United States Senate

WASHINGTON, DC 20510

November 5, 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 Congress considers additional fiscal stimulus to support the U.S. economy, we urge you to enact much-needed reforms to the Main Street Lending Program (MSLP) and the Municipal Liquidity Facility (MLF), in order to better support American workers, state and local governments, and small and mid-sized businesses and nonprofits. While we appreciate the substantial efforts you've undertaken to set up these important programs, absent additional action, these facilities will fail to reach their full potential to support a robust economic recovery.

As you know, over the past six months, the economy has experienced significant disruptions, with GDP decreasing at an annualized rate of 31.4% in the second quarter of this year.[1] While the economic recovery has made some progress, recent data suggests the rebound is slowing down. Real-time data shows tens of thousands of permanent business closures and small business revenue declines, particularly for those in the transportation, leisure, and hospitality industries. According to a recent report, an estimated 1 million nonprofit jobs have been lost due to the pandemic and 7% of nonprofits are expected to close without assistance, all of which is a hit to the economy and to the critical services the nonprofit sector provides.[2] As of September, 3.8 million workers suffered permanent job losses, with 2.4 million considered long-term unemployed.[3] Moreover, according to an analysis from Moody's, without more federal support, another 3 million teachers, nurses, emergency responders, firefighters, and others from around the country will lose their jobs in the next two years.[4]

The COVID-19 pandemic is also continuing to have disproportionate economic impacts on minorities and women. According to one NBER Working Paper, from February to April, the number of actively working, self-employed Black business owners decreased by 41%.[5] Black

[1] https://www.bea.gov/news/2020/gross-domestic-product-third-estimate-corporate-profits-revised-and-gdp-industry-annual
[2] https://independentsector.org/wp-content/uploads/2020/10/sector-health-report-101220.pdf
[3] https://www.bls.gov/news.release/empsit.nr0.htm
[4] https://www.economy.com/economicview/analysis/381262?status=1
[5] https://www.nber.org/system/files/working_papers/w27309/w27309.pdf

(12.1%) and Hispanic (10.3%) unemployment remains higher than white unemployment (7%) and changed little over September.[6] Of the 1.1 million workers who have left the labor force, 865,000 or 80%, of them were women, including 324,000 and 58,000 Hispanic and Black women, respectively.[7] Notably, state and local governments employ a disproportionate number of Black workers and women, therefore a worker laid off in the public sector is 20% more likely to be Black than a worker who loses his or her job in the private sector, and 32% more likely to be a woman.[8] If we do not act decisively, this crisis will further exacerbate an already troubling racial wealth gap.

Addressing these economic challenges will require both additional fiscal stimulus from Congress and a concerted effort from the Federal Reserve and Treasury to improve the overall effectiveness of lending and investment programs such as the MSLP and MLF. Indeed, with appropriate reforms, these two programs could deliver some of the most promising benefits to workers, consumers, and state and local governments, yet they are distressingly underutilized.[9]

According to the most recent data, as of September 18, 2020, only 586 lenders had registered to participate in the MSLP, though only 188 of them had even publicized that they were accepting loan applications from new customers. Of the 188, only 146 lenders accept loan applications from both for-profit businesses and nonprofit organizations that are new customers. As of October 21, 2020, the Treasury had invested $37.5 billion and Federal Reserve holds a mere $3.358 billion in loan participations purchased under the MSLP.[10]

Similarly, as of October 21, the Treasury had invested $17.5 billion in the MLF. The MLF can purchase up to $500 billion in notes, but based on the latest data, the MLF has purchased just $1.65 billion in municipal notes from two issuers, a $1.2 billion one-year note from the State of Illinois and a $450.7 million three-year note from the New York Metropolitan Transportation Authority (MTA).[11]

While we appreciate some of the initial steps you've taken to upgrade these programs, much more can be done within these programs to support a robust economic recovery for those most in need.

Accordingly, we ask that you respond to the following inquiries, and take action on the associated requests, as soon as practicable.

(1) The Federal Reserve and Treasury should promulgate guidance under CARES Act Section 4027 to clarify that they will use their authority to continue to make new loans under the existing facilities after December 31, 2020. While the CARES Act is clear that these facilities can be extended with the concurrence of the Federal Reserve and Treasury, failing to signal the agencies intent now creates undue uncertainty and threatens the programs ability to promote economic recovery.

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[6] https://www.bls.gov/news.release/empsit.nr0.htm
[7] https://nwlc.org/resources/four-times-more-women-than-men-dropped-out-of-the-labor-force-in-september/
[8] https://www.epi.org/blog/cuts-to-the-state-and-local-public-sector-will-disproportionately-harm-women-and-black-workers/; https://cepr.net/cutting-state-and-local-budgets-is-an-attack-on-the-countrys-black-workers/
[9] https://coc.senate.gov/sites/default/files/2020-10/15Oct2020_The%20Fifth%20Report%20FINAL.pdf
[10] *Id.*
[11] *Id.*

(2) Further expand MSLP loan eligibility requirements and provide greater flexibility on the MSLP loan term by extending it beyond five years.

