MAXINE WATERS, CA
CHAIRWOMAN

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

PATRICK MCHENRY, NC
RANKING MEMBER

April 16, 2020

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

Chair Powell:

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

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

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

---

[1] For example, the creation of the Coronavirus Relief Fund as authorized by §5001 of the CARES Act
[2] §4003(c)(3)(E) of the CARES Act
[3] §4002(10)(C) of the CARES Act
[4] §4002(10)(E) of the CARES Act
[5] §4002(10)(D) of the CARES Act
[6] CDC, "Cases in U.S.," (last accessed Apr. 15, 2020), https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html; and CDC, "Morbidity and Mortality Weekly Report," (Apr. 10, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6915e4-H.pdf.

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

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

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

---

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

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

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

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

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

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

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

Main Street Lending Program

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

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

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

---

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

[13] §4003(c)(3)(D)(i) of the CARES Act

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

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

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

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

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

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

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

Sincerely,

Maxine Waters

MAXINE WATERS
Chairwoman

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