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THE STATUS OF THE FEDERAL RESERVE EMERGENCY LENDING FACILITIES

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

ON

RECEIVING UPDATES ON THE FEDERAL RESERVE 13(3) EMERGENCY LENDING FACILITIES AND THE STATE OF THE COMMERCIAL REAL ESTATE MARKET

SEPTEMBER 9, 2020

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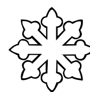

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THE STATUS OF THE FEDERAL RESERVE EMERGENCY LENDING FACILITIES

WEDNESDAY, SEPTEMBER 9, 2020

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10 a.m., via Webex, Hon. Mike Crapo, Chairman of the Committee, presiding.

OPENING STATEMENT OF CHAIRMAN MIKE CRAPO

Chairman CRAPO. This hearing will come to order.

This hearing is another remote hearing by video, and a few of the traditional videoconferencing reminders again.

Once you start speaking, there will be a slight delay before you are displayed on screen. To minimize the background noise, please click the "Mute" button until it is your turn to speak or ask questions.

If there is any technology issue, we will move to the next Senator until it is resolved, and I remind all Senators and the witnesses that the 5-minute clock does still apply.

You should all have one box on your screens labeled "Clock" that will show how much time is remaining, and I will try to remember to gently tap the gavel to remind Senators about 30 seconds before their time is up.

To simplify the speaking order process, Senator Brown and I have again agreed to go by seniority for this hearing.

With that, today we welcome to this virtual hearing the following witnesses: Mr. Hal Scott, president, the Committee on Capital Markets Regulation; Mr. Jeffrey DeBoer, president and chief executive officer of the Real Estate Roundtable; and the Honorable William Spriggs, professor of economics at Howard University and chief economist of the AFL–CIO.

It has been 5 months since the passage of the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, and its being signed into law.

Title IV of the CARES Act provided a $500 billion infusion into the Exchange Stabilization Fund in order to support the Federal Reserve's emergency lending facilities.

This amount has been leveraged to provide trillions of dollars in liquidity back into the markets, supporting credit flow and helping to stabilize the economy.

Currently, there remains about $250 billion left from the CARES Act funding.

Today we will receive testimony from each witness providing an update on the Federal Reserve 13(3) emergency lending facilities, including recommendations on how the Main Street Lending Program and the Municipal Liquidity Facility could be changed to improve access to and demand for the programs as we move forward.

We will also hear an update on the state of the commercial real estate market; why the CRE market lacks access to needed support, including through Main Street; and recommendations for options to get support to commercial real estate.

The Federal Reserve established the Main Street Facilities to support lending to small- and medium-sized businesses and nonprofit organizations that were in sound financial condition before COVID–19.

The Main Street Program includes five facilities: the Main Street New Loan Facility, the Main Street Priority Loan Facility, the Main Street Expanded Loan Facility, the Nonprofit Organization New Loan Facility, and the Nonprofit Organization Expanded Loan Facility.

Treasury's equity investment of $75 billion into the Main Street Program is estimated to provide up to $600 billion in credit to eligible businesses.

However, there has been broad concern around the lack of broad access to the Main Street Program, and so far its uptake has been slow.

One of the most significant industries to lack access to Main Street is the commercial real estate market.

On July 31, I sent a letter to Secretary Mnuchin and Chairman Powell urging them to quickly expand the Main Street Program by setting up an asset-based lending facility and to address commercial real estate either through access to the Main Street Program or in a separate facility.

During this hearing, I look forward to hearing more about the state of small- and medium-sized businesses in industry across the United States and their access to financing, additional ways the facilities could be improved and expanded to provide access to more industries, and recommendations for the use of the remaining Title IV funds.

As I noted in the hearing on Title IV implementation this Committee held on June 2, I am still concerned that incorporating widespread restrictions in these facilities could render the facilities ineffective and leave businesses and their employees without critical resources they desperately need.

The work to get these facilities up and running has been of immense importance, and now it must be ensured that they are structured to achieve the greatest impact for those in need.

I appreciate each one of you joining us today to share your perspectives on these important issues.

Senator Brown.

OPENING STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Mr. Chairman, and thank you to Professor Scott, Professor Spriggs, and Mr. DeBoer for joining us.

More than 150 years ago, President Lincoln observed, "It has so happened in all ages of the world that some have labored, and oth-

ers have, without labor, enjoyed a large portion of the fruits. This is wrong, and it should not continue."

This pandemic is revealing just how true Lincoln's words are today.

This week we celebrate Labor Day, a day when we honor the people who make our country work—all workers, whether you punch a clock or swipe a badge, whether you work for salary or work for tips, whether you are taking care of an aging parent or raising children. All workers.

But workers deserve more than empty words in a tweet or in an email message.

For months we have seen advertisements and PR campaigns from big corporations proclaiming how dedicated they are to the essential workers that are keeping our country running. But statements that are not followed up by increased pay or safer workplaces ring hollow, whether they are from companies or from Government officials.

This Labor Day, this country is not living up to its promise to workers.

Whether it is ending a month ago the $600-a-week unemployment insurance that kept millions of families afloat, or just the simple promise that families will not lose their homes in the middle of a pandemic, under President Trump our Government has given up on its support of our workers.

We are on the precipice of another Great Depression.

If you have the privilege to work from home and you have been watching your stock portfolio slowly rebound, and you are thinking right now, "This guy is being alarmist," I have news for you: You do not understand the real economy.

No matter how well the stock market is doing, no matter how high bank profits and corporate profits are, if workers cannot work—and I say "cannot work," not "will not work"—because workers are desperate to get back on the job safely, then our economy cannot work. The President's failure to get this pandemic under control is keeping tens of millions of Americans who want to go to work sitting on the sidelines of our economy.

If people cannot go to work, if they cannot pay their rent or their mortgage, if they cannot pay their car payment or credit card bills, the bottom will fall out of this economy.

It has been over 6 months since we passed comprehensive coronavirus relief for working Americans, as the Chairman said, and because of the President's failed leadership, things have only gotten worse. He has allowed the virus to rage out of control. Nearly 190,000 Americans—190,000 Americans—have died in less than 6 months. You all know the statistics. We are 4 percent of the world's population. We account for 22 percent of the world's deaths.

School districts have been forced to make impossible decisions: reopen and put students and teachers and custodians and cafeteria workers at risk, or continue to teach remotely, putting an unbearable load on working parents and widening the achievement gap. State and local governments try to step in and help, but their tax revenues are down because taxpayers have lost jobs, businesses have had to cut back, operate with fewer customers, or shut their

doors. That is only going to mean more layoffs of good middle-class jobs, extending this cycle of misery.

After Leader McConnell and President Trump allowed the $600 expanded unemployment benefits to expire and refused to pass additional stimulus checks and refused to pass housing assistance and refused to support local communities, the emergency lending programs we are talking about today are really the only programs left operating to prop up our economy. And none, as Mr. Spriggs will point out, none of these Fed lending programs are actually helping workers.

Dividends are still getting paid; CEOs are still getting their salaries and bonuses. The stock market continues to get a lift. So if you make your money from a brokerage statement, the Government is still helping you. In fact, you are pretty much the only one the Government is actually helping.

But that help does not down from big banks and corporations to the people who make their money from a weekly paycheck—the vast, vast majority of the American people.

It should be obvious to everyone by now that those benefits to the wealthy never "trickle down" to the workers who make this economy run. They did not with the corporate tax cut 2 years ago; they are not now.

Instead, these programs help corporations, many of which continue to lay off workers and have cut hazard pay for those who are still risking their lives on the front lines of this pandemic, if they even bothered to pay those workers hazard pay to begin with.

Mr. Chairman, we are going about this backwards.

Every dollar we give to working families goes directly to supporting the real economy, when those families pay their rent and their bills, when they buy groceries and school supplies and spend money at local businesses. In fact, if we put families and workers first, if the Senate would actually do that, if the President cared enough to put families and workers first, we would not have to bail out corporations at all. The market that so many in this Committee profess to put so much faith in would take care of that.

Of course, we know our economy will not fully recover while the virus is still not under control.

The CARES Act that we passed in March was designed to be temporary relief—to get our workers and their families through the immediate economic hardships while we marshaled all our country's vast resources and talent to stop a pandemic. Clearly, the President failed to do that. Now what we thought would be a relatively short economic disruption has dragged on month after month after month, with no end in sight.

We still have no mask mandate; we still have no national testing strategy; we still have no effective contact tracing. We are seeing another resurgence across 22 States. And as I said, 4 percent of the world's population, 22 percent of the world's deaths.

Imagine, Mr. Chairman, and particularly the Republicans on this Committee, imagine if the President back in March, instead of dismissing the virus as "it will go away," had taken this seriously. Imagine if he had said we should all wear masks. Imagine if he had modeled good precautions we should take. Imagine if he had said we are going to mobilize America's manufacturing talent and

make enough tests to test every public school by the summer. Imagine where we would be as a society right now.

Instead, the President has simply given up on controlling this pandemic at all until a vaccine is developed. Given the scale of his incompetence and his failures thus far, we can only assume he will fail just as badly at distributing a vaccine once that day comes if he is still in office.

The economy will not recover until this President and his Cabinet and his friends in Congress take governing seriously.

Later this month, Mr. Chairman, we will have a hearing with Secretary Mnuchin and Chairman Powell. Unlike today's hearing, that one will be conducted in person. That is because the President has told his top officials they must testify in person, in his continued attempts to gaslight the American people about the danger of the virus.

We should be conducting, as you have done, Mr. Chairman, whenever you can, all hearings remotely, not just to protect Senators and Administration officials, but to protect the cafeteria workers and the custodians and the staff at this Capitol, the police officers, all who are forced to show up and put themselves at risk. Then they worry with the anxiety when they return home that they may spread it to their families.

After 6 months of failures, I am honestly surprised, Mr. Chairman—I have been here a long time, but I am honestly surprised that the President's friends in Congress continue to let him get away with it.

Mr. Chairman, we need your help; we need your leadership. You have done the right thing by conducting our hearings remotely. We need you to demand that the White House sends the right message about taking the coronavirus seriously. Tell Secretary Mnuchin he needs to testify remotely. I have no doubt that Chair Powell would be happy to do so if you asked.

And, Mr. Chairman, we need your help and we need everyone on this Committee's help in convincing Leader McConnell to extend direct support for families while we fight this virus. The House has passed a bill that would take care of workers and renters and homeowners and students and veterans and seniors and local governments. We all know this, shall we say, "emaciated" McConnell proposal is not going to help these families keep food on the table.

When something is not right, we speak up. That is the job we signed up for. Right now thousands of people are dying every week in this country, and Republicans are not speaking out.

The best way Congress could celebrate Labor Day is by doing our job. We need your help to tell President Trump and Leader McConnell it is time to do their jobs, let us get back to work. We have wasted far too much time already.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

We will now move to our witness testimony, and we will begin in the order I introduced you. So we will begin with Mr. Scott. You may proceed.

STATEMENT OF HAL S. SCOTT, EMERITUS PROFESSOR, HARVARD LAW SCHOOL, AND PRESIDENT, COMMITTEE ON CAPITAL MARKETS REGULATION

Mr. SCOTT. Thank you, Chairman Crapo, Ranking Member Brown, and Members of this Committee, for inviting me to testify before you. My focus is on the Treasury/Federal Reserve Main Street Lending Program, and my testimony today regarding Main Street is based on the September 3 statement of the Committee on Capital Markets Regulation, CCMR as abbreviated. With respect to other issues, the testimony is my own and does not necessarily represent the views of my Committee.

CCMR believes that small- and medium-sized businesses will need financial support for several years to recover from the impact of the COVID–19 pandemic. While our economy is improving, given the depth to which it fell, there is still a long way to go. Small business revenues continue to be well below prepandemic levels, and the recovery has stalled since July. A key part of this financial support should come from the Main Street Program authorized by the CARES Act.

So far, the three for-profit business facilities of the Main Street Program, which have been operating for over 2 months, have fallen far short of their desired results. Secretary Mnuchin has estimated that between $25 and $50 billion in loans will ultimately be issued through Main Street, significantly below its existing lending capacity of $600 billion and what is actually needed for economic recovery.

CCMR has, therefore, recommended that Main Street be significantly restructured to take on more credit risk by providing that the Federal Reserve make 100 percent of each loan rather than 95 percent as presently provided, leaving banks and other eligible financial institutions as processors. If banks take on any loans or any portion of a loan, they will apply normal credit standards that many needy businesses cannot meet.

Second, these loans should be at the low market rates, lower interest rates, and longer maturities, coming close to equity, without actually requiring capital restructuring.

Congress has already appropriated $454 billion in the CARES Act to back Fed lending facilities. Depending on how one counts, $251 billion or $351 billion is used. If you look at money that the Secretary has said he would commit but has not committed, there is actually $351 billion available. And much of this is unused and could be used to provide additional backing for Main Street.

It is critical that the Fed and Treasury revise and deploy the Main Street Programs now as the congressional authority for the Fed to make new Main Street loans likely expires on December 31st under the CARES Act.

The Main Street loans should be made on a first-come, first-serve basis, based on available data and objective criteria, to ensure that the Government is not picking winners and losers and that the prospective borrowers have a reasonable chance to survive. And loans should not be available to businesses that can get market rate funding from their own banks. The Fed must also—and this is quite important—reach out to the hardest-hit and underserved communities so that they can take advantage of the program.

It is indisputable that small- and medium-sized businesses, the backbone of our economy, have been very hard hit. A V-shaped recovery, meaning that the economy will within the next year bounce back to pre-COVID levels, is unlikely. According to the latest economic projections from the Fed, the economy will contract by anywhere between 4 percent and 10 percent this year. Most officials do not expect the economy to recover completely until 2022.

While the latest unemployment figures have improved, the level is still very high at 8.4 percent, and as Chairman Powell observed last week, there are still 11 million fewer Americans working than there were in February.

CCMR specifically recommends that Congress enact Senator Crapo's proposed amendment to remove any doubt that Congress' intent in enacting the CARES Act was for the Treasury to take credit risk. If such legislative action cannot be achieved, we would recommend that the Senate Banking Committee clarify Congress' intent in a bipartisan letter to Secretary Mnuchin.

There is no guarantee that our recommendations will succeed in saving American small- and medium-sized businesses. But the current approach has been tried and found wanting; our recommendations would give many of these businesses a fighting chance. The time to act is now.

Thank you.

Chairman Crapo. Thank you, Mr. Scott.

STATEMENT OF JEFFREY D. DEBOER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, THE REAL ESTATE ROUNDTABLE

Mr. DEBOER. Good morning, Chairman Crapo, Senator Brown, and Members of the Committee. I want to start by simply thanking you, Mr. Chairman, for your reference at the start of the hearing about the need to address commercial real estate and the problems that our industry is having on the rest of the economy.

I also want to thank you, Senator Brown, for your focus on the need for rental assistance for individuals and families. That is very, very important.

And, finally, I would like to comment that Senator Warner and Senator Toomey and other Members of this Committee were very instrumental in trying to create a very good program, the Main Street Lending Program.

I am here today on behalf of the Real Estate Roundtable and the 19 national real estate trade associations that are referenced in my written testimony.

People out of work and businesses shuttered and denied income for months have suffered immensely in this pandemic through no fault or action of their own. Many of these people in businesses have struggled to pay for food, struggled to pay for housing, and struggled to pay the rent for their businesses.

For owners of apartment buildings, retail facilities, hotels, office buildings, senior housing, and other buildings, the situation is dramatically affecting their ability to pay their payroll and causing layoffs of building maintenance and security personnel for them. It is impacting their ability to meet their debt service obligations, which increases pressure on financial institutions, pension fund investors, and others. And it is pushing property values down to the

detriment of local governments. It is causing much stress in pools for commercial mortgage-backed securities. It is threatening to result in countless commercial property foreclosures. The situation must be addressed.

I want to thank Congress and the Administration for the quick, deep, bipartisan COVID relief action taken this past spring. Without that action, the situation for the Nation's economy would be much worse. But many of those programs, as well intentioned and desirable as they are, did not reach beyond a relatively narrow definition of small business. That role was left to the well-intended, Fed-administered Main Street Lending Program. Its goal was to provide capital to mid-sized businesses with COVID-related economic problems that cannot obtain capital elsewhere.

Unfortunately, as Mr. Scott just mentioned, the Main Street Program is not lending. The result: Countless mid-sized retail businesses, restaurants, hotels, commercial multifamily building owners are moving closer to shutting their doors forever.

As these Main Street businesses run out of reserves, they miss their rent, utility, and tax payments. They furlough and lay off employees. They begin to look to bankruptcy and abandonment as solutions. The Main Street Lending Program is simply far too risk averse, as Mr. Scott said, to respond to the rapidly developing conditions for many Main Street businesses.

These Main Street businesses need assistance now. They are risky, but not because their product or their business line is risky. They are bearing a huge somewhat immeasurable new risk that is based on governmental policy, the ability to keep clients, customers, and guests healthy, and, in particular, the timing of finding a vaccine. These are the businesses that Congress wanted the Main Street Lending Program to serve. They cannot get capital elsewhere. They are disproportionately minority-, women-, and veteran-owned businesses, and they are increasingly running out of options. Why? Because there is no incentive for banks under the program to market these loans and make the loans. In addition, the program's eligibility, affiliation, and underwriting rules are not designed to meet the needs of the businesses that increasingly need this assistance. Both of these problems could be addressed administratively without additional appropriated funds.

We should move, as was suggested, the loan—100 percent of the loan instead of 95 percent of the loan should be moved to the Fed. The banks should continue to service the loan to maturity, and like a pool servicer, it should be compensated by the bond holders—in this case, the Treasury Department. Perhaps regulators should be instructed not to criticize banks to make Main Street risky loans, as they currently are criticizing them.

Incentives for banking a loan will not solve the problem, though. Administrative action is also needed to reform the mixture of misapplied Small Business Administration lending eligibility rules that bar assistance, for example, to any commercial real estate business. We need to deal with inappropriate leverage limits that hamper the usefulness nearly to all retail stores and restaurants. And the underwriting rules that are in place now simply do not work for any asset-based borrower, whether that is a manufac-

turer, a restaurant, a retail, commercial, or multifamily owner. We need incentives, and we need eligibility rules that make sense.

Congress, though, should take more action as well. We urge that Congress provide additional rental assistance to residential and business tenants. We think the Tax Code should promote healthy workplaces. We want to facilitate debt workouts. There's going to be a tremendous amount of debt on all kinds of businesses that will need to be worked out. We need to provide reasonable liability protection against COVID lawsuits that are unnecessary in many cases. And we need to develop a Federal pandemic risk insurance program.

These actions are by no means simple and by no means small. We understand that. But together they will help America's families and businesses recover, and they will allow this job creation to move forward.

Thank you, and I look forward to your questions. Thank you very much.

Chairman CRAPO. Thank you, Mr. DeBoer.

STATEMENT OF WILLIAM E. SPRIGGS, PROFESSOR OF ECONOMICS, HOWARD UNIVERSITY, AND CHIEF ECONOMIST, AFL–CIO

Mr. SPRIGGS. [inaudible] and Ranking Member Brown—did I unmute? I am sorry.

Chairman CRAPO. You are on now.

Mr. SPRIGGS. OK. Thank you. I apologize. Thank you, Chair Crapo and Ranking Member Brown, for this invitation to give testimony before your Committee today on the issue of where the economy stands with the status of the Federal Reserve's emergency lending facilities. I am happy to offer this testimony on behalf of the AFL–CIO, America's house of labor, representing the working people of the United States, and based on my expertise as a professor in Howard University's Department of Economics.

We began this year with the world facing a novel virus for which we lacked adequate cures and that proved more deadly than most flus we have encountered. The lethal potency of the virus and its easy spread required a new set of responses. Given the lack of a cure and its costly nature of care on people and health systems, the world adopted a policy of social distancing and isolation to prevent its spread. This policy proved very effective in reducing deaths, and for the Nations that took aggressive measures, like New Zealand, proved highly effective in ending the virus' threat.

But despite the huge economic benefits of these policies—and they are huge—slowing the economy to carry out social distancing had huge costs, too. By all measures, the benefits of saved lives alone far outweighed the cost of slowing the economy. It is important to note that in the United States where our implementation of social distancing policies was very uneven, it is also clear that the uncertainty of COVID itself slowed economic activity. The United States policy variation has clearly documented that social distancing policies are not the driver of the economic slowdown, but the spread of the disease is the cause of the economic slowdown. The difference is in the efficacy of the policy in slowing down the virus.

This virus caused a great decline in economic activity, and the world responded in new and novel ways. Thankfully, the U.S. Congress took early action to sustain the economy, passing the Families First and the CARES Acts, and this bought time for policies to contain the virus to take hold. Unfortunately, while the economic policies were effective, the policies to contain the virus in the United States have lagged those of other countries, so our economy now enters a new phase of high uncertainty because of COVID without the aid of those earlier bold actions.

In March, the uncertainty of COVID slowed certain economic activity in the United States that led to the first month of job loss in March, and in April brought the most dramatic loss of jobs in U.S. economic history. In that 1 month, we lost more than twice the jobs lost over the course of the Great Recession. While other advanced economies planned for social distancing by massively subsidizing payroll, America chose to dump workers into unemployment insurance systems. Rather than subsidize payroll, we chose to try and subsidize workers within the unemployment insurance system. To approximate preexisting payroll, an additional $600 was added to weekly unemployment benefits. This policy choice might have worked the same as with other advanced countries if COVID were put under control and sufficient economic certainty was restored for households to resume normal consumption.

However, there were many challenges to using the U.S. unemployment insurance system. It really was not designed for this. Our Nation's unemployment system laws do not cover the workers that were most affected. In 2018, only 8 percent of those in leisure and hospitality received unemployment benefits if they were unemployed. And at the peak of the Great Recession, the system only needed to handle 3 million people. That was in May 2009, but at the end of March, it was receiving 6 million applications weekly and 4 weeks averaged above 3 million for 7 weeks April to May.

Congress also granted the Federal Reserve funds and unprecedented latitude to devise policies to maintain liquidity in the capital markets. You have heard two great testimonies ahead of me on the problems that the U.S. Treasury imposed on those funds, limiting their access to minority firms and to make the program unable to absorb the risk that was needed at a time of high uncertainty. I will not review those comments. I will add one additional, and that is a concern to broaden the ability to lend to public entities.

I want to instead concentrate on the problem facing households, and looking at the problem facing households, we are in a foot race against people being unable to make the payments in the real economy that sustain rent, that sustain investment, that make it possible to pay the loans that are owed. Please remember it is the real economy that matters. That foot race that we are in right now, we are behind because of the lack of support to households, and without that support, we face calamity.

Chairman CRAPO. Thank you, Mr. Spriggs.

I will go with the first question today with you, Mr. Scott, and my question really relates to the success or lack of success, in your opinion, of the Main Street Facility and the other 13(3) facilities in

terms of making capital available to the stressed businesses that need it.

I understand the testimony of Mr. DeBoer and Mr. Spriggs about the real estate industry and the minority businesses, and I understand their testimony that those particular sectors have not been able to benefit from the Main Street Facility or other Fed facilities. I am also aware of a point of view that the other Fed facilities that have been established, like the Primary Market Corporate Credit Facility and the Secondary Market Corporate Credit Facility and the Term Asset Back Securities Loan Facility and others have had an impact in terms of making private sector capital more available to many businesses.

So the question I have is: Is the issue of access to these funds a sectoral issue, one related to real estate or minority businesses or others? Or is there still a broad-based lack of access to the necessary capital by companies that just cannot get that credit in the private sector?

Mr. SCOTT. First, I think for the capital market facilities that were extended to companies issuing bonds, for instance, those have been very successful. They have not had to lend very much money because the fact that they would be prepared to lend the money actually steadied the markets, so these companies can get the money in the private sector.

That is not the case for Main Street. Small and medium-sized businesses do not access capital markets. They get funding from banks. So there is where the access issue is important. And as I testified, I think it is not that the Main Street Facility was designed to exclude certain industries, although I agree with Jeff that, you know, in certain cases it might be that the criteria that were established effectively excluded certain businesses from getting access. But they were not designed to just support certain sectors of the economy. They were designed to support the entire economy.

The problem with the facilities, as the Chairman well knows due to his amendment, is that these facilities were not designed to take on credit risk for Main Street. And, you know, that is in two regards. First of all, as I said in my testimony, if you say the banks have to take 5 percent, they are going to apply normal credit standards, and needy businesses are not going to get the money. And, second, the terms are too difficult, interest maturity, and so forth.

So I do not think that there is a general discrimination against sectors. I think it is more of a question of the design of the program, what the criteria are.

Chairman CRAPO. All right. Thank you. And I am running out of time a little bit already, but——

Mr. SCOTT. I am sorry for that long-winded answer.

Chairman CRAPO. No, it was a long question, too. But, Mr. DeBoer, maybe I would go to you next, and in the minute or so I have left—minute and a half, maybe, could you just respond? Both you and Mr. Scott in your description of what needs to be done had some pretty significant overlap in terms of how we could improve the Main Street Facility. And rather than focus on where you may or may not have any disagreement, could you just again summarize

what you think needs to be done in terms of making the facility more available in your world?

Mr. DEBOER. Thank you very much. First of all, banks are not incentivized to lend under this program. They have a 5-percent retention on the loan, and they are underwriting under traditional—basically under traditional underwriting criteria. Well, traditional underwriting criteria would say these are lendee risky loans. They get criticized by regulators for doing that. They have the risk of the 5 percent loss even though we know that these are risky loans.

So we share the view that 100 percent of the loan should move to the SPV, the Fed facility. We share the view that maturities should be longer, I believe. I think we share the view that amortization of the loan should be delayed a little bit longer and occur later on in the life of the loan. And I believe that we share the view that the underwriting rules, for example, requirements that tie the loans to EBITDA or that tie the loans to a certain leverage ratio need to be revisited because they simply do not respond to these risky businesses. EBITDA means nothing when you have no income. And so there should be more traditional lending criteria to accommodate asset-based borrowers so you have loan-to-value or you have loan-to-cost or loan-to-receipt, something that is different than what we have now. So incentivize the banks and broaden the eligibility.

And if I could have just one more second, in terms of the eligibility and certain sectors, the Administration and the Fed lifted the SBA eligibility rules from their traditional SBA program and suddenly decided that that should be the applicable eligibility rules for a Main Street Lending Program, which bars certain companies and businesses; certainly real estate are barred. And there is no reason for this, and I do not believe that Congress intended that for this program or, frankly, for the PPP program where they did the same thing.

Chairman CRAPO. All right. Thank you. My time is up. This is helpful.

Senator Brown.

Senator BROWN. Thank you, Mr. Chairman. And, Mr. DeBoer, thank you for speaking out, twice I think, in your testimony for emergency rental assistance, and many of us fear a wave of evictions in the coming weeks because of the expiration of the unemployment benefit.

Dr. Spriggs, I will start with you. If we continue to depend on these Federal Reserve emergency facilities rather than providing direct support to working families, what do you think happens to the economy over the next several months?

Mr. SPRIGGS. Well, we are in trouble. We are in a foot race right now. As Chairman Powell pointed out and the data we got last Friday pointed out, we are down over 11 million jobs from our peak. That is worse today. We are starting in a worse position than the depths of the Great Recession. We are not creating jobs at a fast enough level to clear that backlog. And so we see a rise in long-term unemployment; we see a rise in the job losses that are permanent job losses, in tandem with what saw during the Great Recession.

