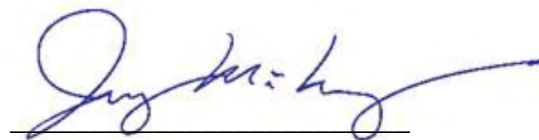
Doris Matsui
Member of Congress



Eric Swalwell
Member of Congress



Barbara Lee
Member of Congress



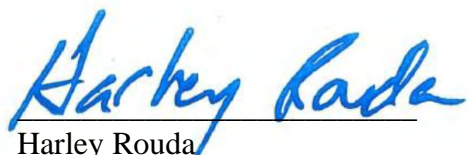
Jerry McNerney
Member of Congress



Mike Doyle
Member of Congress



Jamie Raskin
Member of Congress



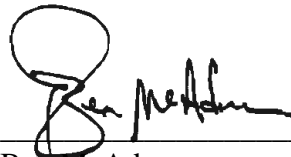
Harley Rouda
Member of Congress



Dean Phillips
Member of Congress



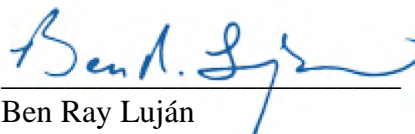
Andy Kim
Member of Congress



Ben McAdams
Member of Congress



Mike Levin
Member of Congress



Ben Ray Luján
Member of Congress



Darren Soto
Member of Congress



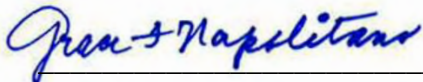
James P. McGovern
Member of Congress



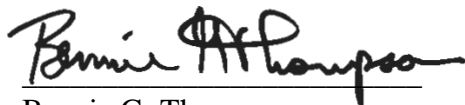
Ron Kind
Member of Congress



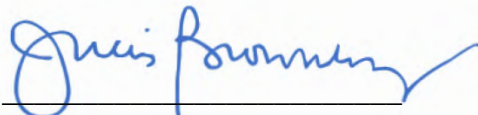
Joe Neguse
Member of Congress



Grace F. Napolitano
Member of Congress



Bennie G. Thompson
Member of Congress



Julia Brownley
Member of Congress



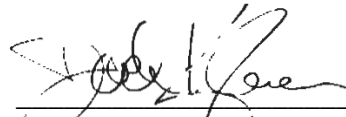
Bradley S. Schneider
Member of Congress



David Trone
Member of Congress



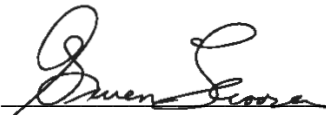
Alan Lowenthal
Member of Congress



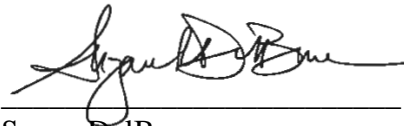
Derek Kilmer
Member of Congress



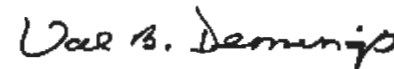
Brenda L. Lawrence
Member of Congress



Gwen Moore
Member of Congress



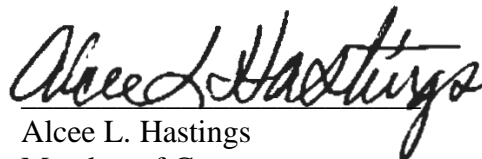
Suzan DelBene
Member of Congress



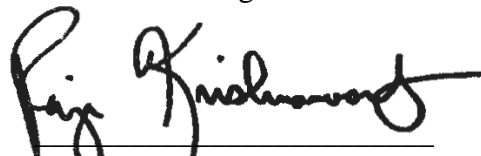
Val Demings
Member of Congress



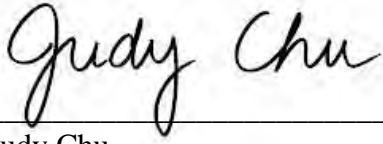
David Cicilline
Member of Congress



Alcee L. Hastings
Member of Congress



Raja Krishnamoorthi
Member of Congress

A handwritten signature in black ink that reads "Judy Chu". The signature is fluid and cursive, with the first name "Judy" and the last name "Chu" clearly distinguishable. A horizontal line is drawn across the page just below the signature.

Judy Chu
Member of Congress

BILLY LONG
7TH DISTRICT, MISSOURI

COMMITTEE ON
ENERGY AND COMMERCE
SUBCOMMITTEE ON
COMMUNICATIONS AND TECHNOLOGY
SUBCOMMITTEE ON ENERGY
SUBCOMMITTEE ON
HEALTH

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WASHINGTON, DC 20515
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(FAX) (202) 225-5604

Congress of the United States
House of Representatives
Washington, DC 20515-2507

April 15, 2020

The Honorable Jerome Powell
Chair
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20219

Dear Chairman Powell,


Thank you for your efforts to provide more economic certainty for businesses during the COVID-19 crisis. I appreciate the work of the Federal Reserve to implement the *CARES Act* as quickly and efficiently as possible, notably the Main Street Expanded Loan Facility Program (MSELF). However, I am concerned that the MSELF program as designed may unfairly penalize companies with a conservative amount of leverage.

The MSELF program will provide much needed liquidity for businesses, but as designed under the currently proposed structure, the program may limit the ability of companies with conservative debt ratios to borrow because the maximum loan size is limited to 30 percent of their existing outstanding and committed but undrawn bank debt. While designed to ensure a company does not become over leveraged, this particular protection could unfairly penalize businesses that have operated in a more conservative manner by limiting their past borrowings, and it may give greater access to liquidity to companies that have taken on excess debt.

I respectfully ask that you consider the needs of companies with conservative debt ratios as you design the MSELF program. Specifically, I urge you to consider waiving the limitation of a maximum loan size of 30 percent of the eligible borrower's existing outstanding debt if an eligible borrower's ratio for total private debt, including the MSELF debt, to 2019 EBITDA is 4 or less.

Thank you for considering these changes, and I look forward to working with you going forward.

Sincerely,



Billy Long
Member of Congress

Congress of the United States
Washington, DC 20515

April 17, 2020

The Honorable Steven Mnuchin
Secretary
Department of the Treasury
Washington, DC 20220

The Honorable Jovita Carranza
Administrator
U.S. Small Business Administration
Washington, DC 20416

The Honorable Jerome H. Powell
Chairman
Board of Governors of the Federal Reserve
Washington, D.C. 20551

Dear Secretary Mnuchin, Administrator Carranza, and Chairman Powell:

Thank you for your diligent work to ensure that our small businesses persevere through the difficult economic conditions brought by COVID-19. As the Department of Treasury, Small Business Administration (SBA), and Federal Reserve continue the ongoing effort to support small businesses through this difficult time, it is imperative that our rural hospitals are in no way prevented from accessing these critical programs, such as the Paycheck Protection Program (PPP), the Main Street Business Lending Program, and other critical financial assistance programs.

