TESTIMONY OF

GWEN MILLS

BEFORE THE

CONGRESSIONAL OVERSIGHT COMMISSION

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Members of the Commission, my name is Gwen Mills. I'm Secretary-Treasurer of UNITE HERE, the North American hospitality union. I appreciate this opportunity to address the Commission today. While my testimony will focus on our industry and the experience of our members, the policy recommendations I will make have the support of the AFL-CIO, representing 55 national unions and 12 million workers.

Our 300,000 members throughout the US and Canada work primarily in the hotel, casino, institutional food service, airline catering and airport retail industries – all sectors that are heavily dependent upon the travel and tourism economy.

Our members have been among the most severely affected by the pandemic. Before the CARES Act became law, 90% of our members had been furloughed or laid off. Today little has changed: about 85% of our members remain unemployed.

A majority of our members are women and people of color. Many are recent immigrants. Most of them have lost or will soon lose their health insurance – benefits that they only won after decades of hard-bargained contracts, often giving up wage increases in order to maintain good family healthcare.

Hundreds of our members or their family members have died from coronavirus – 22 in Las Vegas alone, where an additional 350 have been hospitalized.

A Cautionary Tale

The industries in which our members work have been the most severely affected in terms of unemployment, so I believe our story is a cautionary tale of what awaits American workers across the board if we fail to correct course.

At the heart of this is the question of requiring employers to maintain employment as a condition of federal assistance. There is no requirement in the Main Street Lending Program in spite of clear Congressional intent. This is because the Federal Reserve and Treasury, as part of their April 30 revisions to the facility term sheets for the Main Street Lending Program, eliminated the requirement that loan applicants make "reasonable efforts" to maintain payroll and retain employees during the term of their loan. Under the revised term sheet, firms need only make "commercially reasonable efforts" to maintain payroll. Not only does that make lawmakers' vague mandate even vaguer, but Treasury subsequently clarified that it had no intention of enforcing even that weakened standard. Apparently making "commercially reasonable efforts" is non-binding advice.

We've seen this movie before. And we know how it ends for working people. Because we have seen what happened in other CARES Act programs.

We've seen how powerful hospitality and real estate industry lobbyists with access to the halls of power have been able to transform CARES Act programs like the Paycheck Protection Program and the Payroll Support Program, which were designed to keep furloughed workers connected to their jobs by keeping them on payrolls with continuation of benefits, into subsidies for real estate investors.

We've identified more than 200 hotels or food service outlets where we have members that received PPP loans, according to data recently released by the SBA. I've provided a few case studies in the appendix, but suffice it say the program hasn't protected paychecks or healthcare for the vast majority of our members, 85% of whom remain unemployed more than four months after passage of the CARES Act.

One company - Omni Hotels, received at least thirty-four separate PPP loans with a combined value between $53 million and $123 million, according to the SBA data.[1] Meanwhile, Omni hotels in Boston, Providence, and New Haven were shut down in March and our members laid

[1] It is possible that some of the loans Omni affiliates received were returned, since it is our understanding that not all returned PPP funds were reflected in the data released by the SBA.

off, and it is unclear when the properties will reopen. In Providence the company cut off medical benefits at the end of May, which we believe is in violation of their collective bargaining agreement. In several other cities where workers get health insurance through a jointly-administered Taft-Hartley health fund, the company is no longer paying medical insurance premiums for their laid-off workers.

There are many similar stories I could tell. And I've included a few others in Appendix A.

What they reveal is how a powerful industry lobby largely succeeded in transforming a program designed to stabilize small businesses and help keep workers on payroll into a program that could keep hotel owners current on their mortgages for a few more weeks.

Given this mission drift with respect to a program that lawmakers clearly intended to support payrolls, we have every reason to believe the Main Street program will yield even worse results for workers. First, we're unaware of a single one of our employers that has sought or received a Main Street loan. And even if one did, the Treasury and Fed have been crystal clear that they have no intention of ensuring that the loan proceeds will be used to keep workers on payroll.

