

The Fourth Report of the Congressional Oversight Commission

August 21, 2020

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INTRODUCTION

This is the fourth report of the Congressional Oversight Commission (Commission) created by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).¹ The Commission's role is to conduct oversight of the implementation of Division A, Title IV, Subtitle A of the CARES Act (Subtitle A) by the U.S. Department of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (Federal Reserve). Subtitle A provides \$500 billion to the Treasury for lending and other investments "to provide liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of coronavirus."²

Of this amount, \$46 billion is set aside for the Treasury itself to provide loans or loan guarantees to certain types of companies. Up to \$25 billion is available for passenger air carriers, eligible businesses certified to perform inspection, repair, replace, or overhaul services, and ticket agents. Up to \$4 billion is available for cargo air carriers, and up to \$17 billion is available for businesses "critical to maintaining national security."³ Any unused portions of this \$46 billion, and the remaining \$454 billion, may be used to support emergency lending facilities established by the Federal Reserve.

The CARES Act charges the Commission with submitting regular reports to Congress on:

- The use by the Federal Reserve of authority under Subtitle A, including with respect to the use of contracting authority and administration of the provisions of Subtitle A.
- The impact of loans, loan guarantees, and investments made under Subtitle A on the financial well-being of the people of the United States and the U.S. economy, financial markets, and financial institutions.
- The extent to which the information made available on transactions under Subtitle A has contributed to market transparency.

¹ CARES Act, Pub. L. No. 116-136, § 4020, 134 Stat. 281 (2020).

² CARES Act, Pub. L. No. 116-136, § 4003(a), 134 Stat. 281 (2020).

³ *Id.* at § 4003(b). In addition, Division A, Title IV, Subtitle B of the CARES Act (Subtitle B) authorized the Treasury to provide up to \$32 billion in financial assistance to passenger air carriers, cargo air carriers, and certain airline industry contractors that must be exclusively used for the continuation of payment of employee wages, salaries, and benefits. Of this amount, up to \$25 billion is available for passenger air carriers; up to \$4 billion is available for cargo air carriers; and up to \$3 billion is available for certain airline industry contractors. Subtitle B is not within the jurisdiction of the Commission.

- The effectiveness of loans, loan guarantees, and investments made under Subtitle A in minimizing long-term costs to the taxpayers and maximizing the benefits for taxpayers.⁴

In its first report to Congress on May 18, 2020, the Commission stated that it is responsible for answering two basic questions:

- What are the Treasury and the Federal Reserve doing with \$500 billion of taxpayer money?
- Who is that money helping?⁵

At this time, the emergency lending facilities established by the Federal Reserve that are receiving CARES Act funds are:

- Primary Market Corporate Credit Facility (PMCCF) and Secondary Market Corporate Credit Facility (SMCCF): Through a special purpose vehicle (SPV), the PMCCF enables the Federal Reserve to purchase newly issued corporate bonds and portions of syndicated loans, and the SMCCF enables the Federal Reserve to purchase previously issued corporate bonds and exchange-traded funds (ETFs) that invest in corporate bonds.⁶ The Treasury has announced it intends to make a total equity investment of \$75 billion in the SPV, which can collectively support up to \$750 billion in purchases.⁷ As of August 19, 2020, the Treasury had invested \$37.5 billion in the SPV.⁸ The Federal Reserve has not announced that the PMCCF has purchased any bonds or syndicated loans. As of August 19, 2020, the SMCCF had purchased \$12.49 billion of bond ETFs and individual corporate bonds.⁹

⁴ CARES Act, Pub. L. No. 116-136, § 4020, 134 Stat. 281 (2020).

⁵ Congressional Oversight Commission, *Questions About the CARES Act's \$500 Billion Emergency Economic Stabilization Funds*, May 18, 2020, at 5, https://coc.senate.gov/sites/default/files/2020-08/20200518_Congressional_Oversight_Committee_1st_Report.pdf.

⁶ Board of Governors of the Federal Reserve System, *Primary Market Corporate Credit Facility Term Sheet*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a9.pdf>; Board of Governors of the Federal Reserve System, *Secondary Market Corporate Credit Facility Term Sheet*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a1.pdf>.

⁷ Board of Governors of the Federal Reserve System, *Secondary Market Corporate Credit Facility Term Sheet*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a1.pdf>.

⁸ Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Aug. 20, 2020, at Table 1 footnote 14, <https://www.federalreserve.gov/releases/h41/> (to access click on hyperlink for Aug. 20, 2020 release). The SPV for the PMCCF and the SMCCF is Corporate Credit Facilities LLC.

⁹ *Id.* at Table 4, <https://www.federalreserve.gov/releases/h41/> (to access click on hyperlink for Aug. 20, 2020 release). The SPV for the PMCCF and SMCCF is Corporate Credit Facilities LLC.

- **Main Street Lending Program:** The Main Street Lending Program is comprised of five facilities—three dedicated to for-profit businesses and two dedicated to nonprofit organizations. The Federal Reserve, through an SPV, acquires loans issued by lenders to small and medium-sized businesses and nonprofit organizations with up to 15,000 employees or 2019 revenues of \$5 billion or less. The Treasury announced it intends to make an equity investment of \$75 billion in this program, which can support up to \$600 billion in lending.¹⁰ As of August 19, 2020, the Treasury had invested \$37.5 billion in this program.¹¹ The for-profit facilities are operational and able to purchase eligible loans submitted by lenders registered to participate in the program. The nonprofit facilities are not yet operational. As of August 10, 2020, there were 522 lenders that had registered to participate in the program,¹² though only 160 of them had publicized that they were accepting loan applications from new customers.¹³ As of August 19, 2020, \$496.8 million in loans had been made under the Main Street Lending Program.¹⁴ The Federal Reserve’s participation amount in these loans is \$472 million.¹⁵
- **Municipal Liquidity Facility (MLF):** The MLF enables the Federal Reserve, through an SPV, to purchase short-term notes issued by state and local governments. The Treasury announced it intends to make an equity investment of \$35 billion in the SPV, which can support up to \$500 billion in lending.¹⁶ As of August 19, 2020, the Treasury had invested

¹⁰ Federal Reserve Bank of Boston, *Main Street Lending Program For-Profit Businesses Frequently Asked Questions*, July 31, 2020, <https://www.bostonfed.org/mslp-faqs>; Federal Reserve Bank of Boston, *Main Street Lending Program for Nonprofit Organizations Frequently Asked Questions*, Aug. 6, 2020, <https://www.bostonfed.org/-/media/Documents/special-lending-facilities/mslp/legal/frequently-asked-questions-faqs-nonprofit.pdf>.

¹¹ Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Aug. 20, 2020, at Table 1 footnote 14, <https://www.federalreserve.gov/releases/h41/> (to access click on hyperlink for Aug. 20, 2020 release). The SPV for the Main Street Lending Program is MS Facilities LLC.

¹² Eric Rosengren, President and CEO, Federal Reserve Bank of Boston, *The COVID-19 Pandemic, the Economic Outlook, and the Main Street Lending Program*, Remarks to the South Shore Chamber of Congress, Aug. 12, 2020, <https://www.bostonfed.org/-/media/Documents/Speeches/PDF/20200812-text.pdf> and <https://www.bostonfed.org/-/media/Documents/Speeches/PDF/20200812-charts.pdf>.

¹³ *Id.*

¹⁴ Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, at Table 4, Aug. 20, 2020, <https://www.federalreserve.gov/releases/h41/> (to access click on hyperlink for Aug. 20, 2020 release). The SPV for the Main Street Lending Program is MS Facilities LLC. The H.4.1 statistical release discloses the SPV’s participation amount in Main Street loans, which is 95% of those loans. The August 20, 2020 release disclosed a participation amount of \$472 million, which means \$496.8 million in Main Street loans were made by lenders.

¹⁵ *Id.*

¹⁶ Board of Governors of the Federal Reserve System, *Municipal Liquidity Facility Term Sheet*, Aug. 11, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200811a1.pdf>; Federal Reserve Bank of New York, *FAQs: Municipal Liquidity Facility*, Aug. 11, 2020, <https://www.newyorkfed.org/markets/municipal-liquidity-facility/municipal-liquidity-facility-faq>.

\$17.5 billion in this facility.¹⁷ To date, the MLF has purchased a \$1.2 billion one-year note from the state of Illinois and a \$450.7 million three-year note from the Metropolitan Transportation Authority (MTA), which is the mass transit agency for the New York City area.¹⁸

- Term Asset-Backed Securities Loan Facility (TALF): The TALF enables the Federal Reserve, through an SPV, to make loans to U.S. companies secured by consumer or business loans. The Treasury announced it intends to make an equity investment of \$10 billion in this facility, which can provide up to \$100 billion in lending.¹⁹ As of August 19, 2020, the Treasury had invested \$10 billion in this facility.²⁰ The TALF had lent \$2.26 billion, as of August 19, 2020.²¹

In this report, we provide an in-depth analysis of the Main Street Lending Program. We also provide updates regarding recent key actions the Treasury and the Federal Reserve have taken regarding all of the lending programs and facilities under Subtitle A.

The Treasury's National Security Loan to YRC Worldwide Inc.

The Commission's third report raised concerns regarding the \$700 million loan made by the Treasury to YRC Worldwide Inc. (YRC) under Subtitle A's national security loan program.²² In particular, the Commission questioned (1) whether YRC, a trucking service provider utilized domestically by the U.S. Department of Defense (Department of Defense), was appropriately

¹⁷ Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Aug. 20, 2020, at Table 1 footnote 14, <https://www.federalreserve.gov/releases/h41/> (to access click on hyperlink for Aug. 20, 2020 release). The SPV for the MLF is Municipal Liquidity Facility LLC.

¹⁸ *Id.* at Table 4; Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Aug. 10, 2020, <https://www.federalreserve.gov/publications/files/mlf-transaction-specific-disclosures-8-10-20.xlsx>; Karen Pierog & Jonnelle Marte, *New York transit agency turns to Fed for \$450 million borrowing*, Reuters, Aug. 18, 2020, <https://www.reuters.com/article/us-usa-newyork-fed-debt/new-york-transit-agency-turns-to-fed-for-450-million-borrowing-idUSKCN25E2R3>.

¹⁹ Board of Governors of the Federal Reserve, *Term Asset-Backed Securities Loan Facility Term Sheet*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a6.pdf>.

²⁰ Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Aug. 20, 2020, at Table 1 footnote 14, <https://www.federalreserve.gov/releases/h41/> (to access click on hyperlink for Aug. 20, 2020 release). The SPV for the TALF is TALF II LLC.

²¹ *Id.* at Table 4, <https://www.federalreserve.gov/releases/h41/> (to access click on hyperlink for Aug. 20, 2020 release). The SPV for the TALF is TALF II LLC.

²² Congressional Oversight Commission, *The Third Report of the Congressional Oversight Commission*, July 20, 2020, at 15-16, 31-34, https://coc.senate.gov/sites/default/files/2020-08/20200720_Congressional_Oversight_Commission_3rd_Report.pdf.

designated by the Treasury and the Department of Defense as “critical to maintaining national security,” and (2) whether YRC’s precarious financial condition at the time of the loan exposed taxpayers to a significant risk of loss.²³

On July 30, 2020, the Treasury sent the Commission a letter that provided additional information regarding its loan to YRC.²⁴ After reviewing this letter, the Commission sent letters to Treasury Secretary Steven Mnuchin and Defense Secretary Mark Esper requesting additional information regarding the loan to YRC. The Commission requested responses by August 27, 2020.²⁵

Hearing on the Main Street Lending Program

The CARES Act empowers the Commission to hold hearings as part of its oversight work.²⁶ The Commission’s third report noted its intention to hold a hearing on the Main Street Lending Program.²⁷ That hearing was held on August 7, 2020. A video recording of the hearing and the prepared statements of the hearing witnesses are available on the Commission’s website at <https://coc.senate.gov>. When the full hearing record is completed (including a transcript and any supplemental statements for the record) it will also be available on the Commission’s website. The following witnesses testified at the hearing on various topics concerning the Main Street Lending Program, including its efficacy, accessibility, and perceived shortcomings:

- Eric Rosengren, President & Chief Executive Officer, Federal Reserve Bank of Boston
- Lauren Anderson, Senior Vice President & Associate General Counsel, Bank Policy Institute
- Thomas Bohn, Chief Executive Officer, Association for Corporate Growth
- Vince Foster, Executive Chairman, Main Street Capital Corporation
- Gwen Mills, Secretary-Treasurer, UNITE HERE

Upcoming Hearing on the Municipal Liquidity Facility

In the coming weeks, the Commission plans to hold a hearing about the MLF, which supports lending to state and local governments.

²³ *Id.*

²⁴ Appendix A of this report contains a copy of the Treasury’s letter to the Commission of July 30, 2020.

²⁵ Appendix B of this report contains a copy of the Commission’s letter to Secretary Mnuchin of August 7, 2020. Appendix C of this report contains a copy of the Commission’s letter to Secretary Esper of August 7, 2020.

²⁶ CARES Act, Pub. L. No. 116-136, § 4020(e)(1), 134 Stat. 281 (2020).

²⁷ Congressional Oversight Commission, *The Third Report of the Congressional Oversight Commission*, July 20, 2020, at 5, https://coc.senate.gov/sites/default/files/2020-08/20200720_Congressional_Oversight_Commission_3rd_Report.pdf.

EXECUTIVE SUMMARY

This fourth report of the Commission principally focuses on the implementation of the Main Street Lending Program by the Federal Reserve and the Treasury.

The Main Street Lending Program provides liquidity to small and medium-sized businesses by backing loans to businesses with up to 15,000 employees or less than \$5 billion in 2019 revenue. The program also backs loans to certain nonprofit organizations between 10 and 15,000 employees or \$5 billion in 2019 revenues.²⁸ The Treasury has pledged to invest \$75 billion in the program, which is administered by the Federal Reserve Bank of Boston (Boston Federal Reserve).²⁹

The Main Street Lending Program currently consists of three facilities for for-profit businesses: the Main Street New Loan Facility (New Loan Facility), the Main Street Priority Loan Facility (Priority Loan Facility), and the Main Street Expanded Loan Facility (Expanded Loan Facility). It also has two facilities for nonprofit organizations: the Nonprofit Organization New Loan Facility (Nonprofit New Loan Facility) and the Nonprofit Organization Expanded Loan Facility (Nonprofit Expanded Loan Facility).

The Main Street Lending Program has seen modest initial activity thus far. As of August 19, 2020, eligible lenders had issued loans totaling \$496.8 million under the program.³⁰ The Federal Reserve's participation amount in these loans is \$472 million—about 0.07% of the program's \$600 billion lending capacity.³¹ As of August 10, 2020, 522 lenders have registered with the program, although only 160 had publicized that they are accepting loan applications from new customers.³²

²⁸ Generally, 501(c)(3) and 501(c)(19) nonprofit organizations.

²⁹ The Treasury's investment will be made using funds appropriated to the Economic Stabilization Fund (ESF) under Section 4027 of the CARES Act. Federal Reserve Bank of Boston, *Main Street Lending Program For-Profit Businesses Frequently Asked Questions*, July 31, 2020, at 9, <https://www.bostonfed.org/mslp-faqs>.

³⁰ Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, at Table 4, Aug. 20, 2020, <https://www.federalreserve.gov/releases/h41/> (to access click on hyperlink for Aug. 20, 2020 release). The SPV for the Main Street Lending Program is MS Facilities LLC. The H.4.1 statistical release discloses the SPV's participation amount in Main Street loans, which is 95% of those loans. The August 20, 2020 release disclosed a participation amount of \$472 million, which means \$496.8 million in Main Street loans were made by lenders.

³¹ *Id.*

³² Eric Rosengren, President and CEO, Federal Reserve Bank of Boston, *The COVID-19 Pandemic, the Economic Outlook, and the Main Street Lending Program*, Remarks to the South Shore Chamber of Congress, Aug. 12, 2020, <https://www.bostonfed.org/-/media/Documents/Speeches/PDF/20200812-text.pdf> and <https://www.bostonfed.org/-/media/Documents/Speeches/PDF/20200812-charts.pdf>.

The Commission believes that at least three factors should inform policy discussions about the scope of the Federal Reserve’s emergency efforts to provide liquidity to small and medium-sized businesses.

1. Current economic conditions.

The need for the Main Street Lending Program should decrease as liquidity conditions and the state of the overall economy improve. While the economy shows signs that it may have stopped its precipitous downslide since entering a recession in March 2020, the ongoing COVID-19 crisis means businesses continue to struggle to return to pre-pandemic operations and face considerable uncertainty and economic challenges. Moreover, millions of Americans laid off due to the pandemic and business shutdown orders remain unemployed.

2. The critical economic contribution of small and medium-sized businesses.

Given the uncertainty facing employers, and the desire to preserve employment when possible, the Commission believes that providing appropriate liquidity to small and medium-sized businesses during the COVID-19 crisis is vital. The Main Street Lending Program targets a critical segment of the economy: businesses that help form the “Main Street” of local communities. According to Goldman Sachs economists, as many as 45 million Americans—nearly 40% of private-sector employees—work for businesses that may qualify for the Main Street Lending Program.³³

3. The need or desire of small and medium-sized businesses for credit.

Given the statutory constraints of section 13(3) of the Federal Reserve Act, the Main Street Lending Program is designed to facilitate lending to companies that are “unable to secure adequate credit accommodations from other banking institutions.”³⁴ Some of the Main Street Lending Program’s modest activity may be because some businesses accessed the Small Business Administration’s (SBA) Paycheck Protection Program (PPP), while others are able to rely on existing credit lines or other sources of liquidity. A National Federation of Independent Businesses (NFIB) report from July found that “[h]istorically, loans have never been cheaper,”³⁵ and only 3% of surveyed business owners had unmet credit needs.³⁶ Further, in the Federal

³³ Nick Timiraos & Kate Davidson, *Fed, Treasury Disagreements Slowed Start of Main Street Lending Program*, Wall Street Journal, July 12, 2020, <https://www.wsj.com/articles/fed-treasury-disagreements-slowed-start-of-main-street-lending-program-11594558800>.

³⁴ 12 U.S.C. § 343(3) (Section 13(3) of the Federal Reserve Act).

³⁵ William C. Dunkelberg & Holly Wade, *NFIB Small Business Economic Trends*, National Federation of Independent Businesses, Aug. 11, 2020, at 2, <https://assets.nfib.com/nfibcom/SBET-July-2020.pdf>.

³⁶ *Id.*

Reserve's Senior Loan Officer Opinion Survey for this year's second quarter, only 22.6% of bank senior loan officers reported a moderate or significant increase in inquiries for credit.³⁷

The Commission held its first hearing on August 7, 2020, to explore the Main Street Lending Program. The hearing consisted of two panels of witnesses. The President and CEO of the Boston Federal Reserve, Eric Rosengren, was the witness for the first panel. The second panel consisted of the following four witnesses:

- Lauren Anderson, Senior Vice President and Associate General Counsel of the Bank Policy Institute
- Thomas Bohn, President and Chief Executive Officer, Association for Corporate Growth
- Vince Foster, Executive Chairman, Main Street Capital Corporation
- Gwen Mills, Secretary-Treasurer, UNITE HERE

The hearing explored potential reasons for the program's currently low utilization rate and whether the potential utilization rate would increase in the future. It also explored whether modifications to expand access to the Main Street Lending Program are advisable and whether the Main Street Lending Program adequately encourages banks to make loans that they would not have otherwise made.

In this report, the Commission discusses several topics and suggestions relating to the Main Street Lending Program's efforts to help creditworthy small and medium-sized businesses.

1. Faster implementation would help improve the Main Street Lending Program for borrowers.

It took three months for the Main Street Lending Program to become operational for for-profit businesses, and the facilities for nonprofits have yet to open. The Federal Reserve has cited as the cause of the delay the complexity of implementing a loan buying program that must serve heterogeneous borrowers, along with the fact that the program must rely on private third-party lenders' onboarding of borrowers and those lenders' existing underwriting processes—all time-consuming steps. Any delay in implementing the program constricts the effectiveness of any relief that the program could provide to viable businesses and nonprofits. The Commissioners' views differed regarding whether further modifications to the program's structure and terms would succeed in serving more businesses and their employees, and whether such changes would be prudent, but the Commission does agree that time is of the essence. The Commission recommends that the Federal Reserve and the Treasury expedite their processes for considering (and, if appropriate, implementing) modifications and hasten the rollout of the nonprofit facilities. The Commission also recommends that the Treasury and the Federal Reserve consider

³⁷ Board of Governors of the Federal Reserve System, *Senior Loan Officer Opinion Survey on Bank Lending Practices*, Aug. 3, 2020, <https://www.federalreserve.gov/data/sloos/sloos-202007.htm>.

the appropriateness of enlisting other Federal Reserve Banks to help expand administrative capacity, as well as to help innovate and experiment with changes or expansions to the Main Street Lending Program.

2. Borrowers are unfamiliar with the Main Street Lending Program.

Borrowers would benefit from further outreach by the Federal Reserve and banks to raise awareness of the Main Street Lending Program among eligible borrowers and to explain its mechanics. That said, further outreach alone may not yield a significant change in program participation if demand for loans is limited.

3. The Commission heard testimony regarding a number of proposals for modifying the Main Street Lending Program. The issues involved are complex and multi-faceted.

The Commission heard testimony regarding at least six potential changes to the Main Street Lending Program, including (1) decreasing the Main Street Lending Program's minimum loan size, (2) extending the maturity for Main Street loans from five to seven years and pushing back amortization to year four, (3) raising EBITDA standards (possibly only if a lender will retain a higher portion of loans made to more leveraged companies) and/or creating an asset-based lending facility, (4) relaxing the Main Street Lending Program's affiliation rules, (5) expanding the Main Street Lending Program to nonbank lenders like Business Development Corporations (BDCs), fintech lenders, and Community Development Financial Institutions (CDFIs), and (6) creating enforceable employee retention mandates. The Commissioners' views differed on the wisdom of adopting any or all of these proposals, but this report includes a full discussion of the relative policy merits of each.

4. The Federal Reserve and the Treasury should explore the implications of whether banks are using the Main Street Lending Program to make loans they would not have made anyway.

The Main Street Lending Program aims to encourage lenders to make loans they might not otherwise make on their own by purchasing 95% of originated loans and allowing banks to retain as high as a 20% origination fee on their retained portion of any loan.³⁸ Since federal banking supervisors generally treat Main Street loans like any other loan, banks apply the same strict underwriting standards to Main Street loans as they would any other loan. Thus, borrowers that would not otherwise qualify for regular bank loans may not be able to access credit through the Main Street Lending Program. For the Main Street Lending Program to provide credit to borrowers that do not meet banks' underwriting criteria, the Federal Reserve and the Treasury

³⁸ Lenders may receive a 0.75% to 1% origination fee on the full principal amount of any loan and only retain 5% of the principal amount of that loan. That amounts to an origination fee of 15%-20% on any Main Street loan. While lenders must pay the Main Street Lending Program a fee of 75-100 bps based on the principal amount of any Main Street loan, the lender may pass this fee down to the borrower.

would need to assume more risk of loss. As a legal matter, the 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 ESF, which backs the Main Street Lending Program.

5. The impact of the nonprofit Main Street facilities remains to be seen.

The Commission has not yet assessed in-depth the facilities for nonprofits because they are not yet operational. As noted above, the Commission recommends that the Federal Reserve take expedited action to bring them online. The report also details the development of those facilities and certain public comments submitted to the Federal Reserve about the Main Street Lending Program and nonprofit organizations.

DISCUSSION OF THE MAIN STREET LENDING PROGRAM

Small and medium-sized businesses are a critical part of the fabric of American society, helping to form the “Main Street” of local communities all across the country. Businesses eligible for the Main Street Lending Program provide work for 45 million Americans and account for nearly 40% of private sector employees, according to Goldman Sachs economists.³⁹ A great number of jobs are at risk if these businesses fail, along with possible disruption to nearly one-third of private sector GDP.⁴⁰

The economic slowdown from the virus and stay-at-home and business shutdown orders have unfortunately harmed Main Street businesses across the country. Although real-time data on the number of business closures and bankruptcies is scarce, according to one estimate, 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) drop of 5% for white business owners.⁴¹

At this moment in time, employers face uncertainty about the projected length of the pandemic and the restrictions imposed in response to it. There may be a glimmer of positive news for Americans in that the economy has seemingly stopped a precipitous downward slide since it entered a recession in March 2020.⁴² U.S. retail sales have begun to recover with an 8.4% increase in June 2020 followed by a 1.2% increase in July 2020.⁴³ “U.S. employers added nearly 9.3 million jobs the past three months,” although that hiring “hasn’t yet replaced half of the 22 million jobs lost in March and April,”⁴⁴ which followed a record level of employment and economic activity in February. The number of unemployment applications remains at historic levels, with the latest weekly figure of 1,106,000 almost double “the Great Recession high [of]

³⁹ Nick Timiraos & Kate Davidson, *Fed, Treasury Disagreements Slowed Start of Main Street Lending Program*, Wall Street Journal, July 12, 2020, <https://www.wsj.com/articles/fed-treasury-disagreementsslowed-start-of-main-street-lending-program-11594558800>.