Our rural hospitals are in the perilous position of being on the front line against this public health emergency while also weathering the significant economic challenges and financial strain. In Oklahoma, 43 rural hospitals are established as a Public Trust under 60 O.S. § 176 of the Oklahoma Statutes. Many of these hospitals are not a 501(c)(3) or have both a 501(c)(3) and Public Trust designation, still making all of these hospitals ineligible for these critical financial assistance programs. In addition, these hospitals often receive no funding from the city or county of which the hospital is owned. These facilities are vital to rural Oklahoma, typically serving as both the largest employer and the only option for inpatient care in their communities.

We have seen in the case of PPP that lenders are unsure if these hospitals are eligible for the program, leading many lenders to not move forward in processing the loan application. It is imperative that guidance be issued to clarify that these rural hospitals are eligible for PPP as soon as possible, and that upcoming lending programs are equipped to support our hospitals.

As we all move forward in responding to this pandemic, I ask that you bear in mind the unique business structure of hospitals in Oklahoma. I appreciate your substantial efforts and success in swiftly implementing the programs authorized by the CARES Act. Thank you for your attention to the challenges faced by rural hospitals during this public health crisis.

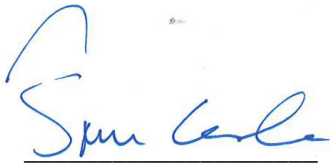
Sincerely,



Frank D. Lucas
Member of Congress



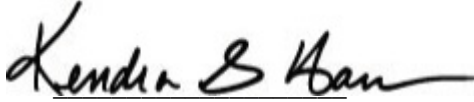
James M. Inhofe
United States Senator



Tom Cole
Member of Congress



Markwayne Mullin
Member of Congress



Kendra S. Horn
Member of Congress



James Lankford
United States Senator



Kevin Hern
Member of Congress

Ben McAdams

Utah's 4th District,

Washington Office

130 Cannon House Office Building
Washington, DC 20515
(202) 225-3011

Utah District Office

9067 S. 1300 West, Suite #101
West Jordan, UT 84088
(801) 999-9801



Committee On Financial Services
Committee on Science, Space, and
Technology

Congress of the United States
House of Representatives
Washington, DC 20515

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

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

Dear Chair Powell and Secretary Mnuchin,

I write to emphasize the importance of nonprofit businesses to our economy and to urge you to include nonprofits in the Federal Reserve's Main Street Lending Program.

I appreciate the Federal Reserve and Treasury's actions to date to support our economy during the coronavirus pandemic. As you are aware, the Federal Reserve recently released term sheets for the Main Street New Loan Facility and the Main Street Expanded Loan Facility. In both term sheets, it appears that eligible borrowers are limited to for-profit entities. Moving forward, I strongly encourage you to expand these programs, or to establish new lending programs, to specifically include nonprofit businesses as eligible borrowers.

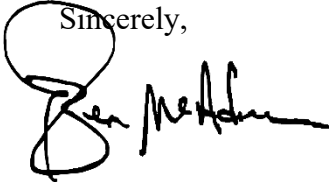
In the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Congress included language specifically aimed at supporting mid-sized businesses with up to 10,000 employees, including both for-profit and not-for-profit entities. Congress stated that direct loans established under the program should have an annualized interest rate no greater than two percent. Unfortunately, the Federal Reserve and Treasury have not yet established a facility that meets these criteria, leaving our nonprofit entities on the sideline of economic recovery measures they desperately need.

In Utah, there are more than 10,000 registered nonprofits, and the sector provides 7% of private sector jobs in the state. These nonprofits are invaluable to our communities and to those they serve and are major employers in the state. Utah nonprofits range in their activities and focus,

with some of our largest nonprofits in the healthcare and education sectors. In short, Utah needs our nonprofit sector to remain strong, and that means seeing them through this economic turmoil.

While Congress can and should continue to evaluate how best to assist our nonprofits in future legislation, it is important that the Federal Reserve and Treasury also do what they can to assist them with existing tools and resources. Thank you in advance for your consideration, and I stand ready to work with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben McAdams". The signature is stylized with a large, looped initial "B" and a cursive "McAdams".

Ben McAdams
Member of Congress

Congress of the United States
House of Representatives
Washington, DC 20515

April 16, 2020

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

Dear Chairman Powell:

Thank you for your dedicated leadership of the Federal Reserve System as the United States continues to address the COVID-19 pandemic. The President and his Administration have taken decisive action to assist businesses through a variety of programs, including the Paycheck Protection Program and Main Street Loan Program. We write to you today as the Federal Reserve is accepting comments on the Main Street Loan Program to highlight an issue that affects businesses in West Virginia and across the country.

The Main Street Loan Program is an important step to give companies with up to 10,000 employees or up to \$2.5 billion in annual revenues the liquidity needed to keep hardworking Americans employed and be prepared to jumpstart the economy once this crisis has subsided. Due to difficult economic conditions in specific industries last year, particularly companies that faced Chinese tariffs, many businesses faced revenue deficits in 2019. Currently, the Main Street Loan Program calculates the amount a company qualifies for based upon their 2019 earnings before interest, taxes, depreciation, and amortization (EBITDA) multiplied by four, or \$25 million, whichever is less. Since the amount is calculated upon 2019 earnings, companies that were unprofitable in 2019, yet remained in business in order to support their employees and communities, will not qualify for a loan through the Main Street Loan Program.

As you move forward with implementing the Main Street Loan Program, we strongly urge you to expand the rules that govern the qualifications for the program to include earnings prior to 2019 before interest, taxes, depreciation, and amortization. Many of the companies that struggled to be profitable in 2019 due to the tariffs placed on their products by China had strong business models prior. These businesses were set to recover in 2020 until the COVID-19 pandemic placed the businesses in jeopardy.

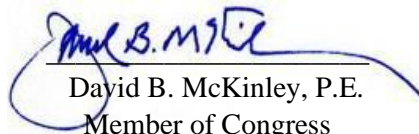
We thank the Federal Reserve System for playing such a major role in the effort to stabilize the American economy through programs such as the Main Street Loan Program. We must be absolutely assured that all businesses in need have the opportunity to apply.

Thank you for your consideration of this request.

Sincerely,



Carol D. Miller
Member of Congress



David B. McKinley, P.E.
Member of Congress



Alex X. Mooney
Member of Congress

DANIEL MEUSER
9TH DISTRICT, PENNSYLVANIA

326 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-6511

121 PROGRESS AVE.
SUITE 110, LOSCH PLAZA
POTTSVILLE, PA 17901
(570) 871-6370



Congress of the United States
House of Representatives
Washington, DC 20515-3809

EDUCATION AND LABOR
SUBCOMMITTEE ON:
HIGHER EDUCATION &
WORKFORCE INVESTMENT
HEALTH, EMPLOYMENT, LABOR,
AND PENSIONS
BUDGET
VETERANS' AFFAIRS
SUBCOMMITTEE ON:
ECONOMIC OPPORTUNITY
HEALTH

Wednesday, April 15, 2020

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

Mr. Chairman,

I write to express concern with a specific provision outlined in the Federal Reserve's interim guidance issued April 9 on the Main Street New Loan Facility.

