

**Congress of the United States**  
**Washington, DC 20515**

December 17, 2020

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

Dear Secretary Mnuchin:

Your recent decision to request that the Federal Reserve Board of Governors (Fed) return unused CARES Act funds risks crippling the Fed's emergency lending programs at a time when we should instead be using every tool at our disposal to support our economic recovery.<sup>1</sup> You have claimed that your decision was required by the CARES Act, but a recent memorandum from the nonpartisan Congressional Research Service (CRS) shows that you clearly and unequivocally retain the authority to continue the Main Street Lending Program and the Municipal Liquidity Facility beyond the end of the year—as requested by Fed Chair Jerome Powell. We write today to urge you to protect American livelihoods by extending these programs and rescinding your request to the Fed to return CARES Act funds that have already been invested in these lending facilities, consistent with your authority.

As you know, the Fed has used its emergency lending authority to set up several special-purpose vehicles (SPVs) to support the economy during the coronavirus pandemic. Treasury has used CARES Act funds to make equity investments in these SPVs, including the Main Street Lending Program and Municipal Lending Facility.<sup>2</sup>

You have repeatedly stated that the CARES Act requires you to end the Fed lending facilities supported by the CARES Act by the end of 2020, and to request the return of all unused CARES Act funds. For example, in your December 2, 2020, testimony before the Financial Services Committee, you stated:

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<sup>1</sup> See Select Subcommittee on the Coronavirus Crisis, *Press Release: Clyburn Urges Reversal of Mnuchin's Shutdown of Emergency Fed Lending Programs* (Nov. 19, 2020) (online at <https://coronavirus.house.gov/news/press-releases/clyburn-urges-reversal-mnuchin-s-shutdown-emergency-fed-lending-programs>); Committee on Financial Services, *Press Release: Waters Blasts The Trump Administration's Move To Shut Down Key CARES Act Facilities Put In Place To Support Economy During The Pandemic* (Nov. 19, 2020) (online at <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=407025>); see also Letter from Secretary Steven T. Mnuchin, Department of the Treasury, to Chair Jerome H. Powell, Federal Reserve Board of Governors (Nov. 19, 2020) (online at <https://home.treasury.gov/system/files/136/letter11192020.pdf>).

<sup>2</sup> The Fed's emergency lending facilities also include the Primary Market Corporate Credit Facility, the Secondary Market Corporate Credit Facility, and the Term Asset-Backed Securities Loan Facility.

I just want to emphasize this was not a political decision. I was merely implementing the CARES Act. I am happy to walk you, your staff, or other members of the Committee, through Section 4029 which makes it very clear.<sup>3</sup>

However, a new legal analysis by the nonpartisan CRS directly contradicts your claim. CRS found that Section 4029 of the CARES Act clearly permits you to extend the Fed lending facilities, which would enable the Fed to continue making loans into 2021. CRS wrote:

Section 4029 does not appear to impose any limitations on the Treasury Secretary's discretion to agree to extend the SPVs in which the Treasury Secretary already has invested CARES Act funds.<sup>4</sup>

CRS explained that this conclusion is drawn directly from the clear and unambiguous text of the CARES Act:

[B]y its plain terms, Section 4029(a) appears to establish only the expiration date for the Treasury Secretary's authority to make *new* investments of CARES Act funds in the SPVs. It does not appear to impose any limitations on the Secretary's discretion to extend the operation of SPVs in which the Secretary has invested CARES Act funds *before* December 31, 2020. Accordingly, a court would likely conclude that Section 4029 does not prohibit the Treasury Secretary from extending the CARES Act-funded Fed facilities beyond December 31.<sup>5</sup>

CRS concluded that it is legally permissible to continue the operation of the Fed's emergency lending facilities in 2021:

Thus, if the Treasury Secretary agreed to extend the SPVs beyond December 31, 2020—which possibility the SPV term sheets contemplate—the SPVs would appear to have authority to continue making loans consistent with Section 4029, using funds the Treasury Department invested prior to December 31.<sup>6</sup>

CRS's legal opinion is consistent with what appears to be the position taken by Treasury before the November election. On October 16, 2020, Treasury wrote to the Congressional Oversight Commission regarding the Municipal Lending Facility. The letter stated that both “the

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<sup>3</sup> Committee on Financial Services, *Oversight of the Treasury Department's and Federal Reserve's Pandemic Response* (Dec. 2, 2020) (online at <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=407031>).