So we are in a foot race in our economy because what we are trying to do is outrun the debt of the household sector, and we can only do that by putting money into the hands of workers so they can pay their rents, so that they can support small businesses, so that the small businesses pay their rents. The way to help the economy is to help the real economy. We have to put back into the system the money that we were losing from the loss in payroll. Other countries did that by maintaining payroll. We agreed we would do that by maintaining unemployment insurance. That $600 is necessary to keep that and so that we can stay in step with other advanced economies. And without that, we are going to face massive problems for loan holders when it comes to commercial real estate.

The way to solve it is not to help the banks in the end. It is to help the real economy on the front side and have workers have the money to pay the rent. Even with eviction abatement, you have got to remember that people are still accruing the debt of owing that rent. So eviction help is necessary to keep them from being homeless, but we also need help to make sure that they have the money to pay the rent.

Senator BROWN. So to make sure I understand, and if you can answer this question yes or no, because I have something else I want to ask you. To avoid another Great Depression, Congress needs to take action to provide direct help to families, workers, homeowners, renters—in other words, regular people. Correct?

Mr. SPRIGGS. That is correct.

Senator BROWN. Dr. Spriggs, after the 2008 crisis, despite spending trillions of dollars to rescue the economy, as we know, millions of families lost their homes, banks got larger, banks made record profits. Why did that happen? How do we avoid—two questions. Why did that happen a decade ago? And, second, how do we avoid that from happening during this crisis?

Mr. SPRIGGS. To concentrate it so much on the last crisis on financial stability and thinking the Fed can solve all problems. The Fed can provide liquidity to keep the financial markets healthy and to make banks healthy. But that ignores the other part of the national balance sheet. The assets of the banks being the loans, we protected that. We did not help households with the liability side. So what we did was we built a life raft for the banks, and it pulled away, and the rest of us were sinking in the storm. We must help the household sector, and we have an opportunity to help the household sector now, but we will lose that ability if we do not help the household sector and we are confronted with banks holding bad loans and facing collapse because they are holding too many bad loans.

Senator BROWN. Let me ask one other question. Thank you, Mr. Chairman.

Dr. Spriggs, I have sat on the Senate floor and heard my colleagues talk over and over about—my millionaire colleagues and billions in the President's Cabinet talk about giving too much to workers, unemployed workers, this unemployment insurance is a disincentive to return to work. I think they are wrong. What do you think? And why?

Mr. SPRIGGS. Well, during the period that people were getting it, there were many studies to look at that exact issue. They found no negative effect. And then we had August where no one was getting the money, and we had final proof. There was no disincentive effect because we saw nothing happening with labor force participation to indicate that the $600 was keeping people out. What is keeping people out of the labor force is the availability of jobs at this record level of unemployment.

Senator BROWN. One study, Mr. Chairman, showed that unemployment insurance kept 12 million people out of poverty, and I applaud my colleagues in both parties for passing that $600 a week, which really kept people from being evicted, kept them in their homes, kept the economy going, kept the banks in business, helped everybody, and I am just sorry that my colleagues do not think that is a key part of this recovery and addressing the bad economy we are living in.

Thank you, Mr. Chairman. Dr. Spriggs, thank you, Mr. DeBoer and Mr. Scott.

Chairman CRAPO. Senator Toomey.

Senator TOOMEY. Thanks very much, Mr. Chairman. Thanks for having this hearing, and a special thanks to Professor Scott for the conversations that we have had and the thoughtful contributions he has made to the discussions about these programs.

I want to take a few moments here to suggest some context about the Main Street Lending Program, Mr. Chairman, and let me start by saying I think it is still too soon to call this program a failure, much less citing it as a failure that justifies then some new big programs. Let me explain why. There are several reasons.

First, let us remember this is still a relatively recent program, for better or for worse. I think the first loan was made in early July, and there is now very recently a big increase in the pipeline. I am not suggesting that I think the program is on track to be utilized to the extent that was contemplated, but there is an acceleration of utilization.

But maybe more importantly, it is entirely possible—and I am still trying to get the data to determine this, but it is entirely possible that businesses that were intended to participate in this are simply accessing credit elsewhere. According to the NFIB's July 2020 report, they said, and I quote: "Historically, loans have never been cheaper."

In their August report, they say, the NFIB, among their membership, which is the largest small business organization in America, probably the world, they say that only 3 percent of business owners surveyed said that all of their borrowing needs were not satisfied. That is pretty interesting. And let us remember, the Fed, we have thought of this as a lender of last resort, and it is not a failure if it turns out that other lenders, private lenders, have been stepping in and providing the credit that has been needed, whether it is banks or BDCs or other institutions.

I have also heard, at least anecdotally, there are banks that suggest that they have been able to offer better terms to borrowers than the Main Street program. Again, if that is what is happening, that is not necessarily a failure.

I think it is also important to think about where we are today compared to where we were when the CARES Act was passed. The CARES Act was meant, in my view, to resolve an immediate and very, very dangerous and frightening liquidity crunch due to the economic shock that we were experiencing back in March-April. It was meant to bridge this liquidity need for a fundamentally solvent business to get through what we hoped would be a very short though certainly very severe episode.

We are in a very different point 6 months later. Unemployment is much lower than it was then. Obviously, we have got a long way to go, but unemployment was almost 15 percent. Today it is just over 8 percent. The economy is overperforming certainly the Fed's expectations and that of most economists. Labor force participation is up. Wages are rising. Retail sales have been strong. Housing starts are off the charts. There is a lot of encouraging data that is happening. And as I say, the program was designed to provide a short-term liquidity bridge for a fundamentally solvent business.

Today we are in a different place, and one of the challenges that I think we have to ask ourselves is: What do we do about the industries, maybe even sectors, where we probably have excess capacity? And we do not know for how long we are going to have it. How long is it going to take before airline travel resumes where it was in 2019? I do not think any of us knows for sure, but I do not think it is in the next few weeks.

Likewise, what is the situation of the capacity in the hotel sector that has historically served business travelers? What about restaurants?

The Main Street Program was not designed, was not intended to keep a sector afloat for months or years while we waited for demand to eventually come back. I think eventually demand will come back, but if we want to keep alive companies, broadly entire sectors, where there has been tremendous demand destruction, then I think we have to ask ourselves whether this is the appropriate program to do it, and I would suggest it is not.

I would also point out that it is not reasonable to evaluate the Main Street Lending Program by the same metrics that we use for PPP. They are very, very different programs. One, we handed away money on the condition that you use it to keep your workforce intact. Of course, people are going to take up the money for that purpose. That was very successful for that purpose. The Main Street Lending Program serves a different purpose.

Now, having said all that, I do think there are some modifications that we ought to consider. Some have been addressed already. Professor Scott, for instance, and others have suggested that maybe the Fed should purchase 100 percent of the loans. I think that is worth considering, but there is an obvious challenge if we do that, and that is that the 5-percent retention that is required on these Main Street loans, retention by the banks that originate it, are meant to create an incentive for the banks to do a proper underwriting so that there is some limit to the amount of risk that is being taken here, because the idea was never to simply lend money to fundamentally insolvent businesses but, rather, to lend money to cash-strapped businesses that are actually solvent.

Some of the things I think we should consider is—and I think Professor Scott alluded to this—banks may not be the optimal vehicle for making slightly more higher credit risk loans. That is not their culture. That is not the regulatory mandate, even though the returns are outsized because the fees are so generous. It is the culture and the practice of banks to take a kind of binary approach to extending credit. And so maybe we should consider institutions like BDCs that might be better able to—you know, extend credit more broadly because they can take into account the higher return.

A second thing I think we should consider is possibly upward limits on the EBITDA measures, especially in some places like early stage growth companies. I think the Fed should consider and I have advocated considering an asset-based lending program because it has been observed that there are categories of our economy where asset-based lending is the norm.

I also think we should ease the affiliation standards. Remember, the Fed adopted the affiliation standards based really on the Small Business Administration programs, and it is not clear to me that that is suitable.

So, Mr. Chairman, I appreciate this conversation. I appreciate having this hearing. I appreciate the thoughtful suggestions that are being made. I just wanted to provide that context, and with that, I will yield back my time.

Chairman CRAPO. Thank you, Senator Toomey.

Senator Reed.

Senator REED. Well, thank you very much, Mr. Chairman. First, I have to recognize Professor Scott. Professor Scott was one of my professors at Harvard Law School, and if occasionally I say something that is semi-intelligent, he gets the credit. The rest is all mine. But, professor, thank you for your wonderful testimony today.

I also want to recognize Jeff DeBoer, who I have had the privilege to work with for many, many years. Thank you, Jeff.

I have some questions for Dr. Spriggs. Dr. Spriggs, I was particularly taken by your emphasis on the uncertainty which is plaguing the economy because of COVID. And one of the most uncertain aspects that I am hearing about back in Rhode Island is just the status of jobs. People do not have the jobs, or people are on furlough, but they do not expect to be called back. We did have, as Senator Brown pointed out, a very, I think, appropriate unemployment compensation program. That is no longer on the books. We have to get it back on the books, in my view.

But there is something else that seems to be happening, too, for uncertainty particularly for working people, and that is the cost of living seems to be going up, including essentials. CPI has just shown that the price of pantry essentials, as they describe it, for example, flour has increased by 4.5 percent; canned vegetables, 6.4 percent; beans by 7.4 percent. So you are seeing not only the uncertainty of will I have a job, but also the uncertainty of will I be able to afford even basic essentials for my home.

So, Dr. Spriggs, does this make another case for a very aggressive unemployment compensation program?

Mr. SPRIGGS. Absolutely. It is the uncertainty that workers are facing that meant even with the $600, there was no disincentive to

take a job. Workers are faced with such uncertainty around the job market that you cannot refuse a job offer because it is not clear when the next one would occur, and as you are pointing out, the workers who are currently unemployed disproportionately are Black, Latino, Asian Americans. These are households with no wealth and no liquidity. The $600 is necessary to reassure them that they actually can spend because they are looking exactly at the issues you talked about, which is food security.

So a smaller amount of money is not going to provide them with that comfort that I can spend now when they are looking down the road at increased food prices. For households under stress, while the general CPI, the inflation rate, may not be rising very much, they are really looking at those food prices. That is most immediate to them. And so that is why the $600 ends up being necessary. We did not see a downside in terms of labor force participation. We saw every upside that was necessary to keep consumption flat. That was a remarkable achievement, and as Senator Brown pointed out, we are going to avoid a high level of poverty despite this economic calamity because of that.

Senator REED. Let me follow up, too. In terms of uncertainty, we passed the first bill with a time limit and ran out, and so if we do that again, I think people are going to be sitting back saying, you know, my job might not come back within the 10 months of this legislation, so I am OK, I am a bettor. So do you think it is important that we put in criteria so that we do not repeal the unemployment until financial conditions return, either the unemployment rate comes down to a certain state, to an acceptable level, something like that?

Mr. SPRIGGS. Well, we certainly shocked the household sector with Congress refusing to extend the need, even with a high employment rate, even with unemployment duration increasing, even with the shift in jobs from being temporarily off to permanently off. And so, yes, you need to give the household sector a sense that Congress gets the message and understands the plight of the household sector so that they can return to some sense of normalcy. So hard deadlines that ignore the state of the economy are going to not—will not provide the certainty that households need to go back to spending.

Senator REED. Now, let me shift gears. We are talking about uncertainty. I know the focal point is on the Federal Reserve's program, but one other area which the Fed really does not have the kind of role to play is what the States are doing. We created a coronavirus relief fund for the States and gave them money, and that now seems to be in need of replenishment and more flexibility so they can spend it in different ways.

Do you think that is appropriate, that we should put more money to the States to—in fact, they might even be more flexible and more adaptable to dealing with some of these problems we have talked about, like homelessness and other things, than the Federal Reserve program that is going to be using banks to lend to traditional borrowers.

Mr. SPRIGGS. We have to give money to the States, and that is not something the Fed can do. As Senator Toomey was pointing out in his comments to this, we did not envision this would be a long-

term problem. It has now lapsed over into the fiscal year change for State and local governments. They are going to implement austerity, and we need the State and local governments as partners in solving the COVID crisis. We cannot have them withdraw from the field. We need them to give us safe schools and safe workplaces to return to. That is at the State and local level where people are confronting these issues. The Fed cannot lend them the money. This is against the State Constitutions. This has to be something that Congress addresses, and immediately, because we are in the new State and local government fiscal years.

Senator REED. Thank you very much, gentlemen, for your testimony.

Thank you, Mr. Chairman, for your graciousness. Thank you.

Chairman CRAPO. Thank you.

Senator Scott? I believe Senator Scott may have had to step away. And, therefore, we will go to Senator Rounds. Senator?

Senator ROUNDS. Thank you, Mr. Chairman.

Let me begin with a question for Mr. DeBoer. First of all, I want to say thank you to everybody just for participating today. Given the requirements associated with the Fed's Main Street Lending Facility and the challenges of taking on more debt, one alternative approach that has been suggested to assist businesses in need would be to allow Treasury to buy preferred equity stakes instead. This would be particularly helpful in sectors like hospitality and tourism that have high overhead and real estate expenses. It would also provide much-needed capital without further stressing balance sheets.

I understand that Congressman Van Taylor in the House and Senator Moran have been working on different but similar preferred equity approaches.

My question: Could you discuss the advantages and disadvantages of preferred equity purchases compared to the Main Street Lending Facility? Mr. DeBoer.

Mr. DEBOER. Thank you, Senator. As a native South Dakotan, it is great to see you, and best wishes to you.

Let me just say that the preferred equity option comes up because typically for loans that—hotel loans, restaurant loans, lodging loans and so forth that are packaged in commercial mortgage-backed securities, those loans, those transactions cannot allow additional equity—or additional debt to be put on them. They can only have equity. And so that is the advantage of using a preferred equity approach.

The problem, as I see it, is simply whether a business wants to, in effect, give equity to the U.S. Government in their business, and I am not sure whether the appetite is really there. But I will say this, that the focus and the efforts by Congressman Taylor, by Senator Moran, by you and others in the Senate to look at this is very, very important.

This problem will not go away. Some businesses have too much debt on them and cannot take any more. Some businesses do not have any more collateral or inventory to pledge for more loans. And as I said, some businesses' loans are tied up in a package, a pool, which will not allow any more debt.

So we are very open to exploring this with you and other Senators and Members of Congress. Something has to be done to assist these businesses.

I would say that I think that Senator Toomey is correct in saying that a lot of businesses can get traditional financing, but those who cannot are really out on a limb, and they have nowhere to go, and those businesses are the ones we just described—restaurants, retail space, hotels, real estate companies in certain sense of the word. And so I thank you for your focus and your question, sir.

Senator ROUNDS. Thank you. And I have just a real quick question for Mr. Scott. Just in listening to the discussions on the PPP program, Main Street businesses larger—you know, those that were not eligible, my question: Why not take a look at the possibilities since Republicans and Democrats both agree that the PPP was successful and it allowed people to stay on payroll, their benefits continued on and so forth? What is the possibility that for some of those Main Street businesses that were restricted away from PPP because of their size, any value in looking at some sort of a PPP as an alternative for some of those larger Main Street businesses? And that would not only be able to take and keep workers on payroll, keep benefits in place, but may very well be able to allow those other larger businesses to stay in business and get through the next several months. Mr. Scott?

Mr. SCOTT. Yes, Senator, I think the revised PPP or renewed PPP should work side by side with the better Main Street Facility. They are different in their terms. PPP is a forgiveness program, and PPP was designed for really small businesses. The Main Street Facility can be used by medium-sized businesses and is a lending facility. And when you look at the cost of one versus the other, obviously a forgiveness program is going to be more expensive than a lending program. We recommend that risk be increased under Main Street. But they are still loans that are being extended from the Fed to the private sector, and a lot of these loans will be repaid. Under a forgiveness program, of course, you know, you are forgiving the loan.

So, in my view, from the beginning we had both of these programs working side by side, and we should continue that approach.

Senator ROUNDS. Thank you, Mr. Scott.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Menendez.

Senator MENENDEZ. The Bureau of Labor Statistics' last job report found that State and local governments have already laid off nearly 1.5 million public workers. If Congress does not act soon to help State and local governments, they are going to have to cut life-saving services, lay off or furlough more teachers, public safety, emergency health personnel, or raise taxes.

So, Dr. Spriggs, let me ask you, if State and local governments continue to lay off workers, will that create a substantial drag on any economic recovery?

Mr. SPRIGGS. There will be a very substantial drag, and that is the head wind we face for the final two quarters of this year, and it is, again, dangerous for an economy. State and local government helps to support so much economic activity, and even if they do not

cut more people, their cut in activity will hurt local businesses. But the number you cited is bigger than all the jobs lost in State and local government during the entire Great Recession. These jobs are not going to come back quickly. They are not going to bounce back unless Congress steps in to help State and local governments.

The lesson learned from the Great Recession unfortunately at the State and local level is that austerity is the wisest policy because Congress refuses to bail you out. If we have a national macroeconomic event, Congress ignores the problems that State and local governments face. So if you are a Governor or a mayor, you will cut expenditures, and you will be slow to reinvest, and we cannot afford that. We need them to continue investment in K–12 education and higher education and, as we see, in our public health system. So we need them as active partners. Slowing them down threatens our economy tremendously.

Senator MENENDEZ. Thank you.

Mr. DeBoer, what would the impact be on the real estate industry if States, cities, counties had to cut investments in infrastructure and education, public health, safety, raise property taxes to continue paying for essential services?

Mr. DEBOER. Thank you, Senator. Well, it would be bad. I mean, real estate and State governments' infrastructure are all intertwined. The health of real estate is critical to State and local governments' health, and the health of State and local governments are critical to real estate's health. So we are intertwined. And I also wanted to say because commercial real estate employs so many people, real estate employs so many people, it pays so much taxes, in many cases around 70 percent of local budgets are derived from revenue from commercial property taxes of transaction fees, as our marketplace deteriorates and cannot get credit and the tenants and our business deteriorate and cannot get credit. That will put more pressure on what you are rightfully flagging for everyone is already a problem, and it could get worse as tenants are unable to pay rent, as landlords are unable to make debt service, and as values drop.

Senator MENENDEZ. And, of course, in the real estate industry, the quality of life or the work environment is critically important, and these services go to the very essence of that in terms of adding value to where real estate property is located and what they can demand for price. Isn't that fair to say?

Mr. DEBOER. Absolutely fair to say, and I would add to it, given the current situation and the world we live in now, how States are able to help keep their transportation systems clean and healthy so that workers feel confident going to and from their place of business and so forth is very, very critical, and that is an added expense for State and local governments—as well as businesses, by the way.

Senator MENENDEZ. Dr. Spriggs, let me ask you, many of us have been disappointed by the ineffectiveness of the Fed's Municipal Liquidity Facility. It would be a massive policy failure if we failed to get money into the hands of State and local governments, as we have just discussed, especially those who are the very epicenter of fighting the virus, which is critical.

Currently, loans under the Municipal Liquidity Facility would have to be paid back within 3 years. Wouldn't you agree that just like in the Great Recession the fiscal pressures on States and localities are probably going to still be there several years beyond that?

Mr. SPRIGGS. Yes, the maturity on those loans has to be greater to really provide the smoothing of income that the State and local governments need. So extending the maturity and lowering the fees—the Fed is putting too high an interest payment on State and local governments through that facility.

Senator MENENDEZ. Thank you.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Scott.

Senator SCOTT. Thank you, Mr. Chairman, very much, and thank you to the panel for being with us this morning on a very important topic.

I will start with Mr. Scott, asking you a couple of questions. One relates to the CDFIs and the important role that it plays in underserved communities and low-income communities. We have all seen the reports around the fact that we saw a 22-percent drop in businesses from February through April, and that is a significant drop in businesses. But when you think about Hispanic-owned businesses, it is 50 percent higher, nearly. It is around a 32-percent drop; and African-American businesses, about 100 percent higher, around 41, 42 percent. It seems to me that it is clear that it is imperative that our most vulnerable and underserved populations are not left out of the economic recovery, and it seems to me the CDFIs can play a significant role in providing that liquidity and access to the liquidity that so many of these communities businesses desperately need.

So, Mr. Scott, what are some changes the Fed and Treasury should consider to better facilitate Main Street Lending Program's participation by CDFIs that serve these low-income and underserved communities?

Mr. SCOTT. Senator, I agree with the thrust of your question and that we need to increase the role, but this is not something I have looked into in any detail. I am really unable to give you a good response.

What I would say is that we need to make funds available by CDFIs as well as by the Fed. We should not abandon the Fed's role here. The Fed has tremendous capability. It has got the backing of the Treasury. It has got the ability to make loans if the program is correctly designed. The problem up to now is that it is not designed correctly. We are asking banks to take credit risk, which they do not want to take, and the terms are not good enough for the neediest borrowers. They cannot meet normal credit standards.

Now, this is something the CDFIs could address, but I think, you know, we should also focus on redesigning the Main Street Facility as it now exists so the Fed can do more as well.

Senator SCOTT. Well, Mr. Scott, you bring up a very important point perhaps around the redesign of the Main Street Lending Programs. I would ask a question that when you look at the response to the last several months, larger firms have had access to assistance; smaller firms have obviously had the Paycheck Protection

Program, and if there is another bite at the apple, I think that would be wise. We have been flirting with the concept of a 20-year 1 percent loan, up to $100 billion in that fund. But what seems to be obvious and missing is that mid-sized business and the lack of access to capital that they are experiencing.

How do you think reducing the minimum loan size from the Main Street Lending Program, from, you know, the $250,000 level, how would that create more access to resources for those mid-sized businesses? And, relatedly, how might the Fed and Treasury reconsider the program's administrative fee models to better incentivize lenders and small service borrowers—providers?

Mr. SCOTT. Well, I think decreasing the minimum loan size would be really essential for the smallest businesses because their needs are often less.

I think on the medium-sized businesses they would probably need, you know, at least $250,000. It is not as big a problem. I think the problem for the mid-sized businesses is the general terms about how long the maturity is, how long they get to pay it back, what the interest rates are, et cetera. I think these are more the problems with the mid-sized, and my committee has recommended kind of a realignment of those terms to make them more attractive to mid-sized businesses.

By the way, I think Senator Toomey raised the point that maybe these mid-sized businesses do not need this facility because they can go to the private sector. Maybe that is true; maybe it is not. I doubt it, because I think there is a lot of need out there for mid-sized businesses that is not being met by the private sector.

Under the committee's recommendations, we say that no borrower should be able to borrow from Main Street if they can get funding in the private sector. So if Senator Toomey is right, we will be OK.

Senator SCOTT. Let me use my last 12 seconds, Mr. DeBoer, to ask you a question that you will not have time to answer, but I will ask you to answer it quickly, and that has to do with creating access for our commercial real estate market. There is no doubt that the leverage limit set forth in the Main Street Lending Program term sheets will not work for most commercial real estate companies. How can additional flexibility help create more resourcing of those commercial real estate companies and investors?

Mr. DEBOER. I will try to be very quick, Senator. First of all, because the Treasury and the Administration use the historic definition of a small business under the SBA loans for both the PPP and the Main Street Lending Program without any authorization or instruction from Congress to do so, they picked up these historic definitions. Those historic definitions redline out certain business activities, definitely including renting real estate, developing real estate, leasing real estate. So point number one, get rid of these inappropriate eligibility rules for both the PPP and the Main Street Lending Program. They have no application here. They should not be allowed.

And point number two is the affiliation rules, and this really is not a real estate direct concern, but the affiliation rules which have received so much publicity certainly should not apply in the case

of these mid-sized businesses, 5,000 to 10,000, as Congress has suggested.

And then, finally, you raise the underwriting criteria and, again, certainly EBITDA has no place in an asset-based lending program, and it should be set aside.

And, finally, I would say this: If we are asking the Fed to make loans to businesses that otherwise cannot get financing, which is what I think we all want, those loans are per se risky. And when a bank makes a per se risky business under current and normal operating conditions, regulators criticize it and mark it down and require more capital. Those things should be addressed here. We should be encouraging and incentivizing banks to make these loans where they are not right now. They are required to retain 5 percent. That is too much. They do not get paid enough to service the loans. That is no good. And they are open for criticism when they do make the per se risky loans that we always want them to make.

I hope that answers it. I am sorry for going long.

Senator SCOTT. Thank you very much. I think we need more time, but maybe we will have a second round.

Thank you so much, Mr. Chairman, for your indulgence.

Senator BROWN [PRESIDING]. I believe that Senator Crapo went to vote. Senator Tester is next.

Senator TESTER. Thank you, Senator Brown. I appreciate it very much, and I want to thank the witnesses for being here today.

I want to refer back very quickly to Senator Reed's testimony when Senator Reed talked about the increases mainly in foodstuffs, and coronavirus has pointed out something else. As we have seen good prices go up in the grocery store, very little of that money has gone to the farm gate, and it points out the fact that we have got another problem in this country, and it is called "consolidation and processing" that we need to get fixed and fixed soon. Otherwise, our food chain for grocery store items is going to continue to demand that it goes up.

Look, I have been concerned about the debt for a long, long time. I have watched this President in good times infuse about $1 trillion a year in borrowed money into this economy and then brag about the fact the economy is doing really, really well when you see that kind of infusion from previous Administrations simply was not the case. Then, last, we are in difficult times right now economically and with the pandemic, and we have to do things, and it is going to involve borrowing money.

This question is for all the witnesses, and I would ask you to be as brief as possible. If you were in a position where you could say I have got a couple two or three programs that need to be funded absolutely unequivocally to keep our economy on track, where would you target those resources? And I will start with you, Dr. Scott.

Mr. SCOTT. There are two targets here. There is the stimulus, which I think Dr. Spriggs has talked about, getting money to individual people.

The second target is helping small business, and that should be done through two ways, through the PPP program, maybe redesigned in some way, and through Main Street.

So those are the three programs that I would focus on.

Senator TESTER. Thank you very much.

Mr. DeBoer?

Mr. DEBOER. Yes, sir, thank you for that question. I would first point out that the recommendations that I have made on the Main Street Lending Program and that I believe Dr. Scott has made really require no additional funds from the Federal Government. They are administrative. They could be done tomorrow by the Treasury and the Fed if they wanted to.

Second, I would reload the PPP to help small businesses, and, remember, in effect, that is a supplemental unemployment check, too, because much of that money passes through to employees.

And, third, I would set up a rental assistance fund for troubled residents and business tenants so that if they could demonstrate severe economic hardship, they could tap those funds and pay their rent. The PPP could then use more of the money to pay payroll and utilities and taxes, and you would have the Main Street Program helping mid-sized businesses. And I think you would have a much better environment if you did those three things?

Senator TESTER. Dr. Spriggs.

Mr. SPRIGGS. Thank you, Senator. Well, we are at such a bad point with the disease, I would say we should think about what other countries did, which is to subsidize payroll directly and restore certainty to households about what is ahead. And we need to keep households that have lost jobs whole.

But the number one thing we have to do is fight the virus, and we need far greater deployment of our resources at fighting the virus. We need to make sure that State and local governments have all the resources that they need, and we need to ramp up the hiring that it takes at the State and local government level to do tracing, to do testing, to get the tests in place, all of those things so that we can contain the virus and have State and local governments provide us with clean, safe transportation and maintain our transit systems. And as you rightly pointed out, Senator, we need this because we have to worry about competitive balance coming out of that. As you pointed out, we already have a problem with competitive balance. It is going to be worse coming out of this if we do not plan ahead on how we are going to maintain it.

Senator TESTER. Amen.

A quick question for Jeff DeBoer. Jeff, right now there are no Federal programs for rental assistance, and I do not believe there are any Federal programs for folks who own rental property when those rents do not get paid. Could you just very briefly talk about the impacts if we do not do anything, when folks cannot pay their rent, and not only the folks that will be put out on the street that cannot pay their rent, but the folks who own the property that is the rental property? Because a lot of these owners are not rich corporations. They are families that may own a duplex or a fourplex that have rented it out for additional income or for retirement income. Could you talk about that just briefly?