Under this guidance, the maximum loan size for qualifying business will be the lesser sum of either \$25 million or four times the borrower's earnings before interest, taxes, depreciation, and amortization (EBITDA). While this requirement is aimed to target Main Street Loans to financially stable businesses, this requirement will lead to the exclusion of businesses that experienced an unusual EBITDA loss for 2019. Various one-time events in 2019 could lead to a net-loss one-year EBITDA.

To prevent otherwise qualified businesses from being unnecessarily excluded from the Main Street Lending Program, I propose two possible modifications to the existing guidance:

- Calculating loan size from 2019 EBITDA, with an exclusion for one-time or extraordinary events.
- Calculating loan size, at the borrower's discretion, from 2019 EBITDA and or an EBITDA average for 2017, 2018 and 2019.

Further, I am concerned with the "existing outstanding and committed but undrawn debt" phrasing on point #5 of the "Eligible Loans" description. A business' debt line can fluctuate daily based upon cash receipts and required payments, so this metric could also negatively impact businesses looking to apply for Main Street Loans.

Thank you for your time and attention to this matter. I welcome the opportunity to discuss this in greater detail with you and your staff. My Chief of Staff, Patrick Rooney, can be reached at patrick.rooney@mail.house.gov or 202-225-6511.

Sincerely,

Daniel P. Meuser
Member of Congress



Congress of the United States House of Representatives

COMMITTEES:

RULES

RULES AND ORGANIZATION
OF THE HOUSE

FINANCIAL SERVICES

NATIONAL SECURITY,
INTERNATIONAL DEVELOPMENT
AND MONETARY POLICY
OVERSIGHT AND INVESTIGATIONS

SCIENCE, SPACE, AND
TECHNOLOGY

SPACE AND AERONAUTICS

April 16, 2020

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

Dear Chairman Powell,

I write to provide comments and suggestions on the recently established Main Street Loan Facility and the Municipal Liquidity Facility. During the COVID-19 crisis, the Federal Reserve has taken extraordinary actions addressing economic stabilization. I appreciate your focus on providing relief for mid-sized businesses and state and local governments through these recently announced facilities. As you finalize the implementation of these programs, I believe certain improvements could be made to maximize their effectiveness.

Main Street Loan Facility

- Make non-profits, non-profit private and public higher education institutions eligible.
- Set the interest rate at 2 percent.
- Use the Facility to support businesses not only during the immediate crisis, but also while they restart operations over the coming months.

Many larger nonprofits are critical to supporting the most vulnerable populations during the crisis and are struggling to fundraise. Additionally, Colorado universities and colleges could lose up to \$174 million in just room and board revenue, creating a significant budget shortfall for higher education institutions.¹ Making these institutions eligible for the Main Street Lending Program could help prevent them from making drastic cuts or staff reductions. Furthermore, keeping the interest rate on the loans low, and providing access to operating capital while businesses are restarting operations as our communities ease and lift the stay at home orders will be critical for our successful economic recovery. Many businesses have been forced to shut their doors and will need significant capital to prepare their business for reopening before they have any revenue. Additionally, many communities will see a phased reopening with uncertain demand for services, which underscores the need for a sustained and flexible commitment by the Board.

¹ <https://www.bizjournals.com/denver/news/2020/03/20/colorado-colleges-refunds-coronavirus.html>

Municipal Liquidity Facility

- Make cities and counties with populations greater than 500,000 eligible issuers for the Municipal Liquidity Facility.

Under the current terms of the Municipal Liquidity Facility, no cities or counties in Colorado would be considered an eligible issuer due to the size restrictions. Additionally, Colorado, like other many other states, has restrictions on borrowing funds which will make it unlikely the state will be able to issue debt and then lend to local governments². Expanding the scope of eligibility for municipal governments by lowering the population thresholds will ensure a broader impact on cities and counties across the country.

Thank you for your prompt full and fair consideration of these recommendations as we respond to this crisis.

Sincerely,



Ed Perlmutter
Member of Congress

² <https://www.colorado.gov/pacific/treasury/public-finance-debt-issuance>

PERMANENT SELECT
COMMITTEE ON INTELLIGENCE
CHAIRMAN
COMMITTEE ON APPROPRIATIONS
EX-OFFICIO MEMBER



ADAM B. SCHIFF
MEMBER OF CONGRESS • 28TH DISTRICT, CALIFORNIA

2269 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

245 EAST OLIVE AVENUE, SUITE 200
BURBANK, CA 91502

@RepAdamSchiff • schiff.house.gov

April 16, 2020

The Honorable Jerome H. Powell
Chair
Board of Governors
Federal Reserve
2001 Constitution Ave NW
Washington, DC 20551

Dear Chair Powell:

As you work to finalize and implement the Main Street Lending Program, I write to request that you include nonprofits as eligible to receive loans under this lending facility. Like businesses, many larger nonprofits have seen existing revenue streams severely cut at a time when the need for charitable services is growing, and are faced with difficult choices about cutting services or laying off employees. The Coronavirus Aid, Relief, and Economic Security Act was passed to provide relief to entities impacted by the pandemic, and assisting large nonprofits is well within Congress's intent.

Nonprofits with fewer than 500 employees may be eligible for assistance under Small Business Administration administered programs, but larger entities likely cannot access programs like the Payroll Protection Program. I am concerned that nonprofit entities, that millions of Americans rely on, will therefore be left out of the relief Congress intended in the CARES Act.

Therefore, I strongly urge the Federal Reserve to include nonprofits institutions as eligible for the Main Street Lending Program, and to ensure that they can fully access the assistance it provides.

Thank you in advance for your consideration of this urgent matter.

Sincerely,

A handwritten signature in blue ink that reads "Adam B. Schiff".

Adam B. Schiff
MEMBER OF CONGRESS

Congress of the United States
Washington, DC 20515

Wednesday, April 15, 2020

The Honorable Jerome Powell
Chairman

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

The Honorable Steven Mnuchin
Secretary

United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Chairman Powell and Secretary Mnuchin:

On April 9th, the Federal Reserve released guidance related to the Main Street New Loan Facility ("Facility"). This Facility could greatly help mid-sized business that fall outside the small business definition but are both too small and too large to reach the traditional lending markets that are so desperately needed to maintain business viability. In this regard, we write to you seeking some clarity and guidance for a company, Mt. Airy Casino Resort ("MACR") located in northeastern Pennsylvania, an area we are both very proud to represent in the United States Congress.

MACR is a casino, hotel and resort with over 280 Triple A rated 4 Diamond hotel rooms, a golf course and a full-service spa, with over 1000 employees. Ensuring companies like MACR have the federal support necessary to endure these challenging times is crucial to the recovery of the Commonwealth of Pennsylvania and to the country as a whole.