⁴⁰ This number refers to the economic contribution of middle market companies. See National Center for the Middle Market, *Q2 2020 Middle Market Indicator: In Unprecedented Times, the Middle Market Strikes a Cautious Path Forward*, at 2, https://www.middlemarketcenter.org/Media/Documents/MiddleMarketIndicators/2020-Q2/FullReport/NCMM_MMI_Q2_2020.pdf (last visited Aug. 13, 2020).

⁴¹ Robert W. Fairlie, *Working Paper: The Impact of COVID-19 on Small Business Owners: The First Three Months after Social Distancing Restrictions*, July 24, 2020, at Table 2, https://people.ucsc.edu/~rfairlie/papers/smallbusiness%20three%20months_v1.docx.

⁴² National Bureau of Economic Research, *Determination of the February 2020 Peak in US Economic Activity*, June 8, 2020, <https://www.nber.org/cycles/june2020.html>.

⁴³ U.S. Census Bureau, *Advance Monthly Sales for Retail and Food Services*, July 2020, https://www.census.gov/retail/marts/www/marts_current.pdf. See monthly figures compared to previous month. July 2020 year over year up 2.7% and June 2020 year over year up 0.8%

⁴⁴ Eric Morath, *U.S. Jobless Claims Rise to 1.1 Million in Latest Week*, Wall Street Journal, Aug. 20, 2020, <https://www.wsj.com/articles/unemployment-benefits-jobless-claims-08-20-2020-11597873460>.

665,000 in March 2009.”⁴⁵ The 10.2% July 2020 unemployment rate is just above the peak experienced during the 2008 financial crisis and still far from the unemployment rate of 3-4% experienced from 2018 to February 2020. Moreover, the improved economic outlook is largely dependent on the trajectory of the pandemic, which, if worsened, could undo gains made in recent months.

This July’s employment report showed that the unemployment rate continued to fall for many groups within the workforce. Unemployment among women declined by 1.1%.⁴⁶ Veterans experienced a 0.7% drop in unemployment.⁴⁷ Individuals with less than a high school diploma saw a 1.2% decrease in unemployment, while high school graduates with no college degree saw a 1.3% decline.⁴⁸ The unemployment rate for disabled individuals fell by 2.2%.⁴⁹ Unemployment among workers in the leisure and hospitality sector, which remains the worst hit employment sector of the economy, declined by 3.9%.⁵⁰ The Black unemployment rate decreased by 0.8% and the Hispanic unemployment rate declined by 1.6% in July 2020.⁵¹ However, the most recent employment report reflected the continued outsized impact of COVID-19 on Black and Hispanic people, with the Black unemployment rate at 14.6% and the Hispanic unemployment rate at 12.9%.⁵²

The CARES Act gave 159 million Americans new economic impact payments (i.e., stimulus checks)—most at \$1,200 per individual with higher amounts for those claiming children as dependents. Federal Pandemic Unemployment Compensation, also created by the CARES Act, provided a supplemental weekly benefit of \$600 on top of a state’s base unemployment

⁴⁵ U.S. Bureau of Labor Statistics, *Unemployment Insurance Weekly Claims*, Aug. 20, 2020, <https://www.dol.gov/ui/data.pdf>; Jeff Cox, *US Weekly jobless claims double to 6.6 million*, CNBC, Apr. 2, 2020, <https://www.cnbc.com/2020/04/02/weekly-jobless-claims.html>.

⁴⁶ U.S. Bureau of Labor Statistics, *The Employment Situation—July 2020*, Aug. 7, 2020, at Table A-1, https://www.bls.gov/news.release/archives/empsit_08072020.pdf.

⁴⁷ *Id.* at Table A-5; Leo Shane III, *Veterans unemployment down for third month in a row, but still double pre-pandemic levels*, Military Times, Aug. 7, 2020, <https://www.militarytimes.com/news/2020/08/07/veterans-unemployment-down-for-third-month-in-a-row-but-still-double-pre-pandemic-levels/>.

⁴⁸ U.S. Bureau of Labor Statistics, *The Employment Situation—July 2020*, Aug. 7, 2020, at A-4, https://www.bls.gov/news.release/archives/empsit_08072020.pdf.

⁴⁹ *Id.* at Table A-6; *Unemployment Rate - With a Disability, 16 Years and Over*, retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/LNU04074597> (last visited Aug. 18, 2020).

⁵⁰ U.S. Bureau of Labor Statistics, *The Employment Situation—July 2020*, Aug. 7, 2020, at Table A-14, https://www.bls.gov/news.release/archives/empsit_08072020.pdf; *Unemployment Rate - Leisure and Hospitality, Private Wage and Salary Workers*, retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/LNU04032241> (last visited Aug. 18, 2020).

⁵¹ U.S. Bureau of Labor Statistics, *The Employment Situation—July 2020*, Aug. 7, 2020, at Tables A-2, A-3, https://www.bls.gov/news.release/archives/empsit_08072020.pdf.

⁵² *Id.* at Tables A-2, A-3.

weekly benefit, which was more than pre-pandemic unemployment benefits.⁵³ With this aid, real disposable personal income rose by 11.5% in the second quarter of 2020,⁵⁴ despite record unemployment and business activity slowdowns. However, stimulus checks were a one-time distribution and enhanced unemployment benefits have since been discontinued, while the COVID-19 infection rates and unemployment rates remain high.

Of course, these additional government payments are not a substitute for a stable, healthy economy that has fully reopened; many benefits would spring from keeping America's workers employed. Lengthy unemployment leads to long-term economic hardship. Research has shown that the longer workers are unemployed, the harder it is for them to regain employment. Some studies argue that lengthy periods of unemployment make it more difficult to reenter the workforce, with some employees never returning to work and others accepting lower wages than they had previously earned.⁵⁵

Given the uncertainty facing employers, and the desire to preserve employment when possible, the Commission believes that providing appropriate liquidity to small and medium-sized businesses during the COVID-19 crisis is vital. Reduced economic activity—i.e., lower demand for goods and services—means many of these businesses are still struggling. However, business participation in the Main Street Lending Program—which, unlike the widely utilized PPP, provides loans that are not forgivable—has been low. As of August 19, 2020, \$472 million of the \$600 billion authorized for use in the program had been lent to small and medium-sized businesses.⁵⁶

The modest initial activity of the Main Street Lending Program could be a function of access to credit elsewhere, as “[h]istorically, loans have never been cheaper,” according to a

⁵³ When the supplemental benefit was in effect, more than two-thirds of eligible individuals saw higher take-home pay via unemployment than at work with a median wage replacement rate for all unemployed persons of 134%. Peter Ganong, Pascal Noel, & Joseph Vavra, *US Unemployment Insurance Replacement Rates During the Pandemic*, Becker Friedman Institute for Economics at the University of Chicago, May 15, 2020 https://bfi.uchicago.edu/wp-content/uploads/BFI_WP_202062-1.pdf.

⁵⁴ U.S. Bureau of Economic Analysis, *Real Disposable Personal Income*, retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/DSPIC96#0> (last visited Aug. 17, 2020).

⁵⁵ Eric Morath & Danny Dougherty, *Covid-19 Pandemic Triggers Wave of Long-Term Unemployment*, Wall Street Journal, Aug. 7, 2020, <https://www.wsj.com/articles/covid-19-pandemic-triggers-wave-of-long-term-unemployment-11596817137>.

⁵⁶ \$472 million represents the amount the Federal Reserve has purchased under the program. Banks have lent \$496.8 million under the Main Street Lending Program in total. See Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, at Table 4, Aug. 20, 2020, <https://www.federalreserve.gov/releases/h41/> (to access click on hyperlink for Aug. 20, 2020 release). The SPV for the Main Street Lending Program is MS Facilities LLC. The H.4.1 statistical release discloses the SPV's participation amount in Main Street loans, which is 95% of those loans. The August 20, 2020 release disclosed a participation amount of \$472 million, which means \$496.8 million in Main Street loans were made by lenders.

quarterly NFIB report on economic data.⁵⁷ That same report found just 3% of business owners reported unmet credit needs and only 1% of business owners stated that their primary concern was financing. Despite the pandemic, 51% of business owners were not seeking a loan and 35% of business owners had “all credit needs met.”⁵⁸ Likewise, according to the Federal Reserve’s Senior Loan Officer Opinion Survey, the demand for commercial and industrial (C&I) loans from businesses of all sizes declined during the second quarter of 2020. Of the bank senior loan officers polled, 32.9% reported that interest in new credit lines or extensions of existing lines had fallen moderately, and 14.3% reported that it had fallen significantly. Only 22.9% of senior loan officers reported a moderate or significant uptick in inquiries for lines of credit.⁵⁹ Further, SBA programs like the PPP may best serve smaller struggling businesses,⁶⁰ given that PPP loans can be forgiven and businesses may be reluctant to assume more debt that must be paid back in light of ongoing economic uncertainty. For those businesses able to take on more debt, the modest initial Main Street Lending program activity could also be a sign that the current design of the Main Street Lending Program makes the program unattractive or inaccessible for many businesses in need.

The Commission believes that these considerations should inform policy discussions about the Main Street Lending Program’s modest initial activity and proposed alterations to the program in response. Accordingly, on August 7, 2020, the Commission held a hearing that explored the following aspects of the Main Street Lending Program:

- Potential causes of the program’s currently low utilization rate, including the lengthy period the Federal Reserve and the Treasury took to launch the program, the longer time for processing loans, borrower awareness and understanding of the program, borrowers’ potential access to credit from other sources, and how the fact that Main Street Lending Program loans must be repaid may affect its utilization. The hearing also discussed whether the Main Street Lending Program’s utilization rate will significantly increase over the coming months.
- Whether some creditworthy small and medium-sized businesses cannot qualify for loans under the Main Street Lending Program’s current loan terms and would benefit from modified loan terms, including the extent to which some creditworthy small and medium-sized businesses are excluded by various program requirements and terms, such as affiliation rules, minimum loan sizes, and the use of earnings before interest, taxes,

⁵⁷ William C. Dunkelberg & Holly Wade, *NFIB Small Business Economic Trends*, National Federation of Independent Businesses, Aug. 11, 2020, at 2, <https://assets.nfib.com/nfibcom/SBET-July-2020.pdf>.

⁵⁸ *Id.*

⁵⁹ Board of Governors of the Federal Reserve System, *Senior Loan Officer Opinion Survey on Bank Lending Practices*, Aug. 3, 2020, <https://www.federalreserve.gov/data/sloos/sloos-202007.htm>.

⁶⁰ For this reason, Congress continues to evaluate bipartisan and bicameral legislative proposals that extend and enhance the PPP program and other small business loan programs.

depreciation, and amortization (EBITDA) measures of leverage for loan sizes, instead of other measures like asset-to-value ratio. The hearing explored both the pros and cons of amending such requirements.

- The extent to which the Main Street Lending Program results in banks making loans that would not have otherwise occurred. This includes a discussion of the implication of the Main Street Lending Program’s utilization of banks’ existing underwriting standards.⁶¹

I. BACKGROUND OF THE MAIN STREET LENDING PROGRAM

To further its statutory mandate to “promote maximum employment [and] stable prices,”⁶² on April 9, 2020, the Federal Reserve announced the creation of the Main Street Lending Program as a vehicle to “support employers of all sizes” by “[providing] powerful support for the flow of credit in the economy.”⁶³ Per the Federal Reserve, the Main Street Lending Program “is designed to provide support to small and medium-sized businesses and their employees across the United States during the current period of financial strain by supporting the provision of credit to such businesses. The availability of additional credit is intended to help companies that were in sound financial condition prior to the onset of the COVID-19 pandemic maintain their operations and payroll until conditions normalize.”⁶⁴

In creating the Main Street Lending Program with funds provided by the CARES Act, the Federal Reserve’s authority is governed by both the CARES Act and Section 13(3) of the Federal Reserve Act, which allows Federal Reserve Banks expanded lending powers if authorized by the Federal Reserve and the Treasury during “unusual and exigent circumstances.”⁶⁵ The Treasury approved the Main Street Lending Program to “support the flow of credit to American workers . . . [and] [s]mall and medium-sized businesses [who], through no

⁶¹ Currently, only the three for-profit facilities of the Main Street Lending Program (i.e., the New Loan Facility, the Priority Loan Facility and the Expanded Loan Facility) are operational. As such, this report largely focuses on an evaluation of those facilities. The Commission will continue to monitor the implementation of the nonprofit facilities (i.e., the Nonprofit New Loan Facility and the Nonprofit Expanded Loan Facility) and report on the efficacy of those facilities once they get underway.

⁶² 12 U.S.C. § 225a.

⁶³ Board of Governors of the Federal Reserve System, *Federal Reserve takes additional actions to provide up to \$2.3 trillion in loans to support the economy*, Apr. 9, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm>.

⁶⁴ Federal Reserve Bank of Boston, *Main Street Lending Program For-Profit Businesses Frequently Asked Questions*, July 31, 2020, at 9, <https://www.bostonfed.org/mslp-faqs>.

⁶⁵ 12 U.S.C. § 343(3) (Section 13(3) of the Federal Reserve Act).

fault of their own, have faced severe financial strain from widespread closures and liquidity pressures in the financial system.”⁶⁶

Section 13(3) of the Federal Reserve Act sets forth several requirements for such financing programs. Among other things, the borrower cannot be insolvent, the program must have “broad-based eligibility,” the Federal Reserve must have evidence that each “participant in any program or facility with broad-based eligibility is unable to secure adequate credit accommodations from other banking institutions,” and the Federal Reserve must ensure that “the security for emergency loans is sufficient to protect taxpayers from losses.”⁶⁷

To protect the Federal Reserve from losses, the Treasury has pledged \$75 billion in equity for a special purpose vehicle (Main Street SPV) created by the Boston Federal Reserve,⁶⁸ which is administering the Main Street Lending Program for the Federal Reserve System.⁶⁹ This investment will enable the Main Street SPV to purchase up to \$600 billion in participations on eligible loans issued by eligible lenders,⁷⁰ via one of the five facilities that currently comprise the Main Street Lending Program—i.e., the New Loan Facility, the Priority Loan Facility, the Expanded Loan Facility, the Nonprofit New Loan Facility and the Nonprofit Expanded Loan Facility.

The Federal Reserve does not typically issue loans directly to borrowers. Since its establishment in 1913, the Federal Reserve has primarily been geared toward providing liquidity

⁶⁶ U.S. Department of the Treasury, *Treasury and Federal Reserve Board Announce New and Expanded Lending Programs to Provide up to \$2.3 Trillion in Financing*, Apr. 9, 2020, <https://home.treasury.gov/news/press-releases/sm968>.

⁶⁷ 12 U.S.C. § 343(3). Additionally, Section 13(3)(C) of the Federal Reserve Act provides that the Federal Reserve is to provide certain information to Congress relating to credit extended under Section 13(3) on a periodic basis. This information includes borrower identities and the material terms of the assistance provided to each borrower.

⁶⁸ Section 13(3) limits the Federal Reserve’s ability to take credit risk in connection with emergency lending programs. Treasury’s equity investment in the Main Street Lending Program will absorb any initial losses suffered by the program, which will mitigate credit risk to the Federal Reserve and help satisfy the statutory conditions for the Federal Reserve’s use of emergency lending authority under Section 13(3). The Treasury’s investment will be made using funds appropriated to the ESF under Section 4027 of the CARES Act. Federal Reserve Bank of Boston, *Main Street Lending Program For-Profit Businesses Frequently Asked Questions*, July 31, 2020, at 9, <https://www.bostonfed.org/mslp-faqs>.

⁶⁹ Federal Reserve Bank of Boston, *Federal Reserve Bank of Boston releases additional information for potential lenders and borrowers in the Main Street Lending Program* May 27, 2020, <https://www.bostonfed.org/news-and-events/press-releases/2020/main-street-lending-program-additional-information-potential-lenders-borrowers.aspx>.

⁷⁰ Federal Reserve Bank of Boston, *Main Street Lending Program For-Profit Businesses Frequently Asked Questions*, July 31, 2020, at 9, <https://www.bostonfed.org/mslp-faqs>. Per the Main Street Lending Program’s FAQs, the Federal Reserve and the Treasury determined that \$600 billion was “appropriate in light of the current financial strains” facing small and medium-sized borrowers targeted by the program. However, they will continue to assess the situation and needs of those borrowers and may adjust the Main Street Lending Program’s size in the future. *Id.* at 10-11.

to financial sector participants. Without the infrastructure to engage in direct lending, the Federal Reserve’s Main Street Lending Program relies on the established channels of lenders that issue commercial loans as part of their everyday business.⁷¹ As such, for a borrower to access the Main Street Lending Program, it must apply through a lender that is registered to participate in the program. The program does not, however, utilize the myriad of other lenders outside of the traditional banking system that some small and medium-sized business use.

The eligible lenders in the Main Street Lending Program are U.S. federally insured depository institutions like FDIC-insured banks, thrifts, and NCUA-insured credit unions. Nonbank lenders like BDCs and fintech lenders are currently not eligible to participate as lenders in the program, and some CDFIs may also be ineligible or functionally unable to access the program due to other requirements. Notably, there is no requirement that even eligible lenders participate or offer Main Street loans to their customers and some lenders have chosen not to participate. As of August 7, 2020, 509 financial institutions, representing approximately 58% of the total banking assets in the United States, registered to participate in the Main Street Lending Program.⁷² This represents less than 5% of eligible lenders.⁷³ In contrast, over 5,460 lenders participated in the PPP effort.⁷⁴ As of the same date, only 153 of those financial institutions were publicly willing to accept loan applications from new customers that lack a preexisting

⁷¹ Letter from Treasury Secretary Steven Mnuchin and Federal Reserve Chair Jerome Powell to Congressional Oversight Commission, June 29, 2020, at 10 (attached as Appendix C to The Third Report of the Congressional Oversight Commission, July 20, 2020, https://coc.senate.gov/sites/default/files/2020-08/20200720_Congressional_Oversight_Commission_3rd_Report.pdf) (stating that with respect to the Main Street Lending Program, the Federal Reserve and the Treasury “will leverage existing channels of bank lending by acquiring participations in loans extended to borrowers by financial institutions Relying on bank intermediation as a central element of the Main Street Lending Program allows the agencies to take advantage not only of lending institutions’ existing customer relationships but also their underwriting expertise to reach a broad and heterogeneous class of borrowers that generally lack the external ratings or public credit standing necessary to access the securities markets.”).

⁷² Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (prepared statement of Eric Rosengren, President and CEO, Federal Reserve Bank of Boston), <https://coc.senate.gov/sites/default/files/2020-08/ROSENGREN%20Testimony%20COC%20Hearing%208-7.pdf>.

⁷³ In June 2020 there were 5,354 credit unions. Credit Union National Association, *Monthly Credit Union Estimates*, Aug. 3, 2020, https://www.cuna.org/uploadedFiles/Global/About_Credit_Unions/CUMonthEst_Jun20.pdf. As of August 15, 2020, there were 5,069 active FDIC-insured depository institutions. Federal Deposit Insurance Corporation, *Institution Directory*, <https://www7.fdic.gov/idasp/advSearchLanding.asp> (last visited Aug. 15, 2020).

⁷⁴ U.S. Small Business Administration, *Paycheck Protection Program - Participating Lenders*, June 25, 2020, https://www.sba.gov/sites/default/files/2020-06/PPP_Lender_List_200625.pdf.

relationship with the lender.⁷⁵ For example, some of the largest lenders in the country have stated that they will limit loans to existing clients.⁷⁶

Eligible borrowers undergo the bank's standard underwriting process for commercial loans, and each bank evaluates applications according to its underwriting criteria. The lender, which has final say on whether to lend to the borrower, must "apply their own underwriting standards in evaluating the financial condition and creditworthiness of a potential borrower."⁷⁷ If a lender approves the applicant for a Main Street loan, then the lender will originate and fund the loan. The lender will then sell a 95% participation in the loan to the Main Street SPV. The lender will retain the remaining 5% interest. The Main Street SPV's purchase of 95% of the lender's loan allows the lender to mitigate the credit risk and capital cost of extending credit to the borrower. Lenders are only at risk of their 5% retention if a borrower defaults and only keep 5% of a loan on their balance sheets, thus freeing up capital to make other investments.

Lenders service the entire loan in exchange for a 25 basis points (bps) fee based on the 95% of the loan purchased by the Federal Reserve. Further, lenders will receive a 75-100 bps origination fee on the entire principal amount (i.e., 100%) of a Main Street loan. While lenders must pay the Main Street SPV a fee of 75-100 bps based on the principal amount of any Main Street loan, the lender may pass this fee down to the borrower. Thus, lenders can retain an origination fee of as much as 15%-20% of the retained portion of any Main Street loan. The fee design and shared participation features of the Main Street Lending Program are intended to make lenders more willing to extend credit to more borrowers and thereby support the economy during the pandemic.⁷⁸

⁷⁵ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (prepared statement of Eric Rosengren, President and CEO, Federal Reserve Bank of Boston), <https://coc.senate.gov/sites/default/files/2020-08/ROSENGREN%20Testimony%20COC%20Hearing%208-7.pdf>;

see also Federal Reserve Bank of Boston, *Program Overview for Borrowers*,

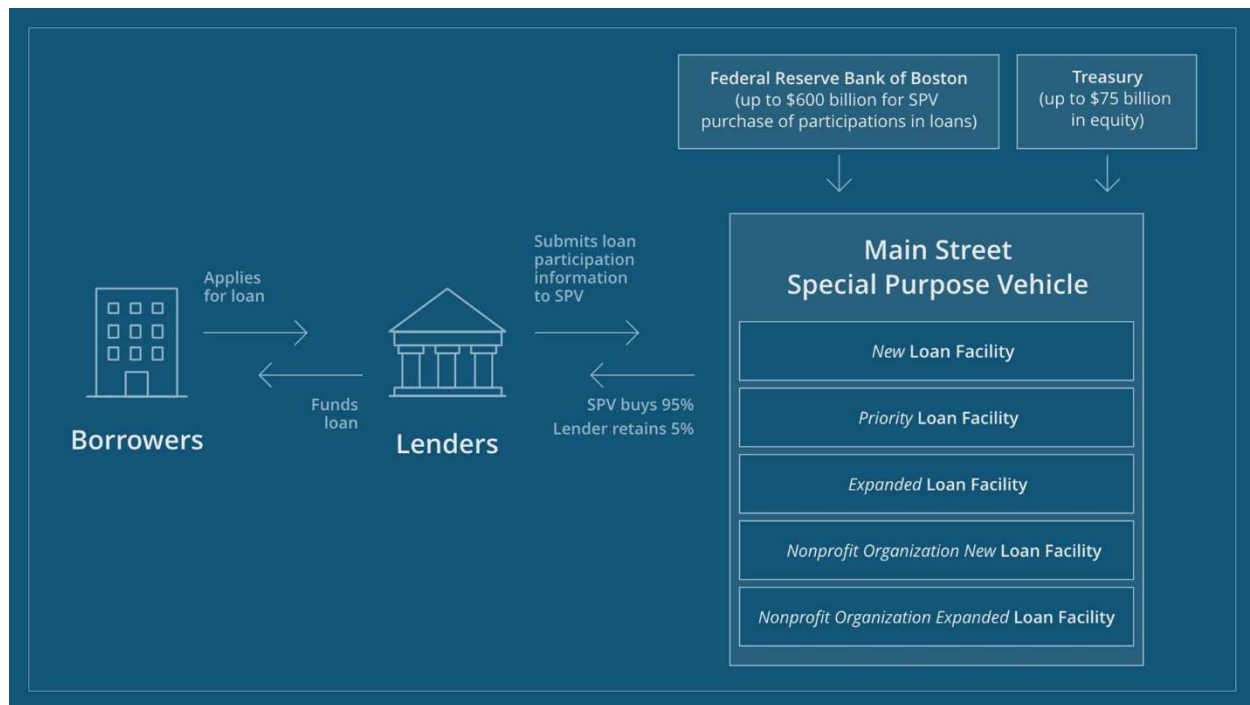
<https://www.bostonfed.org/supervision-and-regulation/supervision/special-facilities/main-street-lending-program/information-for-borrowers.aspx> (last visited Aug. 19, 2020).

⁷⁶ Rachel Siegel, *Fed's Main Street Lending Program Doesn't Have Many Large Banks Making Loans To New Customers*, Washington Post, July 8, 2020, <https://www.washingtonpost.com/business/2020/07/08/fed-main-street/>.

⁷⁷ Federal Reserve Bank of Boston, *Main Street Lending Program For-Profit Businesses Frequently Asked Questions*, July 31, 2020, at 31, <https://www.bostonfed.org/mslp-faqs>.

⁷⁸ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (prepared statement of Eric Rosengren, President and CEO, Federal Reserve Bank of Boston), <https://coc.senate.gov/sites/default/files/2020-08/ROSENGREN%20Testimony%20COC%20Hearing%208-7.pdf> ("The Main Street Lending Program was designed to provide credit support for business or nonprofit borrowers that have temporary cash-flow problems due to the pandemic—and given the uncertain outlook might otherwise have difficulty in obtaining credit from a lender that would have to hold 100 percent of the loan. Main Street can provide a loan to bridge the borrower over this current challenge.").