Mr. DEBOER. Sure, Senator. Thank you for the question. I think it is tremendously misunderstood what rent goes for and what it is used for, and the rent—what we call the "rent obligation chain" in the economy is extremely important, and it begins with the renter, the business, or the person being able to put housing for

themselves and their family or to house their business. They pay the landlord. The landlord then pays for maintenance workers, for security workers, for other things to keep the building safe and healthy. It pays for the utilities. It pays for State and local taxes. It meets its debt service to the lenders, and the lenders in turn, whether they are—maybe they are banks, but they might also be pension funds or what have you, and those pension funds or banks in turn pay the bond holders or the pensioners a return.

As this rent is not paid, the weakness will continue to erode the ability of owners to pay their payroll, to pay their taxes, to pay their debt service. Financial institutions will weaken. Pensioners will not get the return that they want. State and local governments will lose tax revenue because properties will be revalued in this new world that is based on rent receipts. If you do not receive rent, you do not really have much of a value.

So this is extremely important with the underlying part of our economy. I appreciate it very much. And, Senator, I do want to thank you for cosponsoring the RESTART bill. A number of Senators are cosponsoring that bill by Senator Young and Senator Bennet, and that bill would do an awful lot of what you are talking about as well. For example, the conversation on CDFI, the RESTART bill directly authorizes the use of CDFI to move this money through. So I thank you for that, and I thank you for the question.

Senator TESTER. Thanks, Jeff.

Thank you, Mr. Chairman.

Senator BROWN. Thank you, Senator Tester.

Senator Cotton is next.

Senator COTTON. Thank you, and, gentlemen, thank you for appearing before the Committee.

At a time when we still have millions of working-class Americans who are struggling because of major increases of unemployment and job insecurity due to the pandemic, Senator Schumer and Speaker Pelosi are currently demanding that Congress provide massive tax breaks for the rich. Namely, they want to repeal the limitations on the deduction for State and local income taxes. According to one study, 62 percent of the benefits of repealing that cap would go to the richest 1 percent and 86 percent would go to the richest 5 percent. Repealing that $10,000 cap on the deduction for State and local taxes would result in a windfall for the richest 1 percent of more than $38,000.

Professor Spriggs, given that 98 percent of the benefits for repealing the cap on State and local income tax deduction would go to the richest 20 percent of Americans, do you believe that Congress should include a repeal of that cap in any virus legislation that might pass?

Mr. SPRIGGS. Yes, Senator, I think Congress should. Some things that benefit the rich do not trickle down. This is an instance where the philosophy of State and local government comes into play. State and local governments often benefit those high-income families by not taxing them. The ability of State and local governments to raise taxes is threatened by this inability, and removing that lets State and local governments tax more efficiently. And so it may appear that they get a benefit, but it is on the other end that

the rest of us benefit from higher revenues and higher investment in State and local government.

Senator COTTON. How many AFL–CIO members do you think are affected by the $10,000 cap on State and local government taxes?

Mr. SPRIGGS. Well, our largest affiliate is AFSCME, those State and local government workers who depend on having State and local governments have adequate revenues to make the investments that are necessary to sustain our local governments.

Senator COTTON. But how many——

Mr. SPRIGGS. They benefit directly because in those States that have very low tax rates, there are not the resources to maintain proper public services and end up with lower investment. So our teachers who are members of the American Federation of Teachers depend highly on State and local governments making the proper investments. That takes revenue, and that means you have to be able to tax people in your community.

So it removes a Federal tax burden, but it allows State and local governments to put the tax where it needs to be.

Senator COTTON. How many AFL–CIO members on their own income tax returns are hurt by the $10,000 cap on the deduction for State and local taxes in your estimate?

Mr. SPRIGGS. I apologize. I cannot give you the precise number, but in New York State, which is our largest AFSCME affiliate, a large share of them do, in fact, get hit by that because with overtime there are members of some of the affiliates who are not able to make the deduction. Some of them are high-income workers.

Senator COTTON. OK. So your position then is that Congress should repeal the cap on the deduction for State and local income taxes which disproportionately benefits the rich in any virus relief bill so States and municipalities can raise taxes on their own citizens. Is that correct?

Mr. SPRIGGS. So that they can have progressive tax regimes, because, otherwise, it puts more pressure on taxes to be collected from those who are low-income and middle-income. That is the problem. So it is a shift to tax incident toward our members. Our members pay higher taxes because those at the high end do not pay the taxes that they should at the State and local level. State and local level taxes tend to be very regressive. This provision allows for greater progessivity at the State and local government level.

Senator COTTON. Thank you, Professor. I think that was an illuminating conversation.

I yield back my time.

Senator BROWN. Senator Warner.

Senator WARNER. Thank you, Senator Brown, and let me just quickly add that one of the reasons that I think the State and local tax deduction issue comes up and is needed is because, unfortunately, proposals that have come from the White House and the proposals that have come from my Republican colleagues have been so skimpy toward giving relief to State and local governments during the middle of a pandemic. I would simply point out that while we did give some funds in the first CARES bill to State and local government, there was, I think, a completely absurd restriction put on those funds that would not allow it to be used for lost revenues.

We gave billions of dollars for the airlines for lost revenues. We gave billions of dollars appropriately to small business for lost revenues. To somehow say a State and local government could not use the CARES dollars for lost revenues I think was a policy mistake. And I think when you see some of the proposals that are coming forward that also exclude any additional assistance for State and local government, it is very disappointing.

I have got a couple of questions. Mr. DeBoer, I want to start with you. I agree with a lot of proposals in the Main Street fixes that you have put out. As somebody who was very involved in those negotiations, along with Senator Brown and others, I was pretty disappointed with the ultimate facility that it was not as flexible as we approached, and I think it left firms and workers really unable to take advantage of that program.

You pointed out that hotels and retail have withstood some of the largest declines, and that actually then translates into that if the landlords are not paid, they cannot make their debt service, that is going to really trickle into the CMBS market, and we could have a crisis similar to what we had in earlier decades.

So if you want to spend a little bit of time—and I do want to get to CDFIs—on some of your proposals around a preferred equity structure that you suggested, and my understanding is that preferred equity structure, the ability to invest would recently be irregardless of what kind of loan portfolio the developer or real estate entity had. Is that correct?

Mr. DEBOER. Frankly, my proposal—and, by the way, Senator, earlier I expressed my appreciation for your involvement on the Main Street Lending Program to begin with. It is a much-needed thing. There are a variety of proposals on the preferred equity side of things. I think that my point of view here is that it should not apply to every potential borrower out there, but should be targeted to borrowers who have loans that are tied up in CMBS pools, because it is there that you cannot put additional debt, the borrower cannot assume additional debt relative to those loans. That is where the program is needed.

Again, I am not an expert in this area, Senator. I am sorry, and maybe I could get back to you with more——

Senator WARNER. If you could get back, I think, you know, as we are trying to explore, you know, while we give rental forbearance, which I think is appropriate at this point, if we simply pushed the problem up the food chain, you know, we are going to have to grapple with it at some point.

In my last minute or so, I want to at least get to you, Dr. Spriggs. I think my friend Senator Tim Scott pointed out the question earlier. I have been working a lot on a structural change around investing into CDFIs. This pandemic has disproportionately hurt Black businesses, Brown businesses. I have seen as many as 440,000 Black businesses closed their doors, oftentimes because they were not able to participate in PPP because they did not have those long-term banking relationships. And I really want to thank Senator Brown and Senator Crapo and so many Members on both sides of the aisle on this Committee for working on the Jobs and Neighborhood Investment Act, which we have even found some support from the Administration on. Part of that component—and

this is where we are having some of the biggest rub. There seems to be a lot of consensus about the direct equity investment, but the ability to actually use a Fed 13(3) facility. Dr. Spriggs, do you believe that the Fed can and should, consistent with its mandate, better target the minority community and through that CDFIs and MDIs? That is a relatively narrow piece of the financing pie, but when we are talking about a third of America being disproportionately hit, it seems to me that would be appropriate for the Fed. Dr. Spriggs, can you comment on that?

Mr. SPRIGGS. Yes, and the Fed has started to figure out a way that it can interface with the CDFIs. The problem is, as with the banks, it is a cultural problem. The Fed is not used to dealing with the CDFIs. This is encouraging them to do it, and I think more encouragement from your office and from the Senate to have them do that is a good thing. We still have to address the underlying discrimination that has been revealed in the banking system. This is a serious problem. There is a Fair Credit Lending Act, and it needs to be enforced. We need equal access to capital. These are proper steps in the interim of getting the banking culture to be correct.

But looking at our recovery, it is going to be vital that we figure out how do we get capital to the necessary sectors so we can have a balanced recovery, we can restore competitiveness in our system. And I think it will be important looking forward, as we get out of this, to think: How do we do this? Because if we just flood the capital markets, as we have seen here, that does not reach the people we need it to reach in order to get our competitive balance back.

Senator WARNER. Well, I want to just say thank you for that, Dr. Spriggs, and I want to thank all my colleagues on the Committee on both sides of the aisle who helped work with this. This would at least increase—it would be short-term relief, but it would be structural change. It would be north of $100 billion in additional lending capacity.

Thank you, Mr. Chairman.

Chairman CRAPO [PRESIDING]. Thank you, Senator Warner, and I want to thank Senator Brown for covering while I went to vote. And, Senator Kennedy, you are next.

Senator KENNEDY. Mr. Chairman, can you hear me OK?

Chairman CRAPO. We hear you, yes.

Senator KENNEDY. Mr. Chairman?

Chairman CRAPO. Yes. Can you hear us?

Senator KENNEDY. I can hear you.

Chairman CRAPO. We can hear you. Go ahead.

Senator KENNEDY. I have my little ear bud things on.

Gentlemen, I have listened to the testimony with interest. I gather that all three of our witnesses are suggesting that Congress provide more relief. In the first four bills, I think we spent a little over $3 trillion. I voted for those bills. Did we do the right thing? I think we did, but we will not know until we have the benefit of hindsight. One thing I think we all can agree on is that our debt now is staggering at $26 trillion.

Mr. DeBoer, how do you suggest Congress reduce this debt?

Mr. DEBOER. Well, first of all, let me just say that, again, the administrative changes that we are suggesting for the Main Street Program will not cost the Federal Government any more money.

Senator KENNEDY. I understand.

Mr. DEBOER. OK. So you start that. Let us make it work.

As far as the deficit and debt going forward, I think this is an extremely serious problem, and our industry, which is very interest rate sensitive, is very concerned over time about the deficit. I believe that——

Senator KENNEDY. How do you think we should reduce it?

Mr. DEBOER. Well, right now I do not think now is the time to reduce it. I think now is the time——

Senator KENNEDY. How do you think we should reduce it?

Mr. DEBOER. When the time comes, sir?

Senator KENNEDY. Yes.

Mr. DEBOER. When the time comes, I think that revenue options need to all be on the table, and I think spending reduction options need to be all on the table. But, again, right now this economy is teetering on the edge and needs assistance.

Senator KENNEDY. I get it. Let me move to Mr. Scott. What do you think, Mr. Scott? How do you think we ought to reduce this debt once the time comes? Spending, I think we have got that part.

Mr. SCOTT. Senator, I totally agree with your concern. We need to reduce debt in the future. But I agree with Mr. DeBoer that now is not the time to do it. How we do it in the future really depends on the situation. Hopefully, you know, when our economy does recover in the future—and I think it is important that we work now to make it recover—revenues will increase, tax revenues will increase, and that will have a major impact on the reduction of the deficit.

Senator KENNEDY. How much more do you think we can borrow until we get into dangerous territory?

Mr. SCOTT. You know, that is a very hard question. I think usually the dangerous territory is inflation, Senator. And, you know, we are living in a very anti-inflationary environment and have been so for some time. The debt service cost today is obviously much less than it would be if we had more inflation. So we need to keep our eye on that issue.

Senator KENNEDY. Let me stop you, Mr. Scott. Here is what I am trying to get to. You are all very accomplished professionals, but I am looking for your expertise. I get the idea that by raising revenue or lowering costs, it takes care of the deficit. I get that part. How do we do that? We get advice every day to spend more money. The obvious question is—and I am not saying we should not. But how much more? At what point do we get in dangerous territory? I understand the Phillips curve may be losing credibility, but, I mean, at what point do you think if we spend this money, inflation will come back? At what point, if we keep borrowing money, will we undermine the sanctity of the dollar? That is what I am looking for as opposed to just, you know, general concepts.

How about you, Professor? How do you think we ought to pay this money back?

Mr. SPRIGGS. Is that directed to me, Senator?

Senator KENNEDY. Yes, sir, Professor. I am sorry.

Mr. SPRIGGS. Well, this is a war. We are in a war with the virus. The last time we had debts at this level was when we were in World War II. And in a crisis setting, we do not want to create the

uncertainty that we lack seriousness in winning the war. So we do not want people to think that we are going to back away from getting the virus under control, and I think that premature discussions make people believe we do not want to win.

Senator KENNEDY. Professor, I get all that. How do you think we ought to pay this money back?

Mr. SPRIGGS. We paid down the debt of World War II—and we are getting close to the equivalent to that—by ensuring that we had rising wages, rising productivity, but most importantly, rising wages, and then as Mr. Scott said, we had increased revenues because we had broad-based, broadly shared economic recovery. And we had much different tax rates. We had tax rates that had much higher levels at the top. That is how we paid down the debt of World War II, and we have to be thinking about an economy that can generate that kind of broad income growth as we saw after World War II. So we have to institute those institutions that ensure that wages of workers are rising with productivity. We have to increase the minimum wage. We have to give workers back the power to organize. We have to put those things that were in place in the 1950s so that we can see incomes rise dramatically.

Senator KENNEDY. Right. OK, thanks.

Chairman CRAPO. Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman. And thanks to all the witnesses.

Let me start with Dr. Spriggs. We know that there has been a lot of discussion about putting in place eviction moratoriums, both at the State level and the national level. Of course, the House HEROES Act has an evictions moratorium. The Trump administration has attempted to put in place some form of a moratorium, and I do not think any of us want to see tenants evicted at any time, but during this pandemic it would be especially dangerous.

However, I think many of you have testified to the fact that that simply kicks the can down the road. In the end, tenants are still going to have to make their rent obligations. They will have to face a balloon payment at the end, which, you know, given the current trajectory, people are not going to be able to afford, which is why the Ranking Member Senator Brown and myself and others put in legislation for emergency rental assistance. The House HEROES Act also has the rental assistance provision.

Dr. Spriggs, can you talk a little bit about, you know, the fact that an eviction moratorium without that additional rental assistance help simply puts tenants in a untenable position at the end of the road and immediately, as others have said, including Mr. DeBoer, puts the landlords who have their own debts to pay in a difficult position? Can you talk to that?

Mr. SPRIGGS. Yes, Senator, and exactly the point that Mr. DeBoer has been raising. We stem off a financial crisis by making sure that people are making the payments they are supposed to make and help out the balance sheet in that way. And as you said, an eviction moratorium is good because we do not want homelessness, but we need the support for people to pay the rent. We need landlords to get their money. We need shopkeepers to have money so they can pay their rents. And this is the important thing for us

to get ahead of the game rather than wait for foreclosures to take place and banks to be in trouble.

So this is a foot race, and we are losing the foot race because the debts are mounting and we are not letting individuals get ahead of the race on that debt level. That is what has to take place. And without that, we are going to get to January, and we will find banks having problems because the landlords have problems and the loans that the landlords are paying will be in default.

Senator VAN HOLLEN. Right. Mr. DeBoer, can you comment quickly? There is a vote on. I am going to have to run. But this seems to be an area of common ground, and I wish there was broader recognition that getting funds into the hands of tenants, you know, to pay their landlords on the residential side but also, as you point out, on the commercial side, is something that would be very important at this moment.

Mr. DEBOER. Yes, and it is only going to get worse. The Multi-Family Housing Council has their numbers out on rent payments for this month. They have dropped another 5 percent, and that, of course, is connected with the burning off of Federal assistance. So that problem is only going to get worse, and you correctly point out that the moratorium does not solve the problem. It creates a bigger problem once the moratorium is lifted without rental assistance.

So I very much favor rental assistance, and I think these moratoriums, to the extent that they are done—and some have been overly broad. To the extent that they are done, they should only apply to residents who have some economic hardship due to COVID. They should not be blanket moratoriums on eviction. So thank you for that.

And I would also add, I did not mean to speak over Senator Kennedy. That was rude. And I just want to—I was trying to get——

Senator VAN HOLLEN. I am going to, unfortunately, run and vote now, but I want to thank all of you. We have some common ground on rental assistance. Take care.

Chairman CRAPO. Thank you.

Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you. Gentlemen, thank you. This has been a great conversation.

Dr. Spriggs, let me start with you. In your testimony, you noted that the greatest job losses in April, almost 8 million, were in the leisure and hospitality industry, obviously Nevada being hardest hit and a major concern of ours as well. So let me ask you this: What policy mechanisms and tools can Congress prescribe for a swift recovery for those industries and workers who are hardest hit?

Senator BROWN. Senator Cortez Masto is going in and out.

Mr. SPRIGGS. The first thing we have to do is get very serious about fighting the virus so that people can feel comfortable in returning to normal economic activity. That is number one. And all efforts have to be directed at giving us an assurance that we are in a serious fight to get the virus under control so we can have safe travel and feel confident that we can stay safely in hotels and businesses feel comfortable with having their representatives out on the road without returning and infecting their workforce. So that is number one.

We have to maintain the incomes of workers now so that when we do have that relief, people are not heavily indebted and trying to balance their household sheets, and that will delay their ability to return to travel. And Congress is going to have to pay great attention as we come out of this to competitiveness balance. We need a vital transit system. We need to have airlines back functioning. We have to have tourism working. That is one of our greatest sources of trade balance, is through our tourism, through foreign students who come to the United States. And we have to think through how are we going to restore competitiveness balance as we come out of this. Americans do not have paid leave. The rest of the world, August is vacation month. It is not in the United States. We have to give serious consideration to how are we going to do this with a workforce that does not get leave.

There are a number of steps that we need to start considering now so that we are in agreement as we come out of this to restore balance to these industries.

Senator CORTEZ MASTO. Dr. Spriggs, thank you. And thank you all. I appreciate your comments to Senator Tester's question about what we need to do, because it goes back to what you just said, Dr. Spriggs, the balance. We have got to look to assure that individuals are receiving relief, businesses are receiving relief, everybody should be receiving relief right now, and nobody should be left behind. And that is why I appreciate this conversation because I think we also—part of this is how we address the concerns for some of our mid-sized business, large businesses, and our smaller businesses as well, because at the end of the day you need the businesses to employ the workers, and you need the workers for the businesses. They go hand in hand.

So, Mr. DeBoer—and thank you for your conversation as well—you made the comment that Main Street Lending Facilities—we do not need to invest any more money or inject any more money into it. What we need is structural change. And I think I have heard that consistently from all of you. But let me ask you this—and I agree with you. I think there needs to be structural change. Would you support, though, clawing back any of the unused money in the Main Street Lending Facilities? Or do you think it should still be there to be used as part of this restructuring?

Mr. DEBOER. Frankly, I think it should be given an opportunity to work the way that Congress wanted it to work. And you have given the money. It has been hamstrung. You should take off those restrictions and let it work, because these businesses, whether you claw back or not, these businesses need assistance, and this is the only program geared to provide them.

So I would favor keeping the program. I would make it work, though. I would use that money.

Senator CORTEZ MASTO. So if we were to put a bill on the floor of the Senate this week that actually says that that money that is unused should be clawed back beginning next year, what kind of signal is that sending to businesses in general about where we stand or what we are thinking here in Congress?

Mr. DEBOER. Well, I think the signal is many signals. One of them is that there is not the will to force the regulators to make the program work the way that you intended it to work, and I

think that is a bad signal. But, again, if you could only do some things, you have got to do what you can get done. I also think that people understand that this bill is a part of the legislative process, and that as it moves along, hopefully, you know, the PPP can be recapitalized and this money can stay at Main Street. So I am not sure that this one vote or bill on the floor is the end of the world.

I would also say it is a pleasure to be here with Dr. Spriggs. Frequently, business and employees and workers are viewed by the press and others as being in conflict. We are not in conflict. We work together with our workers, with our employees, and it is great to have the points of view articulated by Mr. Spriggs here today. Thank you.

Senator CORTEZ MASTO. Well, let me just say this: From the conversation that we had today, I do not think any of you are in disagreement. I think the goal here is everybody is in agreement that there needs to be another comprehensive package. We all have to be thinking about the relief in a comprehensive manner here. Nobody should be picking and choosing winners and losers.

Mr. DEBOER. By the way, we have talked a lot about opportunities, and all of us, I think have opened our eyes wider to the lack of opportunities that certain parts of our economy and country have, and it is worth noting that since the COVID crisis started, 5 percent of businesses owned by White business owners have failed while 19 percent of businesses owned by Black owners have failed. That is not right. And many of those businesses are these Main Street businesses that currently cannot get this access to financing, and that is just another reason why I would put that money to work downtown and not let it sit idly in a vault somewhere.

Senator CORTEZ MASTO. Thank you.

Chairman CRAPO. Thank you.

Senator Jones.

Senator JONES. Thank you, Mr. Chairman. Thank you to all our witnesses. I really appreciate it.

Mr. DeBoer, I am just going to kind of follow up on that last comment. First of all, let me thank you. You and the realtors have been very helpful with my staff and offices on a number of things that we have been successful on and others that we are thinking about, so thank you personally for the work that we have done together.

But I would like to follow up on that question for you and the other panelists to weigh in, and that is access to capital. We have seen that early on minority businesses had trouble accessing the PPP program. I have not seen the latest statistics on that, but we had to make some carveouts to help with that. We have seen the businesses fail. As you mentioned, 19 percent of Black-owned businesses have failed compared to only 5 percent of their White counterparts.

I understand taking some of the money that we have, that is left over, to maybe help infuse and actually stimulate those businesses. But this is a long-term problem. This is not something that the pandemic caused. You know, minority businesses and the struggles that they have are really—they have been ongoing for a long time, and the pandemic just put a spotlight on those.

So how best going forward can we ensure that minority businesses have access to capital? How can we ensure that they are as structurally strong as their White counterparts? And I will start with you, Mr. DeBoer, since you just mentioned it, but I would like to get the others to weigh in as well on this question. I think it is incredibly important for America.

Mr. DEBOER. Senator, it is incredibly important, and I will be very brief. It is complicated, and it is a long-term answer to how we address the problem that you have described. But one thing that you might consider—and I again do not want to say it is the greatest—well, let me just put it this way: Senator Menendez has a bill that would encourage businesses to provide—they would be measured more by the types of opportunities and investments that they make into minority-, women-, and veteran-owned businesses. And having a benchmark, a structure, a metric that people and businesses could be measured against in that bill—and the bill also passed the House. I believe Congressman Meeks put a bipartisan bill over there. I think having something that businesses would be measured on in their ESG statements or in their filings to the SEC would be very, very helpful in this regard. And I want to tell you that my experience talking to CEOs around the country in a variety of businesses, everyone seems aware and intent and focused on doing what they can do to address this problem. We will see, but they certainly seem to be willing right now.

Mr. SCOTT. So, Senator, I think it is imperative that if we have Government programs to support our economy that they reach minority businesses or minority people. Many of the people are unaware of these programs, so we have to do a much better job of reaching out. And our committee has advocated that any revised Main Street Program do so, and I would generalize that point to all Government programs that we have. Part of the problem is that the Government is not reaching out sufficiently to make these programs known in many of our communities. So that is one practical step I think we could take.

Senator JONES. Great. Dr. Spriggs?

Mr. SPRIGGS. Thank you so much for the question, Senator, and, yes, this has now raised to you see a consensus among a panel of business and labor economists on this point. The Government can play its own role through its contracting. The Government needs to debundle as many contracts as possible so that it is the Government doing direct contracting rather than having subcontracts. This will ensure that the Government knows that it is maintaining competitive balance in our economy and gives greater access to minority-owned firms because they get to deal directly with the Government rather than having to deal with these bundled contracts. Business-to-business contracting is the greatest level of discrimination that takes place in our economy, and this has revealed the discrimination within the banking system.

The Federal Reserve has to be held far more accountable for its responsibility in ensuring there is not discrimination in lending, and what this has shown is that banks do discriminate, and that has to stop. And the Fed has to be questioned repeatedly about what steps it is taking to monitor that. We have an eye on mortgage lending through the Federal home mortgage data system. We

need a system similar for business lending so that we make sure that there is reporting and accountability on that level, and when Congress hears from the Fed Chair, to make sure that is part of what he responds to, is how inclusive is our banking system in making these loans available, broadly speaking. And we need business to step forward and looking at its supply chains. There is a National Minority Supplier Development Council, and we need businesses to be participating in it and holding themselves accountable, as we hold the Government accountable through changing its contracting or making sure that they are using small- and minority-businesses as much as possible.

Senator JONES. Dr. Spriggs, thank you for that, and I know my time is running out. I cannot see the clock, but I would like to call everyone's attention, both my colleagues' as well as this panel, to a program that was started by Mayor Woodfin in Birmingham with some of the largest companies in Birmingham, Alabama, and it does just that. It recognizes that every business has to seek minority vendors, minority-owned businesses, bring in folks on their board, and also be more transparent in mentoring. I think the private sector has a role in this as well as the public sector.

So thank you all, and, Mr. Chairman, I probably have gone over time, which I apologize for, but I cannot see the clock. So thank you very much, Mr. Chairman.

Chairman CRAPO. Thank you. We will make sure we get that clock bright on your screen next time.

That concludes the Senators. Senator Brown has asked if he could ask one more question, and then we are going to have to run to our next vote, which should be starting any second now. So, Senator Brown, please go ahead.

Senator BROWN. Thank you, Mr. Chairman, for doing that. I was really taken today by we all came—three people came in with differing views on a lot of things, and there is broad agreement that we need obviously a real stimulus package.

My only question is really a yes or no for Professor Scott. Do you think Congress providing direct help to households is critical for helping the economy recover, correct? His sound is not on.

Mr. SCOTT. I have got to unmute myself. OK. The answer is yes.

Senator BROWN. Thank you. And I was taken, as I pointed out to Mr. DeBoer, who came in here representing businesses, obviously, also spoke repeatedly about rental assistance. So, Mr. Chairman, there is broad—and, of course, Dr Spriggs is making the case, the main part of his testimony, about unemployment insurance and local government assistance and others. So there is broad agreement the economy is in trouble. The best way to address it is through direct help to households. It means unemployment insurance. It means rental assistance. It means support for State and local governments. The House already passed a bill back in May, as we know, that would take care of workers and renters and homeowners and students and seniors and veterans. We should act on that bill. But all the economic support in the world cannot solve our problems if the President does not start taking the coronavirus seriously. It might be uncomfortable, but it is time for my Republican colleagues here in Congress, especially in the Senate, to hold the President accountable, to speak to Senator McConnell who said

he saw no urgency in this, to speak to him, to hold the President accountable despite the President's continued attempt at gaslighting the country. Everybody on this Committee, everybody in this Senate understands the pandemic will not go away just because we decide to ignore it.

So thank you, Mr. Chairman.

Chairman CRAPO. Thank you. And that does conclude the questioning for today's hearing. Again, I want to thank each of our witnesses for your counsel today and for being willing to come and discuss this important issue with us.

For Senators who wish to submit questions for the record, those questions are due to the Committee by Wednesday, September 16. And to the witnesses, we ask that you respond to these questions as quickly as you can after you receive them.