Our belief is that the Facility unintentionally penalizes companies like MACR who pay a large percentage of gaming facility-specific state taxes on their gaming revenue¹. In 2019, MACR paid over \$94 million in gaming facility-specific Pennsylvania taxes, amounting to an effective gaming tax rate of 52%. By contrast, New Jersey has an effective tax rate of 9.25%. This disparate state tax treatment on the industry will eliminate MACR's ability to utilize the Facility at a time of critical great need. By contrast, the "4x EBIDTA formula" we call attention to will not impact casinos located in states that have a far lower gaming facility-specific tax rate (states which, incidentally, do not rely on a high tax rate on gaming facilities to fund state budget programs). We believe this is very inequitable when analyzed on a state-by-state, industry-specific tax basis.

¹ In the April 9, 2020 Main Street New Loan Facility sheet, Eligible Loans, #5, provides: "Maximum loan size is the lesser of (i) \$25 Million or (ii) an amount that, when added to the Eligible Borrower's existing outstanding and committed but undrawn debt, does not exceed four times the Eligible Borrowers earnings before interest, taxes, depreciation, and amortization ("EBIDTA");

Without due consideration to how this Facility is interpreted, MACR risks being prevented access to a federal program singularly due to their location and their (percentage-wise) very large casino tax payments to the Commonwealth of Pennsylvania.

We respectfully ask that Treasury and the Federal Reserve clarify guidance in the definition of EBITDA for Eligible Loans as defined in the guidance to include an allowance or exemption for state paid industry taxes such as Pennsylvania's gaming tax. We thank the Administration and the Treasury for their unprecedented efforts in keeping our economy steady during these unprecedented times. The speed and scope of these new programs is truly impressive, and we appreciate consideration of clarification to ensure businesses like MACR can remain operational and contribute to our economy's resurgence in the near future.

Sincerely,



Daniel P. Meuser
Member of Congress



Matt Cartwright
Member of Congress

MIKE CRAPO, IDAHO, CHAIRMAN

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PATRICK J. TOOMEY, PENNSYLVANIA
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GREGG RICHARD, STAFF DIRECTOR
LAURA SWANSON, DEMOCRATIC STAFF DIRECTOR

United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

April 17, 2020

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

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

Dear Secretary Mnuchin and Chair Powell:

The COVID-19 (coronavirus) pandemic is an unprecedented global health emergency. More than 30,000 Americans have died and the virus threatens to overwhelm our healthcare system.¹ Businesses across the country, especially those in the retail, service, and hospitality industries, have had to close their doors. In the last month, 22 million Americans have filed for unemployment.²

Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act to address the public health emergency and its economic impact. In addition to critical funding for hospitals, communities, and unemployment benefits for workers, the bill includes up to \$454 billion in funding from Treasury that the Federal Reserve Board can use to create up to \$4.5 trillion in lending to help businesses support their workers who have been affected by the pandemic. The CARES Act also established a Congressional Oversight Commission to conduct oversight of the Treasury and Federal Reserve's implementation of the Act and its efforts to provide economic stability related to the coronavirus pandemic.³

Last week, the Federal Reserve announced several new and updated programs to provide up to \$2.3 trillion in loans intended to support the economy during the coronavirus pandemic, leveraging part of the \$454 billion in taxpayer money authorized under the CARES Act. We are concerned that the Treasury and Federal Reserve have not provided sufficient transparency into the structure and administration of these programs or adequate explanation for the decisions made so far.

The CARES Act gave significant discretion to the Treasury Secretary with respect to the programs created under section 13(3) of the Federal Reserve Act, but the Federal Reserve, which Congress oversees, also plays an essential role in creating and administering these lending

¹ Coronavirus in the U.S.: Tracking deaths and confirmed cases by state. Washington Post. March 27, 2020. Last accessed on April 16, 2020. https://www.washingtonpost.com/graphics/2020/national/coronavirus-us-cases-deaths/?itid=ik_inline_manual_3.

² Department of Labor. April 16, 2020. Unemployment Insurance Weekly Claims. <https://www.dol.gov/ui/data.pdf>; <https://fred.stlouisfed.org/series/ICSA>.

³ Pub. L. No. 116-136, Sec. 4020.

facilities. Congress granted the lending authority under the CARES Act with the expectation that Treasury will use these Federal Reserve facilities to help states and municipalities, small and medium size businesses in support of our whole economy. In addition, the CARES Act loan facilities should require important worker protections and place restrictions on corporate spending for stock buybacks, dividends and capital distributions, and excessive compensation.

Yet, neither the Federal Reserve nor the Treasury has communicated objective criteria for the allocation of funds by Treasury through the facilities or how the statutorily required restrictions will be enforced. Furthermore, none of the facilities require participants to ensure that economic assistance directly benefits workers. The documentation published to date for each facility does not provide sufficient detail and creates more uncertainty for local governments, small businesses, workers, and homeowners and renters. While states, cities, municipalities, and small businesses across the country are desperate for relief, Treasury and the Federal Reserve are instead allocating almost a fifth of relief provided in the CARES Act to prop up existing corporate facilities for Wall Street.

Both Treasury and the Federal Reserve have a responsibility to make sure the law is followed and to prioritize the people who need help the most. This means that Treasury and the Federal Reserve must apply the majority of the \$454 billion in equity to support small and mid-sized businesses, non-profit organizations, and states and municipalities and to stabilize the housing market.

It is clear that these programs are complicated and that the Federal Reserve and Treasury are working quickly, but without more details and thorough explanations to the public and Congress, large, medium, and small businesses, policy makers, and working Americans will not be able to plan accordingly. Under the CARES Act, the Federal Reserve Board must keep a record of its votes and the reasoning for the important decisions it makes during this pandemic.⁴ The Federal Reserve remains accountable to Congress and the American people, and it is required to responsibly communicate the need and justification for its actions in a transparent way.

In light of these concerns, please respond to the following questions by April 24, 2020. The responses to these questions will be critical to Congress's oversight of the Treasury's and Federal Reserve's use of authority. Your answers will also help us evaluate the impact of your actions on the well-being of Americans and the U.S. economy, financial markets, and financial institutions, market transparency, and minimize costs and maximize benefits for taxpayers.⁵ The American public deserves to understand how these facilities are run and that funding is allocated fairly and in a way that helps the real economy.

1. **How do Treasury and the Federal Reserve work together?** How does the Federal Reserve identify the need, size, and amount of each facility and on what data does the Federal Reserve rely to make the determination? Please provide the policies or procedures in place between the Department of the Treasury and the Federal Reserve to ensure that all statutory obligations, including prohibitions on stock buybacks and dividends, worker protections, and reporting requirements, under the CARES Act and the

⁴ Sec. 4009.

⁵ Sec. 4020.

Federal Reserve Act are met. Also, please identify the personnel involved in developing and operating the programs at each agency.

2. **What is the Federal Reserve's strategy?** What is the process for how the Federal Reserve determines which actions it will take as a response to this crisis, and on what data does it rely? How do the Secretary of the Treasury's objectives influence the Federal Reserve's strategy? How do the Federal Reserve and the Treasury resolve differences when their priorities are not aligned?