The diagram below from the Boston Federal Reserve broadly maps out the interplay among the Boston Federal Reserve, the Treasury, the Main Street SPV, the five Main Street facilities, lenders, and borrowers.⁷⁹



Main Street Facilities Serving For-profit Businesses

The Main Street Lending Program has three facilities for for-profit businesses—the New Loan Facility, the Priority Loan Facility, and the Expanded Loan Facility. The general design of each facility, including loan term, interest rate, repayment schedule, and participation structure is similar, but the programs differ in certain key ways, including the amount of allowable leverage, debt seniority, and loan size. The three facilities are structured to address the funding needs of different types of businesses.

The New Loan Facility is aimed primarily at small and medium-sized businesses that do not already have high levels of debt. The New Loan Facility extends five-year term loans between \$250,000 and \$35 million that, when added to existing debt, cannot exceed four times adjusted 2019 EBITDA. Fifteen percent of the principal on these loans is repaid in each of years 3 and 4, while a balloon payment for the remaining 70% is due in year 5. The interest rate is an

⁷⁹ Federal Reserve Bank of Boston, *The Federal Reserve's Main Street Lending Program*, <https://www.bostonfed.org/supervision-and-regulation/supervision/special-facilities/main-street-lending-program/main-street-lending-program-overview.aspx> (last visited Aug. 18, 2020).

adjustable rate of the London Interbank Offered Rate (LIBOR)⁸⁰ plus 3%, and interest payments are deferred (but accruing and capitalized) for one year. Principal payments are deferred for two years. The New Loan Facility requires that loans not be contractually subordinated in priority with the borrower’s other debt. Prepayment must be permitted without penalty. Loan proceeds can only be used to repay existing debt if those debt payments are “mandatory and due.”⁸¹

The Priority Loan Facility is aimed at small and medium-sized firms that may have larger outstanding debt than those using the New Loan Facility, and the loans can be used to refinance existing credit to another lender as well as to increase borrowing. The Priority Loan Facility loan terms are similar to the New Loan Facility, except that the Priority Loan Facility allows for larger loans (the lesser of \$50 million or six times 2019 adjusted EBITDA) and requires the loan to be more senior to or *pari passu* with the borrower’s other debts in terms of priority and security. This higher priority status presumably counterbalances the increased risk of the larger loan amount and higher leverage of the business.⁸²

The Expanded Loan Facility is aimed at larger firms that may already have significant debt outstanding. The program can allow substantial loans of between \$10 million and the lesser of \$300 million or six times 2019 adjusted EBITDA to be made to “upsized” existing term loans or revolving credit facilities. Given the relatively high debt levels of such businesses, and similar to the Priority Loan Facility, the Expanded Loan Facility sets the maximum level of leverage at six times adjusted EBITDA and requires loans to be more senior to or *pari passu* with other debts.⁸³

The chart below summarizes the key features of loans offered through the New Loan Facility, the Priority Loan Facility, and the Expanded Loan Facility.

Main Street For-Profit Facilities	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Type of Loan	New loans to borrowers	New loans to borrowers with greater leverage	Expanded loans to existing borrowers
Loan Term	5 years		
Minimum Loan Size	\$250,000		\$10 million

⁸⁰ One or three month LIBOR.

⁸¹ Board of Governors of the Federal Reserve System, *Main Street New Loan Facility Term Sheet*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a3.pdf>.

⁸² Board of Governors of the Federal Reserve System, *Main Street Priority Loan Facility Term Sheet*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a2.pdf>.

⁸³ Board of Governors of the Federal Reserve System, *Main Street Expanded Loan Facility Term Sheet*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a5.pdf>.

Main Street For-Profit Facilities	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Maximum Loan Size	The lesser of \$35 million, or an amount that, when added to outstanding and undrawn available debt, does not exceed 4 times that borrower’s adjusted 2019 EBITDA	The lesser of \$50 million, or an amount that, when added to outstanding or undrawn available debt, does not exceed 6 times the borrower’s adjusted 2019 EBITDA	The lesser of \$300 million, or an amount that, when added to outstanding or undrawn available debt, does not exceed 6 times the borrower’s adjusted 2019 EBITDA
Loan Proceeds Can Repay Existing Debt	Only payments that are “mandatory and due”	In addition to “mandatory and due” payments, can be used to refinance loans from other lenders	Only payments that are “mandatory and due”
Lender’s Retention in Loan	5%		
Federal Reserve’s Retention in Loan	95%		
Relation to Borrower’s Other Debt	Cannot be contractually subordinated in terms of priority	Senior to or <i>pari passu</i> with, in terms of priority and security, other than mortgage debt	
Principal Repayment Schedule	Principal deferred for 2 years. 15%, 15% and 70% principal repayment due in years 3, 4 and 5, respectively. No prepayment penalty		
Deferral of Interest Payments	Interest payments deferred (but accruing and capitalized) for one year		
Interest Rate	Adjustable rate of LIBOR (1 or 3 month) + 3%		

Main Street For-Profit Facilities	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Fees	<p>Borrower pays lender an origination fee of up to 100 bps.</p> <p>Lender pays Main Street SPV a transaction fee of 100 bps, but lender may have borrower cover fee.</p>	<p>Borrower pays lender an origination fee of up to 75 bps.</p> <p>Lender pays Main Street SPV a 75 bps transaction fee, but lender may have borrower cover fee.</p>	

II. ANALYSIS OF THE MAIN STREET LENDING PROGRAM

As of August 19, 2020, eligible lenders had issued loans totaling \$496.8 million under the Main Street Lending Program.⁸⁴ The Federal Reserve's participation amount in these loans is \$472 million.⁸⁵ From July 15, 2020 to August 19, 2020, the amount of loans made under the Main Street Lending Program increased from \$12 million to \$496.8 million.⁸⁶

The Federal Reserve has disclosed only transaction-specific data about the Main Street Lending Program as of July 31, 2020.⁸⁷ As of that date, the program had purchased participations in 13 loans, ranging in size from \$1.5 million to \$50 million.⁸⁸ The loans went to businesses in five states: Florida (8 businesses), Pennsylvania (2 businesses), Wisconsin (1 business), Texas (1 business), and Louisiana (1 business). These businesses are from a wide variety of industries, including real estate, interior design, construction, dentistry, and roofing. The chart below lists the names of these businesses and provides details about their loans.⁸⁹

⁸⁴ Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, at Table 4, Aug. 20, 2020, <https://www.federalreserve.gov/releases/h41/> (to access click on hyperlink for Aug. 20, 2020 release). The SPV for the Main Street Lending Program is MS Facilities LLC. The H.4.1 statistical release discloses the SPV's participation amount in Main Street loans, which is 95% of those loans. The August 20, 2020 release disclosed a participation amount of \$472 million, which means \$496.8 million in Main Street loans were made by lenders.

⁸⁵ *Id.*

⁸⁶ *Id.*; Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, July 16, 2020, <https://www.federalreserve.gov/releases/h41/> (to access click on hyperlink for July 16, 2020 release). The SPV for the Main Street Lending Program is MS Facilities LLC.

⁸⁷ Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Aug. 10, 2020, <https://www.federalreserve.gov/publications/files/msplf-msnlf-transaction-specific-disclosures-8-10-20.xlsx>.

⁸⁸ *Id.*

⁸⁹ *Id.*

Date of MSLP's Purchase	Facility	Name of Borrower	Industry of Borrower	State of Borrower	Name of Lender	Principal Amount of Loan
7/15/20	MSPLF	Cherry Tree Dental, LLC	Dentistry	WI	Starion Bank	\$12,300,000
7/22/20	MSNLF	Solesdi US LLC	Interior design	FL	City National Bank of FL	\$2,000,000
7/23/20	MSPLF	Cailis Mechanical Corp	Construction	FL	City National Bank of FL	\$5,000,000
7/24/20	MSNLF	Atlas Apex Roofing, LLC	Roofing	FL	City National Bank of FL	\$5,500,000
7/24/20	MSNLF	O.T. Concrete Services Inc.	Concrete	FL	City National Bank of FL	\$2,500,000
7/24/20	MSPLF	Mount Airy #1, L.L.C.	Casino resort	PA	FNCB Bank	\$50,000,000
7/24/20	MSPLF	RESOF, LLC	Industrial refrigeration repair	FL	City National Bank of FL	\$2,100,000
7/24/20	MSPLF	Pablo Alfaro, P.A.	Real estate	FL	City National Bank of FL	\$1,500,000
7/28/20	MSNLF	Zevuloni & Associates Inc	Insurance adjustment	FL	City National Bank of FL	\$1,900,000
7/29/20	MSNLF	Air-Source Int'l Corp.	Air conditioning	FL	City National Bank of FL	\$1,900,000
7/29/20	MSNLF	Gulf South Energy Services, LLC	Oil and natural gas	LA	B1BANK	\$2,000,000
7/30/20	MSPLF	Este Tux, Inc.	Tuxedo rental	PA	FNCB Bank	\$3,250,000
7/30/20	MSNLF	Ilios Lighting Design, LLC	Event production	TX	Transpecos Banks, SSB	\$2,225,000

The Commission notes that one bank in Florida has originated eight Main Street loans and engaged in an outsized proportion of regional PPP loans.⁹⁰ Further inquiry may be warranted to determine whether there are any lessons to learn from this participant's apparently unusual level of success in onboarding borrowers.

Notwithstanding the recent increase in activity in the program, the number and total amount of loans issued under the Main Street Lending Program is still relatively small. When the Commission asked Secretary Mnuchin and Federal Reserve Chair Jerome Powell about the low utilization of the Main Street Lending Program at our June 24, 2020 meeting with them, they noted that low utilization of a program does not necessarily indicate a problem with its design.⁹¹ For example, they noted that the PMCCF had not been used by any businesses. In their view, the lack of utilization of the PMCCF is not a design flaw, but a result of the fact that the corporate bond market is functioning well and businesses are accessing credit through that market. They added that some businesses may obtain credit through existing credit lines, the PPP program, or from nonbank lenders like BDCs. Finally, they noted that demand for the Main Street Lending Program may increase over time.

The Commission notes that unlike with the PMCCF and SMCCF, which provided an immediate boost to the corporate bond markets that serve companies large enough to issue bonds,⁹² the mere announcement of a government loan support program like the Main Street Lending Program may not provide comparable effects in the small-to-medium-sized business loan market.⁹³ Banks must apply their standard underwriting criteria to Main Street loans—criteria that have tightened since the program's April 2020 announcement. According to the

⁹⁰ Ashley Portero, *In study of Florida's top retail banks, this Miami company ranked high for PPP lending*, South Florida Business Journal, July 13, 2020, <https://www.bizjournals.com/southflorida/news/2020/07/13/city-national-bank-ranks-high-for-ppp-lending.html>.

⁹¹ Congressional Oversight Commission, *The Third Report of the Congressional Oversight Commission*, July 20, 2020, at 8-9, https://coc.senate.gov/sites/default/files/2020-08/20200720_Congressional_Oversight_Commission_3rd_Report.pdf.

⁹² Congressional Oversight Commission, *The Second Report of the Congressional Oversight Commission*, June 18, 2020, at 6, https://coc.senate.gov/sites/default/files/2020-08/20200618_Congressional_Oversight_Commission_2nd_Report.pdf (“The announcement of these plans has had a significant effect on the functioning of credit markets and the ability of businesses to access capital. In February and March, the corporate bond market saw a widening gap between bid and ask prices for bonds . . . since the Federal Reserve's March 23 announcement about the creation of the PMCCF and SMCCF, the gap between bid and ask prices has narrowed sharply, improving liquidity for both the investment grade and non-investment grade bond markets.”).

⁹³ See, e.g., William B. English & J. Nellie Liang, *Designing the Main Street Lending Program: Challenges and Options*, Brookings Institute, June 18, 2020, at 2, https://www.brookings.edu/wp-content/uploads/2020/06/WP64_Liang-English_FINAL.pdf (“The mere announcement that Main Street loans are available does not provide the same support to the loan market as the Commercial Paper Funding Facility (CPFF) does for the commercial paper market and the Primary Market Corporate Credit Facility (PMCCF) does for the corporate bond market.”).

Federal Reserve’s Senior Loan Officer Opinion Survey, during the second quarter of 2020, banks tightened standards for loans to commercial and industrial enterprises of all sizes. The survey found that banks had “increased the use of interest rate floors, collateralization requirements, loan covenants, premiums charged on riskier loans, and loan spreads over the bank’s cost of funds, and [many] banks tightened all other lending terms across firms of all sizes.”⁹⁴ Bank senior loan officers noted several reasons for these changes, including “a less favorable or more uncertain economic outlook, worsening of industry-specific problems, and reduced tolerance for risk.”⁹⁵

Given the Main Street Lending Program’s low utilization rate and the possibility that Main Street liquidity could help failing small and medium-sized businesses survive past the COVID-19 crisis, the Commission explores in the remainder of this report potential program modifications, including some suggested by stakeholders. The Commission notes at the outset, however, that Section 4003(d)(3) of the CARES Act expressly prohibits the Federal Reserve from forgiving the principal amount of loans to businesses, states, or municipalities.⁹⁶ The Federal Reserve also interprets Section 13(3) of the Federal Reserve Act to preclude issuing grants or forgivable loans through its emergency lending programs.⁹⁷

The Federal Reserve and the Treasury must act as swiftly as is feasible

The Commission acknowledges the complexity involved in establishing the Main Street Lending Program, but reiterates that Main Street-eligible entities would benefit from swift action to consider and implement any further improvements to the program.

Implementing the Main Street Lending Program has taken months. On March 27, 2020, Congress enacted the CARES Act, which authorized, among other things, \$454 billion for use by the Treasury to support emergency lending facilities established by the Federal Reserve. On April 9, 2020, the Treasury and the Federal Reserve announced the creation of the Main Street Lending Program. Over two months later, on June 15, 2020, the Boston Federal Reserve opened its portal for lenders to register to participate in the Main Street Lending Program. The program only began purchasing loan participations on July 6, 2020, more than three months after the CARES Act’s passage.

⁹⁴ Board of Governors of the Federal Reserve System, *Senior Loan Officer Opinion Survey on Bank Lending Practices*, Aug. 3, 2020, <https://www.federalreserve.gov/data/sloos/sloos-202007.htm>.

⁹⁵ *Id.*

⁹⁶ CARES Act, Pub. L. No. 116-136, § 4003(d)(3), 134 Stat. 281 (2020).

⁹⁷ U.S. Senate Banking, Housing, and Urban Affairs Committee hearing on the Quarterly CARES Act Report to Congress, 116th Cong. (June 16, 2020) (testimony of Jerome Powell, Chair, Board of Governors of the Federal Reserve System).

Similarly, the Federal Reserve announced that it was exploring the possibility of expanding the Main Street Lending Program to include nonprofit organizations on April 30, 2020.⁹⁸ It has since confirmed that it will establish the Nonprofit New Loan Facility and the Nonprofit Expanded Loan Facility and released the term sheets, documents, and forms for these facilities.⁹⁹ However, as of the date of this report over three months later, those facilities are not yet operational.

In his testimony at our August 7, 2020 hearing, Boston Federal Reserve Bank President Eric Rosengren cited the difficulty of “[s]caling up a program that purchases participations in loans from diverse borrowers in a decentralized market that lacks standardization” for why there was a lengthy implementation period.¹⁰⁰ President Rosengren also noted that loans, unlike market securities, take longer to purchase because they are individually negotiated by borrowers and lenders.¹⁰¹ As previously noted, the Main Street Lending Program requires banks to “apply their own underwriting standards in evaluating the financial condition and creditworthiness of a potential borrower.”¹⁰² This requires borrowers to provide lenders with significant documentation and the process can take weeks or more. Finally, President Rosengren noted that any program alterations that require modifying underlying legal documents take time (and will continue to do so).¹⁰³

⁹⁸ Board of Governors of the Federal Reserve System, *Federal Reserve Board Announces It Is Expanding The Scope And Eligibility For The Main Street Lending Program*, Apr. 30, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200430a.htm>.

⁹⁹ Board of Governors of the Federal Reserve System, *Federal Reserve Board Modifies Main Street Lending Program To Provide Greater Access To Credit For Nonprofit Organizations Such As Educational Institutions, Hospitals, And Social Service Organizations*, July 17, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200717a.htm>; see also Federal Reserve Bank of Boston, *Main Street Lending Program Forms and Agreements*, <https://www.bostonfed.org/supervision-and-regulation/supervision/special-facilities/main-street-lending-program/information-for-lenders/docs.aspx>.

¹⁰⁰ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (testimony of Eric Rosengren, President and CEO, Federal Reserve Bank of Boston); see also Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (prepared statement of Eric Rosengren, President and CEO, Federal Reserve Bank of Boston), <https://coc.senate.gov/sites/default/files/2020-08/ROSENGREN%20Testimony%20COC%20Hearing%208-7.pdf> (“Quickly scaling up a program that purchases participations in bespoke loans—from a very diverse group of borrowers in a decentralized market that lacks standardization—is inherently difficult. There are also tradeoffs between limiting credit risk, targeting support, reaching scale, and achieving operational efficiency. Considerations such as these have made the Main Street Lending Program one of the most challenging emergency lending programs the Federal Reserve has ever put in place.”).

¹⁰¹ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (testimony of Eric Rosengren, President and CEO, Federal Reserve Bank of Boston).

¹⁰² Federal Reserve Bank of Boston, *Main Street Lending Program For-Profit Businesses Frequently Asked Questions*, July 31, 2020, at 31, <https://www.bostonfed.org/mslp-faqs>.

¹⁰³ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (testimony of Eric Rosengren, President and CEO, Federal Reserve Bank of Boston) (testifying that changes to terms sheets that require changes to underlying legal documents take longer to implement than other changes).

Given the lengthy underwriting process, delaying the implementation of any improvements to the Main Street Lending Program constricts the effectiveness of any relief that the program could provide to viable businesses and nonprofits. The Commission recommends that the Treasury and the Federal Reserve expedite the implementation of the Nonprofit New Loan Facility and the Nonprofit Expanded Loan Facility, noting that some nonprofit organizations have struggled with adverse impacts from the pandemic for just as long as for-profit businesses. In addition to expediting their own internal processes, the Commission recommends that the Federal Reserve and the Treasury investigate whether modifications to the program could shorten the bank's underwriting process for Main Street loans without undermining safety and soundness or unnecessarily eroding the creditworthiness of Main Street loans. Moreover, the Commission recommends that the Treasury and the Federal Reserve consider the appropriateness of enlisting other Federal Reserve Banks to help expand administrative capacity, as well as to help innovate and experiment with changes or expansions to the Main Street Lending Program.

Improve outreach efforts

Despite the Federal Reserve's outreach efforts for the Main Street Lending Program,¹⁰⁴ some businesses that could benefit from the program are unaware of the program's existence or are confused by the program's terms. In a survey of its members, the Association for Corporate Growth found that 22% of respondents, which were comprised of investors, executives, lenders, and advisers to hundreds of thousands of growing middle-market companies, were unaware of the Main Street Lending Program.¹⁰⁵ Additionally, the Commission heard testimony that 70% of businesses that inquire with banks about the Main Street Lending Program do not fully understand its terms, and that of these, many lose interest when they learn that Main Street Lending Program loans are dissimilar to forgivable PPP loans.¹⁰⁶

¹⁰⁴ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (prepared statement of Eric Rosengren, President and CEO, Federal Reserve Bank of Boston), <https://coc.senate.gov/sites/default/files/2020-08/ROSENGREN%20Testimony%20COC%20Hearing%208-7.pdf> (stating that the Boston Federal Reserve has conducted outreach calls, 14 webinars and posted informational materials to its website).

¹⁰⁵ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (prepared statement of Thomas Bohn, President and CEO, Association for Corporate Growth), <https://coc.senate.gov/sites/default/files/2020-08/BOHN%20Testimony%20COC%20Hearing%208-7.pdf>.

¹⁰⁶ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (testimony of Lauren Anderson, Senior Vice President & Associate General Counsel, Bank Policy Institute) (testifying that "the vast majority, so probably over 70 percent, of new borrower inquiries that our banks are getting are actually borrowers who think Main Street is a PPP program. So they think it is a loan forgiveness program or a grant program. And once they hear the details, then they realize it is actually not for them. So they are looking for something that is equivalent to a PPP type structure.").

Accordingly, the Commission believes that borrowers could benefit from further outreach efforts by the Federal Reserve, the Treasury, and banks.¹⁰⁷ The Commission also believes that eligible nonprofit organizations would benefit from additional outreach prior to the implementation of the Main Street Lending Program’s nonprofit facilities. That said, while additional outreach may help, the Commission is skeptical whether outreach alone will significantly increase program participation.

Proposals to modify the Main Street Lending Program’s structure

Many small and medium-sized businesses that relied on other sources of funding at the pandemic’s outset may have depleted those funds and might need additional liquidity to survive.¹⁰⁸ The Commission heard testimony that these businesses could benefit from the modifications to the Main Street Lending Program outlined below.

In April 2020, a report examining the Federal Reserve System’s annual Small Business Credit Survey found that “most firms are ill prepared for a sustained period of revenue loss” and 86% of firms would need to take some action in order to mitigate losses if they missed two months of revenue, such as using an owner’s personal funds, taking out debt, or reducing payroll.¹⁰⁹ A May 2020 report by the JPMorgan Chase Institute presented an even more dire outlook, stating 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.”¹¹⁰

However, as the Commission’s last report noted, “there are indications that at least some small businesses do not need credit or they are able to obtain it from sources other than the [Main Street Lending Program].”¹¹¹ The report cited statistics from the NFIB’s July 2020 Small Business Economic Trends report, in which only 3% of borrowers reported unsatisfied

¹⁰⁷ For example, the Federal Reserve does not require participating lenders to be listed on the Main Street Lending Program’s website. The Main Street Lending Program’s website only includes an interactive state-by-state map of participating lenders that are accepting new customers (rather than all participating lenders). Consequently, a borrower does not have access to the full list of participating lenders in its area.

¹⁰⁸ For this reason, Congress continues to evaluate bipartisan and bicameral legislative proposals that extend and enhance the PPP program and other small business loan programs.

¹⁰⁹ Federal Reserve Banks of Atlanta, Boston, Chicago, Cleveland, Dallas, Kansas City, Minneapolis, New York, Philadelphia, Richmond, St. Louis, and San Francisco, *2020 Small Business Credit Survey*, Apr. 7, 2020, at 4, <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2020/2020-sbcs-employer-firms-report>.

¹¹⁰ JPMorgan Chase Institute, *Data Dialogue: The Economic Impacts of COVID-19 on Small Business*, May 13, 2020, <https://institute.jpmorganchase.com/institute/research/small-business/the-economic-impacts-of-covid-19-on-small-business>.

¹¹¹ Congressional Oversight Commission, *The Third Report of the Congressional Oversight Commission*, July 20, 2020, at 9, https://coc.senate.gov/sites/default/files/2020-08/20200720_Congressional_Oversight_Commission_3rd_Report.pdf.

borrowing needs, 34% reported sufficient credit access, and over half of respondents stated that they had no interest in obtaining a loan.¹¹² The latest NFIB data show this trend has continued, with still only 3% of borrowers reporting unmet credit needs, and 35% reporting sufficient credit access, an increase of 1% from June.¹¹³ Likewise, the recently released Federal Reserve’s Senior Loan Officer Opinion Survey for the second quarter of 2020 stated that demand for commercial loans decreased among firms of all sizes, and found that 47.2% of surveyed lenders reported a drop in inquiries regarding extending or opening lines of credit.¹¹⁴

That said, at the outset of the pandemic, many small and medium-sized businesses relied on other sources of funding, such as loans or grants through the PPP¹¹⁵ or the SBA’s Economic Injury Disaster Loan (EIDL) program.¹¹⁶ However, the vast majority of small and medium-sized businesses that relied on funds from the PPP have since expended those funds.¹¹⁷ Additionally, businesses with bank relationships drew down on existing lines of credit¹¹⁸ and some business owners may have used personal funds.¹¹⁹

With the foregoing backdrop in mind, the Commission highlights six modifications to the Main Street Lending Program that witnesses at its recent hearing raised:

¹¹² *Id.*

¹¹³ William C. Dunkelberg & Holly Wade, *NFIB Small Business Economic Trends*, National Federation of Independent Business, July 11, 2020, at 2, <https://assets.nfib.com/nfibcom/SBET-July-2020.pdf>.

¹¹⁴ Board of Governors of the Federal Reserve System, *July 2020 Senior Loan Officer Opinion Survey on Bank Lending Practices*, Aug. 3, 2020, <https://www.federalreserve.gov/data/documents/sloos-202007-fullreport.pdf>.

¹¹⁵ Goldman Sachs, *Survey: If Congress CARES, Round Two Must Go Through*, July 14, 2020, <https://www.goldmansachs.com/citizenship/10000-small-businesses/US/infographic-round-two/> (“91% have been approved and received loan funding”).