Again, we appreciate you being here, and this hearing is adjourned.

Senator BROWN. Thank you all. Good to see you all. Thanks to all three of you.

[Whereupon, at 12:02 p.m., the hearing was adjourned.]

[Prepared statements, responses to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF CHAIRMAN MIKE CRAPO

Today we welcome to this virtual hearing the following witnesses: Mr. Hal Scott, President, Committee on Capital Markets Regulation; Mr. Jeffrey DeBoer, President and Chief Executive Officer, The Real Estate Roundtable; and The Honorable William Spriggs, Professor of Economics at Howard University and Chief Economist, AFL–CIO.

It has been 5 months since the passage of the Coronavirus Aid, Relief and Economic Security Act, or CARES Act, was signed into law.

Title IV of the CARES Act provided a $500 billion infusion into the Exchange Stabilization Fund, in order to support the Federal Reserve's emergency lending facilities.

That amount has been leveraged to provide trillions of dollars in liquidity back into the markets, supporting credit flow and helping to stabilize the economy.

Currently, there remains about $250 billion left from the CARES Act funding.

Today, we will receive testimony from each witness providing an update on the Federal Reserve 13(3) emergency lending facilities, including recommendations on how the Main Street Lending Program and Municipal Liquidity Facility could be changed to improve access to and demand for the programs moving forward.

We will also hear an update on the State of the commercial real estate (CRE) market; why the CRE market lacks access to needed support, including through the Main Street Program; and recommendations for options to get support to commercial real estate.

The Federal Reserve established the Main Street Facilities to support lending to small- and medium-sized businesses and nonprofit organizations that were in sound financial condition before COVID–19.

The Main Street program includes five facilities: the Main Street New Loan Facility, the Main Street Priority Loan Facility, the Main Street Expanded Loan Facility, the Nonprofit Organization New Loan Facility and the Nonprofit Organization Expanded Loan Facility.

Treasury's equity investment of $75 billion into the Main Street Program is estimated to provide up to $600 billion in credit to eligible businesses.

However, there has been broad concern around the lack of broad access to the Main Street Program, and so far its uptake has been slow.

One of the most significant industries to lack access to the Main Street Program is the commercial real estate market.

On July 31, I sent a letter to Secretary Mnuchin and Chairman Powell urging them to quickly expand the Main Street Program by setting up an asset-based lending facility, and to address commercial real estate either through access to the Main Street Program or in a separate facility.

During this hearing, I look forward to hearing more about the State of small- and medium-sized businesses in industry across the United States and their access to financing; additional ways that the facilities could be improved and expanded to provide access to more industries; and recommendations for use of the remaining Title IV funds.

As I noted in the hearing on Title IV implementation this Committee held on June 2, I am still concerned that incorporating widespread restrictions in these facilities could render the facilities ineffective and leave businesses and their employees without critical resources they desperately need.

The work to get these facilities up and running has been of immense importance, and now it must be ensured that they are structured to achieve the greatest impact for those in need.

I appreciate each one of you joining us today to share your perspectives on these important issues.

PREPARED STATEMENT OF SENATOR SHERROD BROWN

More than 150 years ago President Lincoln observed, "It has so happened in all ages of the world that some have labored, and others have, without labor, enjoyed a large portion of the fruits. This is wrong, and it should not continue."

This pandemic is revealing just how true that still is today.

This week we celebrate Labor Day, a day when we honor the people who make our country work—all workers, whether you punch a clock or swipe a badge, whether you're raising children or caring for an aging parent.

But workers deserve more than empty words in a tweet or an email message.

For months we've seen advertisements and PR campaigns from big corporations proclaiming how dedicated they are to the essential workers that are keeping our

country running—but Statements that aren't followed up by increased pay or safer workplaces ring hollow, whether they're from companies or Government officials.

This Labor Day, the country isn't living up to its promise to workers.

Whether it's ending the $600 a week unemployment insurance that was keeping millions of families afloat, or just the simple promise that families won't lose their homes, under President Trump, our Government has given up on support for workers.

We are on the precipice of another Great Depression.

And if you have the privilege to work from home and you've been watching your stock portfolio slowly rebound, and you're thinking right now, "this guy's being alarmist," I have news for you—you don't understand the real economy.

No matter how well the stock market is doing, no matter how high bank profits and corporate profits are—if workers cannot work—and I say "can't work," not "won't work," because workers are desperate to get back on the job safely—our economy can't work. The President's failure to get this pandemic under control is keeping tens of millions of workers who want to go to work sitting on the sidelines of our economy.

If people can't go to work, can't pay their rent or mortgage, can't pay their car payment or credit card bills—the bottom will fall out of this economy.

It has been over 6 months since we passed comprehensive coronavirus relief for working Americans, and because of the President's failed leadership, things have only gotten worse. He's allowed the virus to rage out of control. Nearly 190,000 Americans have died in less than 6 months.

School districts have been forced to make impossible decisions—reopen and put students and teachers at risk, or continue to teach remotely, putting an unbearable load on working parents and widening the achievement gap. State and local governments are trying to step in and help, but their tax revenues are down because taxpayers have lost their jobs and businesses have had to shut their doors or operate with fewer customers. And that's only going to mean more layoffs of good middle-class jobs, extending the cycle of misery.

After Leader McConnell and President Trump allowed the $600 expanded UI benefits expire, and refused to pass additional stimulus checks and housing assistance and support for local communities, the emergency lending programs we are talking about today are really the only programs left operating to prop up our economy—and none of these Fed lending programs are actually helping workers.

Dividends are still getting paid, and CEOs are still getting their salaries and bonuses. The stock market continues to get a lift. If you make your money from a brokerage Statement, the Government is still helping you—in fact, you're pretty much the only one the Government is helping.

But that help is not trickling down from big banks and corporations to the people who make their money from a weekly paycheck—the vast, vast majority of the American people.

It should be obvious to everyone by now that those benefits to the wealthy never "trickle-down" to the workers who make this economy run. They didn't with the corporate tax cut 2 years ago, and they aren't now.

Instead, these programs are helping corporations—many of which continue to lay off workers and have cut hazard pay for those who are still risking their lives on the front lines of this pandemic, if they even bothered to pay those workers hazard pay, to begin with.

We are going about this backwards.

Every dollar we give to working families goes directly to supporting the real economy, when those families pay their rent and their mortgages and their bills, and when they buy groceries and school supplies and spend money at a local business. In fact, if we put families and workers first, we wouldn't have to bail out any corporations at all—the market that so many in this Committee profess to put so much faith in would take care of that.

Of course, we also know our economy will not fully recover while the virus is still not under control.

The CARES Act that we passed in March was designed to be temporary relief—to get our workers and their families through the immediate economic hardships while we marshalled all of our country's vast resources and talent to stop a pandemic. The President failed to do that, and now what we thought would be a relatively short economic disruption has dragged on for months and months, with no end in sight.

We still have no mask mandate, we still have no national testing strategy, we still have no effective contact tracing. We are seeing another resurgence across 22 States. As a result, we're just 4 percent of the world's population and 22 percent of the world's deaths.

Imagine if the President had taken this seriously in the spring. Imagine if he'd said we should all wear masks and had modeled good precautions we should all take. Imagine if he'd said we are going to mobilize America's manufacturing talent and make enough tests to test every public school by the summer. Imagine where we could be as a society right now.

Instead, the President has given up on controlling this pandemic at all until a vaccine is developed—and given the scope of his failures thus far, we can only assume he will fail just as badly at distributing a vaccine once that day comes if he's still in office.

The economy will not recover until this President, and his cabinet, and his friends in Congress, take governing seriously.

Later this month, we'll have a hearing with Secretary Mnuchin and Chair Powell. Unlike today's hearing, that one will be conducted in person. That's because the President has told his top officials they must testify in person, in his continued attempts to gaslight the American people about the dangers of the virus.

We should be conducting all hearings remotely, not just to protect Senators and Administration officials, but to protect all of the workers in the Capitol—the janitors, Capitol police officers, and food service workers who are forced to show up and put themselves at risk, and then worry they are bringing the virus home to their families.

After 6 months of failures, I am honestly surprised that the President's friends in Congress continue to let him get away with it.

Mr. Chairman, we need your help and your leadership. You have done the right thing by conducting the rest of our hearings remotely, and we need you to demand that the White House sends the right message about taking the coronavirus seriously—tell Secretary Mnuchin he needs to testify remotely. I have no doubt Chair Powell would be happy to do so if you asked.

And we need your help convincing Mitch McConnell to extend direct support for families while we fight this virus and get our country back on track. The House has already passed a bill that would take care of workers, renters, homeowners, students and seniors, and veterans. We all know this "emaciated" McConnell proposal isn't going to help any of those families keep food on the table.

When something isn't right, we speak up—that's the job we signed up for. And right now thousands of people are dying each day, and Republicans aren't speaking up.

The best way Congress could celebrate Labor Day this year is by doing its job. And we need your help to tell President Trump and Mitch McConnell that it's time to get to work. We have wasted too much time already.

Thank you.

PREPARED STATEMENT OF HAL S. SCOTT

EMERITUS PROFESSOR, HARVARD LAW SCHOOL, AND PRESIDENT, COMMITTEE ON CAPITAL MARKETS REGULATION

SEPTEMBER 9, 2020

Thank you, Chairman Crapo, Ranking Member Brown, and Members of this Committee for inviting me to testify before you today on the Treasury/Federal Reserve Main Street Lending Program (MSLP). My testimony today regarding the MSLP is based on the September 3 Statement of the Committee on Capital Markets Regulation (CCMR), of which I am the President. With respect to other issues, the testimony is my own, and does not necessarily represent the views of CCMR.

CCMR is an independent 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations. CCMR's membership includes 37 leaders drawn from the finance, business, law, accounting, and academic communities. CCMR's Cochairs are R. Glenn Hubbard, Dean Emeritus of Columbia Business School, and John L. Thornton, Chairman Emeritus of the Brookings Institution. Founded in 2006, CCMR undertook its first major report at the request of the incoming U.S. Secretary of the Treasury, Henry M. Paulson. Almost 15 years later, CCMR's research continues to provide policymakers with an empirical and nonpartisan foundation for public policy.

CCMR believes that small- and medium-sized businesses (SMEs) will need financial support for several years to recover from the impact of the COVID–19 pandemic. A key part of this support should come from the MSLP authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The MSLP comprises five facilities, three of which are targeted at for-profit business and two of which are targeted at nonprofits. My testimony is focused on the three for-profit fa-

cilities. So far these facilities, which have been operating for over 2 months, have not delivered the anticipated results.

CCMR therefore recommended that MSLP be significantly restructured to: (1) take on more credit risk, by providing that the Federal Reserve make 100 percent of each loan, rather than 95 percent as presently provided, leaving banks and other eligible financial institutions as processors; and (2) provide below market terms for borrowers who are unable to obtain credit from their existing lenders. The MSLP loans from the Federal Reserve should be on a first-come first-serve basis, based on objective criteria, to ensure that the Government is not picking winners and losers. Policymakers must also reach out to the hardest hit and underserved communities so that they can take advantage of the program. Extraordinary Federal intervention such as the MSLP must end as soon as the need for such a program has dissipated. CCMR supports the current end-date of December 31, 2020, which can be reevaluated in the coming months.

The need for expanded support for small- and medium-sized businesses has been intensified by the current congressional deadlock over new appropriations for these firms. Congress has already appropriated $454 billion in the CARES Act to back Fed lending facilities. This appropriation should be used now to help Main Street.

1. Small- and Medium-Sized Businesses (SMEs) Need Government Help

Small businesses have been hard hit by the COVID–19 pandemic. Dun & Bradstreet's Small Business Health Index reported a decline for June 2020 reflecting an increase in business failure and payment delinquency rates at small businesses during Q2 2020. Certain sectors have been disproportionately affected by the pandemic: as of mid-August, revenues at transportation businesses had declined by 67 percent compared to the same week last year; revenues at arts and entertainment business had decreased by 44 percent; and revenues at restaurants had declined by 19 percent. Also through mid-August, 64 percent of local arts and entertainment businesses and 39 percent of bars and lounges had not processed a single transaction for three straight days. In a recent letter, more than 100 current and former CEOs of some of America's largest companies, major trade associations and small businesses warned that without longer-term support from the Federal Government, small business owners are facing financial ruin.

Medium-sized businesses have also been hard hit. Moody's Analytics reported that, as of mid-June, middle market corporations had experienced across-the-board increases in their expected default frequency. And the default rate on private debt rose to 8.1 percent in Q2 2020 from 5.9 percent in Q1, according to the Proskauer Private Credit Default Index, which measured 546 private loans issued mainly to private-equity-backed mid-sized businesses.

As credit conditions at middle market firms deteriorate, these companies are finding it harder to borrow to meet their liquidity needs. The Federal Reserve—July 2020 Senior Loan Officer Opinion Survey on Bank Lending Practices reported that 71 percent of respondents reported tightening their lending standards on loans to large and medium-size firms, making it harder for these firms to obtain bank financing. The Fed's survey also reported that demand for such loans from borrowers had decreased, likely due to the unattractive terms that banks must offer to offset the credit risk posed by such loans. Indeed, the Association for Corporate Growth has reported that 81 percent of its middle market members that tried to get a loan though the MSLP could not.

A V-shaped recovery, meaning that the economy will within the next year or so bounce back to a pre-COVID level, is unlikely. Such a recovery is inconsistent with the predictions of the Federal Reserve and most economic forecasters, given the path of the virus, elevated unemployment and concern over a possible cascade of business failures in the services sector. According to the latest economic projections from Fed officials, the economy will contract by anywhere between 4 percent and 10 percent this year. Most officials do not expect the economy to recover completely until 2022. While the latest unemployment figures have improved, the unemployment level is still very high at 8.4 percent, and as Chairman Powell observed last week, there are still 11 million fewer Americans working than there were in February.

The generally buoyant U.S. public equity market is not a sign that all is well. The market indices are dominated by large-capitalization firms, some of which—especially in the technology sector—remain strong despite the pandemic lockdown. Sectors that have been hardest hit by the pandemic, such as department stores, airlines, and travel services, make up a small fraction of the major market indices, and the vast majority of SMEs are not publicly traded at all. Moreover, while Fed liquidity and low interest rates might help support public equity values, they do not necessarily portend a quick economic recovery.

Some have expressed concern that distressed SMEs will not want to borrow from the MSLP. While it is true that in many cases their condition has worsened since the enactment of the CARES Act, SMEs, if solvent, will likely still borrow if it is their only hope of maintaining their business as a going concern. Of course, such loans will be risky but, as I shall shortly expand upon, the Treasury needs to be prepared to take that risk.

In summary, SMEs face prolonged balance sheet stress and need financial support from the Government. Given the importance of these firms to the U.S. economy—middle market businesses, in particular, represent one-third of private sector GDP and employ approximately 44.5 million people—such support is key to economic recovery.

2. The MSLP and Credit Risk

When the CARES Act was enacted over 4 months ago, Treasury Secretary Steven Mnuchin and Fed Chairman Jerome Powell said the Act's $454 billion in appropriations could be levered by the Fed to support up to $4 trillion of loans. The Treasury subsequently announced that it would set aside $75 billion of this appropriation to support $600 billion in loans to SMEs under the Main Street facilities on April 9. These programs, after several revisions, became operational on July 6. As of September 2, the Fed had purchased about $1.2 billion in loans through the MLSP, implying that $1.3 billion in loans had been made under the MSLP. The Federal Reserve currently discloses transaction-specific data about the MSLP monthly. As of July 31, 2020, the program had only purchased participations in 13 loans, ranging in size from $1.5 million to $50 million. Secretary Mnuchin has estimated that between $25 and 50 billion in loans will ultimately be issued through the MSLP. This level of lending, if it does occur, will be far short of the MSLP's lending capacity of $600 billion and what is needed for economic recovery.

One of the major reasons for the performance shortfall, has been the policy of the Treasury to avoid taking credit risk. While the Main Street facilities are operated by the Fed, the Treasury, pursuant to Dodd-Frank amendments to Section 13(3) of the Federal Reserve Act, must approve them and therefore controls their terms. Secretary of the Treasury Mnuchin Stated in April, "I think it's pretty clear if Congress wanted me to lose all of the money, that money would have been designed as subsidies and grants as opposed to credit support." The terms of the MSLP reflect the Treasury's view by requiring lenders to retain 5 percent of all loans and to apply normal credit standards (which they would do anyway given their exposure).

On August 4, Chairman Crapo offered the following amendment to the "shell" rescue bill submitted by Senate Majority Leader McConnell, which would amend the CARES Act to provide: "In making loans, loan guarantees, and other investments . . . the Secretary shall prioritize the provision of credit and liquidity to assist eligible businesses, States and municipalities, even if the Secretary estimates that such loans, loan guarantees, or investments may incur losses." Senator Crapo and Congressman Patrick McHenry have also written to Secretary Mnuchin and Chairman Powell, urging them to use funds appropriated under the CARES Act to expand the MSLP.

CCMR strongly supports Senator Crapo's amendment, to remove any doubt of congressional intent. We urge the use of unallocated CARES Act funds to backstop potential losses from the MSLP. Government-backed loans to borrowers that cannot meet normal credit standards unavoidably involves credit risk, but taking such risk is necessary to support an economic recovery that would be slower without such lending.

3. Required Changes in MSLP

For the MSLP to support SMEs in an effective manner, two major changes need to be made: (a) the Fed should make 100 percent of the loans with financial institutions acting as only processors; and (b) the terms for borrowers must be below market.

a. Fed and Treasury Bear Credit Exposure, Lenders as Processors

For the MSLP to work, lenders cannot be required to hold 5 percent of each loan. The requirement that lenders bear credit risk is a major obstacle to the effectiveness of the MSLP. Lenders are unwilling to lend to the neediest borrowers who are uncreditworthy under normal standards. And borrowers that can meet normal credit standards do not need the MSLP at all.

As of August 10, only 522 financial institutions had registered to participate in the MSLP. That number represents less than 5 percent of eligible lenders. Moreover, of those 500 financial institutions, just 160 of them stood willing to publicly accept loan applications from new customers that lack a preexisting relationship with the lender. Larger banks had played a minimal role in MSLP lending as of

early August; more than 90 percent of lenders registered to participate in the MSLP had less than $50 billion in assets and those lenders were responsible for more than 95 percent all MSLP loans.

Once saddled with credit risk, lenders will rightly apply normal credit standards, with the effect that the borrowers who need financial assistance will not qualify for loans. While 5 percent of each loan may not seem significant, multiple small stakes in risky loans add up. We therefore agree with the recommendation of Senators Loeffler, Braun, Cornyn, and Tillis, in their August 4 letter to Secretary Mnuchin and Chairman Powell, that the most effective solution to the bank credit standard obstacle is to eliminate the risk retention feature altogether.

To the extent that the infrastructure already put in place by the Federal Reserve is sufficient, the Fed could lend to borrowers directly, circumventing banks entirely. If that is not feasible, then banks—and other nonbank financial institutions certified by the Fed—should remain in place solely as processors. Banks and other financial institutions that act as processors should be paid a reasonable fee, based on their costs, for processing loans.

b. Specific Terms

As for specific terms, CCMR suggests the following, consistent with the below market approach:

- Loans should be unsecured, since the most distressed borrowers do not have collateral.
- The maximum loan size should be increased. Under the current terms, which tie maximum loan size to the borrower's outstanding debt relative to earnings, many SMEs are excluded from participation as a result of their current high leverage. One way of avoiding such disqualification is to tie the maximum loan size to the borrower's business expenses as reflected on its most recent Federal tax return.
- The minimum loan size should be reduced to $100,000 (from $250,000), consistent with the average size of PPP loans.
- The interest rate on MSLP loans should be lowered to a fixed interest rate of 1 percent per annum (currently, MSLP loans have an adjustable rate of LIBOR plus 3 percent) with no fees charged to borrowers (currently, borrowers can face fees of up to 200 basis points).
- The term should be extended to 10 years (from 5 years).
- Prepayment should be without penalty (consistent with current terms).
- Amortization should be on a 30-year schedule, with the balance due after 10 years.
- Eligible borrowers should be required to certify that:
  - they are solvent;
  - their need for credit arises from the pandemic;
  - the amount borrowed is related to their actual cash business needs;
  - the funds borrowed will be spent on their business; and
  - they could not obtain funds in the amount applied for under the MSLP from their existing bank (this certification would prevent creditworthy borrowers to which banks would otherwise lend from obtaining below-market loans from the MSLP).
- Loan documentation, which is currently complex and lengthy, should be simplified. Currently, borrowers have to digest more than 160 pages of documentation, supply more than 140 data fields, and are subject to quarterly reporting requirements. These information and reporting requirements are a significant obstacle for smaller borrowers and exceed what borrowers typically provide to banks for standard business loans.

Some have suggested that what is needed for the most distressed firms is an equity injection rather than increased lending. In principle, this may be true but it is impractical to restructure the capital of SMEs on any scale in a timely way. That would require the consent of existing investors and significant legal costs. The terms we recommend for the Fed's debt would be similar to patient equity, given the significant risk of nonpayment.

Another potential concern is that extending loans on below-market terms will lead the Fed to prop up businesses that are no longer viable. But the risk that viable businesses will go under en masse without additional support generally warrants greater risk-taking by the Fed and Treasury. And the Fed can mitigate the risk of lending to nonviable businesses by consulting private data, including from providers

like Dun & Bradstreet, to screen out businesses that are unlikely to survive even with additional credit support. The Fed, or the banks and financial institutions acting as processors, can ensure that borrowers meet viability requirements, although such requirements must be clear and objective to avoid confusion and delay. In addition, the borrowers must make certifications as to their solvency and that the amount borrowed is related to their cash needs and will be used in the business—such certifications will be difficult to make for unviable businesses.

The MSLP must ensure that owners cannot siphon off the proceeds of Government loans to themselves through executive compensation, dividends, or share repurchases. The CARES Act establishes certain limits on owners from doing so. Businesses that receive MSLP loans are prohibited from paying dividends or repurchasing shares until 1 year after the loan is no longer outstanding. During the same period, MSLP borrowers cannot pay annual compensation, over any 12 consecutive months, to officers or employees in excess of the sum of $3 million plus half the amount by which an officer or employee's 2019 compensation was over $3 million. MSLP borrowers also cannot increase compensation over any 12-month period for any employee that was paid more than $425,000 in 2019. In addition, as set forth in the CCMR proposed terms, borrowers should be required to certify that they will use the proceeds of any MSLP loan solely for the benefit of the borrower's business. The proceeds of an MSLP should not be used to repay liabilities of the company which are personally guaranteed by any of the shareholders.

CCMR generally opposes Government intervention in private business. Extension of MSLP loans should therefore only be tolerated in the short-term. CCMR therefore supports the CARES Act's time-limited approach to the MSLP, as funds appropriated under the CARES Act can only be used to backstop loans made before December 31, 2020.

4. Expansion of Treasury Support for MSLP

Given the increased credit risk that would result from our suggested redesign of the MSLP, Treasury may have to increase the $75 billion in equity that it has committed to the program. Fortunately, the Treasury has ample ability to do so. As of September 2, the CARES Act facilities, apart from Main Street, held only $17 billion in loans backed by $65 billion in Treasury funds. The existing backing of non-Main Street facilities is excessive given the low number of loans, so some of this backing could be redeployed to Main Street.

Apart from this existing backing, the Treasury has $351.5 billion in CARES Act funding that it has not yet used—a significant portion of this unused amount can be added to support a redesigned MSLP.

5. Ensuring Targeted and Equitable Access to Credit

According to one estimate, businesses eligible for the MSLP employ an estimated 45 million workers, almost 40 percent of all private-sector workers. Yet the MSLP has seen limited take-up. That is in part attributable to the program's current terms, which warrants the changes we recommend. But it is also, in part, a product of a widespread lack of knowledge about the MSLP; many small businesses do not even know about the MSLP or that they are eligible for it. One recent survey of middle-market companies found that more than one-fifth of respondents were unaware of the MSLP; others know about it but mistakenly think they are ineligible. This is a particular problem for minority-owned businesses. Using data supplied by Dun & Bradstreet, about which businesses would benefit most from access to the MSLP and those for which such borrowing is too late, the Treasury and Federal Reserve should coordinate, along with private lenders, outreach to and enrollment assistance for eligible borrowers with a chance of survival.

6. Loans for New Businesses

The COVID–19 pandemic may permanently alter the structure of the U.S. economy. But this is not a reason for Treasury and the Federal Reserve to sit on the sidelines while SMEs fail because of cash-flow disruptions. Rather they should seek opportunities to facilitate a quicker transition to a new, postpandemic economy. To that end, the Treasury and Federal Reserve should also explore the possibility of adding a new facility, perhaps under the MSLP, to support access to credit for new businesses. A facility of this sort would not provide equity to new startup businesses; but once a new business has secured equity financing from private sources it could be eligible for debt financing on appropriate terms.

7. Conclusion

Main Street's recovery is crucial for the U.S. economic recovery. CCMR recommends that Congress enact Senator Crapo's proposed amendment to remove any doubt that Congress's intent in enacting the CARES Act was for the Treasury to

take credit risk. If such legislative action cannot be achieved, we would recommend that the Senate Banking Committee clarify Congress's intent in a bipartisan letter to Secretary Mnuchin.

There is no guarantee that the extraordinary measures recommended by CCMR will succeed in saving American small- and medium-size businesses. But the current approach has been tried and found wanting; the recommendations set out here would give many small- and medium-sized businesses in America a fighting chance. Each day that we wait to help Main Street further damages the prospect for economic recovery.

STATEMENT OF

JEFFREY D. DEBOER

ON BEHALF OF

THE REAL ESTATE ROUNDTABLE

UNITED STATES SENATE

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

HEARING

ON

THE STATUS OF THE FEDERAL RESERVE EMERGENCY LENDING FACILITIES

VIA WEBEX

ON

WEDNESDAY, SEPTEMBER 9, 2020

AT 10:00 AM

WASHINGTON, DC

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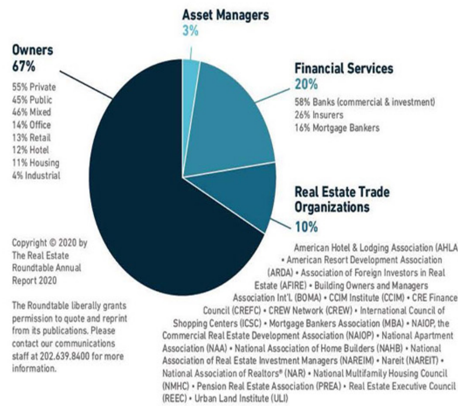
The Real Estate Roundtable

About The Real Estate Roundtable

The Real Estate Roundtable (www.rer.org) brings together leaders of the nation's top publicly-held and privately-owned real estate ownership, development, lending, and management firms with the leaders of major national real estate trade associations to jointly address key national policy issues relating to real estate and the overall economy. By identifying, analyzing, and coordinating policy positions, The Roundtable's business and trade association leaders seek to ensure a cohesive industry voice is heard by government officials and the public about real estate and its important role in the global economy. The Roundtable's membership represents nearly 3 million people working in real estate; about 12 billion square feet of office and industrial space; over 2 million apartments; and nearly 3 million hotels rooms. The collective value of assets held by Roundtable members is approximately $3 trillion.