Unlike the 2008 financial crisis, this crisis was sparked by a global health pandemic. But the Federal Reserve is reprising many of the same tools it used in 2008, and has gone even further to help big business and Wall Street: broadening the scope of its lending authority and repurchase agreement operations, reducing regulatory requirements, and establishing new facilities to support large U.S. corporations. To what extent did the Federal Reserve consider moral hazard concerns before reestablishing and expanding these facilities? How does the Federal Reserve plan to mitigate the moral hazard effects of providing funding to financial institutions and companies that took on excessive debt or risk?

Please explain the prioritization of the lending facilities under the CARES Act. How do these decisions address the unique economic disruption resulting from the pandemic? How have the Federal Reserve's action been designed to achieve maximum benefit and participation by affected entities?

3. **How will the Federal Reserve evaluate the impact of its strategy to stabilize the economy and support households and businesses?** What data and metrics will the Federal Reserve cite to show the effects of its actions on financial markets, credit availability, or the economy? Have these actions increased lending for individuals and small businesses? How will the Federal Reserve evaluate how its actions will affect financial markets and the real economy in the short-term and long-term? What is Treasury's role in this evaluation?

The Federal Reserve initially established a number of facilities intended to support the flow of credit to households and businesses—the Commercial Paper Credit Facility, Money Market Mutual Fund Liquidity Facility, Primary Market Corporate Credit Facility, Secondary Market Corporate Credit Facility, and the Term Asset-Backed Securities Lending Facility. How many households and small businesses does the Federal Reserve anticipate these facilities will support and how will the Federal Reserve measure the impact of such actions? On what data or metrics did the Federal Reserve rely in deciding to redirect additional taxpayer funds to the corporate credit facilities? What factors will the Federal Reserve consider if it decides to increase it further?

What data and metrics will the Federal Reserve use to evaluate the effects of its actions on the number of businesses that are able to remain open and operating? How will they monitor whether businesses have maintained employment levels? How will the Federal Reserve ensure that liquidity for institutions issuing Paycheck Protection Program (PPP)

loans is distributed fairly, regardless of the size or geographic location of the institution? How will Treasury and the Federal Reserve ensure that funding under all of the facilities is allocated without regard to institution size, so that smaller lenders are not left out?

4. Will the strategy help protect workers?

Why did the Federal Reserve create Main Street facilities that do not require businesses to retain and protect workers? How is funding to corporations determined and why do corporate credit facilities have no requirements on large U.S. corporations to retain and protect workers? Why do the Federal Reserve and Treasury fail to prioritize companies that retain workers, protect collective bargaining rights, and that do not outsource jobs?

5. What reforms will the Federal Reserve impose on corporations that are taking taxpayer money? Why do the Federal Reserve's corporate credit facilities fail to include restrictions on stock buybacks, dividends, and excessive compensation for entities that receive loans or funding backed by taxpayer dollars? The Federal Reserve must disclose the names of each company that requests assistance and the amount of support it receives in addition to the other disclosure requirements of the CARES Act. All of these disclosures and the corresponding reports are required to be transmitted to Congress and the public – how will you provide these disclosures so they are in an accessible, searchable format?

6. How will the Federal Reserve monitor compliance and ensure that funding is allocated in an objective and non-partisan way? How will Treasury and the Federal Reserve verify conflict of interest certifications required under section 4019 the CARES Act? To what extent does the Treasury influence the Federal Reserve's decisions? How will your agencies track and enforce compliance with requirements under the CARES Act or other terms established under the Federal Reserve facilities? What steps will Treasury and the Federal Reserve take if requirements are not met?

7. Are small businesses and working Americans getting a fair shake? The Federal Reserve term sheets raised more questions than answers for many people struggling to get by during the coronavirus pandemic. Small businesses, sole proprietorships, unions, non-profits, and other people and entities without ready access to lawyers and financial advisors need to understand how and whether they are eligible to participate in Federal Reserve programs. How will the Federal Reserve ensure that its programs are accessible directly to Americans? Is the Federal Reserve taking any direction from Treasury that limits direct accessibility of these programs?

8. Will the strategy help states, cities, and localities that are facing budget shortfalls while trying to provide sufficient public health and safety resources to fight the coronavirus? Please explain how you established the parameters of the Municipal Liquidity Facility (MLF). How will funding be allocated within those parameters? On what data did Treasury and the Federal Reserve rely in determining the population threshold for cities and counties eligible to participate in the MLF? Why do these parameters exclude the 35 cities with the largest black populations?⁶ What challenges

⁶ <https://www.brookings.edu/research/a-chance-to-improve-the-equity-impact-of-the-feds-municipal-lending-facility/>.

does the Federal Reserve consider as an impediment to expanding the MLF's criteria to include large metropolitan areas that do not meet the current threshold? Please provide the analysis, if any, on the MLF's disparate impact on majority-minority communities, which are disproportionately impacted by the coronavirus and historically have been underserved by financial institutions. How will you ensure that funding to states and municipalities is not influenced by any political determination, but based on need and other objective criteria?

9. **What is the scope of the Federal Reserve's statutory authority?** What is the Federal Reserve's understanding of the statutory limits on its use of funds? How does the Federal Reserve justify its actions under the CARES Act and the Federal Reserve Act? What 13(3) limitations, restrictions, and regulations has the Board of Governors prescribed for lending facilities using equity authorized under the CARES Act and how do they apply to each facility? How can the Federal Reserve use its authority to provide direct relief to workers and families, small and mid-sized businesses, non-profit organizations, and states and municipalities? For programs established outside of CARES Act authority, what alternatives did the Federal Reserve consider?
10. **What are Treasury and the Federal Reserve doing to prepare for the future?** What other facilities or actions is the Federal Reserve planning so that consumers, small businesses, and localities get direct relief? Has Treasury suggested or rejected any specific facilities or actions? What is the timing for any of these actions? What steps will the Federal Reserve take to maintain stability across the single-family and multifamily housing markets to support the needs of homeowners, renters, and the broader housing system?

Thank you and we look forward to your response.

Sincerely,

/s/ Sherrod Brown
Sherrod Brown
Ranking Member

/s/ Charles E. Schumer
Charles E. Schumer
Minority Leader

/s/Chris Van Hollen
Chris Van Hollen
United States Senator

/s/ Elizabeth Warren
Elizabeth Warren
United States Senator .

/s/ Catherine Cortez Masto
Catherine Cortez Masto
United States Senator

/s/ Brian Schatz
Brian Schatz
United States Senator

/s/ Tina Smith
Tina Smith
United States Senator

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GREGG RICHARD, STAFF DIRECTOR
LAURA SWANSON, DEMOCRATIC STAFF DIRECTOR

United States Senate
COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS
WASHINGTON, DC 20510-6075

April 16, 2020

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

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

Dear Secretary Mnuchin and Chairman Powell:

Title IV of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provides \$500 billion in emergency relief in order to provide liquidity to eligible businesses, States, municipalities and Tribes related to losses incurred as a result of COVID-19. Due to the unprecedented shutdown of businesses to prevent the spread of COVID-19, bold and dramatic steps are needed to limit the depth of the economic shock the country is currently experiencing, and to provide conditions for a quick and robust recovery once the economic restrictions are lifted.