¹¹⁶ National Federation of Independent Business, *Covid-19 Small Business Survey*, July 7, 2020, at 2, <https://assets.nfib.com/nfibcom/Covid-19-9-Write-up-and-Questionnaire-7-7-2020-FINAL.pdf> (reporting that 34% of small business respondents applied for an EIDL loan, of which 67% were approved at the time of reporting).

¹¹⁷ When approved by Congress in March, the Paycheck Protection Program was only designed to provide businesses with 8 weeks of assistance. U.S. Department of the Treasury, *Paycheck Protection Program (PPP) Information Sheet: Borrowers*, Mar. 31, 2020, <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>.

¹¹⁸ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (prepared statement of Lauren Anderson, Senior Vice President and Associate General Counsel, Bank Policy Institute), <https://coc.senate.gov/sites/default/files/2020-08/ANDERSON%20Testimony%20COC%20Hearing%208-7.pdf> (“[A]s the severity of the health crisis became evident in the first quarter, both small and large businesses prudently accessed credit from their banks to ensure liquidity. Between February 12, 2020 and April 1, bank loans increased approximately \$700 billion, in large part because banks were funding draws on lines of credit as large and small businesses sought to stockpile cash.”).

¹¹⁹ Federal Reserve Banks of Atlanta, Boston, Chicago, Cleveland, Dallas, Kansas City, Minneapolis, New York, Philadelphia, Richmond, St. Louis, and San Francisco, *2020 Small Business Credit Survey*, Apr. 7, 2020, at 8, <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2020/2020-sbcs-employer-firms-report> (reporting that “88% of employer firms rely on an owner’s personal credit score to obtain financing, similar to 2018” and “56% of firms have relied on personal savings, friends, or family to fund their business in the last five years”).

First, Thomas Bohn, the President and CEO of the Association for Corporate Growth, a member organization of operators and advisors to middle-market companies, recommended decreasing the minimum loan size of \$250,000 to \$50,000 for the New Loan Facility and the Priority Loan Facility. To justify the program's current minimum loan amount, President Rosengren testified that "the PPP program was designed to target that segment of the industry," meaning smaller businesses, and that the Main Street Lending Program "was really designed for businesses that did not qualify for the PPP program and, nonetheless, might have a need for credit."¹²⁰ The Federal Reserve has also already reduced the minimum loan size twice, from an initial \$1 million. However, a minimum loan size of \$250,000 makes accessing the Main Street Lending Program impractical for at least some smaller businesses. The Federal Reserve and Treasury should consider whether to further reduce the minimum loan size. Access to the Priority Loan Facility, in particular, could also help some businesses reduce operating costs by allowing them to refinance their existing debt and take advantage of the deferred principal and interest payments for Priority Loans.¹²¹

The Commission encourages the Federal Reserve and the Treasury to think creatively and prudently as they evaluate whether a lower minimum loan size than \$250,000 would be beneficial or practical. For example, as noted, other Federal Reserve Banks could be enlisted to expand administrative capacity. Additionally, the Treasury and the Federal Reserve could consider creative administrative fee models, such as fees inversely proportional to loan size, so that lenders have better incentives to onboard smaller borrowers.

Second, Vince Foster, the Executive Chairman of Main Street Capital Corporation, a BDC that provides capital to lower middle-market companies seeking to grow or transition ownership, recommended extending the maturity for Main Street loans from five to seven years, and pushing back amortization to year four.¹²² This extended repayment schedule may provide

¹²⁰ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (testimony of Eric Rosengren, President and CEO, Federal Reserve Bank of Boston).

¹²¹ The Commission notes that altering the minimum loan size alone may not result in smaller loans being originated under the program because the costs associated with Main Street lending make obtaining such a loan too difficult. The program was designed for companies that were not eligible for PPP and large enough that a \$250,000 loan would not be unusual. As of July 31, 2020, the smallest Main Street Loan was \$1.5 million. Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Aug. 8, 2020, <https://www.federalreserve.gov/publications/files/msplf-msnlf-transaction-specific-disclosures-8-10-20.xlsx>.

¹²² Currently, principal payments begin in year 3, with 15% due at the end of years 3 and 4, and a 70% balloon payment at the end of year 5. This balloon payment, in particular, may be untenable for many businesses. See U.S. Chamber of Commerce, *U.S. Chamber Letter to Federal Reserve and Treasury on Main Street Lending Program*, Apr. 16, 2020, <https://www.uschamber.com/letters-congress/us-chamber-letter-federal-reserve-and-treasury-main-street-lending-program> ("Lenders should be able to provide flexibility on loan maturities for a period of up to six years"); see also U.S. Small Businesses Administration, *Types of 7(a) Loans*, <https://www.sba.gov/partners/lenders/7a-loan-program/types-7a-loans> (last visited Aug. 18, 2020) (providing that certain SBA 7(a) loans can be extended for up to ten years).

borrowers with additional flexibility and sufficient time to recover from the long-term effects of a prolonged disruption to their businesses. Meanwhile, borrowers that need less time to recover are able to prepay their loans without penalty under the existing terms of the Main Street Lending Program.

The Commission is aware that by statute, the Federal Reserve cannot lend to currently insolvent borrowers, and its emergency lending programs should be “for the purpose of providing liquidity to the financial system, and not to aid a failing financial company.”¹²³ However, within those constraints, an extended repayment schedule could accommodate businesses that will recover—and avoid insolvency—but that will do so on a longer time horizon. Not every struggling firm will benefit from a loan that increases its total debt burden, but loans could be structured to ensure that additional debt is not overly burdensome. A possible counterargument is that the CARES Act was enacted to resolve the immediate liquidity crunch and economic shock experienced in March 2020, and extending a loan’s duration to bring a longer period of time when supply of certain goods and services might greatly exceed demand is a different proposition than the one that confronted lawmakers when the CARES Act was enacted.

Third, Mr. Foster and Mr. Bohn both recommended raising EBITDA standards and allowing for asset-based criteria for loan sizes. They testified that by using an EBITDA (that is, cashflow) standard to evaluate applicants, the Main Street Lending Program may exclude borrowers that may have limited cash flow but are otherwise viable, such as early-stage growth companies. Likewise, the EBITDA standard may exclude businesses that may have low or weak cash flow but that possess a favorable loan-to-value or loan-to-cost ratio, such as hotels or retail businesses that have high inventory.

Regarding the calibration of EBITDA standards, a working paper by William English and Nellie Liang argues that the Federal Reserve and the Treasury should consider raising EBITDA standards in exchange for requiring that lenders retain a higher portion of loans made to more leveraged companies.¹²⁴ Notably, the Priority Loan Facility originally allowed for loans to more highly levered companies if a lender retained 15% of any loan, not the current 5%.

As for whether EBITDA inappropriately excludes some companies that the Federal Reserve and the Treasury could prudently back notwithstanding their limited cash flow, at the

¹²³ 12 U.S.C. § 343(3)(B)(i)-(ii) (Section 13(3) of the Federal Reserve Act).

¹²⁴ William English & Nellie Liang, *Designing the Main Street Lending Program: Challenges and Options*, June 18, 2020, https://www.brookings.edu/wp-content/uploads/2020/06/WP64_Liang-English_FINAL.pdf (“The bank participation share is 5 percent for all loans, regardless of borrower credit quality. We recommend that banks in some cases be allowed to extend program loans to riskier borrowers if they retain a larger share of the loan to demonstrate their confidence in the credit. The Federal Reserve recently eliminated such a trade-off in the Priority Loan facility, but we believe it should be reintroduced, creating greater flexibility in the program.”).

Commission’s meeting with Secretary Mnuchin and Chair Powell on June 24, 2020, Secretary Mnuchin indicated that the Treasury and the Federal Reserve are looking at options to address this situation, including a possible asset-based lending facility established by the Federal Reserve. Two months later, at the Commission’s August 7, 2020 hearing, President Rosengren testified that while he was aware of “discussions about asset-based financing and some of the difficulties experienced . . . there is no term sheet that is imminent.”¹²⁵ Some Commissioners believe that the Federal Reserve and the Treasury should continue exploring whether it would be prudent and appropriate to expand the Main Street Lending Program to include asset-based lending and second-lien lending to creditworthy businesses with reasonable cash flow and valued collateral.

The Commission acknowledges concerns with such asset-based lending and does not underestimate the complexity of the issues that would need to be worked through. This includes determining the scope of the facility and whether it should benefit larger actors like real estate investment trusts, private equity firms, and hedge funds. For example, at the Commission’s hearing, Gwen Mills of the labor union UNITE HERE, which represents over 300,000 hospitality-industry workers, testified that in their view, providing relief to commercial mortgage-backed securities (CMBS) borrowers, and in particular to hotel property owners, would yield an inappropriate “bailout” because the largest beneficiaries of such a facility would be “publicly-traded real estate investment trusts (REITs) . . . and giant private equity firms . . .”¹²⁶ In her view, it would “have little effect to no effect on hotel employment . . .”¹²⁷ Ms. Mills testified that in UNITE HERE’s experience, historically when hotel property owners have gone out of business, that has not affected hotel-worker employment levels because hotel “[o]wners don’t generally employ hotel workers anyway.” Rather, “operating companies [do] . . . under long-term management agreements that frequently outlive multiple changes in ownership.”¹²⁸ Ms. Mills noted that she was authorized to state that the AFL-CIO, which represents an additional 12 million workers, supported the policy recommendations in her testimony.¹²⁹

However, some Commissioners believe an asset-based facility encompassing CMBS could affect hotel employment in the long run by preserving hotels as going concerns, so that workers have jobs to come back to when hotel occupancy increases. One Commissioner also

¹²⁵ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (testimony of Eric Rosengren, President and CEO, Federal Reserve Bank of Boston).

¹²⁶ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (prepared statement of Gwen Mills, Secretary-Treasurer, UNITE HERE), <https://coc.senate.gov/sites/default/files/2020-08/MILLS%20Testimony%20COC%20Hearing%208-7.pdf>.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

noted at the hearing that “74% of CMBS [are] less than \$20 million.”¹³⁰ Further, more than 50% of loans are less than \$10 million.¹³¹ Trepp data provides that for just hotel CMBS loans, 88% are less than \$20 million and 74% are less than \$10 million.¹³² Ms. Mills submitted a supplemental statement for the record providing UNITE HERE’s analysis showing that “59% of hotel CMBS loans had outstanding balances of \$20 million or more, and 76% were over \$10 million.”¹³³

Fourth, Mr. Bohn and Mr. Foster recommended that the Federal Reserve and the Treasury relax the Main Street Lending Program’s affiliation rules. The Main Street Lending Program adopted the SBA’s affiliation rules, which generally require a potential borrower to aggregate all of its employees or revenues with those of its affiliates when determining eligibility.¹³⁴ This may exclude participation by portfolio companies of private equity or venture capital sponsors where the aggregation of total employees may exceed the maximum of 15,000 or revenues may exceed the maximum of \$5 billion.¹³⁵ Furthermore, as Mr. Foster’s written testimony explained, affiliated companies “must share a single Main Street facility limitation amount” like maximum loan size, which “substantially reduces the number of these companies eligible for Main Street loans.”¹³⁶ This may exclude businesses with fewer than 500 employees who could not access the PPP due to affiliation rules, and other private companies with affiliated sister companies.

Some Commissioners believe the Federal Reserve and Treasury should consider revisiting these requirements. In their view, one could argue that these loans already have various safeguards, including those relating to dividends and the ability of borrowers to access funds elsewhere. However, some Commissioners believe the current affiliation restrictions may be necessary to ensure that the Main Street Lending Program’s funds flow to businesses that are unable to otherwise secure capital with reasonable terms, and to ensure that large sponsors, such as private equity and venture capital funds, do not transfer loan proceeds out of the borrowing

¹³⁰ See Trepp data (last accessed June 16, 2020). Trepp, LLC provides a commercially available database of securitized mortgages.

¹³¹ *Id.*

¹³² *Id.*

¹³³ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (supplemental statement for the record of Gwen Mills, Secretary-Treasurer, UNITE HERE).

¹³⁴ Federal Reserve Bank of Boston, *Main Street Lending Program For-Profit Businesses Frequently Asked Questions*, July 31, 2020, at 28-29, <https://www.bostonfed.org/mslp-faqs>.

¹³⁵ Private equity companies were specifically precluded from direct participation in the Main Street Lending Program when the Fed and Treasury adopted 13 C.F.R. § 120.110 to determine eligible businesses, as modified and clarified by SBA regulations for purposes of the PPP. Federal Reserve Bank of Boston, *Main Street Lending Program For-Profit Businesses Frequently Asked Questions*, July 31, 2020, at 29, <https://www.bostonfed.org/mslp-faqs>.

¹³⁶ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (prepared statement of Vince Foster, Executive Chairman, Main Street Capital Corporation), <https://coc.senate.gov/sites/default/files/2020-08/FOSTER%20Testimony%20COC%20Hearing%208-7.pdf>.

portfolio company at taxpayers' expense. The Commission also received a statement for the record signed by 17 organizations, including labor unions representing over 10 million workers, along with economic policy think tanks, explaining their view that "weakening the affiliation rules could provide inappropriate access to Main Street Lending Facilities for private equity owned companies" leading to "public funds . . . being diverted from their public purpose by the private equity owner."¹³⁷ They explained, among other things, that current rules bar only "dividends denominated as such . . . , [while] other forms of transferring or draining value" out of portfolio companies, such as "monitoring fees" are permitted, and that under current rules affiliates would not be jointly liable for repaying loans if their portfolio companies default.¹³⁸

Fifth, Mr. Foster testified that the Federal Reserve and the Treasury should expand the Main Street Lending Program to experienced nonbank lenders, which could include BDCs, CDFIs, fintech lenders, or other private lenders. This could expand the program's reach to companies that would otherwise generally not receive a Main Street loan. For example, BDCs have experience lending to medium-sized companies that banks may not typically serve, and CDFIs could also expand the program's reach. At the end of 2019, BDCs "were holding about \$110 billion in [small and medium-sized enterprise] debt."¹³⁹ At the hearing, President Rosengren testified that the Federal Reserve designed the program for depository institutions in order to "get this facility up and running quickly," given the difficulty of swiftly "mak[ing] sure that BSA, AML and know your customer . . . conditions are . . . met."¹⁴⁰ At the Commission's June 24, 2020 meeting with Chair Powell and Secretary Mnuchin, neither official knew of any philosophical or administrative reason why nonbank lenders could not be made eligible to participate in the Main Street Lending Program.

Sixth, Ms. Mills testified that in the view of UNITE HERE and the AFL-CIO, which represent millions of workers, the Main Street Lending Program will not benefit workers "even if more companies participate in it" because it does not have "binding requirements that employees be rehired from the first day of the aid."¹⁴¹ The Federal Reserve and the Treasury have declined to impose such requirements, and they are not required to under the current statute. Some Commissioners accordingly agree with Ms. Mills' testimony that "Congress . . . need[s] to come

¹³⁷ Letter to Jerome Powell, Chair, Board of Governors of the Federal Reserve System and Eric Rosengren, President and CEO, Federal Reserve Bank of Boston on behalf of 17 organizations, Aug. 12, 2020, <https://ourfinancialsecurity.org/wp-content/uploads/2020/08/Letter-to-Federal-Reserve-on-Affiliation-Rules-FINAL.pdf>.

¹³⁸ *Id.*

¹³⁹ Mike Harmon & Victoria Ivashina, *Managing the Liquidity Crisis*, Harvard Business Review, Apr. 9, 2020, <https://hbr.org/2020/04/managing-the-liquidity-crisis>.

¹⁴⁰ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (testimony of Eric Rosengren, President and CEO, Federal Reserve Bank of Boston).

¹⁴¹ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (testimony of Gwen Mills, Secretary–Treasurer, UNITE HERE).

up with a new approach” that would “give direct support to workers.”¹⁴² However, other Commissioners think the Main Street Lending Program does benefit workers by enabling businesses to continue operating so they can retain or rehire workers as economic conditions warrant, such as when business shutdown orders are lifted. Those Commissioners note that as Chair Powell observed in his June 24, 2020 meeting with the Commission, it is not beneficial for the health of a business to require it to borrow money to pay workers who cannot work.¹⁴³ In addition, those Commissioners note that Congress understood there inevitably would be layoffs during the pandemic, which is why it established several programs to directly support workers, such as economic impact payments (i.e., stimulus checks), supplemental unemployment benefits, and paid leave.

As previously noted, the Treasury and the Federal Reserve should act expediently. The Commission recommends expediting the process of determining whether any of the forgoing modifications should be made to the Main Street Lending Program (and, if so, expeditiously making such modifications while still protecting taxpayers).

Explore the implications of whether banks are using the Main Street Lending Program to make loans they would have made anyway

The Commission’s hearing also explored the extent to which the Main Street Lending Program has encouraged banks to make loans under the program (meaning, loans they would not otherwise make), and whether there are responsible ways to encourage more bank lending. As currently designed, the Main Street Lending Program generally is not meant to offer better terms to creditworthy borrowers that can already meet banks’ underwriting requirements.¹⁴⁴ Main Street loans are in many ways more restrictive than other products that can be found in the

¹⁴² *Id.*

¹⁴³ Congressional Oversight Commission, *The Third Report of the Congressional Oversight Commission*, July 20, 2020, at 10, https://coc.senate.gov/sites/default/files/2020-08/20200720_Congressional_Oversight_Commission_3rd_Report.pdf. The Commission’s third report also noted that former Federal Reserve officials have also made this same point. Jeremy Stein, chairman of the Harvard University economics department and a former Federal Reserve governor, stated, “You can’t expect companies to borrow to pay employees.” Similarly, Mark Carey, a former Federal Reserve staff member, has stated, “To go to great lengths to make companies keep employees that they don’t need, in light of new expectations that economic activity will remain below pre-Covid levels for a long while, doesn’t make sense.” Bob Ivry, et al., *Fed Vow Boosts Debt Binge as Borrowers Cut Thousands of Jobs*, Bloomberg, June 5, 2020, <https://www.bloomberg.com/news/articles/2020-06-05/fed-vow-boosts-debt-binge-while-borrowers-cut-thousands-of-jobs>.

¹⁴⁴ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (testimony of Lauren Anderson, Senior Vice President & Associate General Counsel, Bank Policy Institute) (stating “there are many borrowers who could take 2 or 3 months of disrupted cash flow, and if it was only 2 or 3 months, those may be bankable loans right now, and they might be able to get a rate that is better than LIBOR plus 300 basis points.”).

banking market.¹⁴⁵ For instance, loans under the Main Street Lending Program will contain restrictions on employee compensation by the borrower as well as on borrowers' ability to make distributions or consummate stock buybacks, in each case, for the life of the loan plus 12 months. The Commission recommends that the Federal Reserve and the Treasury continue to evaluate carefully whether the program actually spurs loans that would not already be made in the ordinary course.

The Main Street Lending Program intends to encourage lenders to make loans they might not make on their own by purchasing 95% loan participations through the Main Street SPV while allowing banks to retain up to a 15%-20% origination fee on their retained portion of any loan. Federal banking supervisors will treat Main Street Lending Program loans "in a manner consistent with their supervisory approach to other commercial and industrial loans."¹⁴⁶ Banks must also apply their standard underwriting processes,¹⁴⁷ which have tightened in response to the economic uncertainty caused by the pandemic.¹⁴⁸

According to the Federal Reserve's most recent Senior Loan Officer Opinion Survey, during the second quarter of 2020, banks tightened standards for loans to commercial and industrial enterprises of all sizes. The survey stated that banks had "increased the use of interest rate floors, collateralization requirements, loan covenants, premiums charged on riskier loans, and loan spreads over the bank's cost of funds, and [many] banks tightened all other lending terms across firms of all sizes." Banks noted several reasons for these changes, including "a less favorable or more uncertain economic outlook, worsening of industry-specific problems, and reduced tolerance for risk."¹⁴⁹

Banks are likely expecting an increase in loan losses because of the economic slowdown due to the virus and stay-at-home and business shutdown orders. The risks of new loans to borrowers harmed by the virus may correlate with the existing risks on the banks' books. Banks may also be concerned about downside risks to loan quality given the elevated uncertainty about the economic growth trajectory, especially for smaller and riskier firms.

¹⁴⁵ *Id.* (stating "a borrower who can meet a bank's basic underwriting standards is typically finding out that there is a product that is more suited to them given their credit needs.").

¹⁴⁶ Federal Reserve Bank of Boston, *Main Street Lending Program For-Profit Businesses Frequently Asked Questions*, July 31, 2020, at 62, <https://www.bostonfed.org/mslp-faqs>.

¹⁴⁷ *Id.* at 51.

¹⁴⁸ Board of Governors of the Federal Reserve System, *July 2020 Senior Loan Officer Opinion Survey on Bank Lending Practices*, Aug. 3, 2020, at 2, <https://www.federalreserve.gov/data/documents/sloos-202007-fullreport.pdf> ("Over the second quarter, major net shares of banks reported having tightened standards for C&I loans to both large and middle-market firms and to small firms.").

¹⁴⁹ Board of Governors of the Federal Reserve System, *Senior Loan Officer Opinion Survey on Bank Lending Practices*, Aug. 3, 2020, <https://www.federalreserve.gov/data/sloos/sloos-202007.htm>.

At the August 7 hearing, Lauren Anderson, Senior Vice President and Associate General Counsel of the Bank Policy Institute, which represents banks in the U.S., testified that the concern banks have about the riskiness of Main Street loans limits their willingness to issue loans under the program. That is so despite the generous origination fees. Ms. Anderson noted that the portion of a Main Street loan that a bank retains still has the same risk characteristics as the entire loan, and banks would treat the loan as such. Further, any loans would have to meet the bank's tightened underwriting criteria and withstand scrutiny from federal bank supervisors.¹⁵⁰ This led Ms. Anderson to conclude that "even a 5 percent participation in [a Main Street] loan to a borrower that is anything but creditworthy carries significant disincentives for a bank to participate."¹⁵¹ However, Ms. Anderson did not think that supervisory forbearance on loans would be appropriate because it could "transmi[t] risk from the corporate sector to the banking sector"¹⁵²

Some Commissioners recommend that the Federal Reserve, the Treasury, and other bank regulators carefully evaluate their underwriting and federal banking supervisory guidelines to ensure that they properly reflect the unique structure of Main Street Lending Program loans, including the supranormal origination and servicing fees, when making underwriting decisions. While such guidelines should not undermine safety and soundness, they should also ensure lenders are underwriting loans in a manner commensurate with the actual risk of each loan, given the mandated purchase of 95% of each loan by the Federal Reserve.

Ms. Anderson's testimony elaborated that the program may in the future be useful for enabling lenders with balance sheet constraints to extend loans. However, that does not appear to be a major problem the banks face now: pursuant to the Federal Reserve's recent stress test, banks are currently sufficiently capitalized and are generally projected to remain capitalized in a further downturn.¹⁵³ Ms. Anderson also pointed out that the Main Street Lending Program "may be of greater utility if the economic downturn worsens and banks come under greater

¹⁵⁰ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (prepared statement of Lauren Anderson, Senior Vice President and Associate General Counsel, Bank Policy Institute), <https://coc.senate.gov/sites/default/files/2020-08/ANDERSON%20Testimony%20COC%20Hearing%208-7.pdf> ("[Main Street Lending Program] loans originated as "non-pass" credits would be classified by bank examiners and treated as workouts; non-pass credits would also likely trigger examiner criticism, higher capital charges, and other regulatory constraints. Furthermore, the additional leverage created by a [Main Street Lending Program] loan might cause a downgrade of an existing bank credit. So, even a 5 percent participation in a [Main Street Lending Program] loan to a borrower that is anything but creditworthy carries significant disincentives for a bank to participate.").

¹⁵¹ *Id.*

¹⁵² Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (testimony of Lauren Anderson, Senior Vice President and Associate General Counsel, Bank Policy Institute).

¹⁵³ Board of Governors of the Federal Reserve System, *Assessment of Bank Capital during the Recent Coronavirus Event*, June 2020, at 1, <https://www.federalreserve.gov/publications/files/2020-sensitivity-analysis-20200625.pdf>.

pressure.”¹⁵⁴ Finally, Ms. Anderson argued that the Main Street Lending Program could provide banks with an incentive to lend more to smaller and medium-sized businesses under the Main Street Lending Program if there were more downside credit risk protection.¹⁵⁵ An example of downside credit risk protection would be if the Treasury covered the first 10% of any losses on Main Street loans. Under such a proposal, this would mean that the Treasury would guarantee repayment of 10% of the loan amount retained by the bank, leaving the lender responsible for 4.5% of the total loan amount. However, the Commission notes that such a guarantee may encourage banks to make loans that are riskier than those they would otherwise make. This may also erode safety and soundness and undermine taxpayer protection.

