Statement of the U.S. Chamber of Commerce

ON: Implementation of Title IV of the CARES Act

TO: United States Senate Committee on Banking, Housing, and Urban Affairs

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The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Chairman Crapo, Ranking Member Brown, and members of the Committee on Banking, Housing, and Urban Affairs: My name is Tom Quaadman, executive vice president of the Center for Capital Markets Competitiveness ("CCMC") at the U.S. Chamber of Commerce. Thank you for the opportunity to testify today regarding implementation of Title IV of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

The last few months have brought incredible hardship to all Americans. The lives lost and affected by the coronavirus pandemic are a national tragedy, and many people remain gravely concerned about the health of their loved ones. But, every day we hear more stories of Americans doing extraordinary things to help their families or those in their communities and are reminded that even in these difficult times, America's spirit of service is alive and well.

The pandemic has also led to the swiftest and most significant economic downturn the United States has ever faced. In the span of two short months, tens of millions of Americans have lost their jobs, millions of businesses have been ordered to limit their activities or shut their doors entirely, and households have struggled to pay their mortgages, rent, utilities, and other regular expenses. Governments at all levels have had to take extraordinary and unprecedented actions to keep our economy afloat and allow workers to continue to get a paycheck.

Title IV of the CARES Act authorized $454 billion for the Treasury Department's Exchange Stabilization Fund to be used for the creation of Federal Reserve credit facilities under Section 13(3) of the Federal Reserve Act. Since passage of the CARES Act, the Federal Reserve announced the establishment of several facilities to support lending to main street businesses, municipalities, and other markets that are critical to the functioning of our broader economy. These 13(3) facilities – once fully operational – will eventually support around $3 trillion of lending to the economy.

The Chamber commends the ongoing work of the Senate Banking Committee and the recently established Congressional Oversight Commission (COC) to conduct rigorous oversight of these lending programs. The ultimate goal of policymakers should be to ensure that the credit provided under the CARES Act flows to the businesses and households that most need it, while rooting out any waste, fraud, and abuse that would undermine or impede economic recovery.

While American businesses have been impacted as never before by the pandemic, make no mistake that American businesses will be the linchpin in our road to recovery. Whether it is reorienting assembly lines to produce personal protective equipment, taking extraordinary measures to help employees or devastated

communities, or working their hardest to find a vaccine and treatment for the coronavirus, businesses have stepped up and will continue to do everything in their power to meet this national challenge.

The Chamber's views on the current state of our economy and recovery efforts are discussed in greater detail below.

The Current Economic and Employment Crisis

The economic shock brought on by the pandemic is unprecedented in both its speed and severity. Since the beginning of March, over 40 million Americans have lost their jobs and filed for unemployment as business revenues have dried up and some segments of our economy have come to a complete halt. 1st quarter GDP declined by 5%, and some forecasters estimate that 2nd quarter gross domestic product could decline by over 40%.[1]

The pain is especially pronounced in certain industries. Based upon April employment data, the food, travel, and events industry has lost more than 46% of its workforce; retail has lost 14%; and the service industry has lost over 17%.[2] Many of these workers are hourly earners and can ill-afford a sustained interruption to their ability to earn a livelihood.

A recent study from the University of Chicago also demonstrates how the crisis has disproportionately impacted lower-wage workers. The study found that only 37% of the U.S. workforce is fully able to "work from home."[3] This demographic is largely made up of white collar, technology-oriented jobs that can be done from a laptop. The stay-at-home orders and mandated shutdowns do not affect these workers as much as they do blue collar or service-oriented positions. While the CARES Act and government assistance programs can be an important bridge for workers that have lost their jobs and are seeking a return to work, they are by no means a long-term solution.

The current outlook for small and medium-sized businesses has been similarly grim. In early April, the Chamber, in partnership with MetLife, released the results of a survey which found that under current conditions, 43% of small businesses believed

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[1] "GDP could decline by 42% in the second quarter, according to the Atlanta Fed" CNBC, May 15th, 2020

[2] https://www.uschamber.com/series/above-the-fold/analysis-breaking-down-the-unemployment-crisis-industry

[3] How Many Jobs Can Be Done From Home? Jonathan Dingel, Brent Neiman. April 16th, 2020.

they had less than six months until a *permanent* closure was inevitable.[4] Middle-market businesses – which employ over 40 million workers - have also been faced with incredibly difficult decisions regarding their future operations and workforce.

The Chamber has urged Congress and regulators to consider the unique circumstances that led to the dire economic situation we face. This crisis was not caused by any type of market or regulatory failure and did not originate as part of the normal business cycle. Businesses and workers have been harmed through no fault of their own and the lending programs established over the last two months are, for many businesses, their only viable source of financing.

Importance of Lending Programs for Businesses, Employees, and the Broader Economy

The Chamber supported the inclusion of several programs in the CARES Act intended to help businesses weather the current storm and retain their employees.

These programs included the Paycheck Protection Program (PPP) administered by the Small Business Administration (SBA) and which provides for forgivable loans – with certain conditions – for businesses with no more than 500 employees. As recently reported by the Treasury Department, the PPP has originated more than $530 billion in loans to over 4 million borrowers, making the program one of the more critical tools to helping small businesses survive.