The Roundtable thanks our partner associations that provided assistance and input in preparing these comments: American Hotel & Lodging Association (AHLA); American Resort Development Association (ARDA); Building Owners and Managers Association (BOMA) International; Commercial Real Estate Finance Council (CREFC); International Council of Shopping Centers (ICSC); Mortgage Bankers Association (MBA); NAIOP, the Commercial Real Estate Development Association; Nareit®; National Apartment Association (NAA); and National Multifamily Housing Council (NMHC).[1]

[1] A full list of The Roundtable's "partner associations" is available here.

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EXECUTIVE SUMMARY

- The Main Street Lending Program (MSLP) has significant untapped potential. Administrative actions could incentivize more lenders to participate. Changes by the Fed to relax its eligibility, underwriting, and affiliation rules could also allow more struggling businesses to access credit from the 13(3) facilities.

- Improving Main Street lending so commercial real estate tenants, builders, and owners can actually ***use*** Fed-purchased and Treasury-backed credit is critical to put our nation on a sustained path to recovery, considering the profound impact that the real estate sector has on the U.S. economy. From jobs to housing and infrastructure, from state and local taxes to pension income and retirement savings, commercial real estate is a key driver of America's jobs, opportunities, security, and long-term growth.

- Supplemental legislative action is also needed to jumpstart the economy on non-MSLP matters, particularly to assist businesses that need a hand but are not looking to take on new debt.

Policy Recommendations to Improve the Main Street Lending Program

- ***The Fed should purchase 100% of MSLP loans – not only 95% as the program's rules currently require.*** In the CARES Act, Congress authorized the Treasury Department's Exchange Stabilization Fund to back Main Street loans and thus minimize the Fed's risk exposure. Numerous covenants, certifications, and other program requirements imposed by the Fed on both lenders and borrowers render the 5% bank risk retention requirement unnecessary. It should be eliminated to spur greater lending activity to struggling businesses. Banks should receive a 1% fee to monitor the loan until it matures, to compensate them for servicing the debt after it fully transfers to the balance sheet of the Main Street Special Purpose Vehicle.

- ***Loosen tight "eligibility" and "affiliation" restrictions on borrowers.*** The Fed decided on its own to carry-over rules of the Small Business Administration (SBA) from its conventional 7(a) lending program, and wrongly apply them to key MSLP qualification questions regarding borrowers' "eligibility" and consideration of "affiliated" entities. There is no basis in statute to apply these out-of-context SBA rules to Main Street lending, yet they have significantly impeded businesses' ability to access the 13(3) facilities. The Fed should not apply SBA's "ineligibility" and "affiliation" rules developed for a completely different program, long before the pandemic ravaged the economy.

- ***Reform the metrics of MSLP underwriting to better reflect the types of businesses that need Main Street assistance – such as manufacturing, retail, restaurants, real estate owners, and other asset-based borrowers.*** The MSLP limits a borrower's maximum loan size based on a multiple of its earnings before interest, taxes, depreciation, and amortization (EBITDA). As the Fed has acknowledged, EBITDA is not a standard underwriting metric for real estate or other asset-based businesses. If the EBITDA test remains, its multiple should be increased substantially. For real estate, restaurants, retail, and other asset-based borrowers, other appropriate tests to size Main Street loans must be developed to consider alternative metrics such as loan-to-value, loan-to-cost, and borrowers' net operating income.

- ***Reasonably extend MSLP maturity and amortization timelines***. Maturity for Main Street loans should be extended to seven years (from five years). Amortization of principal should be pushed back to year four (from year three).

- ***Create a preferred equity program for CRE borrowers***. Congress should allocate unused Title IV CARES Act funds and direct the Fed and Treasury to create a preferred equity program for CRE borrowers, as part of the MSLP or as a separate facility. This would provide a temporary liquidity bridge to CRE borrowers and avoid existing prohibitions on taking on additional debt.

- ***Continue to support the Term Asset-Backed Securities Loan Facility (TALF)***. While not technically part of the MSLP, the TALF falls within the Fed's 13(3) authorities. We commend the Fed's and Treasury's timely decision to revive the TALF and include commercial mortgage backed securities as eligible collateral. Yet, more needs to be done. The Fed should also consider the merits of expanding TALF to investment-grade instruments below the triple-A rating level that support the commercial real-estate market to ensure liquidity is available. Also, new issue CMBS and Single Asset, Single Borrower (SASB) securities should also be included as eligible collateral.

Non-MSLP Policy Recommendations

- ***Pass the RESTART Act (S. 3814)***. This bill would allow the SBA to forgive loans made by banks to businesses with up to 5000 employees that have lost significant revenue during the pandemic. It is precisely the kind of policy we need to provide smaller employers and hard-hit minority-, women- and veteran-owned businesses with an emergency credit lifeline.

- ***Establish an emergency residential tenant assistance fund particularly for as long as any federal eviction moratorium is in place***. The CDC recently announced a federal residential tenant eviction moratorium through the end of 2020. It must be accompanied by a specific financial program that helps renter households meet their contractual lease obligations during the pandemic. A residential tenant assistance fund to mitigate the harsh economic impact of the CDC's action on the multifamily sector, and provide apartment owners with the revenue they need to pay their taxes, payroll, utilities, debt service, and meet other obligations.

- ***Establish an emergency rental assistance fund for small business tenants to give these employers a lifeline that supports their rent payments going forward***. Struggling business tenants, who have lost revenue but are limping through the COVID economic crisis, should also receive emergency rent support. The last thing they need as they try to re-open while their customers have not fully returned is to make up for missed lease payments. A limited program to help small business employers cover three months of rent will restore the rental income chain that ripples throughout the economy to support local tax bases, allow building owners to pay their own workers, support Americans' retirement savings, and keep debt markets functioning.

- ***Promote debt restructurings and workouts***. Congress should remove obstacles to private sector debt restructurings and workouts that could allow businesses to avoid bankruptcies, foreclosures, and layoffs. A debt cancellation event reflects a severe hardship on the part of the borrower, not an enrichment. For the next few years, Congress should allow ***all*** distressed borrowers to exclude cancellation of debt ("COD") income, or economically similar gains, to the extent that they reduce the basis of their depreciable and non-depreciable assets. The tax owed on restructured debt would not be forgiven but would be collected over time by a way of reduced tax attributes that limit and increase taxable income.

- ***Pass the Healthy Workplaces Tax Credit Act (S. 4214)***. This bill would provide a temporary refundable payroll tax credit for employers that incur extra and unforeseen costs to disinfect workplaces, provide employees with PPE, and reconfigure building interiors to curb the spread of COVID-19. A robust recovery cannot occur unless tenants, workers, customers, and other guests feel comfortable returning to their offices, stores, restaurants, and other indoor environments. This bill will help employers pay for "healthy workplace" protocols, and is scaled to provide the greatest amount of support to smaller businesses. We believe the bill can be improved to ensure the tax credit is usable for hotels and other properties that do not directly hire employees but operate under a managed structure.

- ***Protect schools, non-profits, and businesses from frivolous COVID lawsuits***. Employers that meet government "re-opening" standards issued by the federal, State and local governments should receive a "safe harbor" from baseless litigation. Grossly negligent, reckless, or willful conduct should not be shielded. However, employers should be afforded some modest sense of surety that they will not need to fight expensive court battles filed by opportunistic plaintiffs that assert specious injury claims related to the coronavirus.

- ***Authorize federal pandemic risk insurance***. Moving forward, the federal government should provide a pandemic risk/business continuity insurance program to backstop the economic impact of a future public health crisis.

I. INTRODUCTION

Thank you Chairman Crapo, Ranking Member Brown, and Members of the Committee, for conducting today's hearing on ***The Status of the Federal Reserve Emergency Lending Facilities***. I am Jeffrey DeBoer, President and Chief Executive Officer of The Real Estate Roundtable ("The Roundtable") (www.rer.org). We are grateful for the Committee's efforts to support the U.S. economy during the COVID-19 public health crisis. We also appreciate the July 31, 2020, letter from Chairman Crapo encouraging Treasury Secretary Mnuchin and Federal Reserve Chair Powell to address the "unique circumstances faced by commercial real estate" during these historic times.[2] In addition, we appreciate the focus that Ranking Member Brown has brought to a residential rent assistance program and we look forward to continuing our discussions on that front. Also, we are grateful for the foresight shown by the Main Street program's authors, including Senators Warner and Toomey, who have rightfully advocated on behalf of employers that need access to credit so they can remain operational and keep their workforce employed during this unprecedented moment on our nation's history.

I am pleased to provide the Roundtable's recommendations to improve borrowers' and lenders' interest in the Main Street Lending Program (MSLP) while also providing worker protections. My testimony also will offer an update on the state of commercial real estate (CRE) markets, and address why CRE owners and our tenants generally lack access to the MSLP. Importantly, my comments are in the spirit of promoting Main Street lending for struggling Main Street businesses, including asset-based businesses – and not just simply for CRE owners. Struggling business tenants need access to the 13(3) emergency lending facilities because missed rent payments will become legacy obligations that will burden these employers' long-term recovery. The Roundtable urges that policy makers must improve the MSLP as a platform to place business tenants in an optimal position to retain and rehire their workforce. Furthermore, a program to help business tenants meet their lease obligations will shore-up the rental income stream that supports state and local tax bases; sustains millions of jobs in the building construction, management and operations workforce; maintains the value of income-producing real estate assets for retirees and pensioners; and keeps mortgage markets healthy and functioning.

The MSLP has promising, untapped potential. It can be fixed to help businesses emerge stronger than ever, and maximize opportunities so American workers have good jobs to return ***to*** on the other side of the pandemic. Let me state at the outset that an improved MSLP can be a critical component to spur recovery and job growth – but it is not a silver bullet. An optimized MSLP must be complemented by direct support for America's families and workers, such as:

- ***New rounds of expired CARES Act relief including expanded federal unemployment benefits, stimulus checks, and Paycheck Protection Program (PPP) loans that have kept workers on payroll with benefits.*** The Roundtable applauds Congress and the Administration in enacting the CARES Act "safety net." Federal leaders did their job to avoid an even deeper recession. We implore policy makers to reach bipartisan compromise on a new package that re-starts these programs to avoid worsening an already serious economic crisis while the health crisis lingers.

[2] Available on the Senate Banking Committee's website.

- ***Direct assistance to renter households to meet their residential lease obligations.*** The Centers for Disease Control (CDC) and the Department of Health and Human Services (HHS) recently announced a federal eviction moratorium through the end of 2020.[3] The CDC's action underscores the need to couple the eviction moratorium with an emergency rental assistance program that supports struggling low-income and middle class renter households. Financial support is needed not only to help tenants meet their rent obligations, but also to provide the critical revenue that apartment owners need to pay state and local property taxes, employ their own workers, cover the elevated costs for safe and healthy building environments in the COVID-19 era, and pay their mortgages.[4]

- ***Emergency rent assistance for struggling business tenants to help these employers pay workers' salaries and benefits.*** Business tenants (like residential tenants) that fail to pay contractual rents when they become due will be saddled with outstanding lease obligations that prolong and dampen their financial recovery. The last thing struggling employers need to worry about as they try to re-open and operate under the "new normal" is to catch-up on missed rent payments. Any direct ***residential*** tenant assistance program should be combined with a direct ***business*** tenant assistance program. Rent assistance for businesses will free-up dwindling resources so tenant-employers can direct whatever available revenues they have to compensate their workers and cover health insurance and other employee benefits.

Hitting the "refresh" button for Main Street lending – with terms and conditions that speak to current market conditions – can amplify the financial support that the next COVID response package should afford to families, workers, and residential tenants. Indeed, MSLP is as much a ***jobs*** stabilization program for the U.S. workforce as it is a ***credit*** program for businesses: "Businesses eligible for the [MSLP] provide work for 45 million Americans and account for nearly 40% of private sector employees."[5]

II. REAL ESTATE'S BROAD ECONOMIC IMPACT

The contribution of commercial real estate to the nation's economy and Americans' well-being is vast and far-reaching. From jobs to housing and infrastructure, from state, local, and airport taxes to pension income and retirement savings, America's commercial real estate is a driver of economic activity and security in the United States.

A. *Commercial Real Estate (CRE) and Current Economic Conditions*

Since the onset of the pandemic, conditions in real estate have largely tracked the underlying economy. Government social distancing mandates shuttered stores, restaurants, and other establishments – causing millions of Americans to lose their jobs and work greatly reduced hours. Those more fortunate have worked from home, but families have been forced to juggle the demands and stress of their jobs while somehow providing day care and education for their

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[3] 85 Fed. Reg. 55,292 (Sept. 4, 2020)

[4] Speaker Pelosi has been reported to state, "If they extend the moratorium, people won't have to pay their rent just yet. It'll get pushed down the road, unless we get some money for them to compensate for what they have to get. And that's not just for the renters, that's for the landlords" too. *White House moves to halt evictions as fears of coronavirus-fueled housing crisis grow,* CNBC (Sept. 1, 2020).

[5] *The Fourth Report of the Congressional Oversight Commission* (Aug. 21, 2020), at p. 13 (hereafter, "COC Fourth Report").

children. Larger conditions that drive economic productivity and job growth ground to a halt, as many jurisdictions stopped construction.

The most vulnerable among us – our nation's seniors – have suffered a terrible toll because of COVID. While the long-term outlook for seniors housing remains positive, the independent living, assisted living, and nursing home properties that seniors call home are enduring immediate losses to asset values and slow-downs in leasing activity.[6] This CRE asset class has been among the hardest hit by the COVID-induced recession.

The Great Recession of 2008-09 was a financial crisis largely stemming from changes in credit and other financial practices. The ***current*** stress in real estate markets reflects events arising from the ground up, in the real economy – notably the erosion of incomes for commercial tenants and residential renters, and in the case of hotels, reduced business and leisure travel. Appendix A provides greater detail on the economic status of certain real estate asset classes as well as real estate debt markets as they weather the pandemic, with data provided by The Roundtable's partner organizations.[7]

As demonstrated in the August 7, 2020, hearing before the MSLP Oversight Commission,[8] emergency lending through the programs established under Federal Reserve Act Section 13(3), and supported by the Treasury Department with monies appropriated under the CARES Act, has missed entire swaths of Main Street businesses. The Roundtable respectfully suggests that the MSLP will not have the impact Congress intended unless it helps businesses who cannot obtain conventional credit in the lending marketplace, particularly because they have lost significant revenue since the pandemic started.

To jumpstart the sluggish economic recovery from COVID, the MSLP must become better suited to lend to struggling businesses including those employers that lease building space and pay rent. Asset developers, owners, and managers must also be considered an important Main Street beneficiary. These CRE audiences bear the high, unforeseeable extra costs of providing their business tenants and employees with safe and healthy environments as buildings re-open and prepare for fuller re-entry – through expensive protocols relating to heightened ventilation, flushing-out plumbing systems, cleaning and disinfecting surfaces, workplace reconfiguration to curtail the virus's spread, and contact-tracing applications. Improving Main Street lending so CRE tenants, builders, and owners can actually ***use*** Fed-purchased credit is particularly critical to put our country on a sustained path to recovery considering the profound impact the real estate sector has on the nation's economy, as set forth below.

B. *Market Value*

Commercial properties across asset classes – apartment, office, retail, industrial, health care, and hotels – represent a major share of the overall economy. At the end of 2018, the total value of America's commercial real estate was between $14.4 and $17 trillion.[9] To put that in

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[6] *The Short- and Long-Term Implications of COVID for Seniors Housing*, National Real Estate Investor (April 13, 2020)

[7] See Appendix A, *infra* at p. 21. RER's partner associations are listed here.

[8] See https://coc.senate.gov/main-street-lending-program.

[9] Nareit®, *Estimating the Size of the Commercial Real Estate Market* (July 2019) (ground-up estimate using CoStar data). Approximately one-third of CRE value is located in the seven "gateway" markets, half is in the next largest 47 markets, and the balance is in other markets.

perspective, the value of our nation's commercial real estate is more than half of the market capitalization of all U.S. publicly traded companies.[10]

C. Contribution to GDP

The operation of existing nonresidential commercial real estate (retail, office, and industrial/warehouse), combined with the development of new commercial buildings, contributed an estimated $1.14 trillion to GDP and $396 billion in personal earnings last year.[11] The multifamily industry, which provides shelter to 40 million residential renters, contributes an additional $400 billion to GDP through apartment construction, improvements, and operational expenditures.[12] The operation of America's hotels, along with hotel construction and capital investment, generate an additional $314 billion in direct economic output.[13] These numbers do not include the enormous indirect benefits that flow from real estate activity such as the revenue generated by retail tenants and further induced guest, employee, and supplier spending in the case of hotels.

D. *Jobs*

Real estate represents much more than just fixed capital, The industry is one of the leading employers in the United States. Real estate companies are engaged in a broad array of activities that directly support an estimated 12.6 million real estate-related jobs. These include jobs in construction, planning, architecture, building maintenance, hotel operations, management, leasing, brokerage, cleaning, security, and other activities. [See Appendix B, *"Real Estate – An Engine of Job Creation"*] In addition, real estate employs millions more indirectly in fields such as mortgage lending, accounting, legal services, investment advising, and environmental consulting.

E. Leverage

U.S. commercial real estate is financed with $4.6 trillion of debt,[14] mostly provided by commercial banks, life companies, government-sponsored enterprises and commercial mortgage backed securities (CMBS). Assuming an aggregate value of $16 trillion (as per Nareit® estimate), U.S. commercial real estate is conservatively leveraged with 71% equity and 29% debt.

F. *Contribution to the Tax Base*

Real estate ownership and activity accounts for nearly one-quarter of taxes collected at all levels of government (this includes income, property and sales taxes). Taxes derived from real estate ownership and transfer represent the largest source — over 72% — of local tax revenues, helping to pay for schools, roads, law enforcement, and other essential public services. Collectively, real estate owners paid more than $509 billion in property taxes to local governments in 2017, the most recent year of available Census data on the topic.[15] In 2018,

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[10] The total market capitalization of U.S.-based public companies traded on the NYSE, NASDAQ, and OTC markets was $30.1 trillion at the end of 2018. Siblis Research Limited (2020), available here.

[11] Stephen Fuller, Ph.D., *Economic Impacts of Commercial Real Estate* (NAIOP Research Foundation 2020).

[12] Hoyt Advisory Services, *The Contribution of Multifamily Housing to the U.S. Economy* (National Apartment Association and the National Multifamily Housing Council, 2019).

[13] Oxford Economics, *Economic Impact of the U.S. Hotel Industry* (Aug. 2019).

[14] Federal Reserve, *Financial Accounts of the United States* (June 2020) (Table L.217 Total Mortgages).

[15] U.S. Census Bureau, *2017 Census of Governments: Finance* (March 2020); *see also* Urban Institute, *State and Local Finance Initiative: Property Taxes*.

businesses paid nearly $300 billion in state and local property taxes, more than they paid in sales taxes, corporate income taxes, and individual income tax on pass-through business income combined.[16] Local property taxes provide more than a third of all money used to finance public education.[17] In addition, according to the Near Airport Parking Industry Trade Association (NAPITA), real estate owners operating properties proximate to U.S. airports paid nearly $25 million in 2019 directly to such airports, supporting their budgets and operating expenses.

According to one study, an average commercial property pays 1.724 times *more* in taxes compared to taxes associated with a home.[18] A recent survey of all 50 States found that the typical large city in the United States imposes an average annual tax of 1.92% on the value of commercial properties (land and building, combined).[19] As a result, the health of state and local governments – and the quality of the services they are able to provide – are closely related to the strength of real estate markets.

G. *Contribution to American's Retirement Savings*

The retirement security of workers and retirees is closely connected to the strength of U.S. commercial real estate. Pension funds, educational endowments, and charitable foundations have invested nearly $800 billion in real estate, which generally delivers a predictable, long-term revenue stream that is tied to rental income and property appreciation.[20] Real estate investments can be found in 87 percent of all public and 73 percent of all private sector pension funds.[21] Insurers, another critical source of retirement savings and survivor benefits, also rely on real estate returns to fund policy payouts to beneficiaries. An estimated 68 percent of insurance companies are actively invested in real estate.

Labor unions, through their pension funds, represent some of the largest and most active investors in U.S. real estate. America's building trades unions manage $600 billion in pension fund assets and maintain a report card on how well asset managers connect pension fund investments to projects that create union jobs.[22] Since its inception in 1977, the real estate arm of the Union Labor Life Insurance Company (Ullico), organized labor's group insurance provider, has participated in the funding of more than 500 real estate projects nationwide totaling in excess of $16 billion.[23]

H. *Contribution of Rents Paid by Business Tenants*

Monthly rents paid by business tenants to real estate owners and operators are a critical income source that flows throughout the economy. Rents enable businesses to lease the work spaces where they profitably operate, and where their employees gather and collaborate. Rent revenues further support an "obligation chain" that links essential, interdependent markets that keep the economy humming.

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[16] Ernst & Young LLP, *Total State and Local Business Taxes: State-by-State Estimates for FY18* at p. 10 (Oct. 2019)
[17] Lincoln Institute of Land Policy, *The Future of U.S Public School Revenue from the Property Tax* (July 2017).
[18] Tax Foundation, *State and Local Property Taxes Target Commercial and Industrial Property* (Nov. 21, 2012).
[19] Lincoln Institute of Land Policy & Minnesota Center for Fiscal Excellence, *50-State Property Tax Comparison Study* (June 2020).
[20] Meredith Despins, *The Role of Real Estate in Pension Funds*, Nareit Developments (Aug. 2019).
[21] Preqin, *Pension Funds Investing in Real Estate*, Real Estate Spotlight (Sept. 2016).
[22] North American Building Trades Unions, *NABTU Real Estate Manager Report Card* (Jan. 2020).
[23] Ullico Bulletin, *J for Jobs Adds Projects in Chicago and New Jersey* (2018).

A stable stream of tenants' rent revenues provides employers with income they use to compensate the millions of workers across all skill-levels in building operations and maintenance jobs; pay the taxes owed by building owners to state and local governments to support schools, first-responders, public health care, infrastructure, and other critical community services; keep mortgage and debt markets solvent and healthy; and safeguard the billions of dollars of Americans' pension and retirement savings invested in real estate assets.

Often overlooked and underestimated is commercial real estate's contribution to economic productivity and growth. The output of any economic activity is a product of the space in which it is created. By its very nature, as the place in which goods and services are produced, real estate makes other productivity gains possible. Optimizing the location, configuration, and architecture of a business's physical structures contributes directly to the productivity and efficiency of an enterprise and its workers. The functionality and needs of industrial, office, retail, and multifamily residential buildings are constantly changing as markets and ways of doing business transform. At no time has this been more true than today. COVID-19 is causing business owners to rethink how employees, customers, and residents will interact with one another.

I appreciate the opportunity to have described the macro-level impact that real estate has on the economy. Please further consult Appendix A for a snapshot of how specific CRE asset classes are faring in the COVID economy. The data sets a predicate for The Roundtable's policy recommendations to improve access to the 13(3) facilities.

III. MSLP CREDIT RISK SHOULD BE SHIFTED AWAY FROM LENDERS TO HELP BUSINESSES AND THEIR WORKERS THROUGH THE COVID CRISIS

Data on MSLP loans to date show that the program has fallen far short of expectations to help small and mid-sized employers navigate the turbulence caused by COVID-19. The MSLP's Congressional Oversight Commission ("Oversight Commission") has noted the program's "low utilization rate" and "modest initial activity thus far."[24] Others have used stronger words, asserting that the program is "too stingy to banks and borrowers"[25] and deeming it an outright "failure" thus far.[26]

According to the Oversight Committee's most recent report, the Fed has thus far participated in 0.07% of the MSLP's current lending capacity – or $472 ***million*** out of $600 ***billion*** available

[24] COC Fourth Report, *supra* n. 5 at pp. 8, 10.

[25] Glenn Hubbard and Hal Scott, *'Main Street' Program Is Too Stingy to Banks and Borrowers*, Wall Street Journal (July 20, 2020).

[26] *Months into recession, Fed's Main Street loan program is at a crossroads,* Washington Post (Aug. 7, 2020) (reporting statement of COC Commissioner Bharat Ramamurti: "By any measure the Main Street program has been a failure").

capacity.[27] Only 160 lenders are accepting MSLP loan applications from new customers.[28] The difference compared to the PPP's deployment is stark: more than 5.2 million PPP loans have been approved to date, totaling over $525 billion, from 5,460 lenders.[29]

These disparities are readily explained because PPP loans can be ***forgiven*** under the CARES Act. The forgivable aspect of PPP loans allows the federal government to shoulder some of the economic impacts of the pandemic; insulate lenders from exposure to credit risks from defaults; and rely on the banking system to efficiently dispense COVID-relief loans to businesses with the primary purpose to keep workers on payroll with benefits.[30] In contrast, MSLP loans are ***not*** forgivable and banks ***retain*** risk by holding on to 5% of the amount of the loan (while the Main Street Special Purpose Vehicle (SPV) purchases 95% participations).[31] Moreover, the CARES Act "expressly prohibits the Federal Reserve from forgiving the principal amount of loans."[32] And, the Fed's own self-created standards (such as maturity and amortization terms that deter borrowers' interest, and sizing loans based on EBITDA criteria that do not apply to asset-based businesses[33]) are too restrictive on banks and borrowers even if the Fed was taking on ***all*** of the risk.

Because the Fed does not assume a meaningfully higher level of MSLP credit risk than a lender, the same underwriting standards apply to a Main Street loan as they do to any other loan. "Eligible [Main Street] borrowers undergo the bank's standard underwriting process for commercial loans, and each bank evaluates applications according to its [usual] underwriting criteria."[34] Based on the limited uptake of MSLP loans to this point, it seems safe to assume that current origination and other fees[35] are not high enough to lure banks to assume more credit risk while they must still retain 5% of the loan.

This is the Catch-22 that confronts potential MSLP borrowers. If they have lost revenue they may be deemed too "risky" to receive conventional bank lending, yet the Fed's standards also shut the doors of Main Street credit to struggling employers because they do not meet a lender's typical underwriting criteria. While we strongly believe that businesses should have an appropriate level of reserves to rely upon, no employer could have reasonably been expected to retain a buffer of "COVID capital" in anticipation of a prolonged shutdown caused by once-in-a-century viral spread.[36] In our view, in the CARES Act, Congress clearly considered the Fed (as backed by the Treasury's Exchange Stabilization Fund) as best positioned to assume ***more*** credit

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[27] COC Fourth Report, *supra* note 5 at p. 8.

[28] *Id.*

[29] Small Business Administration, [PPP Report,]() slide 2 (reflecting PPP loan approvals through 08/08/2020).

[30] The CARES Act originally provided that a portion of PPP loans could be forgiven for an eight-week period after loan origination. Subsequent PPP reforms enacted by Congress in June further liberalized the forgiveness period, giving borrowers up to six months to spend PPP funds while still allowing debt forgiveness. See *Paycheck Protection Program Flexibility Act,* Pub. L. 116-142, section 3(b) (June 5, 2020)

[31] *Main Street Lending For-Profit FAQs* (Aug. 24, 2020). In particular, see FAQ # L.7 at p. 69 ("The Main Street SPV intends to purchase 95% in any MSNLF Loan, MSPLF Loan, or MSELF Upsized Tranche that are submitted to the SPV for purchase ...."

[32] COC Fourth Report, *supra* note 5, at p. 27. The Fed also interprets its 13(3) emergency lending authority as precluding its ability to issue grants or forgive loans. *Id.*

[33] Recommendations to address these problems are provided *infra* at pp. 13-16.

[34] COC Fourth Report, *supra* note 5, at p. 11.

[35] *Main Street Lending For-Profit FAQs* (Aug. 24, 2020). In particular, see FAQ # G.7 at p. 23.