Providing credit to borrowers that do not meet banks’ tightened underwriting criteria would necessarily require the Federal Reserve and the Treasury to assume more risk of loss. On that topic, in April 2020, Secretary Mnuchin noted that the U.S. aims to at least come out even on the Federal Reserve’s programs under the CARES Act and that “[w]e’re looking at it in a

¹⁵⁴ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (prepared statement of Lauren Anderson, Senior Vice President and Associate General Counsel, Bank Policy Institute), <https://coc.senate.gov/sites/default/files/2020-08/ANDERSON%20Testimony%20COC%20Hearing%208-7.pdf>; see also Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (prepared statement of Eric Rosengren, President and CEO, Federal Reserve Bank of Boston), <https://coc.senate.gov/sites/default/files/2020-08/ROSENGREN%20Testimony%20COC%20Hearing%208-7.pdf> (“The eventual size of the Program will be determined by the path of the pandemic and the economy, generally. Should the pandemic and the economy worsen, or financial institutions experience larger than expected loan losses and depletion of capital—all things we hope do not happen—then I would expect interest in using this Program to expand more rapidly.”).

¹⁵⁵ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (prepared statement of Lauren Anderson, Senior Vice President and Associate General Counsel, Bank Policy Institute), <https://coc.senate.gov/sites/default/files/2020-08/ANDERSON%20Testimony%20COC%20Hearing%208-7.pdf> (“If, however, Congress desires to provide further relief to small and midsize businesses experiencing acute stress due to the pandemic, including less creditworthy borrowers who would not currently pass bank underwriting standards, the design of the program would need to be modified . . . [by the government] to provide downside credit risk protection that would allow the [Main Street Lending Program] loan, and existing credit, to be considered lower risk.”); Victoria Guida, *Landmark Fed Business Rescue Struggles Amid Economy's Woes*, Politico, Aug. 1, 2020, <https://www.politico.com/news/2020/08/01/fed-main-street-small-business-389899> (“‘If the idea is to be helping companies that are less than creditworthy, there needs to be some sort of downside credit risk protection,’ such as a government-backed guarantee or having the Fed take first losses”); Glenn Hubbard & Hal Scott, *‘Main Street’ Program Is Too Stingy to Banks and Borrowers*, Wall Street Journal, July 20, 2020, <https://www.wsj.com/articles/main-street-program-is-too-stingy-to-banks-and-borrowers-11595284266> (“The Fed should purchase the entire loan, or indemnify the lenders for all or a high percentage of losses on their retained portion, so that the lenders would have little or no credit risk.”); Jeanna Smialek, *A Coffee Chain Reveals Flaws in the Fed’s Plan to Save Main Street*, New York Times, July 9, 2020, <https://www.nytimes.com/2020/07/09/business/economy/federal-reserve-treasury-main-street.html> (quoting Nellie Liang, a former Federal Reserve official now at the Brookings Institution as stating that policymakers “should err on the side of being generous, especially for smaller businesses If the program is too modest going in, the economy can get worse, more firms fail, and even more support would be needed.”).

base case scenario that we recover our money.”¹⁵⁶ He added that “[i]f Congress wanted me to lose all the money, that money would have been designed as subsidies and grants as opposed to credit support.”¹⁵⁷ In fact, the Congressional Budget Office estimate of the CARES Act assumed the \$454 billion given to the Treasury and the Federal Reserve would not add to the deficit.¹⁵⁸ However, on June 8, 2020, in response to written questions from the Commission, the Treasury clarified that it “accepts the possibility that losses may occur with respect to the funds it has committed, and believes that the terms and conditions of the 13(3) programs to which it has committed funds appropriately balance the interests of taxpayer protection and program efficacy.”¹⁵⁹ Further, during our June 24, 2020 meeting with Secretary Mnuchin and Chair Powell, Secretary Mnuchin stated that the Treasury was prepared to take losses in the various Federal Reserve’s emergency facilities established under CARES Act. In its periodic report, the Federal Reserve notes that “the [Main Street Lending Program] includes features that are intended to mitigate risk to the Federal Reserve [and that the] Board continues to expect that the [Main Street Lending Program] will not result in losses to the Federal Reserve.”¹⁶⁰ The Commission believes no further action from Congress is required on this issue, as the CARES Act already provided Treasury with the necessary statutory authorization to increase its risk tolerance and potentially incur losses to the ESF.

The Main Street Lending Program’s impact on workers

The Commission recognizes the plight of workers who are impacted by the financial struggles of their employers. As noted above, at our August 7, 2020 hearing on the Main Street Lending Program, we heard testimony from an official of UNITE HERE, a union representing 300,000 workers in the hotel, casino, food service, and airline catering industries. These workers are experiencing tremendously high employment rates of 85%, and a majority of these workers are women and people of color. In the midst of a public health crisis, those workers have lost or could lose their current health care benefits if they remain unemployed.¹⁶¹

¹⁵⁶ Kate Davidson & Richard Rubin, *Steven Mnuchin Says U.S. Aims to Get Back Its Money From Fed Programs*, Wall Street Journal, Apr. 29, 2020, <https://www.wsj.com/articles/mnuchin-says-u-s-not-aiming-to-lose-money-on-fed-lending-facilities-11588178749>.

¹⁵⁷ *Id.*

¹⁵⁸ “Because the income and costs stemming from that lending are expected to roughly offset each other, CBO estimates no deficit effect from that provision.” Congressional Budget Office, *Preliminary Estimate of the Effects of H.R. 748, the CARES Act, Public Law 116-136*, Apr. 27, 2020, at 2, <https://www.cbo.gov/system/files/2020-04/hr748.pdf>.

¹⁵⁹ Congressional Oversight Commission, *The Third Report of the Congressional Oversight Commission*, July 20, 2020, at 47, https://coc.senate.gov/sites/default/files/2020-08/20200720_Congressional_Oversight_Commission_3rd_Report.pdf.

¹⁶⁰ Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act*, Aug. 8, 2020, at 2, <https://www.federalreserve.gov/publications/files/nonlf-noelf-pdcf-mmllf-cpff-pmccf-smccf-talf-mlf-ppplf-msnelf-mself-msplf-8-10-20.pdf>.

¹⁶¹ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020).

These workers face a predicament through no fault of their own and Congress established several programs, such as economic impact payments (i.e., stimulus checks), supplemental unemployment benefits, and paid leave as part of the federal response to the pandemic. Although those payments have since expired (though regular unemployment benefits still remain) and workers currently face unmet needs, the solution for these workers may not lie in the Main Street Lending Program. Incurring debt that must be repaid to support employment at a time when revenues are in decline may decrease companies' long-term viability, and businesses may be unwilling to incur such debt to pay their workers. Additionally, unlike with the PPP, in the CARES Act Congress did not mandate that borrowers under the Main Street Lending Program must maintain payroll. Since Congress did not write such a mandate into the law, the Federal Reserve and the Treasury have previously indicated to the Commission that they will not impose mandatory payroll requirements on businesses that borrow through the Main Street Lending Program.¹⁶²

Nonprofit facilities

When term sheets for the Main Street Lending Program were first publicly proposed by the Federal Reserve on April 9, 2020, none of the facilities expressly provided for participation by nonprofit entities. Between April 9, 2020 and April 30, 2020, public stakeholders submitted a number of comments regarding nonprofit access to the proposed Main Street Lending Program. On April 30, 2020, the Federal Reserve announced in response to these comments that it “recognize[d] the critical role that nonprofit organizations play throughout the economy” and that it was “evaluating a separate approach to meet their unique needs.”¹⁶³

On June 15, 2020, the Federal Reserve announced the outlines of a new proposal intended to respond to the needs of nonprofit organizations—i.e., the Nonprofit New Loan Facility and the Nonprofit Expanded Loan Facility.¹⁶⁴ As part of the June 15, 2020 announcement, the Federal Reserve solicited public comments on the terms outlined for the two proposed nonprofit facilities. The release requested that these comments be received by June 22, 2020 and noted that they would be made public. However, to date, none of these comments from the June 2020 comment phase have been publicly released. The Commission requests that the

¹⁶² Congressional Oversight Commission, *The Third Report of the Congressional Oversight Commission*, July 20, 2020, at 10-11, https://coc.senate.gov/sites/default/files/2020-08/20200720_Congressional_Oversight_Commission_3rd_Report.pdf.

¹⁶³ Board of Governors of the Federal Reserve System, *Federal Reserve Board announces it is expanding the scope and eligibility for the Main Street Lending Program*, Apr. 30, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200430a.htm>.

¹⁶⁴ Board of Governors of the Federal Reserve System, *Federal Reserve Board announces it will be seeking public feedback on proposal to expand its Main Street Lending Program to provide access to credit for nonprofit organizations*, June 15, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200615b.htm>.

Federal Reserve release these comments so that the Commission and the public may review them.

As originally proposed on June 15, 2020, both the Nonprofit New Loan Facility and the Nonprofit Expanded Loan Facility shared the following key terms: (a) a five-year term, (b) an endowment cap of \$3 billion, (c) a requirement that the nonprofit was in operation for at least five years, (d) a requirement that the nonprofit have more than 50 employees but less than 15,000 employees, (e) 2019 revenues of less than \$5 billion (with less than 30% sourced from donations), (f) a rate of LIBOR + 3%, (g) deferral of interest payments for one year, (h) deferral of principal repayment for two years (with 15% due in year 3, 15% in year 4, and 70% in year 5), (i) a requirement that the lender retain 5% of risk, and (j) a requirement that the nonprofit be qualified as a tax exempt organization under either 501(c)(3) or 501(c)(19) of the Internal Revenue Code.¹⁶⁵ For the Nonprofit New Loan Facility, the minimum loan size was \$250,000 and the maximum loan size was the lesser of \$35 million or the nonprofit's 2019 average quarterly revenue. For the Nonprofit Expanded Loan Facility, the minimum loan size was \$10 million and the maximum loan size was the lesser of \$300 million of the nonprofit's average quarterly revenue.

On July 17, 2020, the Federal Reserve announced certain modifications to the eligibility criteria applicable to both proposed nonprofit Main Street Lending Program term sheets. These modifications reduced: (i) the minimum headcount to 10 employees, (ii) the non-donation revenues to be equal to or greater than 60% of expenses for the period from 2017 through 2019, (iii) the 2019 operating margin to 2%, (iv) the current days cash on hand to 60 days, and (v) the current ratio of cash, investments, and other resources to outstanding debt and certain other liabilities to 55% or more. Other terms and conditions with respect to the Nonprofit New Loan Facility and the Nonprofit Expanded Loan Facility were finalized by the Federal Reserve on July 28, 2020 and are summarized in the chart below.

Main Street Nonprofit Loan Options	Nonprofit New Loan Facility	Nonprofit Expanded Loan Facility
Type of Loan	New loans to borrowers	Expanded loans to existing borrowers
Term	5 years	
Minimum Loan Size	\$250,000	\$10 million
Endowment Cap	\$3 billion	
Years in Operation	At least 5 years	
Eligibility Criteria	<ul style="list-style-type: none"> Minimum employees 10 (previously 50) 	

¹⁶⁵ Other forms of organization may be considered for inclusion as an eligible borrower under the nonprofit facilities at the discretion of the Federal Reserve. Federal Reserve Bank of Boston, *Nonprofit Frequently Asked Questions*, Aug. 6, 2020, at 22, <https://www.bostonfed.org/-/media/Documents/special-lending-facilities/mslp/legal/frequently-asked-questions-faqs-nonprofit.pdf?la=en>.

Main Street Nonprofit Loan Options	Nonprofit New Loan Facility	Nonprofit Expanded Loan Facility
(See term sheets for more detail)	<ul style="list-style-type: none"> • Total non-donation revenues equal to or greater than 60% of expenses for the period from 2017 through 2019 (previously 70% of revenues) • 2019 operating margin of 2% or more, (previously 5%) • Current days cash on hand 60 days (previously 90 days) • Current debt repayment capacity—ratio of cash, investments and other resources to outstanding debt and certain other liabilities—of greater than 55% (previously 65%) 	
Maximum Loan Size	The lesser of \$35 million, or the borrower’s average 2019 quarterly revenue	The lesser of \$300 million, or the borrower’s average 2019 quarterly revenue
Lender’s Risk Retention in Loan	5%	
Facilities Risk Retention in Loan	95%	
Principal Repayment	Principal deferred for 2 years. 15%, 15% and 70% principal repayment due in years 3, 4 and 5, respectively.	
Interest Payments	Deferred for one year	
Rate	LIBOR + 3%	

The Nonprofit New Loan Facility and the Nonprofit Expanded Loan Facility are not yet operational. The Commission recommends that the Federal Reserve and the Treasury expedite their efforts to roll out these facilities. The Federal Reserve and the Treasury have stated that small and medium-sized nonprofits “are critical parts of the economy, employing millions of people, providing essential services to communities, and supporting innovation and the development of a highly skilled workforce.”¹⁶⁶ Like for-profit businesses, they are struggling with the impact of COVID-19 on their operations, but have been required to wait longer to access possible assistance offered by the Main Street Lending Program.

¹⁶⁶ Federal Reserve Bank of Boston, *Nonprofit Frequently Asked Questions*, Aug. 6, 2020, at 9, <https://www.bostonfed.org/-/media/Documents/special-lending-facilities/mslp/legal/frequently-asked-questions-faqs-nonprofit.pdf?la=en>.

Stakeholder Comments on Nonprofits Participating in the Main Street Lending Program

Because the facilities for nonprofits are not yet operational, the Commission has yet to assess whether they will effectively and efficiently serve their stated purpose of “[providing] support to small and medium-sized nonprofit organizations and their employees across the United States during the current period of financial strain.”¹⁶⁷ Instead, we highlight below concerns raised by stakeholders in the currently publicly available comments (those submitted in April 2020, before the Treasury and the Federal Reserve released the proposed terms for nonprofits) and how they compare with the final terms proposed by the Federal Reserve and the Treasury in the Nonprofit New Loan Facility and the Nonprofit Expanded Loan Facility. Some stakeholders’ April 2020 comments to the Federal Reserve on the Main Street Lending Program supported the inclusion of nonprofits in the program. In addition, comments frequently spoke to the significant financial and operational challenges facing nonprofits in the midst of the pandemic.¹⁶⁸ Beyond these, comments broadly can be categorized by type of commenting organization.

The first broad “type” of comments were those received from nonprofit institutions of higher education, which largely expressed the same concerns. These comments generally asked that the Federal Reserve “clarify that nonprofit private and public institutions are eligible for the Main Street Lending program” and also that student workers be exempted “for the purposes of the employee threshold for the eligibility requirements.”¹⁶⁹ The University of California public university system made the additional requests that (a) “the Federal Reserve update its guidance to clarify that nonprofit institutions of higher education may participate in the Main Street Lending Program regardless of how many employees they have,” (b) each individual University of California campus be able to apply on its own behalf, and (c) nonprofit private and public institutions of higher education be eligible for the program regardless of annual income

¹⁶⁷ *Id.*

¹⁶⁸ See, e.g., Letter from YMCA of the USA to the Federal Reserve, Apr. 16, 2020, at 105, <https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007016.pdf> (“Prior to the pandemic, the Y network employed more than 500,000 staff members. YMCAs already have laid off hundreds of thousands of employees in communities large and small. In fact, we know that many Ys have laid off and furloughed most of their staff, up to 95% in some cases.”); Letter from Alliance for Strong Families and Communities to the Federal Reserve, Apr. 15, 2020, at 15, <https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007019.pdf> (describing a “sector . . . in a state of disarray”); Letter from Arc Thriftstores of Colorado to the Federal Reserve, Apr. 16, 2020, at 14, <https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007019.pdf> (noting that given a \$2 million weekly reduction in revenue “our very survival is now at stake”); Letter from Health Center Partners of Southern California to the Federal Reserve, Apr. 15, 2020, at 11, <https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007019.pdf> (noting a revenue loss of \$5 million to \$9 million per month for a typical community health center in California).

¹⁶⁹ See, e.g., Letter from American Council on Education to the Federal Reserve, Apr. 16, 2020, at 3, <https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007015.pdf>.

requirements.¹⁷⁰ The University of California, which encompasses 10 universities, has an endowment of more than \$21 billion.¹⁷¹

The second type of comments were those by and with respect to nonprofits that were not institutions of higher education. In addition to providing background on the economic impact of nonprofits and the challenges facing nonprofits following the COVID-19 crisis, many of these comments requested specific terms be included in a Main Street Lending Program for nonprofits, including (i) an interest rate of 0.00%¹⁷² or 0.50% for 501(c)(3) charitable nonprofits,¹⁷³ (ii) a date certain for when employee retention provisions should begin,¹⁷⁴ and (iii) that payments shall not be due until two years after a direct loan is made.¹⁷⁵ These comments also often asked that priority be given to 501(c)(3) charitable nonprofits responding to COVID-19 relief efforts, and that lenders be required to make a proportionate number and value of loans to nonprofits to prevent the crowding out observed in the PPP.¹⁷⁶ Some other requests included defining workforce as full-time employees only¹⁷⁷ (or full-time equivalents¹⁷⁸) and allowing “maximum

¹⁷⁰ Letter of University of California to the Federal Reserve, Apr. 16, 2020, at 38-39,

<https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007019.pdf>.

¹⁷¹ University of California, *Annual Endowment Report*, Fiscal Year Ended June 30, 2019, at 4,

<https://www.ucop.edu/investment-office/investment-reports/annual-reports/annual-endowment-report-2018-19.pdf>.

¹⁷² See, e.g., Letter from CAMBA, Inc. to the Federal Reserve, Apr. 16, 2020, at 125,

<https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007019.pdf>; Letter from American Heart Association to the Federal Reserve, Apr. 15, 2020, at 9,

<https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007019.pdf>.

¹⁷³ See, e.g., Letter from National Council of Nonprofits to the Federal Reserve, Apr. 15, 2020, at 4,

<https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007019.pdf>; Letter from Alliance for Strong Families and Communities to the Federal Reserve, Apr. 15, 2020, at 15,

<https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007019.pdf>; Letter from YMCA of the USA to the Federal Reserve, Apr. 16, 2020, at 105, <https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007016.pdf>; Letter from Sheltering Arms New York to the Federal Reserve, at 108,

<https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007019.pdf>; Letter from Kentucky Nonprofit Network to the Federal Reserve, at 12, <https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007019.pdf>.

¹⁷⁴ Some commenters specifically requested that worker retention provisions not begin until loan disbursement. See, e.g., Letter from American Heart Association to the Federal Reserve, Apr. 15, 2020, at 9,

<https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007019.pdf>. Interestingly, the nonprofit facilities require that borrowers undertake “reasonable efforts to maintain its payroll and retain its employees” in contrast to the “commercially reasonable efforts” standard applied to borrowers under the for-profit facilities. It is unclear whether this discrepancy in the facilities was intentional or inadvertent.

¹⁷⁵ See, e.g., Letter from National Council of Nonprofits to the Federal Reserve, Apr. 15, 2020, at 4,

<https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007019.pdf>.

¹⁷⁶ *Id.*

¹⁷⁷ See, e.g., Letter from CAMBA, Inc. to the Federal Reserve, Apr. 16, 2020, at 125,

<https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007019.pdf>.

¹⁷⁸ See, e.g., Letter from Sheltering Arms New York to the Federal Reserve, at 108,

<https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007019.pdf>.

flexibility” with respect to labor- and collective bargaining-related certifications for the program.¹⁷⁹

In several ways, terms pertaining to the Nonprofit New Loan Facility and the Nonprofit Expanded Loan Facility favorably responded to concerns raised in comments submitted by nonprofits to the Federal Reserve. For example, the nonprofit facilities’ five-year term, deferral of interest payments for one year and principal payments for two years, and employee size criteria (i.e., anywhere from 10 to 15,000 employees) are all responsive modifications to the facilities. Another example is the rule requiring nonprofit institutions of higher education to exclude student workers participating in federal work-study programs from the employee headcount cap.

In other ways, however, the Nonprofit New Loan Facility and the Nonprofit Expanded Loan Facility terms are either less than what nonprofits requested or have an unclear impact. A key instance of where these terms are not what nonprofits requested is the loan rate, which is set at LIBOR + 3% instead of the rate of 0.00% to 0.50% that many nonprofits requested. The Federal Reserve’s regulations require its emergency lending programs to extend credit at a “penalty rate.” Some Commissioners believe the Main Street Lending Program could offer nonprofits a rate lower than LIBOR + 3%. It remains to be seen whether or not the 2% operating margin requirement, the revenue and endowment caps, the five-year operating requirement, 60-days cash-on-hand requirement, 40% “donations” cap, and 55% minimum “resources-to-debt” requirement will prevent certain pandemic-impacted nonprofits from utilizing the programs.

One other issue raised in at least one public comment is the idea of making small local governmental entities—such as small cities, towns, school districts, and other public entities like hospitals—eligible for Main Street Lending Program. A comment letter submitted during the nonprofit facility comment period argued that these local governmental entities function much like nonprofit organizations, both in terms of the essential role they play in our communities and with respect to how they obtain credit, with bank lending to local governmental entities constituting a large share of all outstanding municipal credit.¹⁸⁰ The comment pointed out that smaller governmental entities cannot participate directly in the MLF, and they may have trouble participating indirectly in the MLF through larger borrowers like state governments. However, a possible counterargument is that there are potentially relevant distinctions between local

¹⁷⁹ See, e.g., Letter from CAMBA, Inc. to the Federal Reserve, Apr. 16, 2020, at 125, <https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007019.pdf>; Comment of Mission Economic Development Agency, at 80, <https://www.federalreserve.gov/monetarypolicy/files/mslp-public-comments-202007018.pdf>.

¹⁸⁰ Letter from Americans for Financial Reform Education Fund, <https://ourfinancialsecurity.org/wp-content/uploads/2020/08/AFR-Education-Fund-Letter-on-MSLF-expansion.pdf> (last visited Aug. 18, 2020) (citing Ivanov, Ivan and Tom Zimmerman, “The Privatization of Municipal Debt,” Brookings Institution Hutchins Center Working Paper #45 (Sept. 2018), <https://www.brookings.edu/wp-content/uploads/2018/08/WP45.pdf>).

governments and nonprofit organizations, most notably that unlike at least some small governmental entities, a nonprofit organization does not have a taxing authority.

TREASURY AND FEDERAL RESERVE RECENT DEVELOPMENTS

In July and August, the Treasury and the Federal Reserve took a number of actions under Division A, Title IV, Subtitle A of the CARES Act. We describe the key recent developments below.

Primary Market Corporate Credit Facility (PMCCF)

The PMCCF is intended to support credit to businesses by serving as a “funding backstop” for corporate debt.¹⁸¹ The Federal Reserve, through a SPV, will be the sole purchaser of newly issued corporate bonds or purchase portions of bonds or syndicated loans, at issuance, from corporations rated investment grade as of March 22, 2020 that maintain at least a BB-/Ba3 rating.¹⁸² The Treasury intends to make a total equity investment of \$75 billion in the SPV it uses for the PMCCF and the SMCCF, which can support up to \$750 billion in purchases through both facilities.¹⁸³

On July 28, 2020, the Federal Reserve announced that it extended the termination date of the PMCCF, as well as several other emergency lending facilities, from September 30, 2020 to December 31, 2020.¹⁸⁴ According to the Federal Reserve this “three-month extension will facilitate planning by potential facility participants and provide certainty that the facilities will continue to be available to help the economy recover from the COVID-19 pandemic.”¹⁸⁵

As of August 19, 2020, the Federal Reserve had yet to announce that the PMCCF had actually purchased any bonds or syndicated loans.

Secondary Market Corporate Credit Facility (SMCCF)

The SMCCF is intended to support credit to businesses by providing liquidity to the market for outstanding corporate bonds. The Federal Reserve, through an SPV, purchases on the secondary market individual corporate bonds issued by corporations rated investment grade as of

¹⁸¹ Board of Governors of the Federal Reserve System, *Primary Market Corporate Credit Facility Term Sheet*, Apr. 9, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a5.pdf>.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Board of Governors of the Federal Reserve System, *Federal Reserve Board announces an extension through December 31 of its lending facilities that were scheduled to expire on or around September 30*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200728a.htm>.

¹⁸⁵ Board of Governors of the Federal Reserve System, *Federal Reserve Board announces an extension through December 31 of its lending facilities that were scheduled to expire on or around September 30*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200728a.htm>; U.S. Department of the Treasury, *Statement from Secretary Steven T. Mnuchin on the Extension of Facilities Authorized Under Section 13(3) of the Federal Reserve Act*, July 28, 2020, <https://home.treasury.gov/news/press-releases/sm1069>.

March 22, 2020 that maintain at least a BB-/Ba3 rating, as well as U.S.-listed ETFs that themselves invest in a broad range of corporate bonds. As mentioned, the Treasury intends to invest a total of \$75 billion in the PMCCF and the SMCCF, which can support up to \$750 billion in purchases.