Now hotel industry lobbyists have joined forces with lobbyists representing shopping malls and other commercial real estate investors to demand a bailout of the commercial mortgage-backed securities (CMBS) market, especially the $86 billion in CMBS hotel loans. And the vehicle with which it hopes to accomplish this goal is the Main Street Lending Program.

And that's why we were alarmed to read in this Commission's third report that according to Secretary Mnuchin, the Federal Reserve has considered establishing an asset-based lending facility, which we fear would be a major step towards the hotel and shopping center CMBS bailout the real estate industry seeks.

Who would most benefit from a hotel CMBS bailout? Its proponents would have you believe it would primarily be mom and pop small businesses. But the largest beneficiaries would most

likely be publicly-traded real estate investment trusts (REITs) like Monty Bennett's Ashford companies and giant private equity firms like Tom Barrack's Colony Capital.

We recently reviewed CMBS hotel loan information from data service Trepp and found that:

- There were 11 borrowers whose affiliates had at least a billion dollars in outstanding hotel CMBS balances.
- Those 11 borrowers had a combined $29.9 billion in outstanding loan balances or about a third of the total amount of outstanding hotel CMBS debt.
- Four of them were private equity firms, two were publicly-traded REITs, one was a hedge fund billionaire, and the remaining four were real estate developers or billionaire investors.
- And the 12th belongs to the Fontainebleau Miami Beach resort, which refinanced its mortgage twice in two years, borrowing more each time for the owner to cash out $191 million late last year. Now in the crisis, Fontainebleau has canceled healthcare for hundreds of laid off employees despite the subsidies provided by the CARES Act's Employee Retention Tax Credit.

These are hardly the small business owners the proponents of this bailout claim to champion.

Hotel lobbyists claim if the Fed doesn't open up the MSLP to CMBS borrowers, hotels will default and shut down, and workers won't have jobs to come back to. But that is a completely spurious contention, one not borne out by recent experience. This isn't the first time we've seen REITs and large hotel corporations get themselves in trouble using low-cost but inflexible CMBS loans. In the years following the financial crisis, there were scores of defaults across the country.

In many cases borrowers – including some of the same ones currently clamoring for a bailout– walked away from their properties and handed over the keys to lenders. But defaults and even foreclosures did not lead to hotels being shut down. new investors emerged to take ownership and kept properties running. Owners don't generally employ hotel workers anyway. They hire

operating companies like Marriott, Hilton or Hyatt under long-term management agreements that frequently outlive multiple changes in ownership. Hotel workers are used to seeing absentee owners come and go. They understand that defaults, distress sales and even foreclosures don't generally affect employment levels. What affects employment levels is hotel occupancy and revenue, which is to say the level of demand for hotel rooms. Only ending the pandemic, and/or the widespread availability of effective testing and treatments, can start to fix that. Meanwhile, the Main Street program is doing nothing for hospitality-industry workers, or any workers as far as we can tell.

Just as a CMBS bailout would have little to no effect on hotel employment, we doubt it would offer much relief to the thousands of small business hotel owners whose cause the bailout proponents purport to champion, most of whom have regular bank loans.

In fact, it could hasten their demise and here's why: many of the primary beneficiaries of a CMBS bailout would be the very same private equity firms and investors who could end up in the best position to buy up the highly-discounted or foreclosed non-CMBS hotels from desperate owners whose 90-day bank forbearances have expired and whose PPP proceeds have been spent.

Not only would a CMBS bailout allow billionaire and private equity owners to escape the consequences of their own risk-taking, it would enable the largest hotel owners to acquire distressed assets with their store of "dry powder" instead of committing some of those funds to saving their own hotels.