On April 9, 2020, the Federal Reserve Board and Department of Treasury announced new and expanded lending programs to provide up to \$2.3 trillion in loans. This is a powerful step forward to support the flow of credit in the economy and I request that you update the facilities' term sheets accordingly to address the issues raised below.

Paycheck Protection Program

The CARES Act authorizes up to \$349 billion in forgivable loans through the Small Business Administration's Paycheck Protection Program (PPP), aimed at keeping small businesses up and running, and primarily to keep their workers employed during the COVID-19 crisis. That initial \$349 billion allocated to the SBA's PPP has now been completely depleted. As a result, Congress must immediately pass additional funding for the PPP to continue providing critical support so that small businesses and their employees can stay afloat during this challenging

crisis. The Fed announced a facility to bolster the effectiveness of the PPP by supplying liquidity to participating financial institutions through term financing backed by PPP loans to small businesses. The Paycheck Protection Program Liquidity Facility (PPPLF) will extend credit to eligible financial institutions that originate PPP loans, taking the loans as collateral at face value.

Financial institutions have raised many questions about the PPP in recent weeks, including with respect to the applicable interest rate, Bank Secrecy Act and anti-money laundering requirements, affiliation rules, certifications and verifications, liability, the speed and efficiency of technology platforms and more. The SBA and Treasury have addressed and continue to address many of these questions through periodic updates to guidance. However, there are still several outstanding issues, including:

- Whether participation in the PPP will be made available to a range of non-depository institutions and other lenders that are not currently approved, such as Community Development Financial Institutions;
- Providing flexibility so that small businesses in certain industries that are currently ineligible under existing SBA regulations may access the PPP;
- Providing clear communication about the PPP, including, but not limited to, guidance on what the secondary market looks like, guidance on what is required for loan forgiveness and how it will work, a more comprehensive hold harmless agreement, contact information for technical support and an updated list of approved lenders;
- Clarifying through additional guidance how to determine and calculate PPP loan forgiveness;
- Taking additional steps to address issues with technology supporting the Program, including malfunctions and delays while processing loans (and providing additional flexibility on timeframes for disbursing loans as a result) and onboarding new bank employees to use technology;
- Making any necessary changes to various loan terms and conditions to achieve the broadest possible participation by both borrowers and lenders, and to ensure new and existing customers' needs are being met, including to applicable interest rates, loan disbursement timing, loan uses and verification;
- Identifying opportunities to extend the PPP loans' maturity beyond two years, within the maximum maturity specified in the CARES Act; and
- Working with the Small Business Administration to acknowledge the good faith effort by banks to push forward originating and funding PPP loans despite issues emanating in the Program and a lack of full guidance, and honor the guarantees associated with those loans.

A number of financial institutions have stressed the important role that a Federal Reserve facility for PPP loans ultimately plays in the Program's effectiveness. As this facility becomes operational, it is imperative that access to the PPPLF be broad, including to a wide variety of non-depository financial institutions, and that it be easy and quick to facilitate funding under the PPPLF.

Main Street Lending

The Federal Reserve announced two Main Street Lending Programs – the Main Street New Loan Facility (MSNLF) and the Main Street Expanded Loan Facility (MSELF). Although the facilities share some aspects, they each meet different needs on loan type, size and terms. The facilities ensure that credit flows to small and mid-sized businesses with the purchase of up to \$600 billion in loans. Using funding from the CARES Act, Treasury will provide \$75 billion in equity to the facilities. Given that financial institutions will retain a five percent share in an eligible loan, the following needs to be addressed to ensure broad participation by lenders and borrowers:

- Set earnings before interest, taxes, depreciation and amortization (EBITDA) multiples that provide for the broadest possible access for small and medium-sized organizations;
- Amend language pertaining to the debt considered in relation to the EBITDA multiples (*i.e.*, “existing outstanding and committed but undrawn debt”) such that it appropriately considers debt's funding terms and covenants, and reflects the amount that a business is actually able to borrow, and provide guidance on whether lenders can make adjustments to EBITDA;
- Provide greater clarity on access to the facilities for a range of small and medium-sized organizations that are either not traditionally profit-seeking entities, such as non-profits, universities and hospitals, or those organizations that do not typically use EBITDA multiples;
- Adjust the facilities' \$1 million minimum loan size and provide flexibility for longer loan maturities to avoid unintentionally impeding access to the facilities for a vast array of otherwise qualified small and medium-sized businesses;
- Provide certainty that the underwriting and lending decisions ultimately lie with the bank, regardless of any borrower meeting the basic minimum criteria under the terms sheets, and provide greater clarity around how and when a borrower's creditworthiness is to be determined;
- Provide flexibility for financial institutions to utilize a reference rate other than the Secured Overnight Financing Rate (SOFR), which will help ensure the reference rate is one with which both the borrower and lender are familiar;
- Provide flexibility for sectors of the economy that are required to pay dividends as a condition of their company's legal structure; and

- Permit U.S. branches and agencies of non-U.S. banks to qualify as U.S. businesses, thereby allowing them to act as intermediaries for their customers with regard to these facilities.

These Main Street Lending Facilities provide a lifeline to an important subset of our economy, many of which may not qualify for other sources of assistance. Incorporating widespread restrictions in these facilities could unintentionally harm employees, businesses and investors, rendering the facilities ineffective. To avoid unintended consequences, the Federal Reserve and Treasury should avoid adding new barriers and remove any existing barriers that inhibit the broadest possible access to these facilities.

Corporate Credit and Asset-Backed Securities

The Federal Reserve also announced that it will expand the size and scope of the Primary Market Corporate Credit Facility (PMCCF) and Secondary Market Corporate Credit Facility (SMCCF), as well as the Term Asset-Backed Securities Loan Facility (TALF). Together, these three programs will now support up to \$850 billion in credit backed by \$85 billion in credit protection provided by the Treasury. Although this initial expansion of the size and scope of these three facilities is an encouraging first step, additional steps will likely be needed to stabilize credit markets:

- Seek input on how to expand the size and scope of these facilities as appropriate to ensure the stability of both investment grade and non-investment grade markets; and
- Conform reference to both “major” and “eligible” nationally recognized statistical ratings organizations (NRSROs) so that they are consistent and the applicable NRSRO is clear.

