United States Senate

WASHINGTON, DC 20510

May 18, 2020

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

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

Dear Secretary Mnuchin and Chairman Powell:

As we work to address the impact of the COVID-19 pandemic on the U.S. economy, the well-being of our nation's small- and mid-sized businesses – and the millions of workers that they employ – are a top priority. We appreciate the substantial efforts you have taken thus far to help stabilize the economy during these turbulent economic times, including the April 9, 2020, announcement of the Main Street New Loan Lending Facility and the Main Street Expanded Loan Lending Facility (the facilities), and the more recent updates you provided to these facilities on April 30, 2020. As encouraged in Section 4003 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, these facilities could help play a pivotal role in maintaining U.S. employment and avoiding unnecessary economic loss in the coming months. As you finalize the parameters of these important facilities, we urge you to move quickly and adopt changes to the programs' design and eligibility requirements within the bounds of your authorities that will maximize the impact for U.S. businesses and workers experiencing distress due to the current health and economic crisis.

Specifically, we urge you to:

(1) Further expand loan eligibility requirements, including quickly adopting a viable option for non-profits who are facing acute challenges as a result of the virus;

(2) Provide greater flexibility on the loan term;

(3) Ensure that the program is user-friendly and easily accessible for small community banks and credit unions, especially lenders such as minority depository institutions and community development financial institutions that focus lending in low- and moderate-income, rural, and minority neighborhoods. This can be achieved by, among other things, providing early access to the loan programs for small lenders, conducting proactive outreach to small lenders through the Federal Reserve Banks, and adopting program design changes such as eliminating bank participations for lenders under $500 million in assets; and

(4) Consider alternative approaches to assessing the maximum loan size, in light of the overarching goal to maximize the benefit of these facilities for borrowers coping with the COVID-19 pandemic.

Further, we believe it is critical that you lower the adjustable interest rate cap to ensure this credit is an affordable financing option for eligible borrowers. In carrying out these modifications, to the extent necessary, we believe it is appropriate to reconsider and amend, through an emergency interim final rule, the Federal Reserve's interpretation of 13(3) in the context of the current economic crisis.

As you know, although not a statutory requirement under Section 13(3) of the Federal Reserve Act, the Board's practice in extending emergency credit under 13(3) has been to set the relevant interest rate at a penalty rate designed to encourage borrowers to repay emergency credit as quickly as possible. In the Board's November 30th, 2015, Final Rule, 12 C.F.R. Part 201, "Extensions of Credit by Federal Reserve Banks," the Board incorporated this practice by requiring the interest rate for credit extended under section 13(3) be set at a level that is a premium to the market rate in "*normal* circumstances," affords liquidity in unusual and exigent circumstances, and encourages repayment and discourages use of the program as circumstances normalize (emphasis added). Section 201.4(d)(7)(iii) of the rule sets forth a non-exhaustive list of factors that the Board will take into account when establishing the penalty rate. These factors include the condition of the affected markets and the financial system generally, the historical rate of interest for loans of comparable terms and maturity during normal times, the purpose of the program or facility, the risk of repayment, the collateral supporting the credit, the duration, terms and amount of the credit, and other factors relevant to ensuring the taxpayer is appropriately compensated for the risks associated with the emergency credit.

While we strongly believe a penalty rate relative to normal economic conditions is appropriate in the vast majority of circumstances, the current crisis facing the U.S. economy is distinguishable from previous economic downturns, and therefore demands a different approach for several reasons.

First, in this case, the risk of moral hazard, and hence the need for a significant "penalty" for firms seeking to access the facility, is far lower than under typical crises involving the banking sector. Unlike in 2008, or similar downturns originating due to excesses in the financial sector, today's crisis is caused by a rare health pandemic and the inability of firms to earn revenues as a direct result of state, local, and federal shutdown orders to protect the public health. The vast majority of these firms are not seeking public assistance due to risky behavior. To the contrary, they're seeking the assistance in order to properly adhere to public health protections. This is clearly distinguishable from the circumstances in 2008.

Moreover, should firms fail to receive affordable financing terms under these facilities, many will be left with a choice between declaring bankruptcy, posing long-term risks to the economy, or opening up too quickly, which poses significant risk to public health and the potential for long-term negative economic consequences. Indeed, as you asses the taxpayer risk and the associated amount of proper taxpayer compensation for purposes of the applicable penalty rate, we believe that there is far greater risk over the long-term to the taxpayer by adopting a higher penalty rate, as opposed to a lower one. All taxpayers will be better off to the extent more businesses can access affordable financing, keeping doors open, workers on payroll, and avoiding costly bankruptcies, through the remainder of the public health shutdown.

Second, imposing a penalty rate relative to normal economic conditions in this crisis may very well weaken the health of the borrower, thereby undermining the goal of restoring economic stability within the economy more quickly.

Third, to the extent a penalty rate is imposed to protect the Federal Reserve's balance sheet, we would note the significant appropriated capital standing in front of any Federal Reserve losses. Congress intended for the equity capital appropriated in the CARES Act, and made available to the Treasury Department, to absorb losses to protect the balance sheet of the Federal Reserve. In our view, the significant capital protecting the Federal Reserve's balance sheet should be viewed as capital that does not need to be paid back in full. The recoupment of Treasury capital would be entirely appropriate – as it was in 2008 – in order to protect taxpayer dollars and avoid rewarding firms who took unjustifiable risks. However, that is not the case here. Losses to Treasury capital should be tolerated in order to ensure financing reaches the borrowers most in need. As noted above, taxpayers will be far better off in the end if firms are able to sustain through this crisis and avoid associated job losses, which will strain public social safety net resources.

We greatly appreciate the extraordinary efforts underway at the Federal Reserve and Treasury during this unique time in our country's history. While we recognize the significant risks associated with more aggressive action by the Federal Reserve through its 13(3) authorities, including the complex political and programmatic concerns you must weigh in carrying out these programs, we believe the benefits of additional action far outweigh the risks. As members who are firmly dedicated to the independence of the Federal Reserve, and are acutely aware of its proper role in our economy, we appreciate the bold actions under consideration to help sustain the economy, and strongly encourage you to take swift, decisive action in this regard.

We appreciate your continued efforts to help sustain the American economy during these challenging times and look forward to working together to protect the thousands of middle class jobs across America that hang in the balance. Thank you for your consideration.

Sincerely,

Mark R. Warner
United States Senator

Doug Jones
United States Senator

Kyrsten Sinema
United States Senator