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SELECT SUBCOMMITTEE ON THE CORONAVIRUS CRISIS

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<https://coronavirus.house.gov>

August 6, 2020

The Honorable Steven T. Mnuchin  
Secretary  
Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

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

Dear Secretary Mnuchin and Chairman Powell:

The Select Subcommittee on the Coronavirus Crisis is examining implementation of the Main Street Lending Program by the Department of the Treasury (Treasury) and the Federal Reserve (Fed). The Select Subcommittee is concerned that Treasury and the Fed have been slow to implement this program, appear to be prioritizing big businesses over the small and mid-sized businesses that have been hit the hardest by the pandemic, and have not established robust and enforceable job retention requirements. I am writing to seek documents and information about the program's implementation and to urge you to ensure the Main Street Lending Program protects workers and is accessible for the businesses who most need this assistance.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act appropriated funds to Treasury to support Fed lending facilities.<sup>1</sup> With this funding and approval from the Treasury Secretary, the Fed has created emergency lending programs to stabilize credit markets and inject capital into the economy. Treasury has invested \$75 billion for the Main Street Lending Program, which can provide up to \$600 billion in Fed lending.<sup>2</sup>

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<sup>1</sup> Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, Pub. L. No. 116-136.

<sup>2</sup> Department of the Treasury, *Press Release: Treasury and Federal Reserve Board Announce New and Expanded Lending Programs to Provide up to \$2.3 Trillion in Financing* (Apr. 9, 2020) (online at <https://home.treasury.gov/news/press-releases/sm968>).

The Fed announced the creation of the Main Street Lending Program to help “small and mid-sized businesses” on April 9, 2020.<sup>3</sup> Since then, the Fed has issued term sheets and multiple versions of frequently asked questions—but only started accepting applications in July.<sup>4</sup> As reported on August 5, the program had issued only \$81 million in loans to eight borrowers.<sup>5</sup>

According to public reporting, this months-long delay is due to policy disagreements between Treasury and the Fed. Treasury officials have reportedly “focused on how changes would influence near-term profits or losses” while “Fed officials have pushed to reach more borrowers with changes that would generally provide for smaller loans, more refinancing, longer maturities and easier repayment schedules.”<sup>6</sup>

Chairman Powell stated on June 8, 2020, that the Main Street Lending Program aims to “support employment during this difficult period.”<sup>7</sup> During a June 30, 2020, briefing for Select Subcommittee staff, Fed staff confirmed that the program is the Fed’s only lending facility designed to protect jobs and the only facility intended to directly support small and mid-sized businesses during the pandemic.

However, the program’s terms do not appear consistent with Congress’ intent to create a loan program that helps small and mid-sized businesses retain workers. The CARES Act created a lending facility specifically designed to support small and mid-sized businesses, which required recipients to retain at least 90 percent of their workforce.<sup>8</sup> Instead of implementing this program, the Fed used CARES Act funds to create the Main Street Lending Program—and left out the Act’s job retention target. Fed staff confirmed the absence of this job retention target during the June 30 staff briefing.

Unlike the small and mid-sized business lending program in the CARES Act, the Main Street Lending Program does not include a numerical job retention target. Instead, the Fed issued guidance for the Main Street Lending Program in April stating that borrowers would be

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<sup>3</sup> Board of Governors of the Federal Reserve System, *Press Release: Federal Reserve Takes Additional Actions to Provide up to \$2.3 Trillion in Loans to Support the Economy* (Apr. 9, 2020) (online at [www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm](http://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm)).

<sup>4</sup> Board of Governors of the Federal Reserve System, *Main Street Lending Program* (online at [www.federalreserve.gov/monetarypolicy/mainstreetlending.htm](http://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm)) (accessed on July 20, 2020).

<sup>5</sup> 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. 5, 2020) (online at [www.federalreserve.gov/monetarypolicy/mainstreetlending.htm](http://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm)).

<sup>6</sup> *Fed, Treasury Disagreements Slowed Start of Main Street Lending Program*, Wall Street Journal (July 12, 2020) (online at [www.wsj.com/articles/fed-treasury-disagreements-slowed-start-of-main-street-lending-program-11594558800](http://www.wsj.com/articles/fed-treasury-disagreements-slowed-start-of-main-street-lending-program-11594558800)).