Municipals

The Federal Reserve established the Municipal Liquidity Facility (MLF) to help state and local governments manage cash flow stresses caused by COVID-19. The MLF will offer up to \$500 billion in lending to states and municipalities with the Treasury providing \$35 billion of credit protection to the Federal Reserve for the MLF using funds appropriated by the CARES Act. As it stands under the MLF’s term sheet, no city or county in Idaho would qualify, which precludes rural communities from receiving significant and critical assistance in response to COVID-19. In addition to larger and more urban communities, States, cities, municipalities and Tribes with smaller and more rural populations have also been materially affected by COVID-19. All States have a significant need for assistance in response to COVID-19, and a minimum guarantee of assistance to all States should be established to ensure that no State is left without:

- In accordance with Title IV, update the terms so cities, counties, and tribes in rural states like Idaho can apply rather than be automatically excluded. The facility needs to work for both rural and urban states; and

- Provide more clarity on pricing based on an eligible issuer's rating, disclosure to the public per state and taxpayer protections.

Even with these newly-announced facilities and the expansion of the size and scope of certain existing facilities, there remains significant funding provided by Title IV of the CARES Act to continue expanding these facilities and to address other troubled areas, such as the mortgage servicing industry. The Federal Reserve and Treasury should provide guidance on how they are prioritizing the next tranche of emergency lending as financial markets and economic conditions change.

I appreciate the hard work of the Federal Reserve and Treasury to launch a wide range of facilities and programs quickly to provide support to financial markets and the broader economy. As these programs and facilities become operational and you look to bring new facilities online, it is critical that you communicate fully with targeted organizations, and that terms and conditions be structured prudently to ensure that support makes it to the intended organizations in a timely and efficient manner. Additionally, given the state of the economy and employment as a result of working to stop the spread of COVID-19, it is important that the Treasury and Federal Reserve get these facilities operational and lending to the real economy in short order. Please update the facilities' terms sheets accordingly to quickly address these issues.

Sincerely,

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

Mike Crapo
Chairman



United States Senate

April 15, 2020

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

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

Dear Secretary Mnuchin and Chairman Powell,

I write to urge the Treasury Department and the Federal Reserve to ensure that nonprofit organizations are eligible for loans under the Main Street Lending Program.

U.S. nonprofits are suffering substantial harm from the coronavirus, just as for-profit businesses are. I have heard from numerous California nonprofits that are facing major financial difficulties and are contemplating large numbers of layoffs and even their survival. Critical services such as youth, meal delivery, and social service programs are experiencing unprecedented demand in a time where state and local tax revenues have plummeted. Arts companies in the San Francisco area alone expect to lose \$100 million in the next six months. Zoos and aquariums must continue operations to protect animals despite having no incoming revenue. Nonprofits such as these are not only important to the U.S. economy, they provide the services and anchor our communities. They will be a necessary part of an effective post-crisis recovery.

The CARES Act provides in Section 4003(c)(3)(D)(i) that “the Secretary [of the Treasury] shall endeavor to seek the implementation of a program or facility ... that provides financing to banks and other lenders that make direct loans to eligible businesses including, to the extent practicable, nonprofit organizations, with between 500 and 10,000 employees.” However, when the Federal Reserve announced its Main Street Lending Program on April 9, 2020, the term sheets for the program’s two lending facilities made no mention of nonprofits.

I ask the Treasury Department and the Federal Reserve to honor the intent of Congress in the CARES Act by ensuring that nonprofits are eligible for the Main Street Lending Program.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dianne Feinstein", with a stylized, flowing script.

Dianne Feinstein
United States Senator

DF/js

Congress of the United States
Washington, DC 20515

April 23, 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,

On April 15, 2020, we were joined by 39 members of Congress in writing to express our opposition to the proposed use of coronavirus response funds to bail out the fossil fuel industry. After learning that the fossil fuel industry is lobbying for special treatment under the Federal Reserve's Main Street Lending Program, we are following up to urge you to reject these calls to change this program, which is intended for use by small- and medium-sized businesses that were in good financial standing before the crisis hit. Specifically, fossil fuel producers are seeking changes to the terms of the program that would allow them to use loan proceeds to pay off or settle pre-coronavirus-pandemic loans and debts. It would be a short-sighted misuse of taxpayer resources to accede to these requests, which would effectively help bail out an industry struggling under the weight of its own debt and long-term systemic decline.

Fossil fuel investments are now riddled with fundamental structural risks. As countries around the world respond to the climate crisis, deployment costs for renewable energy alternatives are falling. This is causing unease among investors about the future value of fossil fuel assets, leading to concerns about the long-term performance of fossil fuel industry stocks—fears that have been borne out over the past decade as the energy sector has remained the worst-performing sector on the S&P 500. Many notable financial institutions have already moved to restrict their exposure to carbon-intensive investments, including BlackRock, Wells Fargo, the European Investment Bank, and the World Bank Group. And these concerns have arisen despite one giveaway after another from the federal government to the fossil fuel industry, with the Trump administration rolling back key regulations such as fuel economy standards and keeping billions of dollars in annual tax subsidies on the books.

Additionally, using federal money to prop up the fossil fuel industry would only increase the financial toll of climate change and the environmental degradation it has wrought. Cities, states, and the federal government are already bearing the costs of rising seas, flooding, heat waves, and other environmental and public health disasters. The costs of inaction on climate change are

Chairman Jerome Powell

April 23, 2020

Page 2 of 2

already high, but continued investment in its root cause of fossil fuels will only drive those costs higher.

During the federal response to this unprecedented crisis, we urge you to deploy the Federal Reserve's resources in a way that protects taxpayer interests and avoids the bailout of an industry that has been struggling under its own short-sighted financial decisions for years. We must protect workers and communities affected by the oversupply of fossil fuels and the resulting downturn in oil and gas prices, but we can do that without carving out special rules for loans to fossil fuel corporations. We strongly urge you to resist the fossil fuel industry's calls for privileged treatment and maintain the existing terms of the Main Street Lending Program.

Sincerely,

Edward J. Markey
United States Senator

Nanette Diaz Barragán
Member of Congress

April 22, 2020

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

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

Dear Secretary Mnuchin and Chairman Powell:

As the Treasury and the Federal Reserve work to craft guidance to implement the Main Street Lending Program (MSLP) as part of the recently enacted Coronavirus Aid, Relief, and Economic Security (CARES) Act, I would like to bring to your attention the concern of employees at some mid-size businesses, that they could potentially be prevented from fully benefiting under the MSLP because of the Main Street Expanded Loan Facility's term loan requirement.

My constituent employer, Lexmark, is a mid-size company headquartered in Lexington. Lexmark has suffered a huge loss of business due to the COVID-19 pandemic and economic downturn. I am told they need more than the \$25 million available under the New Loan Facility to get them through this crisis and avoid laying off workers. However, according to the Term Sheet for the Expanded Loan Facility, to qualify as an eligible borrower, the business must currently have a term loan outstanding with an eligible lender. Lexmark has an existing credit line with an eligible lender, but is worried it could be prevented from obtaining a loan under the Expanded Loan Facility because they do not have an existing term loan.

I ask that you consider Lexmark's request to clarify in the implementing regulation 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 for the Expanded Loan Facility eligibility.

For your reference, I have enclosed a copy of Lexmark's recent correspondence with me as well as the formal comments they have submitted to the Federal Reserve.