Moreover, once the Fed starts bailing out CMBS borrowers in the hotel industry, it will not be able to stop. The debt crisis in hotels is not a short-term problem. Hotels are asking for 2 years' worth of interest payments on CMBS debt, but what they aren't telling the Fed is that $40 billion of hotel CMBS mortgages mature by 2022. In order to refinance those mortgages and repay Fed loans or "preferred equity", hotel asset values need to reach pre-COVID levels to borrow at customary loan to value ratios. Hotel asset values will lag recovery of revenues which analysts aren't projecting to happen until late 2023. How will the Fed recoup its investment in hotels if

the underlying mortgages default at maturity in the coming years, or is the Fed really being asked to refinance the entire hotel lending market? The very leverage levels that prevent hotels from accessing the Main Street Lending Program portend defaults to come even after Fed assistance.

Isn't there a moral hazard in making taxpayers party to the financial engineering which has brought us to this brink, where real estate investors lay off 85% of hotel workers, end their healthcare in a pandemic and use federal assistance to pay their banks and bondholders?
In this respect, the bifurcated world of hotel asset owners is no different than the divide between small and large firms in the larger economy, which is to say large corporations have access to the credit markets but their smaller competitors, many of them family-owned businesses, usually do not.

There is a second critical lesson here for the Commission in relation to the Main Street Lending Program. There is no question that stabilizing public and interbank credit markets is extremely important in a crisis. But when the Fed acts as if its only mission or authority in times of crisis is to stabilize credit markets - whether that means bond markets, repo markets, or asset-based markets - it is making a choice. It means we should expect wildly disparate and unequal outcomes. The real core mission in this crisis should be to protect jobs and incomes of America's working people. And in the case of the CARES Act, the Congress explicitly authorized the Treasury to capitalize programs like the Main Street Lending Program so that the Fed can take credit risk in for the purpose of protecting jobs.

But the focus on the solvency of pyramided credit structures rather than on jobs means the benefits of stabilizing those credit markets are tenuous at best for workers.

It means our members – most of whom are brown and black - are thrown off payrolls and into unemployment while their large employers – whose executives, boards and shareholders are predominantly white -- can simply tap their credit lines, stockpile cash and ride out the crisis.

The Federal Reserve is now trying to implement the Main Street Lending Program at a moment when the fate of 30 million unemployed and their families is in the hands of a deadlocked and dysfunctional Congress, where despite the fact that the HEROES Act is sitting on Leader McConnell's desk, our members are exposed to the full consequences of time-limiting the pandemic unemployment benefits and then letting them expire for our families lives and health.

It is no longer acceptable for the Fed to just stand by and watch us fall off that cliff. Read the room. Millions of American workers are right behind us and on the precipice.

In this context, the choice to leave the MSLP dying on the vine seems at best unimaginative, and at worst destructive. One can certainly argue, as Chairman Powell has, that the reticence of banks to make the loans and the putative lack of interest by prospective borrowers are signs that private markets are working and there is no urgent need for the program at the moment.

But what if lawmakers had been clearer in their proscription that the program help businesses stay connected to their workforces? What if the program designers at the Fed had taken that mandate to heart? What if credit terms were loosened considerably what if we actually used the Treasury capital as Congress had intended – up to and including making loans forgivable in some circumstances – so long as – and here's the important part – so long as there were air-tight requirements – not incentives, not suggestions, not recommendations – but requirements that recipients keep workers on payroll?

Short of making direct grants to workers to substitute their lost income and healthcare – something presumably only Congress can do – tying credit assistance to payroll in a reinvigorated MSLP is the one new thing the Fed could do right now to really make a difference in the lives of millions of American workers and their families.

It is what the PPP could have done if it hadn't been hijacked by the real estate industry.
The Fed and Treasury must learn from the PPP experience. The Fed and Treasury must reform the MSLP so that it actually contributes to the economic security and employment situation of working Americans.

That, in our opinion, would be the best thing the Fed could do with its mostly-unused MSLP authority to help average Americans. And we've already said what we think would be the worst.