<sup>7</sup> Board of Governors of the Federal Reserve System, *Press Release: Federal Reserve Expands its Main Street Lending Program to Allow More Small and Medium-Sized Businesses to be Able to Receive Support* (June 8, 2020) (online at [www.federalreserve.gov/newsevents/pressreleases/monetary20200608a.htm](http://www.federalreserve.gov/newsevents/pressreleases/monetary20200608a.htm)).

<sup>8</sup> Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, Pub. L. No. 116-136, § 4003(c)(3)(D)(i).

required to attest to taking “reasonable efforts” to maintain payroll.<sup>9</sup> In June, the Fed released updated terms requiring only that businesses make “*commercially* reasonable efforts” to maintain payroll. The updated terms also eliminated the attestation requirement, making this provision extremely difficult to enforce.<sup>10</sup>

The Fed has confirmed it does not plan to ensure borrowers adhere to the Main Street Lending Program’s limited payroll commitments. In response to questions from the Congressional Oversight Commission, the Fed conceded that it will not monitor compliance with the payroll requirement on a borrower-by-borrower basis but rather the Fed and Treasury will “monitor the program’s impact on the economic recovery and employment broadly.”<sup>11</sup> At the June 30 briefing, Fed staff confirmed that they will not collect any payroll-related metrics from borrowers. Fed staff further stated that they did not plan to track any job-specific metrics from lenders or borrowers to determine whether the program was meeting its job retention goals.

The Main Street Lending Program also appears designed to support larger businesses, not the small businesses most in need. Program loans can range from a minimum of \$250,000 all the way up to \$50 million, well beyond the needs of many struggling small businesses.<sup>12</sup> As former Fed Chairs Ben Bernanke and Janet Yellen noted at a recent hearing before the Select Subcommittee, the “Fed and Treasury may have to further ease terms for borrowers.”<sup>13</sup> Community banks have recommended that the Fed lower the minimum loan amount to \$100,000 to increase program participation.<sup>14</sup>

Given the country’s record-high levels of unemployment, the Select Subcommittee is examining why it has taken Treasury and the Fed so long to implement the Main Street Lending Program and why Treasury and the Fed decided to prioritize big businesses over protecting small businesses and American jobs. I urge Treasury and the Fed to instead ensure the Main Street

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<sup>9</sup> Board of Governors of the Federal Reserve, *Main Street New Loan Facility Term Sheet* (effective Apr. 9, 2020) (online at [www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a7.pdf](http://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a7.pdf)).

<sup>10</sup> Congressional Oversight Commission, *Second Report* (June 18, 2020) (online at [www.toomey.senate.gov/files/documents/Congressional%20Oversight%20Commission%20Report%20\(June%2018,%202020\).pdf](http://www.toomey.senate.gov/files/documents/Congressional%20Oversight%20Commission%20Report%20(June%2018,%202020).pdf)).

<sup>11</sup> *Id.*

<sup>12</sup> *Fed’s \$600 Billion Main Street Lending Program Sees Lukewarm Interest*, Wall Street Journal (July 1, 2020) (available at [www.wsj.com/articles/feds-600-billion-main-street-lending-program-sees-lukewarm-interest-11593608400](http://www.wsj.com/articles/feds-600-billion-main-street-lending-program-sees-lukewarm-interest-11593608400)).

<sup>13</sup> Committee on Oversight and Reform, Select Subcommittee on the Coronavirus Crisis, Testimony of The Honorable Ben Bernanke and The Honorable Janet Yellen, Former Chairs, Board of Governors of the Federal Reserve, *Hearing on Former Federal Reserve Chairs on Responding to our Nation’s Economic Crisis* (July 17, 2020) (online at <https://coronavirus.house.gov/subcommittee-activity/hearings/former-federal-reserve-chairs-responding-our-nation-s-economic-crisis>).