Thank you for your consideration of this matter, which is important to me and to my constituents. I look forward to continuing our work to help families and businesses in Kentucky recover from this crisis.

Sincerely,



Mitch McConnell
UNITED STATES SENATOR



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

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

Dear Chair Powell and Secretary Mnuchin:

I write to you in regard to last week's announcement that the Federal Reserve System (Fed), in conjunction with the Department of Treasury (Treasury), will provide \$600 billion in loans to small and mid-sized businesses with up to 10,000 employees using funds provided in the *Coronavirus Aid, Relief, and Economic Security (CARES) Act*.¹ I am concerned that, in establishing this new program to bail out thousands of medium-sized companies, you did not use your authority to appropriately protect workers and taxpayers, and that you chose not to use a specific provision in the CARES Act that gave you explicit recommendations on how to do so. Congress provided you with this funding to protect workers, taxpayers, and the economy, and I urge you to reconsider program requirements to make sure that these funds are used for those purposes.

The CARES Act contained a specific provision stating that "the Secretary shall endeavor to seek the implementation of a program ... that provides financing to banks and other lenders that make direct loans to eligible businesses ... with between 500 and 10,000 employees," at an annual interest rate no higher than two percent.² This provision continued, indicating that businesses that participate in this program must certify that they meet ten conditions,³ including that (a) funds will be used to keep at least 90% of the recipients workforce until September 30, 2020, and, (b) that the recipient intends to restore at least 90% of its original workforce, with all compensation and benefits, after the public health emergency is over, and (c) that the recipient has a majority of its employees based in the United States, and (d) the recipient will not pay dividends or repurchase stock while the loan is outstanding; and (e) the recipient will not

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>; Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, <https://www.congress.gov/bill/116th-congress/house-bill/748>.

² CARES Act 4003(c)(3)(D).

³ CARES Act 4003(c)(3)(D)(I) through section 4003(c)(3)(D)(X).

outsource jobs during the course of the loan and for two years thereafter, and (f) the recipient will not abrogate collective bargaining agreements and remain neutral in any organizing efforts.

But rather than creating a facility with these requirements in place or incorporating them into the Main Street facility that was already under development you instead proceeded to use \$75 billion in taxpayer funds to create the Main Street Lending Program with more limited requirements from a different section of the CARES Act, requiring only that the companies seeking these “loans must commit to make reasonable efforts to maintain payroll and retain workers,”⁴ that the companies refrain from stock buybacks or dividend payments until 12 months after the loan is repaid, and that the company place limits on compensation increases for highly paid executives.⁵ Even these limited requirements appear to be full of loopholes and unanswered questions. For example, with regard to the “reasonable efforts” provision, the Fed has “yet to strictly define what that means or how it will be enforced.”⁶

In other words, the Federal Reserve is handing out billions of dollars with little oversight and failing to require basic protections that companies retain workers and maintain payroll, failing to include protections against outsourcing, and failing to retain basic protections for union workers. Absent these protections, it is not clear how these bailouts will help American families and workers.

To be sure, your actions are allowed under the CARES Act. Although Congress recommended the protections noted above for a medium-sized business facility, it did not require them for the Main Street Lending Program, and you may, under your extensive existing authority to provide loans without these requirements. But by the same token, your authority under the CARES Act and the Federal Reserve’s authority under Section 13(3) of the *Federal Reserve Act* gives you the ability to require additional protections to prevent abuse of these taxpayer funds. On Tuesday, March 31, 2020, I sent a letter to both of you regarding this broad authority, urging you to use it to ensure that bailout funds protect workers and do not reward corporate misbehavior, and to ensure that the funds are protected by strong anti-corruption and transparency rules.⁷

Specifically, I urged you to require that any company receiving any backing under the CARES Act use funds to keep workers employed and maintain at least 95% of payrolls, provide a \$15 hourly minimum wage, do not use taxpayer funds to enrich corporate executives through executive compensation mechanisms, and other strict conditions to prevent the misuse of these

⁴ 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>.

⁵ These limits are found in section 40039(c)(3)(A)(ii) of the CARES Act. Board of Governors of the Federal Reserve System, Term Sheet: Main Street New Loan Facility, April 10, 2020,

<https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a7.pdf>.

⁶ New York Times, “With \$2.3 Trillion Injection, Fed’s Plan Far Exceeds its 2009 Rescue,” April 9, 2020, <https://www.nytimes.com/2020/04/09/business/economy/fed-economic-rescue-coronavirus.html>.

⁷ Letter from Senator Warren to Secretary of the Treasury Mnuchin and Board of Governors of the Federal Reserve System Powell, March 31, 2020,

<https://www.warren.senate.gov/imo/media/doc/2020.03.31%20Letter%20to%20Mnuchin%20re%20CARES%20Act.pdf>; Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, <https://www.congress.gov/bill/116th-congress/house-bill/748>.

funds.⁸ I also urged you to ensure that companies receiving taxpayer funds are liable for all assistance received if the company violates these terms.⁹ You included none of these protections among the requirements for these bailout funds.


I ask that you reconsider and resolve this problem before finalizing program requirements. To do so, I ask that you include the following for any recipient of funds under the Main Street Loan facilities:

1. Ironclad workforce retention and restoration protections, as described in Section 4003(c)(3)(D)(II) and Section 4003(c)(3)(D)(III) of the CARES Act.
2. Protections against outsourcing, as described in Section 4003(c)(3)(D)(II) and Section 4003(c)(3)(D)(VIII) of the CARES Act.
3. Protections for collective bargaining agreements and unionized workers, as described in Section 4003(c)(3)(D)(IX) and Section 4003(c)(3)(D)(X) of the CARES Act.
4. Requirements that the loan recipient provide a \$15 minimum wage within one year of receiving a loan.
5. Requirements that the CEOs of companies receiving bailout make personal, annual certifications to Treasury and the Federal Reserve that their companies are complying with the rules, ensuring that these CEOs would face civil and criminal penalties for violating these terms.
6. Requirements that recipients of funds be held liable to the federal government for all assistance received if they violate any of the terms of their agreements with taxpayers.
7. A ban on political spending or lobbying expenditures for the duration of the assistance for any recipients of bailout funds.

I also ask that, as you administer the program, you do so in a transparent manner, so that Congress and the public have a clear understanding of the rationale for all actions taken by Treasury and the Federal Reserve, knowledge of all recipients of bailout funds, and a clear explanation of the terms and conditions of all loans or assistance.

I appreciate your consideration of these matters and am happy to discuss them in more detail with you or your staff.

Sincerely,


Elizabeth Warren
United States Senator

⁸ Letter from Senator Warren to Secretary of the Treasury Mnuchin and Board of Governors of the Federal Reserve System Powell, March 31, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.03.31%20Letter%20to%20Mnuchin%20re%20CARES%20Act.pdf>; Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, <https://www.congress.gov/bill/116th-congress/house-bill/748>.

⁹ *Id.*