Thank you on behalf of the working people I represent for the chance to appear before this Commission's first hearing. It means a lot to us. And I welcome your questions.

Appendix A: Case Studies

OTG

OTG is one of the largest operators of airport restaurants in the United States, with significant presence at key hubs in New York / New Jersey, Philadelphia, Houston, Minneapolis and Washington, DC. According to the SBA data, the company was approved for 8 separate PPP loans totaling between $18 million and $50 million. In March, the company was featured in the *New York Times* for abruptly laying off 1,200 workers at the New York-area airports and cutting those workers off their health insurance effective March 31st.[2] Most of those workers remain unemployed and the company to our knowledge has not extended health insurance to those workers who were laid off.

Payroll Support Program – Where's the Support for Airline Catering Workers?

When lawmakers created the Payroll Support Program for the aviation industry, they included airline catering contractors. That should have meant continued paychecks for thousands of airline catering workers from April through September and no layoffs. Yet, Gate Gourmet, which received $171 million from the program, laid off approximately 5,000 of its 8,000 U.S. employees in May and hasn't recalled them. Another contractor, Flying Food, received $85 million and also laid off thousands of people. At the company's kitchen serving Dulles Airport, only 2 out of 168 workers were working in June, after the company reached its agreement to receive millions in taxpayer funds from the payroll support program.

How did this happen? First, the Treasury issued guidance explicitly allowing employers to spend funds indefinitely, rather than imposing a deadline for companies to use the funds. A deadline would ensure workers promptly received money intended for them. Second, the Treasury took months to implement the agreements that could have prevented layoffs had they been executed

[2] https://www.nytimes.com/2020/03/21/nyregion/coronavirus-airport-workers-ny-nj.html

quickly. These firms were allowed to lay off thousands in April and May, take federal funding in June and July, and hold those funds indefinitely to subsidize their future payroll whenever they decide to start bringing back workers. In the meantime, they are not required to do anything to assist their laid off workers. Like the PPP, a program meant to protect paychecks became one that instead protects corporate bottom lines.

Appendix B: The Hijacking of the PPP

An early prototype of what became the PPP was a plan floated in mid-March by the hotel lobbying group American Hotel and Lodging Association. Their proposal, which they called the "Hospitality Workforce Relief Fund"[3] called on Congress to provide $100 billion in "grants to businesses for the purpose of employee retention and rehiring" and an additional $50 billion "to provide federal funds to cover debt payments" for hotel owners and "to facilitate forbearance" on the part of hotel lenders. Around that same time, the head of the AHLA and the leading hotel industry CEOs met in closed door session with President Trump and Vice President Pence to promote their plan.[4]

AHLA subsequently took credit for winning an unusual carve-out for their industry in the plan that emerged in the final package of the CARES Act. That provision singled out hospitality companies – those with NAICS codes beginning with 72 – for special treatment, exempting them from the SBA's affiliation rules, thus making it possible for large hotel and restaurant corporations to apply for and receive PPP loans at every one of their locations with fewer than 500 employees. That is how companies like Omni were able to receive so many PPP loans.

Despite this unprecedented carve-out, AHLA was not satisfied. Beginning the day after the CARES Act became law, the group criticized the new program, calling it "unworkable for hoteliers" because, they argued, its focus on payroll expenses was too restrictive and would not enable hotel owners to cover their monthly mortgage payments, particularly those hotel owners locked-in to an inflexible kind of loan known as a commercial-mortgage backed security (or CMBS) loan.

[3] https://www.ahla.com/sites/default/files/HospitalityWorkforceReliefProposal.pdf
[4] https://thehill.com/business-a-lobbying/business-a-lobbying/488084-tourism-industry-calls-for-150-billion-in-assistance

Industry efforts to shoehorn the program into a mortgage subsidy culminated in the PPP Flexibility Act, which went a long way toward transforming a program designed to stabilize small businesses and help keep workers on payroll into a program that is more likely to keep hotel owners current on their mortgages for a few more weeks.