[36] The COC cites a JPMorgan Chase Institute report to the effect that "[f]ifty percent of small businesses pre-COVID were operating with fewer than 15 cash buffer days – the number of days of typical outflows a business could pay out of its cash balance in the event of a disruption to inflows." COC Fourth Report, *supra* note 5, at p. 30.

risk during this historic crisis ***precisely*** to help struggling employers assemble their "COVID capital buffer" and offer a bridge to post-pandemic conditions.

We recognize that the Fed's 5% retention requirement was likely written with the objective of reducing the central bank's risk of loss by theoretically ensuring higher underwriting standards by banks that have some "skin in the game." Section 13(3) precludes the Fed from lending to insolvent borrowers and it cannot "aid a failing financial company."[37] Under the Dodd-Frank Act, the policies and procedures governing any emergency lending program under section 13(3) must provide "that the security for emergency loans is sufficient to protect taxpayers from losses . . ."[38] However, even after removal of the 5% risk retention rule, several layers of protection are in place to prevent losses by the Federal Reserve. The MSLP's numerous and stringent requirements imposed on both lenders and borrowers are designed to prevent excessive losses. Ninety pages of certifications, covenants, and restrictions are set forth in the Fed's "Frequently Asked Questions" document. Term sheets for each separate MSLP facility regarding "New Loans," "Priority Loans," and "Expanded Loans" further detail the covenants and certifications required from participating banks, and from potential borrowers, to support ***full-recourse*** Main Street lending. These exhaustive prerequisites establish the integrity of Main Street underwriting and function to expose the Fed to only minimal losses.[39]

In addition, perhaps most importantly, the ***Treasury's*** investment in the MSLP is available to absorb losses and mitigate Main Street lending risks. The Oversight Commission "notes that the Treasury does not need new statutory authorization to increase its risk tolerance and potentially incur losses to the $454 billion appropriated to the Treasury's [Exchange Stabilization Fund], which backs the Main Street Lending program."[40]

Policymakers should not ease up on the pedal in exploring how to stimulate greater participation in the 13(3) facilities. We strongly encourage the Committee to consider solutions that can appropriately shift risk away from banks who are reticent to lend under the MSLP. Some indicators that conditions might be improving from the nadir of the current crisis (such as a roaring stock market) may camouflage the economy's uncertain future as infections continue to spread and as the world waits for a vaccine that works and engenders the public's trust. In this regard, we note the following:

- "The U.S. added 1.4 million jobs in August as unemployment fell to 8.4 percent," but "[p]ayrolls are still more than 11 million jobs below their pre-pandemic level."[41] Moreover, the Oversight Commission highlighted the outsized negative jobs impact that business shutdowns have had on people of color, "with the Black unemployment rate at 14.6% and the Hispanic unemployment rate at 12.9%."[42]

- Businesses owned by minorities, women, and veterans have disproportionately felt the pandemic's economic brunt. One estimate reports, "from February to June 2020, the number of Black business owners dropped 19%, Hispanic business owners dropped 10%, and Asian business owners dropped 10%, in comparison to a smaller (but still alarming)

[37] *Federal Reserve Act* § 13(3)(B), codified at 12 U.S.C. § 343(3)(B)(i), (ii).
[38] *Dodd-Frank Wall Street Reform and Consumer Protection Act* § 1101(a)(6), Pub. L. 111-203 (2010).
[39] See generally *Main Street Lending For-Profit FAQs* (Aug. 24, 2020).
[40] COC Fourth Report, *supra* note 5, at p. 20.
[41] *U.S. Added 1.4 Million Jobs in August*, New York Times (Set. 4, 2020).
[42] COC Fourth Report, *supra* note 5, at p. 14.

drop of 5% for white business owners."[43] One poll revealed that 34% of small businesses overall did not have the revenue to pay their rent – with "Covid-19 quarantines … especially difficult on women-owned, minority-owned, and veteran-owned businesses."[44] Likewise, Fed data cited in a recent McKinsey & Company report indicate the coronavirus's disparate impact on minority-owned businesses, which are twice as likely to be classified as "at risk" or "distressed" compared to businesses ***not*** owned by minorities.[45]

- Retail sales are recovering month-to-month – more slowly in July (1.4%) as the coronavirus surged in certain parts of the country, compared to June's increase (8.4%). Rent collections from national retail tenants increased this summer after a spring of abysmally low payments to commercial owners – particularly in covered malls from movie theaters, restaurants, gyms, and apparel retail businesses.[46] Yet, compared to a year ago, rents paid by retail tenants to owners in August were down 19%.[47] Twenty-six national retailers have reportedly filed for bankruptcy thus far in 2020.[48]

- Residential rent collections in the multifamily space have been faring relatively well. The National Multifamily Housing Council (NMHC) reported that 92% of apartment households paid August rent through August 27.[49] However, the industry now enters uncharted waters. Expanded unemployment insurance and other CARES Act "safety net" programs, which have helped households pay rent for months, are now expired. The CDC eviction moratorium provides a public health response that assures renters' housing ***without*** an economic response to support rent payments.[50] "Household Pulse Survey" Census data further reveal warning signs on the horizon. One-third of renters surveyed in May – when CARES Act programs were up and running – nonetheless had "no" or "slight" confidence in making their next monthly rent payment.[51] A recent Executive Order that allows the Federal Emergency Management Agency (FEMA) to provide some limited extra unemployment insurance benefits from the Disaster Relief Fund[52] may help in the near term, but it will not aid families deep into the fall and winter if the virus surges again.

Unfortunately, the MSLP has been a glaring gap in Congress's and the Administration's COVID-19 recovery structure. The program's reliance on the intermediation of banks, and by extension their regulators, has produced relatively low demand for the program's loans. As long as banks are required to retain risk, bank underwriting will be the predominant gating mechanism

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[43] *Id.* at p. 13.

[44] *34% of Small Businesses Can't Cover May Rent*, Alignable (April 28, 2020) (results of poll conducted April 24-26) ("[M]ore than half of all women-owned businesses (52%) report being closed, while similar figures surfaced for minority-owned businesses (48%) and veteran-owned companies (44%). That's compared to all other businesses, where only 38% have shut their doors.").

[45] *Covid-19's effect on minority-owned businesses in the United States*, McKinsey & Company (May 2020).

[46] *Retail Rent Collections Begin to Increase*, GlobeSt.com (Aug. 24, 2020).

[47] *U.S. Retail Rent Collections Up from July, Down 19 Percent from Last Year*, Commercial Observer (Aug. 21, 2020) (citing rent collections data from Datex Property Solutions).

[48] *The running list of 2020 retail bankruptcies*, Retail Dive (updated Aug. 17, 2020).

[49] See https://www.nmhc.org/research-insight/nmhc-rent-payment-tracker/.

[50] *Supra* notes 3-4.

[51] *New Household Data Show Renters Face an Uncertain Housing Future*, NMHC (May 29, 2020).

[52] *Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019* (Aug. 8, 2020).

for access to the program. If instead credit risks were fairly shifted to the Fed as backstopped by the Treasury's Exchange Stabilization Fund, Congress's vision to provide liquidity to small- and mid-sized businesses would be more fully realized. Injections of Main Street liquidity will propel the recovery of employers – including the business tenants that lease commercial building space – that drive jobs markets and provide the rental income that ripples throughout the economy and upon which the CRE industry depends.

IV. MSLP POLICY RECOMMENDATIONS

The "unusual and exigent" circumstances caused by COVID-19 are precisely the kinds of conditions that warrant emergency lending from 13(3) facilities. The Roundtable accordingly welcomes the opportunity to offer specific options to improve access to the MSLP to help keep workers employed in our industry, provide liquidity to small- and mid-sized tenants that lease CRE space to operate their businesses – and support the employers that develop, construct, and own income-producing real estate.

As a general matter, we believe that the key to unlocking more MSLP loans is to reconsider the program's delivery and underwriting apparatus. As long as banks are required to retain risk, their normal underwriting standards will be the predominant gating mechanism that impedes robust access to Main Street. If policy makers amended lenders' risk retention requirements, then more CRE business tenants could borrow, more CRE companies would have resources to support their workforce and pay their taxes and mortgages, and it could even create avenues of liquidity to the CMBS market.

The Roundtable believes that most of our MSLP improvement recommendations do not require further legislation from Congress, and could be achieved by administrative changes to the Fed's and Treasury's existing rules and guidance. We accordingly encourage the Committee and Administration officials to consider and collaborate on the following measures to improve the MSLP:

- ***The Fed should purchase 100% of MSLP loans:*** Banks are Main Street's gatekeepers. To incentivize them to promote the program, we suggest eliminating the 5% loan retention requirement. The MSLP facilities' "term sheets"[53] should be modified for the Fed to purchase 100% of originated loans – not 95% as per current constraints. The Fed's purchases should also apply to existing debt. Generous origination fees up to 20% have not spurred lender interest to date, because "even a 5 percent participation in [an MSLP] loan to a borrower that is anything but creditworthy carries significant disincentives for a bank to participate."[54] The Roundtable submits that the 5% risk retention requirement is not even necessary to protect the Fed, considering the MSLP's numerous and stringent requirements imposed on both lenders and borrowers aimed to prevent excessive losses.[55]

  We accordingly urge the Committee and the Fed to consider sale of 100% of an MSLP loan to the Main Street Special Purpose Vehicle (SPV). If lenders no longer retain a 5% default risk, their standard underwriting would not raise a too-high bar to preclude

[53] MSLP "term sheets" for its loan facilities available here.
[54] COC Fourth Report, *supra* n. 5, at p. 39 (citing testimony of Lauren Anderson, Senior Vice President and Associate General Counsel of the Bank Policy Institute, at the COC's August 7 hearing).
[55] See *supra* notes 37 – 39 and accompanying text

borrowers from accessing 13(3) lending in the midst of the COVID economy's "unusual and exigent circumstances."[56] And, as noted earlier, the Treasury's pledge of Exchange Stabilization Fund assets to backstop the MSLP[57] minimizes the Fed's risk exposure and furthers the Governors' mandate to "support employers of all sizes" by providing "powerful support for the flow of credit in the economy."[58]

The Roundtable recognizes that the Fed likely has neither the resources nor expertise to monitor and service an MSLP loan once it is fully transferred to the SPV's balance sheet. We recommend that continued servicing should remain the responsibility of the originating bank, and/or a bank already servicing a borrower's existing debt. The lender is best positioned to attend to the loan and help the borrower manage its Main Street debt and emerge post-COVID as a thriving business. To make it worth lenders' while and compensate their participation as "Main Street servicers," the MSLP should accommodate a special servicing fee of 1% of the loan's balance until it matures – a typical servicing fee amount in the private market – over our recommended seven-year maximum term.

I would be remiss in failing to note that one of my esteemed fellow witnesses, Mr. Scott, has likewise recommended that "[t]he Fed should purchase the entire loan … so that the lenders would have little or no credit risk."[59] This recommendation is also within the spirit of Chair Powell's remarks in May that "timely and appropriately large" steps by Congress, the Fed, and Treasury are needed at this time to so that "liquidity problems" do not morph into "solvency problems."[60]

- ***Loosen overly tight "eligibility" and "affiliation" restrictions on borrowers:*** The Committee should also consider policies to motivate borrower-side interest. The basic point here is that worthy borrowers and industries should be eligible ***in the first place*** to access Main Street loans. In this regard, Treasury and the Fed should revise the MSLP FAQs[61] to state that the "ineligibility rule"[62] – promulgated by the Small Business Administration (SBA) in a completely different lending context[63] – should ***not*** block entry to Main Street. ***All*** businesses with up to 15,000 employees should be MSLP-eligible.

  The Fed and Treasury wrenched the SBA's "ineligibility rule" out of context, and carried it over to Main Street through their own administrative interpretation — not at the direction of Congress, the text of the CARES Act, or the language of the Federal Reserve Act. Small- and mid-sized businesses meeting the required MSLP "employee count" should determine 13(3) lending eligibility here. To be clear, The Roundtable further

[56] *Federal Reserve Act* section 13(3)(A), codified at 12 U.S.C. § 343(3)(A).
[57] *Supra* notes 5, 40. See also Congressional Research Service, *Treasury's Exchange Stabilization Fund and COVID-19* (updated April 10, 2020).
[58] Press release, *Federal Reserve takes additional actions to provide up to $2.3 trillion in loans to support the economy,* (April 9, 2020).
[59] *Supra* n. 25.
[60] Chair Jerome H. Powell, *Current Economic Issues*, speech to the Peterson Inst. for International Economics (Washington, D.C.) (May 13, 2020).
[61] *Main Street Lending For-Profit FAQs* (Aug. 24, 2020). In particular, see FAQ # E.1.3 at p. 23.
[62] 13 C.F.R. 120.110.
[63] Namely, the 7(a) loan program, the SBA's "primary program for providing financial assistance to small businesses." See https://www.sba.gov/partners/lenders/7a-loan-program/types-7a-loans.

believes that the "ineligibility rule" should ***not*** apply to the PPP, either. The CARES Act states that ***any*** business with 500 workers or less (or of a size established by the SBA for a given industry) should be PPP eligible, and PPP loan proceeds can only be used for payroll, benefits, and other fixed expenses – not for the "speculative" purposes that ostensibly justify the rule in the context of SBA's 7(a) loan program.[64]

The MSLP and PPP are already off-limits to public companies and well-capitalized firms that can compete in the marketplace for fair and reasonable borrowing. No ***legal*** business that meets the programs' employee-sizing counts – that also cannot access credit on competitive terms in the COVID economy – should confront the out-of-context "ineligibility rule" as a categorical bar to emergency liquidity.

Similarly, for purposes of determining MSLP's 15,000 employee threshold, the carry-over of SBA's "affiliation rule"[65] is inapt. Rather than applying the SBA's subjective and complicated test to determine affiliated entities, we think the federal government should defer to State laws on business formation. If an entity is legally formed under State laws as its own LLC, LLP, or other structure, that should end the matter for purposes of counting employees. Perhaps some "pandemic revenue loss" requirement might be considered if a particular affiliated entity applies for an MSLP loan. However, a lawfully-formed employer that complies with State-level business structure laws should govern borrowers' access to the MSLP.

- ***Reform MSLP underwriting metrics to better reflect the types of businesses that need Main Street assistance – such as manufacturing, retail stores, restaurants, real estate owners, and other asset-based borrowers:*** Banks underwriting MSLP loans should be granted greater discretion in assessing credit worthiness across industries, with respect to individual borrower circumstances, and based on the types of assets involved. Currently, the MSLP limits a borrower's maximum loan size to a multiple of its earnings before interest, taxes, depreciation, and amortization (EBITDA). As the Fed has acknowledged, EBITDA is not a standard underwriting metric for real estate or other asset-based businesses. If the EBITDA multiple test remains, the number should increase substantially. We recommend that the Fed also allow lenders to use conventional metrics of the real estate industry:

  ✓ For construction and development projects, a 75% maximum loan-to-cost (LTC) ratio.

  ✓ For other assets, an 80% maximum loan-to-value (LTV) ratio, or a 1.2x minimum debt service coverage ratio, based on 2019 operating income.

  ✓ In addition, we believe Net Operating Income (NOI) is a better metric to reflect the long construction and lease-up times in commercial and residential property. The MSLP should allow the maximum loan size for CRE borrowers whose buildings were placed into service after January 2019 based on their projected stabilized NOI.

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[64] See The Real Estate Roundtable's *8-Point Plan to Reform the Paycheck Protection Program,* Point #1 (April 8, 2020).

[65] 13 C.F.R. 121.103, made applicable to the MSLP through # E.5 (at p. 26) of the Fed's FAQ, *supra* note 35.

The Roundtable understands that MSLP Oversight Commissioners and members of this Committee share our belief: the Fed and Treasury should continue exploring whether Main Street might include asset-based and second-lien lending for creditworthy businesses with reasonable cash flow and valued collateral. Such a facility could affect employment by preserving asset-based businesses so workers have jobs that survive the pandemic. We thus encourage policymakers to establish an asset-backed lending facility in conjunction with the MSLP in short order.

- ***Reasonably extend maturity and amortization timelines:*** The Roundtable suggests that the MSLP permit lenders and borrowers to agree to terms of at least six years, and permit borrowers and lenders to agree to amortization schedules that reflects their unique circumstances and borrowing needs. We support recommendations submitted to the Oversight Commission that the maturity for Main Street loans should be extended to seven years (from five years), and amortization of principal should be pushed back to year four (from year three).[66]

- ***Create a preferred equity program for CRE borrowers:*** Congress should allocate unused Title IV CARES Act funds and direct the Fed and Treasury to create a preferred equity program for CRE borrowers, as part of the MSLP or as a separate facility. The new program would purchase positions and provide full or partial guarantees to insured financial institutions to make purchases of preferred equity. This would provide a temporary liquidity bridge to CRE borrowers and avoid existing prohibitions on taking on additional debt. The following technical amendment to Section 4003(b)(4)(A) of the CARES Act would achieve this objective:

    a. TECHNICAL AMENDMENT. Clarify that "obligations or other interests directly from issuers of such obligations" is intended to encompass both the direct purchase of and the provision of full or partial guarantees to insured financial institutions to enable them to purchase preferred equity positions in commercial real estate firms that require the capital to satisfy outstanding debt obligations.

    b. REGULATORY CAPITAL REQUIREMENTS RISK WEIGHT. With respect to the appropriate Federal banking agencies or the National Credit Union Administration Board applying capital requirements under their respective risk-based capital requirements, a preferred equity investment in a commercial real estate firm that receives a full or partial guarantee in accordance with subparagraph (a) shall receive a risk weight of zero percent.

- ***Continue to support the Term Asset-Backed Securities Loan Facility (TALF):*** While not technically part of the MSLP, the TALF falls within the Fed's 13(3) authorities. We commend the Fed's and Treasury's timely decision to revive the TALF and include commercial mortgage backed securities as eligible collateral. The TALF – which includes as eligible collateral triple-A rated agency and non-agency tranches of outstanding (legacy) commercial mortgage backed securities (CMBS) – has thus far proven beneficial to CMBS markets.

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[66] COC Fourth Report, *supra* note 5, at p. 32.

The Fed should also expand TALF to investment-grade instruments below the triple-A rating level that support the commercial real estate market – to ensure liquidity is available where it is needed most without exposing itself to credit losses that would cause a net loss for the program. These could include new issue conduit CMBS and Single Asset, Single Borrower (SASB) new issue and legacy securities.

V. NON-MSLP POLICY RECOMMENDATIONS

We share Chair Powell's view that for some firms, more debt may not be the right answer at this point.[67] In this section, I appreciate the opportunity to provide the Committee with other recommendations – outside of 13(3) authorities – that complement our Main Street options. These further suggestions can provide critical relief to help families, workers, and businesses endure the pandemic and put the U.S. economy on a sustainable path to recovery.

- ***Pass the RESTART Act:*** The Roundtable strongly supports S. 3814, championed by Senators Bennet (D-CO) and Young (R-IN), and endorsed by an impressive list of 53 bipartisan co-sponsors. *RESTART* is where the PPP and the MSLP intersect on a Venn diagram. The bill would mimic the PPP's forgivable loan structure and provide credit to qualifying businesses to cover payroll, benefits, and other fixed costs such as rent obligations. Businesses with up to 5,000 employees could qualify, with streamlined procedures for <500 employee firms. Its provisions would boost lending for underserved businesses owned by minorities, women, and veterans, and target credit for concerns that have sustained a 25% loss in revenue. The Roundtable recommends several minor modifications to the *RESTART* Act similar to the "eligibility" and "affiliation" issues discussed earlier.[68] Overall, this is precisely the kind of policy we need to jumpstart small to mid-sized businesses to help them overcome on-going challenges caused by the pandemic.

  We also encourage that the *RESTART* Act (or any associated PPP improvement efforts) capture the significant reforms proposed by the *Small Business Expense Protection Act.* S. 3162 is championed by Senators Cornyn (R-TX) and supported by 31 bipartisan co-sponsors including Finance Committee Chairman Grassley (R-IA) and Ranking Member Wyden (D-OR). The bill would clarify that employers are not precluded from deducting business expenses, such as employee wages, simply because the expenses are paid out of funds from PPP loans that are subsequently forgiven under the CARES Act.

- ***Establish a residential tenant assistance fund particularly for as long as any federal eviction moratorium is in place:*** As noted earlier, the CDC/HHS eviction moratorium announced recently is incomplete as a policy solution.[69] The moratorium is in place even though expanded unemployment insurance, PPP loans for payroll, and stimulus checks – that were all available for months to help households pay rent – have now expired. In this regard, we appreciate efforts to craft legislation that would provide emergency rental assistance. The Roundtable suggests that these efforts are headed in the right direction precisely because they would provide critical funding for renters to pay their lease obligations. We humbly recommend that any such measure incorporate the following elements:

[67] *Supra* note 60.
[68] *Supra* notes 61-64 and accompanying text.
[69] *Supra* notes 3-4 and accompanying text.

- ✓ Ensure any protections for struggling residential (and business) tenants from evictions be aligned with financial assistance that makes those protections unnecessary in most cases. An eviction moratorium itself only delays eviction if rents go unpaid.[70] Rental assistance can prevent evictions in the first place.

- ✓ Provide corollary economic relief to multifamily owners and lenders in consideration of the harm they may suffer from tenants' missed rent payments, for as long as any eviction protections may endure.

- ✓ "Opportunistic tenants" – that have the ability to pay rent but nonetheless avoid payments – should not benefit from federal eviction protection.

- ✓ Eviction protections should only extend to tenants that make some certification and showing of economic harm as a result of COVID-19 (*e.g.*, lost job, reduction in income). Indeed, mortgagors could obtain CARES Act forbearance only if they sustained COVID-related economic harm.

- ✓ Partial rent payments should be encouraged as much as practicable. Any rent assistance program should be structured so that federal support is available to pay the rent increment that a qualifying residential tenant is unable to pay.

- ✓ Income-level restrictions should be expanded – so that more middle class households renting units geared to "workforce housing" income levels receive support during the COVID-19 economic crisis.

- ✓ Qualifying tenants that already receive some means of rental assistance through an existing program (such as Section 8 housing choice vouchers) should not ***also*** receive support through a temporary emergency rent assistance program. Limited resources should be economized so as much assistance as possible can be made available to renter households.

- ***Establish an emergency rental assistance fund for small business tenants made eligible because they have lost significant revenue during the pandemic.*** As the Committee considers creation of a residential rent assistance program, The Roundtable likewise encourages your careful deliberation of a similar program devoted to help ***business*** tenants meet their rent obligations. Ensuring that business tenants' rents are paid will allow this stream of income to spread throughout the economy, as the revenue supports worker salaries, state and local property tax bases, utility providers, mortgage and debt service, and Americans' retirement savings. The University of Pennsylvania's Wharton School has provided an estimate that a meaningful program designed specifically to help struggling U.S. small businesses meet three-months of their rent obligations would cost around $100 billion. (Wharton analysis available upon request.)

- ***Promote debt restructuring and workouts:*** Government-mandated closures and scaled-back operations mean millions of employers are struggling to cover basic fixed costs, including their debt service payments. Congress should remove obstacles to private sector debt restructurings and workouts that could allow businesses to avoid bankruptcies, foreclosures, and layoffs. Specifically, current tax rules discourage

[70] *Id.*

creditors and debtors from mutually agreeing to modify existing loans because any resulting debt forgiveness can generate immediate tax liability for the borrower, even though he or she has received no actual cash income. Keep in mind, lenders operating at arm's length will reduce or forgive the amount of outstanding debt only when the borrower has suffered a commensurate, and normally greater, loss in the value or earning power of its assets. A debt cancellation event reflects a severe hardship on the part of the borrower, not an enrichment. This is especially true in the case of a debt cancellation due to foreclosure.

In prior economic downturns, Congress has provided relief for cancellation of debt ("COD") income, including the farm crisis in the 1980s, the commercial real estate depression in the early 1990s, and the financial crisis of 2008-09. More recently, the CARES Act exempted loan forgiveness under the $670 billion PPP from COD income. For the next few years, Congress should allow ***all*** distressed borrowers to exclude COD income, or economically similar gains, to the extent that they reduce the basis of their depreciable and non-depreciable assets. The tax owed on restructured debt would not be forgiven, but would be collected over time by way of reduced tax attributes that limit deductions and increase taxable income. In short, the tax will still be paid, gradually, in a way that avoids undue hardship for struggling businesses and hastens the economic recovery. The Roundtable has provided the tax-writing committees with detailed recommendations on how to address pandemic-related COD income and would welcome an opportunity to discuss the issue with this Committee in greater detail.

- ***Pass the Healthy Workplaces Tax Credit Act:*** The Roundtable strongly supports S. 4214, introduced by Senator Portman (R-OH). The bill would provide a refundable payroll tax credit for the costs incurred by a business though the end of 2020 for certain "safe and healthy" workplace measures implemented due to the COVID-19 outbreak. Building owners and other businesses face exorbitant extra costs for "healthy workplace" protocols as they re-open responsibly and prepare their buildings for fuller re-entry. Temporary support to help cover these unforeseen expenses to enhance the comfort of workers, tenants, and guests will help businesses return to "close-to-normal" operations. The tax credit is scaled to provide more robust assistance to small businesses. We recommend that the legislation ensure that the credit is available to hotel and other owners that do not directly hire employees and operate under a managed structure.

- ***Protect schools, non-profits, and businesses from frivolous COVID lawsuits:*** The Roundtable strongly supports the liability protections developed by Leader McConnell (R-KY) and Senator Cornyn (R-TX) in the *SAFE TO WORK* Act. Building owners and managers – and their tenants – have a shared responsibility to re-open in a manner that protects occupants and guests from undue risks of harm. As we "re-open responsibly," businesses need protection from frivolous COVID-related lawsuits so they can focus on re-building customer bases and re-hiring workers. To be clear, we are not talking about protections for businesses that may engage in reckless, grossly negligent, or willful conduct. However, if a business follows available CDC, EPA, and state/local guidance on re-opening, a "safe harbor" should protect them.

- ***Authorize federal pandemic risk insurance:*** Although many businesses believed they had taken precautions to weather business interruption, their insurance policies have not provided the support they expected. Moving forward, the federal government should

provide a pandemic risk/business continuity insurance program to backstop the economic impact of a future public health crisis. As policymakers consider additional stimulus measures, particularly this Committee, it is important to enact measures that provide liquidity to put American workplaces in a position to reopen and rehire. A prospective federal business continuity insurance program should be put into place before the pandemic recurs or future government orders shutdown businesses again, to provide the economy with the coverage it needs to address future public health crises.

VI. CONCLUSION

COVID-19 has shocked our nation's – indeed our world's – economy. Signs of recovery provide cause for optimism and things appear to be moving in the right direction. However, the trends toward a "new normal" feel fragile at best. Unemployment remains at alarming levels, and businesses struggle to re-open and re-gain lost customers and revenue. Families worry about where their next paycheck will come from, amid lingering concerns that the virus has not yet abated and will surge as the fall and winter months approach.

Accordingly, The Roundtable emphasizes that new and improved rounds of COVID-related support are necessary now as much as at any point since the virus reached our shores. We also urge that further assistance should focus on individuals and businesses that have suffered economically during the pandemic. Congress and the Administration took significant and impactful actions early in the economic crisis, particularly in enacting the CARES Act. However, we are highly concerned that without continued support to struggling people and businesses, the current crisis could worsen resulting in more jobs lost, greater stress on local governments, and a much more protracted employment and economic recovery.