On July 28, 2020, the Federal Reserve announced that it extended the termination date of the SMCCF, as well as several other emergency lending facilities, from September 30, 2020 to December 31, 2020.¹⁸⁶ According to the Federal Reserve this “three-month extension will facilitate planning by potential facility participants and provide certainty that the facilities will continue to be available to help the economy recover from the COVID-19 pandemic.”¹⁸⁷

As we noted in our last report, the SMCCF began to shift its bond buying from bond ETFs to individual corporate bonds on June 16, 2020, when the SMCCF began to purchase individual corporate bonds. That trend has continued since then. On August 10, 2020, the Federal Reserve disclosed transaction-specific data for the SMCCF showing that from June 30, 2020 through July 30, 2020 the SMCCF purchased only \$520 million of bond ETFs, but purchased \$1.8 billion of individual corporate bonds.¹⁸⁸

As of July 30, 2020, the SMCCF had purchased more than 900 individual corporate bonds from more than 550 different issuers.¹⁸⁹ The purchase amount for these bonds was \$3.6 billion.¹⁹⁰ The chart below lists the SMCCF’s ten largest individual bond holdings by issuer as of

¹⁸⁶ Board of Governors of the Federal Reserve System, *Federal Reserve Board announces an extension through December 31 of its lending facilities that were scheduled to expire on or around September 30*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200728a.htm>.

¹⁸⁷ *Id.*; U.S. Department of the Treasury, *Statement from Secretary Steven T. Mnuchin on the Extension of Facilities Authorized Under Section 13(3) of the Federal Reserve Act*, July 28, 2020, <https://home.treasury.gov/news/press-releases/sm1069>.

¹⁸⁸ Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Aug. 10, 2020, <https://www.federalreserve.gov/publications/files/smccf-transaction-specific-disclosures-8-10-20.xlsx>.

¹⁸⁹ Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, June 28, 2020, <https://www.federalreserve.gov/publications/files/smccf-transition-specific-disclosures-6-28-20.xlsx>; Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, July 10, 2020, <https://www.federalreserve.gov/publications/files/smccf-transaction-specific-disclosures-7-10-20.xlsx>; Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Aug. 10, 2020, <https://www.federalreserve.gov/publications/files/smccf-transaction-specific-disclosures-8-10-20.xlsx>.

¹⁹⁰ *Id.*

July 30, 2020.¹⁹¹ The bonds of these ten issuers make up 13.5% of the SMCCF's total individual bond holdings.

Issuer	Sector	Par Value of Bonds (U.S. \$)	Percentage of SMCCF's Individual Bond Holdings as of 7/30/20
AT&T Inc.	Communications	\$59,500,000	1.76%
Toyota Motor Credit Corp	Consumer Cyclical	\$58,500,000	1.73%
Apple Inc	Technology	\$55,000,000	1.63%
General Electric Co	Capital Goods	\$48,000,000	1.42%
BMC US Capital LLC	Consumer Cyclical	\$43,000,000	1.28%
Microsoft Corp	Technology	\$41,500,000	1.23%
Ford Motor Credit Co LLC	Consumer Cyclical	\$41,000,000	1.22%
Abbvie Inc	Consumer Non-Cyclical	\$37,000,000	1.10%
Daimler Finance North America LLC	Consumer Cyclical	\$36,000,000	1.07%
Comcast Corp	Communications	\$34,500,000	1.02%

As of July 30, 2020, the SMCCF had purchased 112.8 million shares of bond ETFs, which represents an increase of only about 6.1 million shares since June 29, 2020.¹⁹² The

¹⁹¹ This chart was compiled using data in the Federal Reserve's June 28, 2020, July 10, 2020, and August 10, 2020 transaction-specific disclosures for the SMCCF. Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, June 28, 2020, <https://www.federalreserve.gov/publications/files/smccf-transition-specific-disclosures-6-28-20.xlsx>; Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, July 10, 2020, <https://www.federalreserve.gov/publications/files/smccf-transition-specific-disclosures-7-10-20.xlsx>; Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Aug. 10, 2020, <https://www.federalreserve.gov/publications/files/smccf-transition-specific-disclosures-8-10-20.xlsx>.

¹⁹² Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, May 29, 2020, <https://www.federalreserve.gov/publications/files/smccf-transition-specific-disclosures-5-29-20.xlsx>; Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, June 28, 2020, <https://www.federalreserve.gov/publications/files/smccf-transition-specific-disclosures-6-28-20.xlsx>; Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, July 10, 2020, <https://www.federalreserve.gov/publications/files/smccf-transition-specific-disclosures-7-10-20.xlsx>; Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities*

SMCCF has purchased shares from sixteen bond ETFs, of which eleven were investment grade ETFs and six were non-investment grade ETFs. The market value of the facility's ETF shares was \$8.7 billion as of July 30, 2020.¹⁹³ We calculate the SMCCF had an unrealized gain of \$291.6 million on its ETF purchases as of that date.

The chart below lists the names of the bond ETFs that the SMCCF has purchased, the number of shares purchased, and the market value of those shares as of July 30, 2020.¹⁹⁴

Name of ETF	Shares Purchased (as of 7/30/20)	Cost Basis (U.S. \$)	Market Value as of 7/30/20 (U.S. \$)
iShares iBoxx US Dollar Investment Grade Corporate Bond ETF (LQD)	17,860,663	2,348,976,888	2,467,629,200
Vanguard Short-Term Corporate Bond ETF (VCSH)	18,237,015	1,494,057,556	1,514,584,095
Vanguard Intermediate-Term Corporate Bond ETF (VCIT)	14,875,069	1,390,196,481	1,439,162,925
iShares Short-Term Corporate Bond ETF (IGSB)	12,448,466	675,063,751	684,665,630
SPDR Bloomberg Barclays High Yield Bond ETF (JNK)	5,285,048	533,601,998	559,950,835
iShares Intermediate-Term Corporate Bond ETF (IGIB)	8,046,720	477,627,285	493,585,804
SPDR Portfolio Intermediate Term Corporate Bond ETF (SPIB)	13,181,447	473,440,497	486,790,837
iShares iBoxx High Yield Corporate Bond ETF (HYG)	3,875,790	314,495,007	330,333,581
SPDR Portfolio Short Term Corporate Bond ETF (SPSB)	8,954,460	279,165,732	281,170,044
iShares Broad US Dollar Investment Grade Corporate Bond ETF (USIG)	2,997,120	177,163,049	185,581,670
Xtrackers US Dollar High Yield Corporate Bond ETF (HYLB)	1,644,970	76,765,613	80,323,885
iShares Broad US Dollar High Yield Corporate Bond ETF (USHY)	1,555,865	59,163,108	62,187,924
iShares 0-5 Year Investment Grade Corporate Bond ETF (SLQD)	841,975	43,490,248	44,010,033

Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures), Aug. 10, 2020, <https://www.federalreserve.gov/publications/files/smccf-transaction-specific-disclosures-8-10-20.xlsx>.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

Name of ETF	Shares Purchased (as of 7/30/20)	Cost Basis (U.S. \$)	Market Value as of 7/30/20 (U.S. \$)
VanEck Vectors Fallen Angel High Yield Bond ETF (ANGL)	1,129,770	31,417,302	34,311,114
SPDR Bloomberg Barclays Short Term High Yield Bond ETF (SJNK)	1,220,506	31,065,310	31,769,771
iShares 0-5 Year High Yield Corporate Bond ETF (SHYG)	685,850	29,105,436	30,390,013

The Federal Reserve also provides weekly disclosures of the value of the bond ETFs and individual corporate bonds owned by the SPV for the SMCCF and PMCCF. The most recent disclosure indicates that SPV owned \$12.49 billion worth of bond ETFs and individual corporate bonds as of August 19, 2020,¹⁹⁵ which is a \$1 billion increase from a month earlier.¹⁹⁶

Main Street Lending Program

The Main Street Lending Program is intended to facilitate lending by banks to small and medium-sized businesses. Businesses with up to 15,000 employees or up to \$5 billion in 2019 annual revenues are eligible to receive loans under this program. The Main Street Lending Program currently consists of three facilities for businesses: the New Lending Facility, the Priority Loan Facility, and the Expanded Loan Facility. In addition, the Main Street Lending Program includes two facilities for certain nonprofit organizations: the Nonprofit New Loan Facility and the Nonprofit Expanded Loan Facility. The Treasury has announced it intends to make an equity investment of \$75 billion in the Main Street Lending Program. Collectively, the facilities can support up to \$600 billion in lending.¹⁹⁷

On July 28, 2020, the Federal Reserve announced that it extended the termination date of the Main Street Lending Program, as well as several other emergency lending facilities, from

¹⁹⁵ Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Aug. 20, 2020, at Table 4, <https://www.federalreserve.gov/releases/h41/> (to access click on hyperlink for Aug. 20, 2020 release). The SPV for the PMCCF and SMCCF is Corporate Credit Facilities LLC.

¹⁹⁶ As of July 15, 2020, the SPV for the PMCCF and SMCCF—Corporate Credit Facilities LLC—owned \$11.48 billion worth of bond ETFs and individual corporate bonds. Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, July 16, 2020, at Table 4, <https://www.federalreserve.gov/releases/h41/20200716/>.

¹⁹⁷ Board of Governors of the Federal Reserve System, *Main Street New Loan Facility Term Sheet*, June 8, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200608a1.pdf>.

September 30, 2020 to December 31, 2020.¹⁹⁸ According to the Federal Reserve, this “three-month extension will facilitate planning by potential facility participants and provide certainty that the facilities will continue to be available to help the economy recover from the COVID-19 pandemic.”¹⁹⁹

On August 7, 2020, President Eric Rosengren testified before the Commission about the Main Street Lending Program.²⁰⁰ He stated that the program had 509 registered lenders as of August 4, 2020 and that “their assets represent \$14.2 trillion, which is approximately 58 percent of total banking assets in the United States.”²⁰¹ Of the 509 registered lenders, he noted that 153 had publicized that they are accepting loan applications from new customers. President Rosengren stated that, as of August 4, 2020, 54 loans totaling more than \$530 million were active in the Main Street Lending Program’s loan portal. The Federal Reserve’s participation amount in these loans is \$104 million.²⁰² Of the 54 loans, 18 loans totaling \$109 million were committed or settled.²⁰³ He testified that the largest number of Main Street loans had been made by “financial institutions in the \$10-50 billion size range.”²⁰⁴

President Rosengren’s testimony also included information about the size distribution of loans in the Main Street Lending Program’s loan portal as of August 4, 2020. He noted these loans ranged in size from less than \$1 million to more than \$30 million and the largest number of loans was in the \$1 million to \$2.5 million range. The businesses applying for loans have come from a wide range of industries, including “construction and design firms, dental offices, retailers, and entertainment-related firms like movie theaters.” According to President Rosengren, “the loans we have seen to date have reflected what one might broadly expect of small and mid-sized firms whose businesses have been disrupted by the current efforts at social distancing.”²⁰⁵

¹⁹⁸ Board of Governors of the Federal Reserve System, *Federal Reserve Board announces an extension through December 31 of its lending facilities that were scheduled to expire on or around September 30*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200728a.htm>.

¹⁹⁹ *Id.*; U.S. Department of the Treasury, *Statement from Secretary Steven T. Mnuchin on the Extension of Facilities Authorized Under Section 13(3) of the Federal Reserve Act*, July 28, 2020, <https://home.treasury.gov/news/press-releases/sm1069>.

²⁰⁰ Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (prepared statement and presentation of Eric Rosengren, President and CEO, Federal Reserve Bank of Boston), <https://coc.senate.gov/sites/default/files/2020-08/ROSENGREN%20Testimony%20COC%20Hearing%208-7.pdf> and <https://coc.senate.gov/sites/default/files/2020-08/ROSENGREN%20Testimony%20COC%20Hearing%208-7%20figures.pdf>.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

On August 12, 2020, President Rosengren gave a speech in which he discussed the Main Street Lending Program.²⁰⁶ His speech contained data about the program as of August 10, 2020, which was six days later than the August 4, 2020 data he discussed during his testimony before the Commission. As of August 10, 2020, 87 loans totaling more than \$856 million were active in the program's loan portal.²⁰⁷ Of the 87 loans, 32 loans totaling \$252 million were committed or settled, which represents a 77% increase in the number of loans committed or settled and a 131% increase in the amount of such loans since August 4, 2020.²⁰⁸ The chart below lists the Main Street Lending Program loan status information as of August 4, 2020 and August 10, 2020.²⁰⁹

MSLP Loans to Borrowers by Status						
Processing Status in MSLP Loan Portal	Number of Loans as of 8/4/20	Number of Loans as of 8/10/20	MSLP Participation Amount as of 8/4/20	MSLP Participation Amount as of 8/10/20	Loan Amount as of 8/4/20	Loan Amount as of 8/10/20
Loans Committed or Settled	18	32	\$104,006,00	\$240,171,351	\$109,480,000	\$252,811,948
Loans Under Review	36	55	\$400,327,014	\$573,963,538	\$421,396,857	\$604,172,145
Total	54	87	\$504,333,014	\$814,134,888	\$530,876,857	\$856,984,093

In addition, President Rosengren's August 12, 2020 speech revealed that, as of August 10, 2020, the Main Street Lending Program's number of registered lenders had increased to 522.²¹⁰ From June 30, 2020 to August 10, 2020, the number of registered lenders increased from

²⁰⁶ Eric Rosengren, President and CEO, Federal Reserve Bank of Boston, *The COVID-19 Pandemic, the Economic Outlook, and the Main Street Lending Program*, Remarks to the South Shore Chamber of Congress, Aug. 12, 2020, <https://www.bostonfed.org/-/media/Documents/Speeches/PDF/20200812-text.pdf> and <https://www.bostonfed.org/-/media/Documents/Speeches/PDF/20200812-charts.pdf>.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*; Congressional Oversight Commission hearing on the Main Street Lending Program, 116th Cong. (Aug. 7, 2020) (prepared statement and presentation of Eric Rosengren, President and CEO, Federal Reserve Bank of Boston), <https://coc.senate.gov/sites/default/files/2020-08/ROSENGREN%20Testimony%20COC%20Hearing%208-7.pdf> and <https://coc.senate.gov/sites/default/files/2020-08/ROSENGREN%20Testimony%20COC%20Hearing%208-7%20figures.pdf>.

²¹⁰ *Id.*

approximately 300 to 522.²¹¹ He also disclosed that the number of lenders publicizing that they are accepting loan applications from new customers had increased to 160.²¹²

As of August 19, 2020, \$496.8 million in loans had been made under the Main Street Lending Program.²¹³ The Federal Reserve's participation amount in these loans is \$472 million.²¹⁴ From July 15, 2020 to August 19, 2020, the amount of loans made under the Main Street Lending Program increased from \$12 million to \$496.8 million.²¹⁵

Municipal Liquidity Facility (MLF)

The MLF is intended to help state and local governments manage cash flow problems relating to the COVID-19 crisis. The Federal Reserve, through an SPV, will purchase notes from U.S. states, including the District of Columbia, U.S. counties with a population of at least 500,000 residents, U.S. cities with a population of at least 250,000, and certain multistate entities. States may use the proceeds for the sales of these notes to support counties and cities. The Treasury has announced it intends to make an equity investment of \$35 billion in this facility. The MLF can purchase up to \$500 billion in notes.²¹⁶

On August 11, 2020, the Federal Reserve made revisions to the pricing terms for notes eligible for purchase by the MLF.²¹⁷ These revisions reduced “the interest rate spread on tax-

²¹¹ U.S. House Committee on Financial Services hearing on Coronavirus and the Cares Act, 116th Cong. (June 30, 2020) (statement of Jerome Powell, Chair, Board of Governors of the Federal Reserve).

²¹² Eric Rosengren, President and CEO, Federal Reserve Bank of Boston, *The COVID-19 Pandemic, the Economic Outlook, and the Main Street Lending Program*, Remarks to the South Shore Chamber of Congress, Aug. 12, 2020, <https://www.bostonfed.org/-/media/Documents/Speeches/PDF/20200812-text.pdf> and <https://www.bostonfed.org/-/media/Documents/Speeches/PDF/20200812-charts.pdf>.

²¹³ Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, at Table 4, Aug. 20, 2020, <https://www.federalreserve.gov/releases/h41/> (to access click on hyperlink for Aug. 20, 2020 release). The SPV for the Main Street Lending Program is MS Facilities LLC. The H.4.1 statistical release discloses the Main Street SPV's participation amount in Main Street loans, which is 95% of those loans. The August 20, 2020 release disclosed a participation amount of \$472 million, which means \$496.8 million in Main Street loans were made by lenders.

²¹⁴ *Id.*

²¹⁵ *Id.*; Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, July 16, 2020, <https://www.federalreserve.gov/releases/h41/> (to access click on hyperlink for July 16, 2020 release). The SPV for the Main Street Lending Program is MS Facilities LLC.

²¹⁶ Board of Governors of the Federal Reserve, *Municipal Liquidity Facility Term Sheet*, June 3, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200603a1.pdf>; Federal Reserve Bank of New York, *FAQs: Municipal Liquidity Facility Term Sheet*, June 3, 2020, <https://www.newyorkfed.org/markets/municipal-liquidity-facility/municipal-liquidity-facility-faq>.

²¹⁷ Board of Governors of the Federal Reserve System, *Federal Reserve Board announces revised pricing for its Municipal Liquidity Facility*, Aug. 11, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200811a.htm>.

exempt notes for each credit rating category by 50 basis points” and reduced “the amount by which the interest rate for taxable notes is adjusted relative to tax-exempt notes.”²¹⁸ According to the Federal Reserve, these “changes will ensure the MLF continues to provide an effective backstop to assist U.S. states and local governments as they weather the pandemic.”²¹⁹ In accord with the Federal Reserve’s view that the facility serves as a backstop and the regulatory requirement that its emergency facilities extend credit at a penalty rate, the reduced rates remain “substantially higher than market rates.”²²⁰

To date, the MLF has purchased notes from the state of Illinois and New York’s MTA.²²¹ On June 5, 2020, Illinois borrowed \$1.2 billion from the MLF through the sale of a one-year note, making it the facility’s first participant.²²² Illinois will pay an interest rate of 3.82% on this note, which is more than a full percentage point less than the 4.875% interest rate it paid on comparable short-term notes during a public market sale in mid-May 2020.²²³

On August 18, 2020, New York’s MTA, which runs the largest transit system in the United States, borrowed \$450.7 million from the MLF through the sale of a three-year note.²²⁴ The MTA will pay the MLF “a true interest cost”²²⁵ of 1.92% on the note, “resulting in a savings

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ Alexandra Scaggs, *Federal Reserve Reducing Borrowing Costs for States, Municipalities*, Barron’s, Aug. 11, 2020, <https://www.barrons.com/articles/federal-reserve-reduces-borrowing-costs-for-states-municipalities-51597185935>.

²²¹ Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Aug. 10, 2020, <https://www.federalreserve.gov/publications/files/mlf-transaction-specific-disclosures-8-10-20.xlsx>; Karen Pierog & Jonnelle Marte, *New York transit agency turns to Fed for \$450 million borrowing*, Reuters, Aug. 18, 2020, <https://www.reuters.com/article/us-usa-newyork-fed-debt/new-york-transit-agency-turns-to-fed-for-450-million-borrowing-idUSKCN25E2R3>.

²²² Shruti Singh & Amanda Albright, *Illinois Becomes First to Tap Fed Loans After Yields Surge*, Bloomberg, June 2, 2020, <https://www.bloomberg.com/news/articles/2020-06-02/illinois-becomes-first-to-tap-fed-loans-after-bond-yields-surge>.

²²³ *Id.*; *State of Illinois, General Obligation of Bonds, Series of May 2020*, May 2020, <https://www2.illinois.gov/sites/capitalmarkets/Documents/Official%20Statements/2020/State%20of%20Illinois-General%20Obligation%20Bonds%20Series%20of%20May%202020-Official%20Statement.pdf>. The SPV for the MLF is the Municipal Liquidity Facility LLC.

²²⁴ Karen Pierog & Jonnelle Marte, *New York transit agency turns to Fed for \$450 million borrowing*, Reuters, Aug. 18, 2020, <https://www.reuters.com/article/us-usa-newyork-fed-debt/new-york-transit-agency-turns-to-fed-for-450-million-borrowing-idUSKCN25E2R3>; Amanda Albright & Danielle Moran, *New York’s MTA Becomes Second to Tap Fed as Banks Demand Higher Yields*, Bloomberg, Aug. 18, 2020, <https://www.bloomberg.com/news/articles/2020-08-18/ny-mta-becomes-second-to-tap-fed-as-banks-demand-higher-yields?srnd=economics-vp&sref=hKSAni5g>.

²²⁵ “[True interest cost] is a method of calculating an [issuer’s] borrowing interest cost, which considers the present value of the debt service payments. It is defined as the rate necessary to discount the debt service payments, compounding semi-annually, to the purchase price received by the issuer at the time of bond closing.” *Am. Trucking*

of over 85 basis points compared to the public market levels,” according to the MTA.²²⁶ The transit agency borrowed from the MLF after it rejected higher cost bids offered for its three-year notes by 10 banks during a competitive bidding process in the municipal bond market on August 18, 2020.²²⁷

As noted above, the Commission intends to hold a public hearing on the MLF in the coming weeks.

Term Asset-Backed Securities Loan Facility (TALF)

The TALF is intended to facilitate the provision of credit to consumers and businesses by enabling the issuance of asset-backed securities (ABS) “backed by private student loans, auto loans and leases, consumer and corporate credit card receivables, certain loans guaranteed by the SBA, and certain other assets.”²²⁸ The Federal Reserve, through an SPV, will “make loans to U.S. companies secured by certain AAA-rated ABS backed by recently originated consumer and business loans.”²²⁹ The Treasury has announced it intends to make an equity investment of \$10 billion in this facility. The TALF can provide up to \$100 billion in lending.²³⁰

On July 28, 2020, the Federal Reserve announced that it extended the termination date of the TALF, as well as several other emergency lending facilities, from September 30, 2020 to December 31, 2020.²³¹ According to the Federal Reserve this “three-month extension will facilitate planning by potential facility participants and provide certainty that the facilities will continue to be available to help the economy recover from the COVID-19 pandemic.”²³²

Associations, Inc. v. Delaware River Joint Toll Bridge Comm'n, No. CIV.A.02-8841, 2005 WL 300070, at *2 (E.D. Pa. Feb. 8, 2005).

²²⁶ Amanda Albright & Danielle Moran, *New York's MTA Becomes Second to Tap Fed as Banks Demand Higher Yields*, Bloomberg, Aug. 18, 2020, <https://www.bloomberg.com/news/articles/2020-08-18/ny-mta-becomes-second-to-tap-fed-as-banks-demand-higher-yields?srnd=economics-vp&sref=hKSAni5g>.

²²⁷ *Id.*; Karen Pierog & Jonnelle Marte, *New York transit agency turns to Fed for \$450 million borrowing*, Reuters, Aug. 18, 2020, <https://www.reuters.com/article/us-usa-newyork-fed-debt/new-york-transit-agency-turns-to-fed-for-450-million-borrowing-idUSKCN25E2R3>.

²²⁸ Board of Governors of the Federal Reserve System, *Periodic Report Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act*, May 28, 2020, <https://www.federalreserve.gov/files/pmccf-smccf-talf-5-29-20.pdf#page=3>.

²²⁹ *Id.*

²³⁰ Board of Governors of the Federal Reserve System, *Term Asset-Backed Securities Loan Facility*, May 12, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200512a1.pdf>.

²³¹ Board of Governors of the Federal Reserve System, *Federal Reserve Board announces an extension through December 31 of its lending facilities that were scheduled to expire on or around September 30*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200728a.htm>.

²³² *Id.*; U.S. Department of the Treasury, *Statement from Secretary Steven T. Mnuchin on the Extension of Facilities Authorized Under Section 13(3) of the Federal Reserve Act*, July 28, 2020, <https://home.treasury.gov/news/press-releases/sm1069>.

On August 7, 2020, economists at the Federal Reserve Bank of New York released a report analyzing the TALF and its impact on the ABS market, which supports lending to consumers and businesses.²³³ The report notes that “as coronavirus cases surged and authorities imposed shutdowns beginning in March 2020, the economic outlook became highly uncertain, disrupting financial markets,” including the ABS market.²³⁴ According to the report, “[t]otal ABS issuance declined more than 70 percent from February to April 2020” and “the interest rate spreads on [asset-backed securities] spiked.”²³⁵ The report states that “[s]ince the ABS market has historically funded a significant portion of consumer and business lending, continued disruption of these markets . . . had the potential to strain the liquidity and balance sheet capacity of financial institutions and thereby limit their ability to make loans to consumers and businesses.”²³⁶ According to the report, the Federal Reserve’s announcement of the TALF and the TALF’s subsequent expansion appear “to have provided a backstop for securitization market activity and helped to normalize ABS spreads.”²³⁷ In addition, the report notes that since these announcements “issuance of ABS backed by TALF-eligible collateral such as auto loans and student loans has rebounded close to pre-pandemic levels,” though overall ABS issuance has not, “suggesting that some less liquid sectors continue to struggle.”²³⁸

On August 10, 2020, the Federal Reserve disclosed transaction-specific data about the TALF’s activities through July 30, 2020.²³⁹ This report indicates the TALF grew significantly in July 2020. As of June 30, 2020, the TALF had only made 19 loans totaling \$252 million to five different borrowers.²⁴⁰ However, as of July 30, 2020, the TALF had made 106 loans totaling \$1.6 billion to 36 different borrowers.²⁴¹ Of the 106 loans, 62 support the commercial mortgage sector, 35 support the small business sector, 6 support the student loan sector, and 3 support the insurance premium finance sector.²⁴² Of the \$1.6 billion in loans made by the TALF, 42.5% support ABS backed by commercial mortgages, 38% support ABS backed by SBA loans, 12.7%

²³³ Elizabeth Caviness & Asani Sarkar, *Securing Secured Finance: The Term Asset-Backed Securities Loan Facility*, Liberty Street Economics, Aug. 7, 2020, <https://libertystreeteconomics.newyorkfed.org/2020/08/securing-secured-finance-the-term-asset-backed-securities-loan-facility.html>.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Aug. 10, 2020, <https://www.federalreserve.gov/publications/files/talf-transaction-specific-disclosures-8-10-20.xlsx>.