<sup>14</sup> *It’s Very Discouraging’: America’s New \$600 Billion Rescue Program for Small Businesses is Off to a Rocky Start*, Washington Post (June 18, 2020) (online at [www.washingtonpost.com/business/2020/06/18/fed-main-street-lending/](http://www.washingtonpost.com/business/2020/06/18/fed-main-street-lending/)).

Lending Program is accessible to the small and mid-sized businesses who most need and deserve this assistance and to protect the workers this program was designed to help.

To assist the Select Subcommittee in understanding the development of the Main Street Lending Program (including the Main Street New Loan Facility, Main Street Priority Loan Facility, and the Main Street Expanded Loan Facility), please produce by August 20, 2020, the following documents and information from March 1, 2020, to the present. These requests are consistent with House Resolution 935, which established the Select Subcommittee on the Coronavirus Crisis to “to conduct a full and complete investigation” of the “efficiency, effectiveness, equity, and transparency of the use of taxpayer funds and relief programs to address the coronavirus crisis,” “the economic impact of the coronavirus crisis,” and “any other issues related to the coronavirus crisis.”

1. All documents and communications about the job retention requirement in the Main Street Lending Program, including but not limited to the change from “reasonable efforts” to “commercially reasonable efforts,” and the elimination of the attestation requirement; and
2. All communications between Treasury and the Fed about the terms of the Main Street Lending Program.

In addition, please provide written responses to the following questions by August 20, 2020:

1. What steps will Treasury and the Fed take to make the Main Street Lending Program more accessible to small businesses?
2. What steps will Treasury and the Fed take to expand the number of lenders involved in the program, including Minority Depository Institutions and Community Development Financial Institutions?
3. Is Treasury or the Fed considering lowering the minimum loan amount below \$250,000? If so, what will be the anticipated minimum loan amount?
4. Why didn’t Treasury and the Fed implement the lending facility for small and mid-sized businesses created under the CARES Act?
5. What caused the delay in implementing the Main Street Lending Program?
6. How are Treasury and the Fed assessing the effectiveness of the Main Street Lending Program in supporting employment during the pandemic?

7. Why did Treasury and the Fed change the “Retaining Employees” term in the Main Street Lending Program term sheet dated June 8, 2020, and remove the attestation requirement?<sup>15</sup>
8. Will the Fed collect any payroll or job retention-related information from lenders or borrowers under the Main Street Lending Program? If not, why not?
9. How will Treasury and the Fed ensure compliance with the job retention provisions in the Main Street Lending Program?
10. Will Treasury and the Fed monitor layoffs by individual borrowers during the loan period?
11. What metrics will Treasury and the Fed use to monitor the Main Street Lending Program’s impact on economic recovery and employment broadly?
12. Why did Treasury and the Fed decide not to include a voluntary demographic questionnaire with the loan application? Will you commit to including a voluntary demographic questionnaire with loan application going forward?

An attachment to this letter provides additional instructions for responding to the Select Subcommittee’s request. If you have any questions regarding this request, please contact Select Subcommittee staff at (202) 225-4400.

Sincerely,



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James E. Clyburn  
Chairman

Enclosure

cc: The Honorable Steve Scalise, Ranking Member

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<sup>15</sup> Board of Governors of the Federal Reserve System, *Main Street New Loan Facility Term Sheet* (effective June 8, 2020) (online at [www.federalreserve.gov/newsevents/pressreleases/files/monetary20200608a1.pdf](http://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200608a1.pdf)).

## Responding to Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committees.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committees' preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
  - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - b. Document numbers in the load file should match document Bates numbers and TIF file names.
  - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - d. All electronic documents produced to the Committees should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

7. Documents produced to the Committees should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committees' letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee on Oversight and Reform, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building. When documents are produced to the Committee on Financial Services, production sets shall be delivered to the Majority Staff in Room 2129 of the Rayburn House Office Building and the Minority Staff in Room 4340 of the O'Neill House Office Building. When documents are produced to the Permanent Select Committee on Intelligence, production sets shall be delivered to Majority and Minority Staff in Room HVC-304 of the Capital Visitor Center.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **Definitions**

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a



part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.