The MSLP could provide significant assistance. Yet Main Street's potential is largely untapped. Administrative actions could incentivize lenders to more actively engage small and mid-sized employers such as by reforming the eligibility, underwriting and affiliation restrictions that have significantly hampered the program to date. Changes by the Fed to its program rules and guidance could allow Main Street credit to flow and assist many more struggling businesses unable to access capital elsewhere. These are precisely the types of businesses that Congress designed the program to assist, and they are disproportionately minority-, women- and veteran-owned businesses. Our MSLP recommendations would require little if any additional budgetary allocation.

Supplemental legislative action also is needed to provide rental assistance for residential and business tenants, promote healthy workspaces, and provide reasonable liability protection from frivolous COVID lawsuits. These and other policy responses will help America's resilient families and employers – our most valuable resources – emerge from the pandemic stronger than ever.

These are critical times and we very much appreciate the focus of this Committee. We are prepared to assist the Committee further on these or other matters.

Thank you.

APPENDIX A

COVID-19's Impact on Specific Real Estate Sectors and Markets

Hotel and Lodging Industry

Labor-intensive with an economic impact that extends to surrounding communities and small businesses, hotels are an important barometer of any locality's economic health. Prior to the COVID-19 pandemic, the U.S. hotel industry was at record performance in occupancy and revenues.[71] Hotels in the United States supported 8.3 million jobs and $395 billion in wages and compensation.[72]

As of August 29, nationwide hotel occupancy was only 48%, down from 67% the same week the prior year, and down from 49% the week prior. The occupancy rate in urban markets, typically comprised of larger hotels with a higher employment base, was only 37% -- versus 74% last year.[73] Hotel room revenues (measured as revenue per available room) were down 45% for the week ended August 29th, continuing a steady trend of declines of 45-50% on a weekly basis,[74] stretching back to the peak declines of 80% or more earlier in the crisis.[75] Many hotels rely on the peak travel season during the summer and the situation is expected to worsen in the fall and winter. Occupancies have already plateaued at historically low levels and begun their descent as what meager leisure travel has occurred dries up. Hotels are not expected to return to pre-pandemic revenue levels before 2024.[76]

At the peak of the pandemic, nearly nine in ten hotels had to lay off or furlough workers, and the hospitality and leisure industry lost 7.5 million jobs. Despite small gains in employment over the summer driven largely by restaurants and bars reopening, the leisure and hospitality sector is still down 4.1 million jobs since February. The unemployment rate in the overall accommodations sector is 34.5%, compared to a national average of 8.4%.[77] Prior to the pandemic, hotels supported the employment of 1 in 25 American jobs and this crisis has devastated hotel workers.

Wide swaths of the hotel industry are in danger of going out of business, putting millions of jobs at risk. Nearly two-thirds of hotels remain at or below 50% occupancy, far below the threshold needed to break even and pay debt. Hotel revenue lost due to COVID-19 is expected to exceed $120 billion, a loss of more than 50% of the hotel industry's total revenue in 2019, according to CBRE and STR, a division of CoStar.[78] The pandemic is projected to reduce hotel-specific state and local tax revenues by nearly $17 billion this year – with an additional $9 billion in hotel real estate taxes at risk.[79]

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[71] Revenue per available room (RevPAR), a widely used industry measure, reached the highest level ever recorded by industry analyst STR, a division of the CoStar Group, at the end of 201. STR, *U.S. Hotel Industry Posts Record Levels in 2019, But Lowest Growth Since Recession* (Jan. 2020).
[72] https://www.ahla.com/sites/default/files/oxford2019.pdf
[73] https://str.com/press-release/str-us-hotel-results-week-ending-22-august
[74] *Id.*
[75] *Id.*
[76] https://str.com/press-release/str-te-slightly-downgrade-us-hotel-forecast
[77] *The Employment Situation – August 2020*," U.S. Bureau of Labor Statistics (rel. Sept, 4, 2020).
[78] https://str.com/press-release/str-te-slightly-downgrade-us-hotel-forecast
[79] https://www.ahla.com/sites/default/files/AHLA%20State%20%20Local%20Tax%20Revenue%20Loss%206-12-20.pdf

Retail Industry

Before the pandemic, first quarter of 2020, the vacancy rate in retail real estate was relatively low at 7.7%[80] and total retail rent collections stood at 91%[81]. By the end of May, retail rent collection had fallen to 57% and vacancies were rising[82]. Over the past three months (June, July, August) the percentage of total retail rent collected has risen 16 percentage points (pp)[83]. The pace of the recovery, however, has slowed over the summer. Between May and June, total retail rent collections increased 9.4 pp, from June to July +3.6 pp, and from July to August +2.8pp[84].

At the same time that income from retail tenants has declined dramatically, operational expenses are surging due to COVID-19. Shopping center operational expenditures have increased by an estimated 20.5% due to new health and safety protocols[85], including allowances for curbside pickup, personal protective equipment, increased cleaning services and significant upgrades to HVAC systems.

Over the last 15 years, retail real estate has experienced a gradually shift away from traditional storefronts to service-oriented businesses, such as restaurants and drinking establishments; personal care, health and wellness businesses; and educational, and entertainment facilities[86]. These service-oriented businesses have been particularly hard hit by COVID-19.

America's shopping centers report $190 billion in reduced sales[87], $54 billion in missed rent[88], and more than 7 million lost jobs due to the pandemic.[89] According to research by the International Council of Shopping Centers, there are 6,359 announced store closures since the end of post COVID-19 shutdown (Q2-Q3 2020). The devastating effect of COVID-19 on retailers has put at risk the approximately $400 billion of state and local taxes[90] generated by the shopping center industry that goes to support local communities, public safety resources and infrastructure.

Multifamily Housing

Over 40 million renters reside in America's multifamily housing communities. Setting aside any government-imposed moratoria, apartment owners are proactively and successfully working with their residents during the pandemic to avoid delinquencies and evictions. In its survey of 11.4 million units of professionally managed apartment units across the country, the National Multifamily Housing Council (NMHC)'s Rent Payment Tracker found 90 percent of apartment households made a full or partial rent payment by August 20. This is a 2.1-percentage point, or

[80] National Council of Real Estate Investment Fiduciaries (NCREIF) and ICSC Research
[81] Datex Property Solutions
[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] NCREIF
[86] US Census Bureau, CoStar Realty Information Inc., and ICSC Research
[87] US Census Bureau and ICSC Research
[88] NCREIF and ICSC Research
[89] U.S. Bureau of Labor Statistics and ICSC Research
[90] ICSC Research

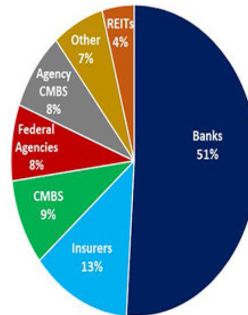
237,056 -household decrease from the share who paid rent through August 20, 2019 and compares to 91.3 percent that had paid by July 20, 2020. These data encompass a wide variety of market-rate rental properties across the United States, which can vary by size, type and average rental price.

The ability of Americans to continue meeting their rental obligations during the pandemic is a testament to the aggressive actions taken by Congress and the Administration to address the economic consequences of COVID-19. That said, there are clear warning signs that should guide policymakers' actions. First, in some cases, multifamily owners may be counting a security deposit as a rental payment, thus overstating actual current collections and suggesting that potential trouble could lie ahead. Second, the continued high unemployment numbers mean that as leases expire, many renters without jobs are going to move back home. During the second quarter of 2020, occupancy rates fell to the lowest level since Q2 2017; U.S multifamily occupancy posted a decrease of 0.6 percentage points year-over-year to 95.3 percent.[91] One highly respected real estate economist foresees apartment occupancy falling to as low as 88% this year.[92]

Renters are likely to be in more high risk occupations, and many were housing cost burdened before the onset of the pandemic. The Terner Center for Housing Innovation at UC Berkeley estimates that nearly 16.5 million renter households have at least one worker in an industry likely to be affected by COVID-19, and among those renter households, more than 7.1 million were already experiencing housing instability.If relief efforts such as the enhanced emergency unemployment benefits and the Paycheck Protection Program are allowed to phase down while unemployment remains elevated and businesses continue to struggle, the percentage of renters unable to meet their rental obligations will undoubtedly rise. The result will be undue economic hardship and further deterioration of the rental obligation chain that underlies much of our economy. For these reasons, it is critical that Congress and the Administration agree to extend, for now, the economic lifelines enacted in the CARES Act, as well as provide rental assistance.

[91] National Apartment Association, *Summer 2020: Weathering the Storm Amid Uncertainty* (Aug. 7, 2020).
[92] Peter Linneman, *Linneman Associates Capital Markets Webinar* (Aug. 2020).

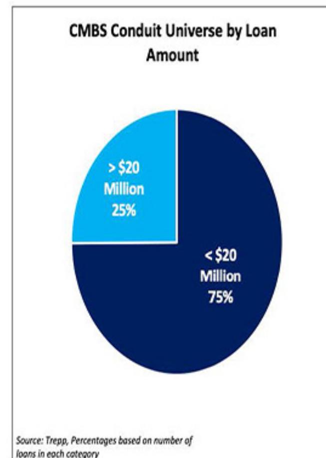
Debt Markets



U.S. commercial real estate debt (including debt associated with multifamily residential properties) totaled $4.66 trillion at the end of the first quarter of 2020. Roughly two-thirds of commercial real estate debt relates to non-residential property with the remainder financing multifamily residential rental property (five or more units). As the pie chart above indicates, the largest holders of the outstanding debt are banks (51%), government-sponsored enterprises and GSE-backed mortgage pools (16%), life insurance companies and pension funds (13%), commercial mortgage-backed securities (9%), and REITs (4%).[93]

Among different capital sources, the CMBS market is most reliant on loans backed by the most impacted property types – namely, hotel and retail – and has thus faced the greatest challenges. Notably, the vast majority – 75% – of CMBS loans are smaller, less than $20 million in size:

[93] Federal Reserve, *Financial Accounts of the United States* (June 2020).



CMBS delinquencies are generally viewed as a reasonable barometer of the health of private commercial real estate credit. The rate of severely delinquent CMBS (121 days late or more) nearly tripled in August.[94] The hotel CMBS delinquency rate has already climbed to the highest figure on record at 23.4%,[95] representing more than $20 billion in debt out of the total $87 billion in the hotel CMBS market. This amount represents a 53% increase in delinquencies over the highest peak during the Great Financial Crisis.[96] As of July, $21.4 billion in troubled retail CMBS loans were in special servicing. This compares to $6.7 billion in December 2019.

Corresponding to the loss of rent which stands at $54 billion (April - August,) CMBS delinquency rates for retail real estate rose by 670-basis points between April and May (3.4% to 10.1%) and by 790-basis points between May and June (10.1% to 18.0%). While delinquency rates declined by 195 basis points between June and July (18.0% to 16.1%), the current delinquency level is almost double the previous record high of 8.2% that was reached following the Great Financial Crisis.

While the current rate of delinquencies and defaults is alarming, the level of stress in commercial real estate debt markets will rise if unemployment remains elevated and COVID-19 continues to put downward pressure on the income of commercial tenants.

[94] *Commercial Mortgage Debt in Distress Surges 320%, Moody's Says* (Bloomberg, Aug. 25, 2020), *available at*: https://www.bloomberg.com/news/articles/2020-08-25/commercial-mortgage-debt-in-distress-up-320-since-march-moodys.
[95] https://info.trepp.com/trepptalk/an-update-on-the-hard-hit-hotel-and-retail-commercial-real-estate-sectors
[96] *Id.*

APPENDIX B

Real Estate - An Engine of Job Creation

CODE	OCCUPATION	TOTAL EMPLOYMENT
119021	Construction managers	293,380
119081	Lodging managers	38,340
BUSINESS AND FINANCIAL OPERATIONS OCCUPATIONS		
119141	Property, real estate, and community association managers	220,750
132020	Property appraisers and assessors	56,320
ARCHITECTURE AND ENGINEERING OCCUPATIONS		
171010	Architects, except naval	126,130
171020	Surveyors, cartographers, and photogrammetrists	56,520
173011	Architectural and civil drafters	98,800
173031	Surveying and mapping technicians	53,030
LEGAL OCCUPATIONS		
232093	Title examiners, abstractors, and searchers	52,890
ARTS, DESIGN, ENTERTAINMENT, SPORTS, AND MEDIA OCCUPATIONS		
271025	Interior designers	60,650
PROTECTIVE SERVICE OCCUPATIONS		
339032	Security guards (excludes transportation security)	1,126,370
BUILDING AND GROUNDS CLEANING AND MAINTENANCE OCCUPATIONS		
371010	First-line supervisors of building and grounds cleaning and maintenance workers	259,140
372011	Janitors and cleaners, except maids and housekeeping cleaners	2,145,450
373010	Grounds maintenance workers	999,960

CODE	OCCUPATION	TOTAL EMPLOYMENT
PERSONAL CARE AND SERVICE OCCUPATIONS		
396010	Baggage porters, bellhops, and concierges	81,460
SALES AND RELATED OCCUPATIONS		
419020	Real estate brokers and sales agents	205,060
n/a	Real estate agents (self-employed)	1,200,000
OFFICE AND ADMINISTRATIVE SUPPORT OCCUPATIONS		
434081	Hotel, motel, and resort desk clerks	267,940
CONSTRUCTION AND EXTRACTION OCCUPATIONS		
471011	First-line supervisors for construction trades and extraction workers (construction = 90%)	626,180
472000	Construction trades workers	4,617,440
473010	Helpers, construction trades	242,400
474011	Construction and building inspectors	110,420
474021	Elevator and escalator installers and repairers	28,350
474031	Fence erectors	25,900
474041	Hazardous materials removal workers	44,240
INSTALLATION, MAINTENANCE, AND REPAIR OCCUPATIONS		
499011	Mechanical door repairers	23,050
499012	Control and valve installers and repairers	52,270
499021	Heating, air conditioning, and refrigeration mechanics and installers	342,040
TRANSPORTATION AND MATERIAL MOVING OCCUPATIONS		
536021	Parking attendants	147,390
TOTAL		**13,601,910**

Source: U.S. Bureau of Labor Statistics, National Occupational Employment and Wage Estimates (May 2019), available at: https://www.bls.gov/oes/current/oes_nat.htm#00-0000; Estimate for self-employed real estate agents based on NAR membership data available at: https://www.nar.realtor/membership/monthly-report

PREPARED STATEMENT OF WILLIAM E. SPRIGGS

PROFESSOR OF ECONOMICS, HOWARD UNIVERSITY, AND CHIEF ECONOMIST, AFL–CIO

SEPTEMBER 9, 2020

Thank you, Chairman Mike Crapo and Ranking Member Sherrod Brown, for this invitation to give testimony before your Committee today on the issue of where the economy stands with the status of the Federal Reserve's emergency lending facilities. I am happy to offer this testimony on behalf of the AFL–CIO, America's house of labor, representing the working people of the United States, and based on my expertise as a professor in Howard University's Department of Economics.

We began this year with the world facing a novel virus for which we lacked adequate cures and that proved more deadly than most flus we had encountered. The lethal potency of the virus and its easy spread required a new set of responses. Given the lack of a cure and its costly nature of care on people and health systems, the world adopted a policy of social distancing and isolation to prevent its spread. This policy proved very effective in reducing deaths, and for the Nations that took aggressive measures, like New Zealand, proved highly effective in ending the virus' threat.

But, despite the huge economic benefits of these policies, slowing the economy to carry out social distancing had huge costs, too. By all measures, the benefits of saved lives alone, far outweighed the cost of slowing the economy. It is important to note, that in the United States where our implementation of social distancing policies was very uneven, it is also clear that the uncertainty of COVID itself, slowed economic activity. The United States policy variation has clearly documented that social distancing policies are not the driver of the economic slowdown, but the spread of the disease is the cause of the economic slowdown. The difference is in the efficacy of the policy in slowing down the virus spread.

This virus has caused the greatest decline in global economic activity since World War II. It has affected the Gross Domestic Product of every advanced economy according to the Organization for Economic Cooperation and Development. In response to this tremendous and unprecedented slowdown, economic policymakers everywhere have responded with swift, large, and bold actions. The U.S. Congress took early action to sustain the economy this Spring. Two quick acts of Congress, the Family First and the Cares Acts, bought time for policies to contain the virus to take hold. Unfortunately, while the economic policies were effective, the policies to contain the virus in the United States have lagged those of other countries, so our economy now enters a new phase of high uncertainty because of COVID without the aid of those earlier bold actions.

In March, the uncertainty of COVID slowed certain economic activity in the United States that led to the first month of job loss, ending its record string of growth. But April brought the most dramatic loss of jobs in U.S. economic history. In that 1 month, we lost more than twice the jobs lost over the course of the Great Recession. While other advanced economies planned for social distancing by massively subsidizing payroll, America chose to dump workers into our unemployment insurance system. Rather than subsidize payroll, we chose to try and subsidize workers within the unemployment insurance system. To approximate preexisting payroll, an additional $600 was added to weekly unemployment benefits. This policy choice might have worked the same as with other advanced countries if COVID were put under control, and sufficient economic certainty were restored for households to resume normal consumption.

However, there were many challenges to using the U.S. unemployment insurance system. The greatest job losses in April, almost 8 million, were in the leisure and hospitality industry. Our Nation's unemployment insurance laws were not well designed for these workers, and in normal economic times, workers in those industries are the least likely to receive unemployment benefits when they become unemployed—fewer than 8 percent in 2018. And, at its peak during the Great Recession the system handled a little over 3 million in May 2009, but received over 6 million at the end of March 2020, and had a 4-week average above 3 million for 7 weeks from April to May. This overwhelmed the system and created backlogs, delays and confusion for American households that had lost labor income.

Congress also granted the Federal Reserve funds and unprecedented latitude to devise policies to maintain liquidity in the capital markets. This let the Fed take steps to ease blockages in public finance and corporate borrowing that had frozen markets for those needed lines of liquidity. In periods of heightened uncertainty, a primary function of the Fed is to reduce uncertainty so the financial markets can function. But this case was different because the uncertainty from COVID were high and affected a broad range of economic actors, many that do not rely on Wall Street,

but need access to liquidity from the commercial banking sector. Here the Fed was met with restrictions from the U.S. Treasury on how to devise plans to help those firms that live on Main Street. As with the Payroll Protection Plan loans overseen by the U.S. Treasury, banks were the primary financial intermediary. And, as with the PPP program, the banking sector proved both inadequate to the task and a reluctant participant. The banking sector also showed the problems of discrimination that plague banking, and access to minority-owned firms was greatly limited. Further, rather than let the Fed take advantage of the funds from Congress to assume room for risk in making loans, the U.S. Treasury limited this possibility, resulting in the program under the Fed's control as far more limited than would have been desirable given the uncertainty we faced.

However, at this point, it is not clear whether the primary concern should rest with the Fed. The economic scarring of the downturn is taking hold on the economy. The initial plans of the Family First and Cares Acts to bide the economy over the COVID fight, now confront unemployment levels looking like the Great Recession. It is no longer the case that the best set of policies are in deepening the debt position of companies or households. Increased debt burdens in those sectors would lead to a weakened recovery as both the household and business sectors would engage in balance sheet consolidation during the early stages of a recovery, slowing down the economic rebound. In fact, most companies have already leaned toward increasing their cash balances, given the uncertainty that COVID has created. And, initially, those households with the greatest discretion used their Economic Impact Payments to consolidate their balance sheets as well, paying off debts or increasing their cash balances, too.

The jobs report we got from the U.S. Bureau of Labor statistics for August was very revealing in respect to where the economic challenges now stand. First, the report was the first since the end of the $600 weekly Federal Pandemic Unemployment Compensation payments to the unemployed. This gave a final test of whether those payments had distorted labor market participation by encouraging lower wage workers to stop seeking employment opportunities. Several studies looking at the effect of the FPUC showed there was no effect on labor force participation, with some showing it had a positive effective, mostly because the additional benefit encouraged many low wage workers to apply for unemployment benefits and thus get and remain engaged in the labor market. In normal economic times, low wage workers are the least likely to apply for unemployment benefits. And, research has shown unemployment insurance benefits help workers remain in the labor market, rather than become discouraged and drop out of the labor force. Clearly in August, there was no spike, or break in trend with labor force participation, putting to final rest the payments were a disincentive to returning to work.

This new information we have on the performance of the FPUC is key because it showed clearly in the data from the U.S. Bureau of Economic Analysis the role the FPUC had in offsetting the significant drop in aggregate payroll for personal income. Without that money channeled to households, the economy will have a hole it cannot make up. Available evidence on spending patterns, clearly showed that the FPUC and the EIP payments kept consumption smooth for the bottom 75 percent of American households. Absent that support, to offset lost payroll income, we are heading into the final quarters of this year facing a huge headwind.

Second, the report showed a slowing down in the job bounce back from April's decline. In May, with some key hotspots under better control, like New York city, employment was able to return quickly. Spikes in COVID activity around the country after Memorial Day, however have slowed the employment rebound. We remain down over 11 million jobs from our peak in February of this year. That is greater than the depths of the Great Recession. The number of workers losing jobs permanently is rising in step with the pattern of the Great Recession, as is the number of workers unemployed over 26 weeks. The rate of net job creation is too slow to get those numbers down, and those losses mount on personal household balance sheets. A feedback loop can set in to slow the recovery in aggregate demand and slow the recovery in jobs. So, this adds to the affect of the missing $600 FPUC payments in unemployment checks.

The share of unemployed workers who are from households with little wealth and no liquidity is rising. The initial recovery for jobs has been far more rapid for White households than for Black and Hispanic families. Black and Hispanic families have significantly less wealth and liquidity than White households. The result is that a $1 drop in labor income leads those households to experience a greater than drop in consumption than for White households. The extra $600 the FPUC provided to unemployment benefits is needed for these households to maintain spending and keep aggregate demand at levels to sustain the macroeconomy. And, because Black and Asian American workers face discrimination in the labor market, they have the

longest duration of unemployment spells. The loss of job for them has far greater financial risks. Consequently, the $600 FPUC does not carry the same work disincentive, as they face much lower probabilities of an unemployment spell ending with a job; meaning, their prospective loss of income from refusing a job offer is much higher. This dimension of racial equity underscores another important element of the FPUC.

Other advanced economies that chose to subsidize payrolls, have much lower levels of unemployment than the United States. They will enter the final quarters of the year with healthier household balance sheets and they have managed to do a far better job of containing the virus. For the United States to enter the final quarters in a similar position will require maintaining personal income as best possible. Having chosen the path of using our unemployment system as the avenue of maintaining payroll employment levels, we have little choice but to continue down that path by keeping the FPUC up.

The Fed cannot maintain personal consumption, or solve the COVID mystery. So, it must rely on the Congress to take actions to maintain household incomes. That can only be done through fiscal actions.

Similarly, State and local governments are constrained by State constitutions in borrowing money to balance their fiscal issues. They are essentially, public actors under a single currency. As such, State and local governments must look to the Federal Government and Congress to act to provide stability in the face of macroeconomic uncertainty. In this economic situation, State and local government austerity will be counter-productive to an economic recovery, and further complicate the situation because they are playing a vital role as partners in getting COVID under control. At this point we need State and local governments to increase their investment in the safe return of workers to employment, and students to their schooling; while maintaining State and local government investments in the rest of our Nation's infrastructure. The great lesson of the Great Recession was the drag that State and local government austerity can play on economic recovery. As we enter the final quarters of this year, we will be facing the new fiscal years for State and local government. An additional headwind of drag from public investment austerity will make recovery even more difficult.

We are heading into the final quarters of this year with a more severe labor market than the depths of the Great Recession while facing headwinds from the household and public sector. This is dangerous. We rely on households to pay rents, make mortgage payments and to buy the goods that let small businesses pay their rents and workers. Ultimately, the health of our financial sector rests on the real economy, and households making the payments that repay the loans the financial sector has made. Currently, the Fed has taken the actions it must to reassure the financial markets there is sufficient liquidity for businesses to borrow to keep up business. But the Fed cannot pay off the loans that banks make.

What we are risking at this point is a failure of the real economy that increases uncertainty that loans will be repaid. That is something that Congress alone can address. It can keep to its course of maintaining payroll through adequate unemployment insurance payments, and keep the household sector afloat until the uncertainty of COVID is reduced and households return to normal consumption patterns, or it can watch personal consumption collapse and try and deal with the fall out that may contaminate the solvency of the financial sector. Congress can maintain the State and local government sector, its vital partner in getting COVID under control, or face disappoint in deploying a vaccine when, and if, one becomes available and the needed steps for safe opening of more workplaces.

Congress should hope the Fed can maintain the economy while it waits to act. The Congress can ask the Fed to be as aggressive as possible in making lending available to restart the economy. Congress can direct the U.S. Treasury to loosen the reigns and let the Fed be more creative in getting funding to Main Street, recognizing this is a period of higher risk but also where more risk must be taken to ensure that when the recovery takes hold we have the greatest competitive balance our economy can maintain.

But, in conclusion, Congress must act. It cannot pretend that jobs will magically appear and the labor market will heal itself before the loss of payroll income collapses demand. It cannot wish the job crises away, anymore than it can wish COVID away. Actions are needed on both fronts, and a full economic recovery is not possible without actions on both fronts.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR CORTEZ MASTO FROM HAL S. SCOTT

Q.1. Should the Federal Reserve lower the minimum loan size for the Main Street Lending Facility to encourage participation by smaller businesses?

A.1. Yes, to $100,000.

Q.2. Should the Federal Reserve consider extending the loan terms for the Main Street Lending Facility for a year or more?

A.2. Yes, there should be 10 year maturity on the loans.

Q.3. Should the Federal Reserve continue to require banks retain 5 percent of the loan through the Main Street Lending Facility?

A.3. No, it should make 100 percent of the loans. Banks are very reluctant to loan if they bear credit risk for less worthy but more needy borrowers.

Q.4. Do you think the employee retention provisions in the Main Street Lending Program are adequate?

A.4. Yes.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR SINEMA FROM HAL S. SCOTT

Q.1. In August 2020, it was reported that the Primary Market Corporate Credit Facility (PMCCF) had yet to make a single purchase and the Secondary Market Corporate Credit Facility (SMCCF) was only holding around $3.6 billion of the Facilities' combined $750 billion corporate debt-buying capacity. It has also been reported that while some of this debt was purchased from struggling companies, the SMCCF has also purchased from cash-heavy companies performing well in the stock market. The Federal Reserve argues that buying bonds from massive companies keeps major employers in a healthy position. Others argue the emergency funding is going to the wrong place.

What do you make of these criticisms?

A.1. Do not have an opinion.

Q.2. How have current eligibility requirements for PMCCF and SMCCF affected overall uptake of these programs?

A.2. Do not know.

Q.3. What do you think are the biggest barriers to entry for companies looking to participate in the Federal Reserve's debt-buying program?

A.3. Do not know.

Q.4. Some of the 13(3) Facilities, such as the PMCCF and SMCCF, require applicants to have ratings from nationally recognized statistical rating organizations (NRSROs) that are accompanied by

one of three “major” credit rating agencies. The Federal Reserve also requires some applicants to obtain ratings no later than the date a facility was stood up. I’ve recently partnered with Senator Tim Scott to introduce the Access to Emergency Credit Facilities Act, which would mandate the Federal Reserve open up the programs to all qualified NRSROs registered with the Securities and Exchange Commission.

Do you think limiting ratings to one of the three major NRSROs has limited access to the Federal Reserve’s corporate bond purchasing and other relief programs for small- and mid-size companies?

A.4. Do not know.

Q.5. Do you think opening up these programs to other credible ratings agencies will help the Federal Reserve purchase more debt from those most in need?