²⁴⁰ Board of Governors of the Federal Reserve System, *Transaction-specific disclosures*, July 10, 2020, <https://www.federalreserve.gov/publications/files/talf-transaction-specific-disclosures-7-10-20.xlsx>.

²⁴¹ Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Aug. 10, 2020, <https://www.federalreserve.gov/publications/files/talf-transaction-specific-disclosures-8-10-20.xlsx>.

²⁴² *Id.*

support ABS backed by student loans, and 6.6% support ABS backed by insurance premiums.²⁴³ The five borrowers to whom the TALF has lent the most money are: Alta Fundamental Advisers SP LLC—Belstar-Alta Series 1; MacKay Shields TALF 2.0 Opportunities Master Fund LP; Palmer Square TALF Opportunity Sub LLC; BlackRock Securitized Investors, L.P.; and Alta Fundamental Advisers SP LLC—Belstar-Alta Series 2.²⁴⁴

As of August 19, 2020, the TALF had made \$2.26 billion in loans to eligible borrowers.²⁴⁵

Treasury Loans for the Airline Industry and National Security Businesses

The Treasury has available \$17 billion to make loans to businesses critical to maintaining national security under Subtitle A. To date, it has provided a national security loan to only one business—YRC Worldwide Inc. On July 8, 2020, the Treasury finalized a \$700 million loan to YRC.²⁴⁶ As noted above, the Commission has submitted questions to Secretary Mnuchin and Secretary Esper regarding this loan, with responses requested by August 27, 2020.

In addition, the Treasury has available \$29 billion to make loans to the airline industry under Subtitle A. To date, it has not entered into any agreements to provide such loans. However, the Treasury has signed letters of intent with ten passenger air carriers that set out the terms on which the Treasury is prepared to extend loans to these carriers.²⁴⁷ On August 19, 2020, one of these carriers—Southwest Airlines—announced it has decided not to participate in the Subtitle A loan program because of “the significant actions” it has taken “to bolster liquidity and its belief that it can secure additional financing at favorable terms, if needed.”²⁴⁸ Previously, in July 2020, Southwest Airlines had signed a non-binding letter of intent with the Treasury for a loan “with an estimated principal amount of approximately \$2.8 billion.”²⁴⁹

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Aug. 20, 2020, at Table 4, <https://www.federalreserve.gov/releases/h41/> (to access click on hyperlink for Aug. 20, 2020 release). The SPV for the TALF is TALF II LLC.

²⁴⁶ U.S. Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses*, <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses> (last visited Aug. 15, 2020).

²⁴⁷ U.S. Department of the Treasury, *Statement from Secretary Steven T. Mnuchin on CARES Act Loans to Major Airlines*, July 2, 2020, <https://home.treasury.gov/news/press-releases/sml054>.

²⁴⁸ Southwest Airlines Co., *Current Report (Form 8-K)*, Aug. 19, 2020, http://www.southwestairlinesinvestorrelations.com/~media/Files/S/Southwest-IR/20200819_8K%20Investor%20update_vF.pdf.

²⁴⁹ *Id.*

On August 4, 2020, Bloomberg reported that the Treasury is asking airlines applying for Subtitle A airline industry loans in amounts under \$300 million to first apply for loans through the Main Street Lending Program. A Treasury spokeswoman confirmed to Bloomberg “that the agency is requiring some smaller companies to apply first with banks in the Fed program.”²⁵⁰

²⁵⁰ Justin Bachman, *Another Regional Airline Falls to the Covid-19 Recession*, Bloomberg, Aug. 4, 2020, <https://www.bloomberg.com/news/articles/2020-08-04/another-regional-u-s-airline-falls-to-the-covid-19-recession?sref=hKSAni5g>.

Appendix A:
Letter from U.S. Department of the Treasury to
Congressional Oversight Commission, dated July 30, 2020



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

July 30, 2020

The Honorable French Hill
U.S. House of Representatives
Washington, DC 20515

The Honorable Donna E. Shalala
U.S. House of Representatives
Washington, DC 20515

Mr. Bharat Ramamurti
Commissioner
Washington, DC 20515

The Honorable Pat Toomey
United States Senate
Washington, DC 20510

Dear Members of the Congressional Oversight Commission:

The Third Report of the Congressional Oversight Commission, dated July 20, 2020, discusses the loans that the Department of the Treasury recently agreed to make to YRC Worldwide Inc. (YRC) under section 4003(b)(3) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). It also expresses the Commission's interest in learning more about these loans.

In the spirit of transparency and cooperation, although the Commission has not requested further information from Treasury, Secretary Mnuchin wanted to share the enclosed material regarding the YRC loans to assist the Commission in its work.

If you have further questions, please direct your staff to contact the Office of Legislative Affairs.

Sincerely,

Frederick W. Vaughan
Principal Deputy Assistant Secretary
Office of Legislative Affairs

Enclosure

Information on Treasury Loans to YRC Worldwide Inc.

I. BACKGROUND

CARES Act Loans to National Security Businesses

Under section 4003(b)(3) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Department of the Treasury is authorized to make loans in support of “businesses critical to maintaining national security” related to “losses incurred as a result of coronavirus.” The CARES Act does not define the scope of such businesses, so on April 10, 2020—two weeks after the statute was enacted—Treasury issued guidance defining this term.¹ Under the guidance, a company falls within this definition if:

- (1) it performs under a “DX”-priority rated contract or order under the Defense Priorities and Allocations System regulations (15 CFR part 700);
- (2) it operates under a valid top secret facility security clearance under the National Industrial Security Program regulations (32 CFR part 2004); or
- (3) the Secretary of the Treasury determines that the applicant is critical to maintaining national security based on a recommendation and certification from the Secretary of Defense or the Director of National Intelligence that the business is critical to maintaining national security.

In accordance with the CARES Act and Treasury’s guidance, on June 26, 2020, the Secretary of Defense made a recommendation and certification regarding YRC Worldwide Inc. (YRC) to the Secretary of the Treasury. Based on that recommendation and certification, the Secretary of the Treasury determined, on July 8, 2020, that YRC is a business critical to maintaining national security.

Background on YRC

YRC is the second largest “less-than-truckload” (LTL) carrier and the fifth largest trucking firm in the United States. It carries 68% of the Department of Defense’s LTL shipments and is the leading transportation provider to the Department of Homeland Security and U.S. Customs and Border Protection. YRC employs 30,000 people and plays an essential role in the supply chain of the U.S. economy, with more than 200,000 corporate customers nationwide. As the COVID-19 pandemic hit the U.S. economy, YRC’s shipments fell almost 30% from March 13, 2020 to April 10, 2020. YRC’s revenue is projected to fall 16% in 2020 compared to 2019.

YRC’s fall in revenue created a liquidity crisis that forced the company to delay payments for employee health insurance and pension contributions. The company’s major health insurance

¹ Treasury, Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses Updated as of April 10, 2020, <https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf>.

provider notified 12,000 of the company’s employees of the termination of their coverage effective July 5, 2020. Our understanding is that the withdrawal of health insurance coverage would have led to a strike of the company’s 25,000 unionized employees and a bankruptcy filing, which would have disrupted the operations of critical federal agencies and the U.S. supply chain, undermining the economic recovery.

Members of Congress on both sides of the aisle wrote to Treasury to relay such facts and circumstances and to encourage Treasury to give “full and fair consideration” to YRC’s request for liquidity under section 4003 of the CARES Act.²

II. TREASURY LOANS TO YRC

Credit Underwriting Criteria

Treasury adopted a credit test for loans under section 4003(b)(3) of the CARES Act. An applicant passes this test if it meets any two of the following three criteria. As indicated in this table, YRC met all three of the criteria.

Credit Criteria:	Required Level:	YRC Level:
Leverage (existing debt / 2019 adjusted EBITDA)	Must be < 6.0x	4.2x
Debt service coverage (2019 adjusted EBITDA / 2020 existing debt service)	Must be > 1.5x	1.9x
Collateral (secured debt / tangible assets)	Must be < 75%	45%

Key Terms of the Loans to YRC

The CARES Act provides that loans made by Treasury under section 4003(b)(3) “shall be made ... in such form and on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate.”³

The loans from Treasury to YRC will be made in two tranches. Tranche A provides \$300 million to meet certain of YRC’s near-term contractual obligations, working capital needs, and certain non-vehicle capital expenditures, with an interest rate equal to LIBOR plus 3.5%, consisting of 1.5% cash and 2.0% payment in kind. Tranche B provides \$400 million for specific capital investments in tractors and trailers made pursuant to capital plans subject to approval by Treasury, with an interest rate equal to LIBOR plus 3.5% in cash. Both tranches mature on September 30, 2024.

² See Letter from Representative Sharice Davids, U.S. House of Representatives, to Secretary Mnuchin, Apr. 2, 2020; Letter from the Chairman Peter A. DeFazio and Ranking Member Sam Graves, Committee on Transportation and Infrastructure, U.S. House of Representatives, to Secretary Mnuchin, Apr. 17, 2020; Letter from Senators Ron Wyden and Pat Roberts, United States Senate, to Secretary Mnuchin, Apr. 17, 2020; Letter from Representative Albio Sires, U.S. House of Representatives, to Secretary Mnuchin, Apr. 22, 2020; Letter from Rep. Bill Pascrell, Jr., U.S. House of Representatives, to Secretary Mnuchin, May 5, 2020; *see also* Letter from Rep. Donald M. Payne, Jr., U.S. House of Representatives, to Secretary Mnuchin, Apr. 20, 2020.

³ CARES Act, sec. 4003(c)(1)(A).

The interest rate of LIBOR plus 3.5% on the YRC loans was set to be above the interest rate of LIBOR plus 3% applicable to loans made by banks participating in the Federal Reserve's Main Street Lending Program (MSLP). The MSLP was established to provide bridge financing to companies of speculative-grade credit risk whose revenues were negatively affected by the economic impact of the COVID-19 crisis. The duration of Treasury's loans to YRC and of loans under the MSLP are comparable. The interest rate under the MSLP was set by the Federal Reserve at a penalty rate, and the interest rate on the YRC loan is 0.5 percentage points higher.

Disbursements to YRC under the Tranche B loan can only be used for the acquisition of tractors and trailers and are subject to a capital expenditure (CapEx) plan that must be approved by the Treasury on an ongoing basis. Each quarter, YRC will prepare a revised CapEx plan to be approved by the Treasury based on the company's most recent financial and operating results and updated projections of performance. Disbursements under the Tranche B loan for the subsequent quarter will be based upon the updated CapEx plan approved by the Treasury.

The loan agreements also include covenants by YRC to comply with certain restrictions on employee compensation, stock repurchases, dividends, and reductions in employment levels, as required by the CARES Act.

Collateralization of Treasury Loans to YRC

As the Commission's report notes, loans made by Treasury under section 4003(b)(3) are required to be either (1) sufficiently secured (as determined by the Secretary, in his discretion), or (2) made at a rate that (a) reflects the risk of the loan and (b) is, to the extent practicable, not less than an interest rate based on market conditions for comparable obligations prevalent prior to the COVID-19 outbreak. Treasury's loans have a significant level of collateralization, which, in addition to the interest payable on the loans, helps protect Treasury against potential losses. The Secretary therefore determined that these loans are sufficiently secured.

Following is a summary of the amount of existing collateral available to secure Treasury's loans to YRC, based on an analysis of Treasury's external financial advisors and an assumed drawing of the maximum of \$450 million under YRC's existing asset-backed loan (ABL) facility.

YRC Existing Collateral Pledged to Secure Existing Debt (Excluding Treasury Loan)

Existing Fleet:	\$312.2 million (appraised value)
Real Estate:	\$735.1 million (appraised value)
Accounts Receivable:	\$529.4 million
<i>Total Existing Collateral:</i>	<i>\$1,576.7 million</i>

Existing Debt (Excluding Treasury Loan) Secured by YRC Existing Collateral

Term Loan:	\$581.0 million
ABL (Maximum Draw):	\$450.0 million
<i>Total Debt Secured by Existing Collateral:</i>	<i>\$1,031.0 million</i>

Excess Existing Collateral Securing Treasury Loan:

Total Existing Collateral:	\$1,576.7 million (see above)
Total Existing Debt:	\$1,031.0 million (see above)
<i>Total Excess Existing Collateral Securing Treasury Loan:</i>	<i>\$545.7 million</i>

This excess existing collateral of \$545.7 million secures both Treasury's \$300 million Tranche A loan and \$400 million Tranche B loan.

In addition, if any funds are disbursed under the Tranche B loan, the Tranche B loan has a first-priority lien on all equipment (tractors and trailers) purchased with proceeds of that loan, in addition to Treasury's lien on the excess collateral described above. For example, if \$400 million of the Tranche B loan is disbursed, there will be additional newly purchased tractors and trailers with a purchase cost of \$400 million securing the Tranche B loan on a first-lien basis. Assuming a 20% discount for the liquidation value of this collateral, the first-priority lien would provide Treasury with an additional \$320.0 million in security. In this case, Treasury would have collateral of \$865.7 million (\$545.7 million of excess existing collateral plus \$320.0 million of newly purchased tractors and trailers) securing its \$700 million loan—a collateralization level of 124%.

Taxpayer Compensation

Treasury can make a loan under section 4003(b)(3) of the CARES Act to a company with publicly traded securities only if Treasury receives warrants or equity interests in the business (or senior debt instruments, if the company cannot feasibly issue warrants or equity interests).⁴ To satisfy this requirement, Treasury received shares equal to 29.56% of YRC's common stock on a fully diluted basis, held in a voting trust. These common shares provide additional compensation to taxpayers, in addition to the interest on the loans described above. The current market value of the shares held by Treasury is approximately \$40 million. In the event of appreciation in the company's equity value, this shareholding will create a significant profit for the federal government; in an adverse scenario, the collateralization described above will help protect Treasury against losses.

⁴ CARES Act, sec. 4003(d).

Appendix B:
Letter from Congressional Oversight Commission to
Treasury Secretary Steven Mnuchin, dated August 7, 2020

Congressional Oversight Commission

SDG55 Dirksen Senate Office Building
Washington, DC 20510

August 7, 2020

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

Dear Secretary Mnuchin:

The Congressional Oversight Commission (the “Commission”) is in receipt of a letter from the Treasury Department (the “Treasury”), dated July 30, 2020 (“Letter”)¹ providing additional information regarding the Treasury’s recent \$700 million national security loan to YRC Worldwide Inc. (“YRC”) under Division A, Title IV, Subtitle A of the CARES Act (“Subtitle A”). We thank the Treasury for proactively providing this information in response to concerns we raised in the Commission’s third report.² In accordance with our responsibility to oversee the implementation of Subtitle A, we respectfully request responses to the below follow-up questions regarding the YRC loan and the Treasury’s implementation of the national security loan program.

As you are aware, Subtitle A provides the Treasury \$500 billion to use “to provide liquidity to eligible businesses . . . related to losses incurred as a result of coronavirus,”³ including up to \$17 billion for lending to businesses “critical to maintaining national security.”⁴ The Treasury has defined a “business critical to maintaining national security” as a business that is, at the time of its application for a national security loan, performing under a defense contract of the highest national priority or operating under a top-secret facility security clearance.⁵ A business that does not satisfy either of these two criteria may nonetheless be considered for a national security loan if the Secretary of Defense or the Director of National Intelligence recommends and certifies that the

¹ Letter from Frederick W. Vaughan, Principal Deputy Assistant Secretary, Office of Legislative Affairs, Department of the Treasury to Congressional Oversight Commission, July 30, 2020.

² The Third Report of the Congressional Oversight Commission, July 20, 2020, [https://www.toomey.senate.gov/files/documents/Oversight%20Commission%20-%203rd%20Report%20\(FINAL\)_7.20.20.pdf](https://www.toomey.senate.gov/files/documents/Oversight%20Commission%20-%203rd%20Report%20(FINAL)_7.20.20.pdf).

³ CARES Act, Pub. L. No. 116-136, § 4003(a), 134 Stat. 281 (2020); *see also* Attachment to Letter at 1.

⁴ *Id.* at § 4003(b)(3); *see also* Attachment to Letter at 1.

⁵ U.S. Department of the Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses*, Apr. 10, 2020, <https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf>; Defense Contract Management Agency, *Defense Priorities & Allocations System (DPAS)*, May 7, 2019, <https://www.dema.mil/DPAS/> (“A DX rating is assigned to those programs of the highest national priority”); *see also* Attachment to Letter at 1.

business is critical to maintaining national security and the Secretary of the Treasury agrees with that determination.⁶

On July 8, 2020, the Treasury finalized an agreement to loan \$700 million to YRC. YRC provides transportation and logistics services throughout North America. Based on 2019 revenue, YRC is the fifth-largest U.S. trucking company and the fourth-largest less-than-truckload U.S. shipping provider (*i.e.*, shipments where smaller cargos from multiple customers are combined on one trailer).⁷ According to the Treasury, “YRC is a leading provider of critical military transportation and other hauling services to the U.S. government and provides 68% of less-than-truckload services to the Department of Defense”⁸ and “is the leading transportation provider to the Department of Homeland Security and U.S. Customs and Border Protection.”⁹ The Treasury asserts that the loan “will enable YRC to maintain approximately 30,000 trucking jobs and continue to support essential military supply chain operations.”¹⁰ The Treasury’s determination that YRC is critical to maintaining national security was “based on a certification by the Secretary of Defense,” rather than on YRC satisfying either of the Treasury’s two national security eligibility criteria.¹¹

The YRC loan appears to expose taxpayers to significant risk. YRC’s credit has been rated non-investment grade for over a decade.¹² On April 6, 2020, a research report by investment bank Stephens Inc. indicated that YRC might be at risk of a “potential bankruptcy.”¹³ One month later, on May 11, 2020, YRC stated that there was “substantial doubt” about its ability to continue to operate as a going concern without “governmental assistance or a meaningful stabilization of the economy in the near-term.”¹⁴ On May 28, 2020, Standard & Poor’s (“S&P”) downgraded YRC’s credit rating from CCC+ to CCC.¹⁵ It appears that the Treasury was aware of YRC’s poor financial

⁶ U.S. Department of the Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses*, Apr. 10, 2020, <https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf>; see also Attachment to Letter at 1.

⁷ Jennifer Smith, *Trucker YRC Seeks to Defer Millions in Benefits Payments*, Wall Street Journal, June 18, 2020, <https://www.wsj.com/articles/trucker-ycr-seeks-to-defer-millions-in-benefits-payments-11592508252> (citing analysis by transportation research provider SJ Consulting Group Inc. that ranks LTL shipping providers by revenue for LTL operations only).

⁸ U.S. Department of the Treasury, *Treasury to Provide Loan to YRC Worldwide*, July 1, 2020, <https://home.treasury.gov/news/press-releases/sm1049>; see also Attachment to Letter at 1.

⁹ Attachment to Letter at 1.

¹⁰ U.S. Department of the Treasury, *Treasury to Provide Loan to YRC Worldwide*, July 1, 2020, <https://home.treasury.gov/news/press-releases/sm1049>; see also Attachment to Letter at 1.

¹¹ *Id.*; see also Attachment to Letter at 1.

¹² Moody’s Investors Services, YRC Worldwide Inc. Ratings, <https://www.moodys.com/creditratings/YRC-Worldwide-Inc-credit-rating-834015> (last visited July 29, 2020).

¹³ Jennifer Smith, *Truckers Cut Spending as Factory Slowdown Weighs on Operators*, Wall Street Journal, April 7, 2020, <https://www.wsj.com/articles/truckers-cut-spending-as-factory-slowdown-weighs-on-some-operators-11586295247>.

¹⁴ YRC Worldwide Inc., *Quarterly Report (Form 10-Q)*, May 11, 2020, <https://sec.report/Document/0001564590-20-024217/>.

¹⁵ Standard & Poor’s, *U.S.-Based YRC Worldwide Inc. Downgraded To ‘CCC’ On Anticipated Covenant Violation, Outlook Negative*, May 28, 2020, https://www.standardandpoors.com/en_US/web/guest/article/-/view/type/HTML/id/2450913.

condition at the time it made the loan.¹⁶ Nevertheless, the Treasury's loan to YRC has an interest rate of LIBOR plus 3.5%, which is 4% lower than the interest rate on a \$600 million loan that YRC obtained from affiliates of Apollo Global Management, LLC in September 2019,¹⁷ prior to the COVID-19 crisis and S&P's downgrade of YRC's credit rating. The Treasury will receive a 29.6% equity stake in YRC to reportedly provide "appropriate taxpayer compensation" for its loan to the company.¹⁸

To fulfill our obligations under the CARES Act, the Commission requests the following information, pursuant to Section 4020(e)(4) of that Act:

1. What was the Treasury's rationale for determining that YRC is critical to maintaining national security? Please provide all documentation and analysis supporting the Treasury's conclusion, including the Secretary of Defense's recommendation and certification that YRC is critical to maintaining national security.
2. Please summarize the decision-making process related to YRC's designation as a business critical to maintaining national security. The summary should (1) identify the parties that were involved in the designation, whether the parties are governmental or otherwise (although the list may elect to use parties' offices, titles, and affiliations while omitting their individual names), and (2) list any department, agency, office, or instrumentality of the United States or entity possessing public authority under the laws of the United States that was included in giving any input into that decision-making process (irrespective of whether it was an ultimate decision-maker).
3. Did the Treasury communicate with any creditors of YRC, including lenders or health, welfare, and pension funds, with respect to YRC's designation as a business critical to maintaining national security, the Treasury's loan transaction with YRC, or otherwise? If so, please provide a list of such creditors and a summary of such communications.
4. While YRC's business, like many other American businesses, may have been impacted by the COVID-19 crisis,¹⁹ YRC's financial troubles also predate the COVID-19 crisis. YRC's credit has been rated non-investment grade for over a decade and the pandemic may only

¹⁶ Attachment to Letter at 1 ("YRC's fall in revenue created a liquidity crisis that forced the company to delay payments for employee health insurance and pension contributions. The company's major health insurance provider notified 12,000 of the company's employees of the termination of their coverage effective July 5, 2020. Our understanding is that the withdrawal of health insurance coverage would have led to a strike of the company's 25,000 unionized employees and a bankruptcy filing").

¹⁷ YRC Worldwide Inc., *Current Report (Form 8-K)*, Sept. 11, 2019, <https://sec.report/Document/0001193125-19-242625/>.

¹⁸ U.S. Department of the Treasury, *Treasury to Provide Loan to YRC Worldwide*, July 1, 2020, <https://home.treasury.gov/news/press-releases/sm1049>.

¹⁹ Attachment to Letter at 1 ("As the COVID-19 pandemic hit the U.S. economy, YRC's shipments fell almost 30% from March 13, 2020 to April 10, 2020. YRC's revenue is projected to fall 16% in 2020 compared to 2019.").

have been the straw that broke the camel's back. Given those preexisting problems, how does the Treasury reconcile YRC's loan with the statutory language in Subtitle A stating that the Treasury is authorized to make loans "to provide liquidity to eligible businesses . . . related to losses incurred as a result of coronavirus"?²⁰

5. Please provide all documentation, analysis, and recommendations concerning the Treasury's loan to YRC that Perella Weinberg Partners and any other external financial advisors produced for Treasury.
6. How did the Treasury determine that \$700 million was an appropriate amount for YRC's loan? Please provide all documentation and analysis supporting the Treasury's conclusion, including any analysis produced by Perella Weinberg Partners and any other external financial advisors for the Treasury.
7. The Commission notes that a portion of the loan will be used by YRC to finance capital expenditures, such as the purchase of tractors and trailers.²¹ How are these capital expenditures related to YRC's "losses incurred as a result of coronavirus"?²²
8. The Commission notes that a portion of the loan will be used by YRC to pay deferred pension and healthcare liabilities.²³ How are these deferred liabilities related to YRC's "losses incurred as a result of coronavirus"?²⁴
9. The Letter states that "the interest rate of LIBOR plus 3.5% on the YRC loans was set to be above the interest rate of LIBOR plus 3% applicable to loans made by banks participating in the Federal Reserve's Main Street Lending Program (MSLP)."²⁵ The Letter also notes that the Federal Reserve set the interest rate for the MSLP at a "penalty rate."²⁶ However, neither LIBOR plus 3% nor LIBOR plus 3.5% is a penalty rate for YRC. YRC received a \$600 million loan just a few months prior to the coronavirus outbreak with an interest rate of LIBOR plus 7.5% (*i.e.*, 4% higher than the Treasury's loan to YRC). In light of that loan, why does the Treasury believe that an interest rate of LIBOR plus 3.5%, even including its assumptions about the valuation of its equity stake in YRC, was an appropriate interest rate for this loan? Please provide all documentation relating to the Treasury's interest rate and

²⁰ CARES Act, Pub. L. No. 116-136, § 4003(a), 134 Stat. 281 (2020).