(3) Lower the minimum loan threshold for the MSLP to at least $50,000.00. While we appreciate the Federal Reserve's recent announcement to lower the minimum balance to $100,000.00 and the challenges that may be involved with administrating a lower minimum balance threshold, we believe recommendations outlined in the Congressional Oversight Commission's August report are instructive on how to approach these issues, including: (1) engaging additional Federal Reserve branches to be more involved in administering the program; and (2) creating a fee structure that better incentivizes banks to go after the smaller, marginal borrowers that most need the help but take more effort to find and underwrite. Modifying the loan size will also help the MSLP better reach many minority- and women-owned businesses that have struggled to gain access to some of these critical loan programs. During a September 29, 2020 appearance before the Senate Committee on Banking, Housing and Urban Affairs, Chair Powell acknowledged that the Main Street program currently targets "larger [businesses] than a lot of minority businesses."[12] Minority- and women-owned businesses tend to be relatively small—average business sales and receipts for black-owned businesses are $58,000 per year, and 98% of minority- and women-owned businesses have fewer than 50 employees.

(4) Modify the existing MSLP criteria to include all Community Development Financial Institutions (CDFIs) as eligible lenders and expand the program to fit the unique needs of CDFIs and Minority Depository Institutions (MDIs).

(5) Adopt language in the MLSP borrower certification documents to ensure the use of borrowed funds aligns with the program's requirements to make commercially reasonable efforts to maintain payroll and retain employees. Even as the unemployment rate starts to recover, permanent job losses continue to grow, totaling 3.8 million as of the most recent jobs report. Chair Powell has recognized that "long periods of unemployment can erode workers' skills and hurt their future job prospects," in addition to leaving "lasting damage to the productive capacity of the economy."[13]

(6) Improve current MSLP terms to expand participation by nonprofits by allowing flexibility in meeting the operating ratio and debt repayment capacity eligibility criteria for the MSLP's nonprofit lending, and removing the non-donation revenues criteria for eligibility, all of which will allow the program to better accommodate the unique nature and range of nonprofits from performing arts to human service models.

(7) Further lower the penalty rate for the MLF and MSLP programs. We believe both the MLF and MSLP penalty rates are unnecessarily punitive within the context of this unique health

[12] https://www.c-span.org/video/?c4910581/user-clip-main-street-racial-equity
[13] https://www.federalreserve.gov/newsevents/testimony/powell20200616a.htm; https://bankingjournal.aba.com/2020/05/powell-warns-of-longer-term-economic-consequences-of-coronavirus-pandemic/.

crisis and that it is well within the Federal Reserve's existing authorities to lower the rate, consistent with its existing penalty-rate regulation (21 C.F.R. 201.4(d)(7)). Should firms or state and local governments fail to receive affordable financing terms under these programs, many will be left with no choice but to declare bankruptcy or cut critical services, posing long-term risks to the economy, taxpayers, and overall financial stability. We note that, for example, the MTA, one of the just two MLF borrowers to date, paid more than half a percentage point more in interest than it paid on a similar note pre-pandemic.

(8) Lengthen the MLF repayment term beyond the current term of three years and consider making the use of funds more flexible to meet the immediate needs of state and localities. We believe recommendations outlined by Moody's Chief Economist Mark Zandi – including additional flexibility for use of funds and a proposed ten-year term – are instructive.

(9) Allow more cities, counties, territories, and tribes to access the program. Currently the eligibility rules limit direct access to only about 250 potential borrowers. That shuts out tens of thousands of smaller cities and counties, along with U.S. territories and Indian tribes that are really struggling to get through this crisis.

(10) Create a facility to make secondary market municipal purchases. The Federal Reserve and Treasury's support of the secondary corporate credit market (through the SMCCF) has played a big role in driving corporate bond rates to below even pre-pandemic levels. But the same support has not been extended to municipal markets, where many issuers (including the State of Illinois and the MTA, the two MLF borrowers to date) are still paying higher than pre-pandemic rates. At the absolute minimum, we urge you to stand up a secondary market municipal facility now so that it can be ready to make purchases if we see more stress in the municipal markets.

Further, there are two additional, urgent problems that should be resolved to increase utilization of these critical programs. First, the fast-approaching expiration date for the MSLP and MLF is dangerously premature. Within the MSLP, this means that many banks will not continue accepting new loan applications for MSLP financing after the end of October due to the administrative burden of processing such applications. Similarly, the MLF is requiring municipalities to provide notices of interest by the end of November. We strongly believe that the Federal Reserve and Treasury should extend these critical facilities and that financial institutions should continue processing applications unabated for as long as these programs remains operational.

Second, there is a tension between the PPP and MSLP programs that we believe should be resolved through additional Federal Reserve guidance. As you are aware, when banks calculate the amount of MSLP funding available for a borrower, based on current Federal Reserve guidance, banks must count an outstanding PPP loan as existing debt without regard to the near certainty that the SBA will ultimately forgive the PPP loan. As a result, many businesses and nonprofits we believe can benefit from MSLP loans can't meet underwriting criteria because of the backlog in the SBA forgiveness process. An approach to resolving this problem is for the Federal Reserve to update its current guidance so that banks can make reasonable assumptions that PPP loans will be forgiven in the underwriting process. Absent updated guidance, the MSLP will not be able to support many businesses and nonprofits that are looking to the program as a means of surviving for the next year while we continue to face the pandemic. We note that this change would benefit companies that were healthy pre-COVID and expect to be healthy post-COVID (after utilizing a second round of PPP loans) and need a fully repayable loan with a two-year grace period to bridge these turbulent times.

We greatly appreciate the extraordinary efforts underway at the Federal Reserve and Treasury during this unique time in our country's history and strongly encourage you to take swift, decisive action on our recommendations to improve the MLF and MSLP programs. We look forward to working together to support our economy and 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

Charles E. Schumer
United States Senator

Sherrod Brown
United States Senator

Elizabeth Warren
United States Senator