<sup>4</sup> Memorandum from Congressional Research Service to Staff, Select Subcommittee on the Coronavirus Crisis, Section 4029 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the Extension of the Federal Reserve's Emergency-Lending Programs (Dec. 16, 2020) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Memo%20re%20CARES%20Act%20Section%204029.pdf>).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

Federal Reserve and Treasury” were assessing market conditions “in order to determine whether any changes to this expiration date [December 31, 2020] would be warranted.”<sup>7</sup> Public reports indicate that senior Treasury officials continued to consider extending the emergency lending facilities in early November 2020, only to abruptly change their position after the presidential election.<sup>8</sup>

During this time of unprecedented hardship, the federal government should be doing everything in its power to support the economic recovery, not stripping the Fed of critical economic tools. As the Fed recently stated, it “would prefer that the full suite of emergency facilities established during the coronavirus pandemic continue to serve their important role as a backstop for our still-strained and vulnerable economy.”<sup>9</sup> Indeed, Fed Chair Powell testified before the Senate Banking Committee that no central banker would want to remove backstops in the midst of an emergency.<sup>10</sup>

Despite the Trump Administration’s rosy outlook on the economy, millions of Americans are hurting from the economic fallout of the coronavirus crisis. The economy has nine million fewer workers than at the start of the pandemic, with at least two million Americans permanently leaving the workforce during this time.<sup>11</sup> As of early December 2020, 26 million Americans lived in households that didn’t have enough to eat in the past week, and more than 10 million people were unemployed.<sup>12</sup>

State and local governments and small businesses—the primary beneficiaries of the Main Street Lending Program and Municipal Liquidity Facility—have been stretched thin due to the pandemic-induced economic crisis.<sup>13</sup> A recent study found that over 160,000 businesses closed

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<sup>7</sup> Letter from Principal Deputy Assistant Secretary Frederick W. Vaughan, Department of the Treasury, to Members, Congressional Oversight Commission (Oct. 16, 2020) (online at <https://coc.senate.gov/sites/default/files/2020-10/Treasury%20Response%20-%20MLF%20Hearing%20QFRs.pdf>).

<sup>8</sup> *Legacy on the Line, Mnuchin Gambles by Ending Fed Programs*, New York Times (Dec. 9, 2020) (online at [www.nytimes.com/2020/12/09/us/politics/steven-mnuchin-treasury-fed-programs.html](http://www.nytimes.com/2020/12/09/us/politics/steven-mnuchin-treasury-fed-programs.html)).

<sup>9</sup> *Mnuchin to End Key Fed Emergency Programs, Limiting Biden*, New York Times (Nov. 19, 2020) (online at [www.nytimes.com/2020/11/19/business/economy/mnuchin-fed-emergency-programs.html](http://www.nytimes.com/2020/11/19/business/economy/mnuchin-fed-emergency-programs.html)).

<sup>10</sup> *Powell, Mnuchin Embrace New Stimulus After Fed Lending Rift*, Bloomberg (Dec. 1, 2020) (online at [www.bloomberg.com/news/articles/2020-12-01/powell-mnuchin-embrace-new-stimulus-after-rift-over-fed-lending](http://www.bloomberg.com/news/articles/2020-12-01/powell-mnuchin-embrace-new-stimulus-after-rift-over-fed-lending)).

<sup>11</sup> *The Economy Added 245,000 Jobs in November, The Slowest Month of Growth Since Recovery Began*, Washington Post (Dec. 4, 2020) (online at [www.washingtonpost.com/business/2020/12/04/november-2020-jobs-report-unemployment/](http://www.washingtonpost.com/business/2020/12/04/november-2020-jobs-report-unemployment/)).