²¹ U.S. Department of the Treasury, *Transaction Documentation*, July 8, 2020, <https://home.treasury.gov/system/files/136/YRC-Documentation.pdf>; see also Attachment to Letter at 2.

²² CARES Act, Pub. L. No. 116-136, § 4003(a), 134 Stat. 281 (2020).

²³ U.S. Department of the Treasury, *Transaction Documentation*, July 8, 2020, <https://home.treasury.gov/system/files/136/YRC-Documentation.pdf>.

²⁴ CARES Act, Pub. L. No. 116-136, § 4003(a), 134 Stat. 281 (2020).

²⁵ Attachment to Letter at 3.

²⁶ *Id.*

risk analysis, including any analysis produced by Perella Weinberg Partners and any other external financial advisors for the Treasury.

10. The Letter analogizes the terms of the YRC loan with the terms of loans made by the Federal Reserve under the MSLP. The Treasury states “[t]he MSLP was established to provide bridge financing to companies of *speculative-grade credit risk* whose revenues were negatively affected by the economic impact of the COVID-19 crisis.”²⁷ However, this appears to be at odds with the Treasury’s prior statement that “[t]he Main Street program was established to provide a safety net for small and medium-sized businesses that were in *sound financial condition* before the pandemic.”²⁸ Please clarify.
11. In determining that its loan to YRC was “sufficiently secured” as required by the CARES Act,²⁹ the Treasury assumes a 20% discount for the liquidation value of the equipment YRC will purchase with the proceeds of the loan. Please provide the basis for determining that 20% is an appropriate discount rate for such equipment, including all related documentation such as any analysis produced by Perella Weinberg Partners and any other external financial advisors for the Treasury.
12. The Treasury states that it determined that YRC has excess existing collateral of \$545.7 million to secure the \$700 million loan, along with an interest in certain equipment purchased with proceeds of the loan. The Commission notes that the Treasury’s loan is secured by a combination of a first-priority security interest in certain escrow accounts, a third-priority security interest in YRC’s personal property, a third-priority mortgage or deed on certain real property, a third-priority pledge of YRC’s equity interests, and a first-priority security interest on certain equipment YRC purchases with proceeds of the loan.³⁰ Did the Treasury consider seeking additional first-priority interests on YRC assets? If not, why not? Please provide all documentation supporting the Treasury’s conclusion that YRC’s loan is “sufficiently secured,” including any analysis produced by Perella Weinberg Partners and any other external financial advisors for the Treasury, diligence reports, and other professional opinions such as appraisals.

²⁷ Attachment to Letter at 3 (emphasis added).

²⁸ U.S. Department of the Treasury, *Statement from Secretary Steven T. Mnuchin on the Main Street Lending Program*, July 6, 2020, <https://home.treasury.gov/news/press-releases/sm1053> (emphasis added); *see also* Board of Governors of the Federal Reserve System, *Main Street Lending Program*, <https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm> (“The Federal Reserve established the Main Street Lending Program (Program) to support lending to small and medium-sized businesses and nonprofit organizations that were in *sound financial condition* before the onset of the COVID-19 pandemic.”)(emphasis added)(last visited Aug. 1, 2020).

²⁹ CARES Act, Pub. L. No. 116-136, § 4003(c)(2)(C), 134 Stat. 281 (2020).

³⁰ U.S. Department of the Treasury, *Transaction Documentation*, July 8, 2020, <https://home.treasury.gov/system/files/136/YRC-Documentation.pdf>.

13. The Treasury's 29.6% equity stake in YRC is reportedly to provide "appropriate taxpayer compensation" for the loan.³¹ How did the Treasury determine that a 29.6% equity stake was appropriate? How and when does the Treasury anticipate realizing returns on its equity in YRC? Please provide all documentation and analysis supporting the Treasury's conclusion, including any analysis produced by Perella Weinberg Partners and any other external financial advisors for the Treasury.
14. Please also provide the Commission with a copy of the loan application submitted by YRC, which, per the Treasury's form application, includes information regarding YRC's U.S. operations, covered losses, financial plan, etc.
15. How will the Treasury monitor whether YRC complies with Section 12.03 of the loan credit agreement's terms on maintenance of employment levels?³²
16. The Treasury has previously told the Commission that "[t]ogether with the other data and information provided in [loan] applications, Treasury will develop standards for adequate and appropriate taxpayer protections. Treasury has not yet determined the final form of taxpayer protection that will be required, but anticipates applying a uniform standard that satisfies the requirements of [the CARES Act]."³³ Please provide the uniform standard that the Treasury is using to measure adequate and appropriate taxpayer protections, including the standards applied to the YRC loan.
17. The Letter states that the Treasury adopted a credit test for national security loans consisting of three criteria and that an applicant passes this test if it meets any two of those criteria.³⁴ Will the Treasury deny loans to companies that are designated as being critical to maintaining national security but do not pass this credit test?
18. The Treasury previously told the Commission that, as of June 17, 2020, the Treasury "received 70 applications for the national security loan program, 25 of which meet one of the two national security eligibility criteria established by Treasury, although one of those has been withdrawn."³⁵ Please provide an update regarding the total number of loan

³¹ U.S. Department of the Treasury, *Treasury to Provide Loan to YRC Worldwide*, July 1, 2020, <https://home.treasury.gov/news/press-releases/sm1049>.

³² U.S. Department of the Treasury, *Transaction Documentation*, July 8, 2020, <https://home.treasury.gov/system/files/136/YRC-Documentation.pdf>.

³³ Letter from Treasury Secretary Steven Mnuchin and Federal Reserve Chair Jerome Powell to Congressional Oversight Commission, dated June 29, 2020 (attached as Appendix C to The Third Report of the Congressional Oversight Commission, July 20, 2020, [https://www.toomey.senate.gov/files/documents/Oversight%20Commission%20-%20203rd%20Report%20\(FINAL\)_7.20.20.pdf](https://www.toomey.senate.gov/files/documents/Oversight%20Commission%20-%20203rd%20Report%20(FINAL)_7.20.20.pdf)).

³⁴ Attachment to Letter at 2.

³⁵ Letter from Treasury Secretary Steven Mnuchin and Federal Reserve Chair Jerome Powell to Congressional Oversight Commission, dated June 29, 2020 (attached as Appendix C to The Third Report of the Congressional Oversight Commission, July 20, 2020,

applications for the national security loan program the Treasury has received to date and the status of those loan applications, including whether the Treasury currently anticipates issuing additional loans or loan guarantees under this program.

In light of the Commission's monthly reporting obligations, we ask that you provide the information requested in this letter by August 27, 2020 and look forward to receiving your responses.

Thank you for your attention to this matter.

Sincerely,

/s/
French Hill
Member of Congress

/s/
Bharat Ramamurti
Commissioner

/s/
Donna E. Shalala
Member of Congress

/s/
Pat Toomey
U.S. Senator

Appendix C:
Letter from Congressional Oversight Commission to Defense
Secretary Mark Esper, dated August 7, 2020

Congressional Oversight Commission

SDG55 Dirksen Senate Office Building
Washington, DC 20510

August 7, 2020

The Honorable Mark T. Esper
Secretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Secretary Esper:

The Congressional Oversight Commission (the “Commission”) was created by the CARES Act to oversee the implementation of Division A, Title IV, Subtitle A of the CARES Act (“Subtitle A”).¹ Subtitle A provides the Treasury Department (the “Treasury”) \$500 billion to use “to provide liquidity to eligible businesses . . . related to losses incurred as a result of coronavirus,”² including up to \$17 billion for the Treasury to lend to businesses “critical to maintaining national security.”³ The Treasury recently made such a loan to YRC Worldwide Inc. (“YRC”). We write as members of the Commission to request information related to the Defense Department’s recommendation and certification that YRC is critical to maintaining national security.

The Treasury has defined a “business critical to maintaining national security” as a business that is, at the time of its application for a national security loan, performing under a defense contract of the highest national priority or operating under a top-secret facility security clearance.⁴ A business that does not satisfy either of these two criteria may nonetheless be considered for a national security loan if the Secretary of Defense or the Director of National Intelligence recommends and certifies that the business is critical to maintaining national security and the Secretary of the Treasury agrees with that determination.⁵

On July 8, 2020, the Treasury finalized an agreement to loan \$700 million to YRC. YRC provides transportation and logistics services throughout North America. Based on 2019 revenue,

¹ CARES Act, Pub. L. No. 116-136, § 4020, 134 Stat. 281 (2020).

² *Id.* at § 4003(a).

³ *Id.* at § 4003(b)(3).

⁴ U.S. Department of the Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses*, Apr. 10, 2020, <https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf>; Defense Contract Management Agency, *Defense Priorities & Allocations System (DPAS)*, May 7, 2019, <https://www.dcms.mil/DPAS/> (“A DX rating is assigned to those programs of the highest national priority”).

⁵ U.S. Department of the Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses*, Apr. 10, 2020, <https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf>.

YRC is the fifth-largest U.S. trucking company and the fourth-largest less-than-truckload (“LTL”) U.S. shipping provider (*i.e.*, shipments where smaller cargos from multiple customers are combined on one trailer).⁶ According to the Treasury, “YRC is a leading provider of critical military transportation and other hauling services to the U.S. government and provides 68% of less-than-truckload services to the Department of Defense (“Defense Department”).”⁷ The Treasury asserts that the loan “will enable YRC to maintain approximately 30,000 trucking jobs and continue to support essential military supply chain operations.”⁸ The Treasury’s determination that YRC is critical to maintaining national security was “based on a certification by the Secretary of Defense,” rather than on YRC satisfying either of the Treasury’s two national security eligibility criteria.⁹

YRC has struggled financially for years and the COVID-19 crisis has exacerbated those struggles. YRC’s credit has been rated non-investment grade for over a decade.¹⁰ On April 6, 2020, a research report by investment bank Stephens Inc. indicated that YRC might be at risk of a “potential bankruptcy.”¹¹ One month later, on May 11, 2020, YRC stated that there was “substantial doubt” about its ability to continue to operate as a going concern without “governmental assistance or a meaningful stabilization of the economy in the near-term.”¹² On May 28, 2020, Standard & Poor’s downgraded YRC’s credit rating from CCC+ to CCC, stating that YRC’s “capital structure [was] unsustainable over the long term.”¹³

To fulfill our obligations under the CARES Act, the Commission requests the following information, pursuant to Section 4020(e)(4) of that Act:

1. In general, what criteria does the Defense Department use in evaluating whether a business is critical to maintaining national security? Specifically, what criteria did the Defense Department use to evaluate whether YRC is critical to maintaining national security?

⁶ Jennifer Smith, *Trucker YRC Seeks to Defer Millions in Benefits Payments*, Wall Street Journal, June 18, 2020, <https://www.wsj.com/articles/trucker-ycr-seeks-to-defer-millions-in-benefits-payments-11592508252> (citing analysis by transportation research provider SJ Consulting Group Inc. that ranks LTL shipping providers by revenue for LTL operations only).

⁷ U.S. Department of the Treasury, *Treasury to Provide Loan to YRC Worldwide*, July 1, 2020, <https://home.treasury.gov/news/press-releases/sm1049>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Moody’s Investors Services, YRC Worldwide Inc. Ratings, <https://www.moodys.com/creditratings/YRC-Worldwide-Inc-credit-rating-834015> (last visited July 29, 2020).

¹¹ Jennifer Smith, *Truckers Cut Spending as Factory Slowdown Weighs on Operators*, Wall Street Journal, April 7, 2020, <https://www.wsj.com/articles/truckers-cut-spending-as-factory-slowdown-weighs-on-some-operators-11586295247>.

¹² YRC Worldwide Inc., *Quarterly Report (Form 10-Q)*, May 11, 2020, <https://sec.report/Document/0001564590-20-024217/>.

¹³ Standard & Poor’s, *U.S.-Based YRC Worldwide Inc. Downgraded To ‘CCC’ On Anticipated Covenant Violation, Outlook Negative*, May 28, 2020, https://www.standardandpoors.com/en_US/web/guest/article/-/view/type/HTML/id/2450913.

2. What was the Defense Department's rationale for recommending and certifying that YRC is critical to maintaining national security? Please provide all documentation and analysis supporting the Defense Department's conclusion, including a copy of your recommendation and certification that YRC is critical to maintaining national security.
3. Please summarize the decision-making process related to YRC's designation as a business critical to maintaining national security. The summary should (1) identify the parties that were involved in the designation, whether the parties are governmental or otherwise (although the list may elect to use parties' offices, titles, and affiliations while omitting their individual names), and (2) list any department, agency, office, or instrumentality of the United States or entity possessing public authority under the laws of the United States that was included in giving any input into that decision-making process (irrespective of whether it was an ultimate decision-maker).
4. YRC "provides 68% of less-than-truckload services to the Department of Defense"¹⁴ and reportedly delivers "food, electronics and other supplies to military locations around the country."¹⁵ Why does the Defense Department believe these services from the fourth-largest less-than-truckload U.S. shipping provider are critical to maintaining national security?
5. What types of supplies does YRC transport for the Defense Department?
6. What services does YRC provide for the Defense Department other than less-than-truckload services?
7. Has the Defense Department decreased its usage of YRC's services at all during the COVID-19 crisis?
8. What other trucking companies provide less-than-truckload services for the Defense Department?
9. In evaluating whether YRC is critical to maintaining national security, did the Defense Department communicate with other trucking companies about whether they could meet the Defense Department's needs for transportation services if YRC reduced or ceased its operations? If so, please provide a summary of such communications.
10. In evaluating whether YRC is critical to maintaining national security, did the Defense Department consider replacement services or service providers for YRC? If not, why not?

¹⁴ U.S. Department of the Treasury, *Treasury to Provide Loan to YRC Worldwide*, July 1, 2020, <https://home.treasury.gov/news/press-releases/sm1049>.

¹⁵ Kate Davidson & Jennifer Smith, *U.S. Treasury to Lend \$700 Million to Trucking Firm YRC Worldwide*, Wall Street Journal, July 1, 2020, <https://www.wsj.com/articles/u-s-treasury-to-loan-700-million-to-trucking-firm-ycr-worldwide-11593602409>.

11. YRC has struggled financially for years prior to the COVID-19 crisis. What contingency plans did the Department of Defense have in place, before and after the onset of the COVID-19 crisis, should YRC reduce or cease its operations? Please provide all documentation concerning these plans.
12. Did the Department of Defense communicate with any creditors of YRC, including lenders or health, welfare, and pension funds, with respect to YRC's designation as a business critical to maintaining national security, the Treasury's loan transaction with YRC, or otherwise? If so, please provide a list of such creditors and a summary of such communications.
13. How many other businesses has the Defense Department recommended and certified as critical to maintaining national security as part of the Treasury's national security loan program?

In light of the Commission's monthly reporting obligations, we ask that you provide the information requested in this letter by August 27, 2020 and look forward to receiving your responses.

Thank you for your attention to this matter.

Sincerely,

/s/
French Hill
Member of Congress

/s/
Donna E. Shalala
Member of Congress

/s/
Bharat Ramamurti
Commissioner

/s/
Pat Toomey
U.S. Senator

cc: Secretary Steven T. Mnuchin, U.S. Department of the Treasury

Appendix D:
Main Street Lending Program Hearing Follow-up
Questions, dated August 14, 2020

CONGRESSIONAL OVERSIGHT COMMISSION

August 7, 2020 Hearing: *Examination of the Main Street Lending Program Established by the Federal Reserve Pursuant to the CARES Act.*

Follow-Up Questions Submitted to President Eric Rosengren, Federal Reserve Bank of Boston (Witness Name) from Commissioner Ramamurti

Question 1: Many smaller cities, towns, school districts, and other public entities like hospitals function much like non-profits—both in terms of the essential role they play in our communities and with respect to how they obtain credit, with bank lending to local governmental entities constituting a large share of all outstanding municipal credit.¹ The Municipal Lending Facility (MLF) is ill-suited to serving these smaller governmental entities, who cannot participate directly in the MLF. Moreover, they may have trouble participating indirectly in the MLF through larger borrowers like state governments. Has the Federal Reserve considered whether there are unmet credit needs of such smaller governmental borrowers that could be met by expanding the MSLF to encompass them? Please explain whether the Federal Reserve believes such an expansion warranted.

Question 2: In a recent study examining the Payment Protection Program (PPP) administered by the Small Business Administration, the Federal Reserve Bank of New York found “significant coverage gaps” in the PPP’s ability to reach Black-owned businesses, despite the pandemic’s outsized impact on communities of color.² Will the Federal Reserve conduct a similar study of whether and how the CARES Act programs that it administers have impacted racial and ethnic minorities?

Question 3: Will the Federal Reserve collect and report any data on whether minority-owned businesses are participating in the MSLF program?

Question 4: President Rosengren testified that Federal Reserve’s outreach plan for the MSLF included an intentional effort to reach minority and women-owned businesses, minority depository institutions, and tribal businesses. What further steps is the Federal Reserve taking to ensure that the MSLF program is made available on an inclusive basis? For example, in light of reports of lending discrimination by banks participating in the PPP,³ what steps will the Federal Reserve take to ensure that banks participating in the MSLF offer MSLF-backed loans on a non-discriminatory basis?

Question 5: In response to questions about whether certain MSLF program terms and requirements were changed in response to requests from the oil and gas industry, President Rosengren testified that “[i]n the discussions [he] ha[s] been involved in, we do not discuss specific industries.” However, the Energy Secretary has stated publicly that he and Treasury Secretary Mnuchin worked with the Federal Reserve to ensure that the energy industry could participate in the Federal Reserve’s lending facilities.⁴ Is President Rosengren aware of any discussions, deliberations, meetings, or communications in which specific industries or companies were

¹ Ivanov, Ivan and Tom Zimmerman, “The Privatization of Municipal Debt,” Brookings Institution Hutchins Center Working Paper #45 (Sept. 2018), available at <https://www.brookings.edu/wp-content/uploads/2018/08/WP45.pdf>.

² Claire Kramer Mills, “Double Jeopardy: COVID-19’s Concentrated Health and Wealth Effects in Black Communities,” Federal Reserve Bank of New York (Aug. 2020), available at https://www.newyorkfed.org/medialibrary/media/smallbusiness/DoubleJeopardy_COVID19andBlackOwnedBusinesses.

³ Anneliese Lederer, et al., “Lending Discrimination within the Paycheck Protection Program,” National Community Reinvestment Coalition (July 2020), available at <https://www.ncrc.org/lending-discrimination-within-the-paycheck-protection-program/>.

⁴ E.g., Timothy Gardner, “Trump administration working to ease drilling industry cash crunch,” Reuters (Apr. 17, 2020), available at <https://www.reuters.com/article/us-health-coronavirus-usa-oil-credit/trump-administration-working-to-ease-drilling-industry-cash-crunch-idUSKBN21Z1JY>; Saleha Mohsin & Ari Natter, “Energy Chief Says Fed Asked to Expand Lending for Oil Firms,” Bloomberg.com (May 12, 2020), available at <https://www.bloomberg.com/news/articles/2020-05-12/energy-chief-says-fed-was-asked-to-expand-lending-for-oil-firms>.

CONGRESSIONAL OVERSIGHT COMMISSION

August 7, 2020 Hearing: *Examination of the Main Street Lending Program Established by the Federal Reserve Pursuant to the CARES Act.*

discussed—irrespective of whether he was personally involved in those discussions? If so, please identify what officials or agencies may have been involved.

Question 5: The Federal Reserve publicly disclosed public comments that it received, which reportedly were the basis for changes to the MSLF made on April 30, 2020.⁵ However, some of the changes made on April 30, 2020 are not reflected in any of those publicly disclosed comments, such as the deletion of the required attestation that the loan was needed “due to the exigent circumstances presented by the ... COVID-19 pandemic.” As the public record currently stands, the only evidence of anyone requesting that change and certain other changes is that they were requested only by the oil and gas industry,⁶ and that requests by that industry were sometimes made outside the ordinary public comment process available to everyone else.⁷ Will the Federal Reserve publicly disclose all documents, communications, and records of communications that relate to the energy industry’s participation in the MSLF?

Question 6: Title 12 U.S.C. § 343(3) and 12 C.F.R. § 201.4 require the Federal Reserve’s emergency lending programs to be “broad-based.” In the Federal Reserve’s view, as a legal matter, do these provisions permit changes to a program designed to benefit a particular industry or particular companies, so long as the program as a whole has broad eligibility? Please explain the Federal Reserve’s view of what the broad-based requirement does and does not encompass.

Question 7: For the Secondary Market Corporate Credit Facility (SMCCF), the Federal Reserve has stated that it will leverage the Treasury equity at a ratio as low as 3 to 1,⁸ while the MSLF appears to have a larger equity cushion. Is the Federal Reserve more willing to absorb risks with respect to the SMCCF than with respect to the MSLF? If so, why?

Question 8: Has the Federal Reserve analyzed whether more companies would be served by the MSLF if the loan term were extended an additional year or more? Please explain whether the Federal Reserve believes such an extension warranted.

Question 9: Has the Federal Reserve analyzed whether Community Development Financing Institutions (CDFI) are able to originate MSLF loans? Please explain whether the Federal Reserve believes any changes to

⁵ See Press Release, “Federal Reserve Board announces it is expanding the scope and eligibility for the Main Street Lending Program,” Federal Reserve (Apr. 30, 2020), *available at* <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200430a.htm> (citing public comments as basis for loan term sheet adjustments).

⁶ E.g., Letter to Secretary Mnuchin and Chairman Powell from Senator Ted Cruz (Apr. 24, 2020), *available at* <https://www.cruz.senate.gov/files/documents/Letters/4.24.2020%20Oil%20Gas%20Fed%20Lending%20Facility%20Letter.pdf> (stating that “condition ... that a borrower must attest they require financing because of circumstances attributed to COVID-19 ... may prove to be too restrictive” “in the context of energy”).

⁷ E.g., Timothy Gardner, “Trump administration working to ease drilling industry cash crunch,” Reuters (Apr. 17, 2020), *available at* <https://www.reuters.com/article/us-health-coronavirus-usa-oil-credit/trump-administration-working-to-ease-drilling-industry-cash-crunch-idUSKBN21Z1JY> (reporting Energy Secretary’s statement that he met with U.S. energy industry representatives to discuss the size of loans they would need in order to participate in the MSLF).

⁸ Terms Sheet, Secondary Market Corporate Credit Facility, Federal Reserve (July 28, 2020), *available at* <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a1.pdf>.

CONGRESSIONAL OVERSIGHT COMMISSION

August 7, 2020 Hearing: *Examination of the Main Street Lending Program Established by the Federal Reserve Pursuant to the CARES Act.*

the MSLF would be needed to facilitate participation by CDFIs that serve low-income and minority communities, and whether it believes such changes warranted?

Question 10: Has the Federal Reserve analyzed whether lowering the minimum loan size further would facilitate participation by more businesses with unmet needs? Please explain whether the Federal Reserve believes such changes warranted. To the extent the Federal Reserve believes a lower loan size would present administrability issues given the capacity of the Boston branch to oversee this complex program, has it considered creating another facility administered by a branch other than Boston?

Question 11: Has the Federal Reserve analyzed whether decoupling lender fees from loan size could better incentivize lenders to identify and onboard smaller borrowers? Please explain whether the Federal Reserve believes higher fees for smaller-size loans could better incentivize lenders to originate loans.

Question 12: Were the MSLF affiliation rules to be relaxed, what would prevent private-equity companies from transferring wealth out of the borrowing business to the private-equity sponsor, and what kinds of restrictions would prevent such wealth transfers?

Question 13: Were the MSLF to be expanded to include an asset-based lending facility, how would the Federal Reserve ensure that assets are appropriately appraised, particularly in light of the significant uncertainty surrounding how COVID-19 will impact commercial property values? Would the Federal Reserve be equipped to oversee and enforce appraisals, so that taxpayers are not on the hook if private parties' appraisals turn out to be overvalued?

Question 14: Were the MSLF to be expanded to include an asset-based lending facility, would the Federal Reserve be prepared to foreclose on assets if the borrower lacks the cash-flow to make loan payments? How would the Federal Reserve administer foreclosures?

Follow-Up Question Submitted to Lauren Anderson, Bank Policy Institute (Witness Name)
from Commissioner Ramamurti

Question 1: Do lenders collect demographic data on borrowers in the absence of federal program mandate to collect and report such data? If not, will BPI commit to working with its members to collect such demographic data for MSLP loans?