A.5. Do not know.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

September 8, 2020

The Honorable Mike Crapo	The Honorable Sherrod Brown
Chairman	Ranking Member
Committee on Banking, Housing,	Committee on Banking, Housing,
and Urban Affairs	and Urban Affairs
United States Senate	United States Senate
Washington, DC 20510	Washington, DC 20510

Dear Chairman Crapo, Ranking Member Brown, and Members of the Committee:

My name is George Selgin. I'm a professor (emeritus) of economics at the University of Georgia and the Director of the Cato Institute's Center for Monetary and Financial Alternatives. I thank your committee for allowing me to comment upon the Status of the Federal Reserve Emergency Lending Facilities.

My remarks here concern the Federal Reserve's Main Street Lending facilities. So far, those facilities have lent only a very small fraction of the $600 billion quota assigned to them by Congress and the U.S. Treasury. The proximate reason of this low uptake consists of strict lending terms that either exclude or are uninviting to many struggling firms. But a more fundamental cause consists of the government's belief that, by having the Fed "lever up" a smaller quantity ($75 billion) of funds appropriated to support Main Street loans, the Government avoids much of the burden the public would have to bear were Congress to fund Main Street lending to the full extent of its assigned $600 billion limit.

I plan to explain why that belief is mistaken, and how setting it aside would allow the Treasury and the Fed to offer truly effective Main Street support.

The Main Street Lending Facilities

The Federal Reserve's Main Street facilities are supposed "to support lending to small and medium-sized" businesses and nonprofits "that were in sound financial condition before the onset of the COVID-19 pandemic." To qualify for this assistance, businesses must either have fewer than 15,000 workers, or they must have earned less than $5 billion in 2019 revenue. The Main Street facilities complement the Fed's Primary and Secondary Corporate Credit facilities, which only assist companies large and well-established enough to have issued investment-grade securities prior to the pandemic. They both complement and supplement the SBA's "Paycheck Protection Program" (PPP), for which only single-establishment companies of 500 or fewer employees, or some chains with 500 or fewer employees per location, are eligible. Whereas the maximum PPP loan is for $10 million dollars, a Main Street loan can be for as much as $35

million. Small companies that have secured PPP funding may also borrow from the Fed's Main Street facilities provided they can demonstrate a need for further aid.

Almost 30,000 companies employ between 500 and 15,000 employees (henceforth "midsize companies") in the U.S. today. Many were sound until the outbreak of the pandemic, but cannot secure needed emergency support from either the Fed's Corporate Credit facilities or the PPP program. The Fed's Main Street facilities are therefore their principal if not only potential source of emergency support.

So far, however, the Main Street facilities have fallen well-short of fulfilling that hope. Since they became fully operational two months ago, those facilities have processed fewer than 100 loan applications, and the Fed has purchased only $1,172 million in loans. At this rate it would take *over 85 years* for the programs to reach their planned capacity! This limited uptake doesn't reflect any lack of need for support among qualifying businesses. Instead, potential applicants complain that, although Main Street loans are less burdensome than ordinary bank loans, their terms either disqualify, or appear too burdensome to make borrowing worthwhile.

Without some sort of assistance, many of these firms, though viable until the crisis, are likely to fail. And while some might fail even with help, owing to permanent changes in post-COVID business conditions, the failure of others will result in a regrettable waste of firm-specific capital, a longer-than necessary post-COVID recovery, and a greater than necessary welfare losses—the very results Congress sought to avoid by passing the CARES Act. In short, cracks have appeared in that measure; and many mid-size firms are in danger of falling through them.

The Argument for the Fed's Involvement

The strategy Congress and the Treasury have chosen for aiding Main Street depends on the Fed's willingness to serve, not merely as a conduit for Congressionally-appropriated aid to small and medium sized businesses, but as the chief source of funding for such aid. Speaking on March 22nd of the Treasury's broad reliance upon the Fed to supplement CARES Act funding, Treasury Secretary Mnuchin remarked that the Fed could "lever up" the $454 billion in Treasury backstop funding to over "$4 trillion to help everything from small business to big business get through."[1] With that plan in mind, the Treasury has devoted $75 billion in CARES Act funding to the Fed's Main Street facilities case, its implicit assumption being that the Fed would be willing and able to lend as much as 12.5 times that amount.

Unfortunately, in reaching this conclusion, Congress and the Treasury either underestimated the potential riskiness of emergency Main Street lending, or they assumed that the Fed would be willing to risk incurring losses exceeding its Treasury-provided backstop. Neither assumption has been born out in practice.

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[1] See Jeanna Smialek and Alan Rappeport, "Fed Could Bolster Groups of Businesses and Localities With Funds in G.O.P. Bill," *The New York Times*, March 22, 2020, https://www.nytimes.com/2020/03/22/business/economy/fed-bailout-congress.html

13(3) Limitations on Fed Loss Taking

Section 13(3) of the Federal Reserve Act spells-out the rules for its emergency lending to nonbank individuals, partnerships, and corporations. It allows the Fed to lend on such borrowers' "notes, drafts, and bills of exchange when such notes, drafts, and bills of exchange are indorsed or otherwise secured to the satisfaction of the Federal Reserve bank." They stipulate, furthermore, that "the security for emergency loans" must be "sufficient to protect taxpayers from losses."[2]

The ultimate aim of these rules is that of safeguarding Congress' "Power of the Purse," as enshrined in Article 1, Section 9 of the Constitution, which provides that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Because losses incurred by the Fed are deducted from its obligatory Treasury remittances, they are legally equivalent to money "drawn from the Treasury." By a special, long-standing arrangement, the Fed is allowed to deduct from remitted interest earnings no more than what's required to cover the system's ordinary operating expenses. *These provisions incline the Fed to err on the side of caution rather than risk breaking the law.*

Treasury Backstops are Insufficient

Even in ordinary times, the risks of business lending are considerable. Consequently, commercial banks generally exercise considerable due diligence in arranging and overseeing business loans. During a major economic crisis, the risks of business lending become much greater. When loans are offered only to struggling firms that that are "unable to secure adequate credit accommodations from other banking institutions," the risk is greater still: in practice, the targeted firms will lack anything resembling "good banking collateral," and most will lack *any* sort of collateral sufficient to fully secure their loans.

For these reasons, it has proven impossible to design a Main Street lending facility that strictly conforms to the Federal Reserve Act's 13(3) provisions. Indeed, far from requiring that all of its Main Street loans be fully secured, the Fed only requires security for "expanded" Main Street loans, and then only when the underlying loans are themselves secured. These facts explain why the Fed could not possibly help Main Street on its own: Treasury backstopping of Main Street lending has been absolutely necessary.[3]

But while it may be necessary, the $75 billion in equity has not been *sufficient* to protect the Fed from the kind of risks to which Main Street lending might expose it. Because of this, the Fed has resorted to other precautions, including various strict lending terms, and the requirement that commercial Main Street loan originators retain 5 percent of the loans they originate. It is owing to these risk-control measures that both the uptake of Main Street loans and commercial banks' interest in participating in them have been so limited.

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[2] See https://www.federalreserve.gov/aboutthefed/section13.htm

[3] See George Selgin, "The Constitutional Case for the Fed's Treasury Backstops." *Alt-M*, April 13, 2020, https://www.alt-m.org/2020/04/13/the-constitutional-case-for-the-feds-treasury-backstops/

Nor would a larger but still limited Treasury backstop necessarily fix things. Between 1934 and 1957, the Federal Reserve made business loans, both directly and through commercial bank partners, on terms not unlike those of its current Main Street New Loan facility. One difference with today's program was that the Fed's 13(b) lending, which was capped at $280 million dollars, relied on a Treasury backstop equal to a full 50% of that limit. Yet, owing in part to loss sharing with its partner banks but also to its own determination to limit losses despite its fat equity cushion, the 13(b) program also proved to be a major disappointment.[4]

The "Lever Up" Fallacy

As I've noted, Congress's decision to rely on the Fed not merely as an administrator but as a source of Main Street support, despite all the risk-avoidance behavior that invites, rests on its desire to "lever up" its CARES Act appropriations. That desire in turn reflects the view that such leveraging-up is fiscally advantageous. But that view is false. Having the Fed lend $600 billion using a $75 billion Treasury backstop, or no backstop at all for that matter, doesn't guarantee a fiscal burden lower than that which would result from having the Treasury fully-fund a $600 billion lending program by issuing new debt for the purpose.

The expected fiscal burden of these alternative financing arrangements is instead roughly equivalent, because both ultimately involve similar interest expenses. When the Treasury borrows $600 billion, that expense consists of the interest paid in the securities it issues. When the Fed instead creates the necessary credit, it adds $600 billion to the outstanding quantity of bank reserves, which also bear interest. That interest is earned by banks, and deducted from the Fed's Treasury remittances. The result is much as if the Treasury itself were responsible for paying interest on banks' reserves. The difference between the interest burden of a Main Street program fully-funded by Congress, and financed by Treasury security issues, and one funded entirely by Fed credit creation, is simply the difference between the interest paid on reserves and the interest on securities. Although the rate paid on reserves can differ at any moment from the rate on securities, there is no reason to suppose that one option will be less burdensome than the other. As I write this, for example, the 3-year Treasury bond yield is 18 basis points, while the interest rate on reserves is only 10 basis points. But because the rate on reserves is a floating rate, it might rise enough in three years to make the longer-term financing option worthwhile.[5]

A Revised Main Street Program

To conclude: in choosing to rely on the Fed to "lever up" its CARES Act support for struggling small and mid-sized businesses, Congress tied its hands unnecessarily. By exposing the Fed to risk, this strategy invited it to build risk-control arrangements into its Main Street facilities that have prevented them from supplying more than a small fraction of the aid Congress intended to make available. Yet having the Fed "lever up" Congressional appropriations doesn't actually

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[4] See idem., "When the Fed Tried to Save Main Street," *Alt-M*, March 30, 2020, https://www.alt-m.org/2020/03/30/when-the-fed-tried-to-save-main-street/

[5] For more details see idem, "The Treasury's Helicopter Cop-Out," *Alt M*, March 20, 2020, https://www.alt-m.org/2020/03/20/the-treasurys-helicopter-cop-out/

offer any clear fiscal savings. Consequently, the strategy has been not only unsuccessful but unnecessary.

It is not too late for Congress to correct matters on time to assist many struggling firms. It can do so by (1) having the Treasury fully fund the Main Street programs, using its remaining CARES Act funds and, perhaps, by providing additional funds, and (2) having the Treasury and the Fed revise the Main Street facilities' terms in view of the fact that the Federal Reserve Banks will no longer be extending their own credit to businesses or assuming any credit risk. Possibilities the Treasury and Fed might consider include lower Main Street lending rates; conditionally forgivable loans; loans of longer duration; and less or no reliance upon commercial bank risk sharing.

Respectfully,

George Selgin
Director, Center for Monetary and Financial Alternatives
The Cato Institute

UNITED STATES SENATE

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

September 9, 2020

HEARING

ON

THE STATUS OF THE FEDERAL RESERVE EMERGENCY LENDING FACILITIES

STATEMENT OF THOMAS McGEE

PRESIDENT & CEO, INTERNATIONAL COUNCIL OF SHOPPING CENTERS

Thank you, Chairman Crapo and Ranking Member Brown for conducting today's hearing on the emergency lending authority granted to the Federal Reserve under section 13 (3) of the Federal Reserve Act and additional uses of this authority for businesses, like shopping centers, that have been significantly impacted by the temporary economic impairment created by the public health response to the COVID-19 crisis. As well, we commend Chairman Crapo for the July 31, 2020 letter to Secretary of the Treasury Steven Mnuchin and Chair of the Federal Reserve Jerome Powell calling for the creation of a liquidity facility for COVID-19 impacted commercial real estate (CRE) borrowers. We hope today's hearing will help to expedite that process.

The International Council of Shopping Centers (ICSC) is the preeminent membership organization serving retail and real estate professionals. The ICSC member network represents owners, developers, financial institutions, professional service providers and, importantly, shopping center tenants such as retailers, restaurants, gyms, health centers and service providers. Shopping centers are an essential part of every city, town and community across the country, with small businesses representing nearly 70 percent of shopping center tenants.

Prior to the COVID-19 pandemic, the shopping center industry generally was thriving with a 93% occupancy rate. The majority of the estimated $6.7 trillion of consumer activity produced by the retail, food & beverage, entertainment and consumer service industries took place within our nation's shopping centers. Nearly 1 out of 4 American jobs prior to COVID-19 was retail related and approximately $400 billion of all state and local taxes supporting local communities, public safety resources and infrastructure was generated by our industry. Additionally, the value of retail real estate stretches far beyond retail sales alone and comprises a key component of many pension and retirement fund investments.

While certain essential retail businesses have been allowed to remain open, several sectors that are part of the diverse mix of today's shopping centers, including health, wellness, personal care, restaurants, entertainment, education and childcare, have been especially hard hit by the pandemic and some remain closed nearly 6 months after the start of the current crisis. Since March, ICSC estimates that in the shopping center industry, approximately 7.4 million jobs have been eliminated, $188 billion in sales lost and $54 billion in rent unpaid. In the majority of cases, landlords and tenants have reached agreements to defer those obligations until a later date, however operating costs still exist today. We have included an overview of the state-by-state economic impact of COVID-19 prepared by ICSC Research at the end of this document.

While ICSC's members include global, publicly traded retail real estate interests, the vast majority of our member companies are privately held, small to mid-sized businesses, many of which have been negatively affected by the economic consequences of COVID-19. Our members have reported that they do not have access to additional sources of capital or the leverage to substantively negotiate with certain debt servicers during this temporary liquidity shortfall. As Because the majority of our owner/developer members' companies are privately held and meet the definition of "passive real estate businesses," they

have been excluded from all federal liquidity assistance to date. To allow these assets to fail because the government shut down their businesses seems patently unfair.

As it relates to the hearing, the loss of rent is an important statistic to focus upon because it significantly impacts the current liquidity of retail real estate owners and their ability to pay their debt service. To put the $54 billion in loss retail rent into context, rent collections were 90.9% in March 2020, by May the collection percentage had dropped 33.9 percentage points (pp) to 57.0%. As government mandates have eased, the collection percentage has slowly begun to increase, up 9.4 pp in June, up 3.6 pp in July and 2.8 pp in August, still nearly 20 pp shy of pre-pandemic levels. More importantly, operational expenses have increased by 20 pp, due to pandemic-related mandated health and safety protocols that have tightened the squeeze on landlords.

As a result of the loss of net operating income, commercial mortgage-backed securities (CMBS) delinquency rates for retail real estate rose by 650-basis points from April to May (3.7% to 10.1%) and 790-basis points from May to June (10.1% to 18.0%). The current delinquency level is almost double the previous record high of 8.14% that followed the Great Financial Crisis. As of July, $21.4 billion in retail CMBS loans were with the special servicer, compared to $6.7 billion as of December 2019. In total, there is over $134 billion in outstanding retail CMBS debt.

Our members actively work to anticipate the changing demands and desires of consumers. With that in mind, consumer preferences have shifted and some traditional enclosed malls are in various stages of adaptive reuse to create more jobs, connect with communities and inspire future opportunities. The COVID-19 economic cessation has fundamentally undermined the orderly process of reimagining these properties by prematurely reducing the economic viability and value of many centers while increasing capital costs for future investment.

Policy Recommendations

ICSC has focused its current advocacy efforts in two ways: (1) economic support to allow tenants to pay existing rent obligations; and (2) for situations where economic assistance is inadequate or lease negotiations are unresolved, liquidity support for retail real estate owner/developers to meet existing debt obligations with their lenders.

Federal economic assistance should be targeted, yet flexible, to give impaired consumer-facing businesses certainty to persevere through this crisis and meet their essential operating expenses. ICSC has advocated for a federal recovery fund like that proposed in H.R. 7671, the Small Business Comeback Act, which represents the most holistic and effective approach to supporting impacted businesses. We also support S. 3814/H.R. 7481, the Reviving the Economy Sustainably Towards A Recovery in Twenty-twenty Act (the RESTART Act) as it provides greater access and more flexibility to the existing Paycheck Protection Program (PPP). It is absolutely essential that federal economic support to businesses include funds for rental assistance along with providing for payroll and costs for personal protection equipment.

In addition to immediate passage of broad economic support like a recovery fund or RESTART, ICSC urges policymakers to create a federal liquidity facility to address the urgent fiscal needs of our sector. Congress should allocate unused Title IV CARES Act funds and direct the Federal Reserve and Treasury to create a preferred equity program for CRE borrowers, either as part of the Main Street Lending Program (MSLP) or as a separate facility. We believe a temporary liquidity bridge to combat the current market distortion in certain CRE sectors is critical. To this end, we support the program established by H.R. 7809, Helping Open Properties Endeavor (HOPE) Act or a similar model.

The HOPE Act is important to note as a guide for several reasons beyond the liquidity it provides and the preferred equity system that it encourages. First, the program requires a 1.3 debt coverage ratio (DCR), essentially requiring that the property must have been generating 30% more revenue than necessary to cover its debt service prior to COVID-19. This is a generally higher DCR than the industry standard and it is an appropriate metric to use for helping to identify successful properties that deserve to have the

opportunity to succeed again after this crisis concludes. Additionally, the HOPE Act provides safeguards to make sure that property owners adhere to the intent of the program by paying off the preferred equity position before taking funds from the asset. While aspects of this program may be outside the parameters of the current liquidity facility, we believe that it is possible to create a responsible CRE-oriented program.

As well, ICSC respectfully requests that U.S. Department of Treasury and the Federal Reserve revisit the terms established for MSLP to allow for temporary liquidity support for CRE borrowers. Suggested changes include:

1. First and foremost, the eligibility standards for the MSLP should be expanded to remove the limitation placed on commercial rental real estate businesses due to the misguided use of the SBA 7(a) loan eligibility standards.

2. As the Federal Reserve has acknowledged, EBITDA is not a standard underwriting metric for real estate or other asset-based businesses. If the EBITDA multiple test remains, the number should be increased substantially. However, ICSC recommends that the Federal Reserve allow lenders to use conventional metrics of the real estate industry:

    - For construction, development projects and hotels, a 75% maximum loan to cost (LTC).
    - For other assets, an 80% maximum loan to value (LTV) or a 1.2x minimum debt service coverage ratio based on 2019 operating income.
    - In addition, we believe pre-COVID-19 Net Operating Income (NOI) is a better metric to reflect the long construction and lease-up times for commercial and residential properties. MSLP should allow the maximum loan size for CRE borrowers whose buildings were placed into service after January 2019 to be based on the projected stabilized NOI.

3. The impact of assuming additional debt on existing loan covenants should be considered. A better alternative to loan facilities for commercial property is preferred equity, which does not add to a property's debt burden, keeps cash available to operate, and provides flexibility to work with the equity investor over the life of the asset, while providing the opportunity for repayment and return on the investment.

In addition to our support of the above efforts to provide liquidity to tenants and CRE borrowers, ICSC strongly believes that the federal government must partner with the insurance industry to provide businesses the certainty to rebuild and reopen by establishing a federal pandemic risk insurance program. We hope that a consensus model can be found and legislation passed before the end of the year.

Summary

While some believe that CRE owners have access to other sources of capital, that is not true for many of the smaller entrepreneurial ICSC members who comprise the majority of our membership. Furthermore, many retail real estate owners are in this difficult economic situation due to no fault of their own, but rather because of governmental orders to combat a public health crisis. Without federal liquidity support to assist with outstanding debt obligations, many of these community-based assets will be seized and allowed to languish without the benefit of hands-on management.

Shopping centers are an important catalyst for community job creation, and they are a crucial component of state and local tax revenue. The first communities to be impacted by foreclosed shopping centers will be the secondary and tertiary markets such as those located in rural or underserved areas. Taking a laissez-fare approach to the COVID-19 impacted CRE sector will devastate these communities, cause job loss and capital flight from the areas that need it most.

The long-term strength of the shopping center industry is critical to the economic, civic and social viability of communities across the country. However, without meaningful access to a federal liquidity program, the impact of COVID-19 mandated closures and social distancing precautions will result in significant and lasting economic damage, empty storefronts and vacant shopping centers across the country for years to come, leaving long-term shortfalls for state and local revenues and prolonging the recovery period.

Thank you again for your focus on the need for liquidity support for COVID-19 impaired CRE industry participants and the potential of the U.S. Department of Treasury and the Federal Reserve to utilize the current 13(3) authority and to do so expeditiously.

State-by-State Impact of COVID-19 on the Shopping Center Industry

Shopping centers are one of the most distressed sectors impacted by COVID-19. Nationwide our industry has lost 7.4 million jobs, $190 billion in sales and $54 billion in rent (which means less tax revenue for community support).

	2019			March-July 2020		
	Jobs	Sales	Taxes	Lost Jobs (As of July)	Lost Sales (March-July)	Lost Rent (April-July)
Alabama	582,434	$98.2 bil.	$4.1 bil.	106,433	$3.1 bil.	$870.8 mil.
Alaska	59,376	$10 bil.	$96.2 mil.	15,387	$317.9 mil.	$95.2 mil.
Arizona	677,554	$114.2 bil.	$6.9 bil.	150,204	$3.6 bil.	$1 bil.
Arkansas	345,833	$58.3 bil.	$3.9 bil.	62,796	$1.9 bil.	$520 mil.
California	3.5 mil.	$591.1 bil.	$46.4 bil.	836,511	$18.8 bil.	$5.3 bil.
Colorado	598,054	$100.8 bil.	$3.4 bil.	135,676	$3.2 bil.	$905.2 mil.
Connecticut	451,141	$76.1 bil.	$5.1 bil.	79,740	$2.4 bil.	$681.9 mil.
Delaware	107,151	$18.1 bil.	$38.3 mil.	24,179	$573.6 mil.	$164 mil.
District of Columbia	50,903	$8.6 bil.	$743.6 mil.	20,789	$272.5 mil.	$76.9 mil.
Florida	2.4 mil.	$409.5 bil.	$26.6 bil.	517,283	$13 bil.	$3.7 bil.
Georgia	1.2 mil.	$202.7 bil.	$8.9 bil.	235,476	$6.4 bil.	$1.8 bil.
Hawaii	124,209	$20.9 bil.	$1 bil.	37,606	$664.9 mil.	$200.6 mil.
Idaho	191,198	$32.2 bil.	$2 bil.	38,292	$1 bil.	$290 mil.
Illinois	1.5 mil.	$250.8 bil.	$17.3 bil.	286,604	$8 bil.	$2.3 bil.
Indiana	803,245	$135.4 bil.	$9.9 bil.	151,402	$4.3 bil.	$1.2 bil.
Iowa	327,964	$55.3 bil.	$3.7 bil.	75,148	$1.8 bil.	$523.4 mil.
Kansas	336,918	$56.8 bil.	$4 bil.	65,984	$1.8 bil.	$515.8 mil.
Kentucky	472,505	$79.7 bil.	$5 bil.	99,699	$2.5 bil.	$696.8 mil.
Louisiana	508,557	$85.7 bil.	$4.1 bil.	107,158	$2.7 bil.	$788.2 mil.
Maine	172,851	$29.1 bil.	$1.8 bil.	34,115	$925.3 mil.	$262.1 mil.
Maryland	605,709	$102.1 bil.	$6.4 bil.	131,092	$3.2 bil.	$947 mil.
Massachusetts	727,802	$122.7 bil.	$8.5 bil.	168,413	$3.9 bil.	$1.1 bil.
Michigan	1.2 mil.	$196.3 bil.	$12.6 bil.	215,293	$6.2 bil.	$1.8 bil.
Minnesota	625,142	$105.4 bil.	$7.7 bil.	132,723	$3.3 bil.	$963.2 mil.
Mississippi	314,251	$53 bil.	$4 bil.	62,661	$1.7 bil.	$476.6 mil.

	2019			March-July 2020		
	Jobs	Sales	Taxes	Lost Jobs (As of July)	Lost Sales (March-July)	Lost Rent (April-July)
Missouri	685,279	$115.5 bil.	$5.3 bil.	144,372	$3.7 bil.	$1 bil.
Montana	99,458	$16.8 bil.	$103.5 mil.	26,651	$532.4 mil.	$157.9 mil.
Nebraska	217,744	$36.7 bil.	$2.3 bil.	47,341	$1.2 bil.	$336.8 mil.
Nevada	317,325	$53.5 bil.	$3.8 bil.	73,922	$1.7 bil.	$458.3 mil.
New Hampshire	193,384	$32.6 bil.	$161 mil.	38,676	$1 bil.	$289.1 mil.
New Jersey	990,468	$167 bil.	$12.2 bil.	192,750	$5.3 bil.	$1.5 bil.
New Mexico	216,129	$36.4 bil.	$2 bil.	43,899	$1.2 bil.	$331.3 mil.
New York	2 mil.	$342.5 bil.	$16.7 bil.	429,911	$10.9 bil.	$3.2 bil.
North Carolina	1.2 mil.	$199.1 bil.	$9.9 bil.	236,755	$6.3 bil.	$1.8 bil.
North Dakota	72,911	$12.3 bil.	$703.2 mil.	20,070	$390.3 mil.	$119.8 mil.
Ohio	1.5 mil.	$257.2 bil.	$15.6 bil.	270,159	$8.2 bil.	$2.3 bil.
Oklahoma	477,261	$80.5 bil.	$3.8 bil.	85,015	$2.6 bil.	$717.3 mil.
Oregon	442,593	$74.6 bil.	$289 mil.	98,614	$2.4 bil.	$665.5 mil.
Pennsylvania	1.5 mil.	$249.1 bil.	$16 bil.	276,104	$7.9 bil.	$2.3 bil.
Rhode Island	130,897	$22.1 bil.	$1.7 bil.	24,944	$700.8 mil.	$192.8 mil.
South Carolina	655,044	$110.4 bil.	$7.1 bil.	120,787	$3.5 bil.	$978.6 mil.
South Dakota	78,956	$13.3 bil.	$679.7 mil.	22,435	$422.7 mil.	$128.2 mil.
Tennessee	812,151	$136.9 bil.	$9.9 bil.	159,603	$4.3 bil.	$1.2 bil.
Texas	3.1 mil.	$519.7 bil.	$35.9 bil.	644,998	$16.5 bil.	$4.6 bil.
Utah	318,385	$53.7 bil.	$3.4 bil.	73,500	$1.7 bil.	$466.4 mil.
Vermont	49,409	$8.3 bil.	$610.7 mil.	15,559	$264.5 mil.	$75.9 mil.
Virginia	907,101	$152.9 bil.	$8.9 bil.	191,383	$4.9 bil.	$1.4 bil.
Washington	712,670	$120.2 bil.	$8.3 bil.	167,646	$3.8 bil.	$1.1 bil.
West Virginia	251,975	$42.5 bil.	$2.7 bil.	36,673	$1.3 bil.	$389.2 mil.
Wisconsin	720,171	$121.4 bil.	$6.5 bil.	137,487	$3.9 bil.	$1.1 bil.
Wyoming	49,049	$8.3 bil.	$447 mil.	13,380	$262.6 mil.	$76.8 mil.
U.S. Total	35.6 mil.	$6 tril.	$369.2 bil.	7.4 mil.	$190.4 bil.	$54 bil.

Sources: ICSC Research, NCREIF, CoStar, Bureau of Labor Statistics, Sales Tax Clearinghouse and U.S. Census Bureau.

The shopping center industry is one of the most distressed industry sectors impacted by COVID-19. As our members work with state and local governments on responsible re-opening measures, it will take time for "normal" consumer activity to return. Without meaningful assistance and urgent relief the communities we serve will suffer as property and sales taxes disappear, property values plummet and vacant shopping centers and shuttered store fronts become the norm across our country. Congress and state legislatures must act now to bring life back to our communities and our communities back to life.

For more information, contact ICSC Global Public Policy at gpp@icsc.com.