<sup>12</sup> Catherine Rampell, *Our Long, Cold Winter Is Already Here*, Washington Post (Dec. 3, 2020) (online at [www.washingtonpost.com/opinions/our-long-cold-winter-is-already-here/2020/12/03/bc3697a6-35a2-11eb-a997-1f4c53d2a747\\_story.html](http://www.washingtonpost.com/opinions/our-long-cold-winter-is-already-here/2020/12/03/bc3697a6-35a2-11eb-a997-1f4c53d2a747_story.html)); Bureau of Labor Statistics, *News Release: The Employment Situation—November 2020* (Dec. 4, 2020) (online at [www.bls.gov/news.release/pdf/empsit.pdf](http://www.bls.gov/news.release/pdf/empsit.pdf)).

<sup>13</sup> *States Grappling with Hit to Tax Collections*, Center on Budget and Policy Priorities (Nov. 6, 2020) (online at [www.cbpp.org/research/state-budget-and-tax/states-grappling-with-hit-to-tax-collections](http://www.cbpp.org/research/state-budget-and-tax/states-grappling-with-hit-to-tax-collections)).

between March and September of this year.<sup>14</sup> As of November 25, small business revenues were down at least 33 percent since the beginning of the year.<sup>15</sup> State and local governments have also been hit hard, with at least 1.3 million jobs lost in the past eight months due to significant declines in tax revenue.<sup>16</sup> Economists estimate another 2.8 million state and local jobs could be lost without more federal aid.<sup>17</sup>

We ask that you extend the Main Street Lending Program and the Municipal Liquidity Facility and rescind your request that the Fed return CARES Act funds that have already been invested in these facilities, consistent with your authority. We also expect you will agree no additional legislative steps should be taken to prohibit future use of these emergency lending facilities.

To shed light on your troubling decision—and consistent with the offer during your recent testimony to share your legal analysis with Congress—please produce the following documents by December 23, 2020:

1. All legal opinions, memoranda, analyses, and guidance regarding your decision to terminate the emergency lending facilities on December 31, 2020, or your request to the Fed to return CARES Act funds; and
2. All documents and communications, including communications with the White House, regarding your decision to terminate the emergency lending facilities on December 31, 2020, or your request to the Fed to return CARES Act funds.

In addition, if you plan to persist in your planned termination of the emergency lending facilities despite the absence of a legal requirement to do so, please explain by December 23, 2020, why you disagree with Chair Powell’s assessment that their continuation is warranted given continued economic hardship.

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<sup>14</sup> *Local Economic Impact Report*, Yelp (Sept. 16, 2020) (online at [www.yelpeconomicaverage.com/business-closures-update-sep-2020.html](https://www.yelpeconomicaverage.com/business-closures-update-sep-2020.html)).

<sup>15</sup> *Economic Tracker: Percent Change in Small Business Revenue*, Opportunity Insights (accessed on Dec. 7, 2020) (online at <https://tracktherecovery.org/?nosplash=true>).

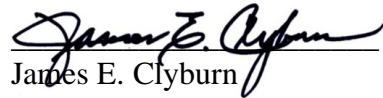
<sup>16</sup> *In Blue States and Red, Pandemic Upends Public Services and Jobs*, New York Times (Dec. 4, 2020) (online at [www.nytimes.com/2020/12/04/business/economy/state-local-finances.html](https://www.nytimes.com/2020/12/04/business/economy/state-local-finances.html)).

<sup>17</sup> *Coronavirus-Hit State Budgets Create a Drag on U.S. Recovery*, Wall Street Journal (Aug. 12, 2020) (online at [www.wsj.com/articles/coronavirus-hit-state-budgets-create-a-drag-on-u-s-recovery-11597224600](https://www.wsj.com/articles/coronavirus-hit-state-budgets-create-a-drag-on-u-s-recovery-11597224600)).

The Honorable Steven T. Mnuchin  
Page 5

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

Sincerely,



James E. Clyburn  
Chairman  
Select Subcommittee on the  
Coronavirus Crisis



Rep. Maxine Waters  
Chairwoman  
Committee on Financial Services

Enclosure

cc: The Honorable Steve Scalise, Ranking Member  
Select Subcommittee on the Coronavirus Crisis

The Honorable Patrick McHenry, Ranking Member  
Committee on Financial Services

## Responding to Oversight 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 Committee.
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 Committee's 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 Committee 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 Committee 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 Committee's 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, 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.
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.