The CARES Act also provided $454 billion in funding for Federal Reserve lending facilities under Section 13(3). As noted by Treasury Secretary Mnuchin to this committee recently, since mid-March Treasury has approved the establishment of several facilities, including:

- The Commercial Paper Funding Facility
- The Primary Dealer Credit Facility
- The Money Market Mutual Fund Liquidity Facility
- The Term Asset Backed Securities Loan Facility
- The Primary Market Corporate Credit Facility
- The Secondary Market Corporate Credit Facility
- The Main Street Lending Program
- The Municipal Liquidity Facility; and the

[4] "Special Report on Coronavirus and Small Business" U.S. Chamber and L) April 3rd, 2020. https://www.uschamber.com/report/special-report-coronavirus-and-small-business

- PPP Liquidity Facility

To date, Treasury has committed $195 billion of CARES Act funding to these facilities, and Secretary Mnuchin has stated Treasury's intent to the commit the remaining $259 billion.

Without these facilities and the provision of credit through the Federal Reserve's "lender of last resort" function, many otherwise healthy businesses would face the prospect of permanent closure, critical components of our financial markets would be severely impaired, and the shock caused by the pandemic would turn into a prolonged and severe economic downturn.

Robust Oversight of Lending Programs is Critical

The Chamber strongly supports efforts by Congress, the Congressional Oversight Commission, and eventually the Special Inspector General for Pandemic Recovery to provide oversight for the CARES Act lending programs. Oversight of these programs is central to the confidence of taxpayers that the funding authorized under the CARES Act is being deployed responsibly and in a manner that will support economic recovery. Accordingly, identifying fraudulent actors and holding them accountable should be the top priority of oversight efforts.

We also believe that oversight is important to ensure that funds are being appropriated in a manner that is consistent with Congressional intent, and that borrowers are following the appropriate terms and conditions for eligibility. Such oversight assists businesses' understanding of the expectations that policymakers have set for participation.

The Chamber has consistently supported oversight mechanisms in times of crisis when taxpayer dollars are used as a lifeline for the economy. For example, in 2009 the Chamber support the Troubled Asset Relief Program (TARP) Accountability Act which provided a mechanism for government and the public to easily track and monitor disbursement of TARP funds in the wake of the 2008 financial crisis.[5] As we stated then, "This level of transparency will help avoid the misuse of funds and develop a level of confidence that is integral to the success of TARP."

At the same time, using this crisis and exploiting the CARES Act facilities to pursue unrelated policy goals – or to shame certain companies or industries for availing

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[5] See testimony of U.S. Chamber to House Financial Services Committee, September 17th, 2009. http://archives-financialservices.house.gov/media/file/hearings/111/quaadman_testimony.pdf

themselves of programs they are legally eligible for – should not be confused with "oversight." Businesses in every sector and of every size are being harmed by the pandemic, and many will ultimately choose to apply for and receive credit under a program. Our economy will never fully recover if lending programs become politicized and used as a mechanism to direct policy outcomes that are uncorrelated to putting Americans back to work and getting the economy growing again.

As we noted in a recent letter to the Treasury and Federal Reserve, the Chamber also remains concerned over certain corporate governance restrictions for 13(3) facilities that were included as part of the CARES Act, including a prohibition for certain borrowers from paying dividends or engaging in share repurchases.[6] Such restrictions are based upon the reasonable argument that businesses and shareholders should not be rewarded with taxpayer support for reckless or irresponsible behavior.

However, the current crisis is inherently unique in that businesses seeking financing find themselves in such a position through no fault of their own, and in most cases have been mandated by a government body to limit or cease operations. Moreover, retirees and other retail investors that rely on the returns generated by dividends and share repurchases would be harmed by a broad prohibition against such distributions. The Chamber continues to urge the Treasury Department of Federal Reserve to use extreme prudence if they decide to implement these restrictions authorized under the CARES Act.

Section 13(3) Lending Facilities

While the lending facilities established by the Treasury Department and Federal Reserve are incredibly expansive, we recognize that given the severity of the economic situation they may ultimately not entirely fulfill the credit needs of our diverse economy. We urge both the Treasury Department and Federal Reserve to be flexible in adapting to economic conditions as they evolve. The Chamber and its members have taken strong interest in the recently established credit facilities. Our views regarding a number of them are described in greater detail below.

Main Street Lending Program

The Main Street Lending Program was announced by the Federal Reserve in early April and is expected to be operational in the coming days. The MSLP will provide up to $600 billion of credit through the Main Street New Loan Facility, Main Street

[6] http://www.centerforcapitalmarkets.com/wp-content/uploads/2020/04/4.16.20_CCMC_MainStreetLoanFacilities_Fed_Treasury.pdf?#

Priority Loan Facility, and the Main Street Expanded Loan Facility. The MSLP will be especially important for middle market businesses that are ineligible for the PPP but are struggling to finance their operations and payroll.

The Chamber was pleased with several changes made to the eligibility requirements of the program by the Federal Reserve in mid-April. These changes included modifying employment and revenue thresholds to include more businesses, decreasing the permitted minimum loan size by half, allowing for the use of adjusted EBITDA to determine leverage, including borrowers with non-term loans, and substituting the Secured Overnight Financing Rate (SOFR) with the still widely-used London Inter-bank Offered Rate (LIBOR) to price loans.

While these changes should make the program more attractive, as noted above we believe that restrictions on capital distributions could ultimately be harmful to both businesses and their shareholders. We also believe eligibility requirements under the MSLP should be modified to include nonbank lenders, in particular by expanding the definition of an "eligible loan" to include those made by nonbank lenders.

Additionally, while the banking system stands ready to assist and serve as conduits for main street businesses to access the MSLP, we continue to hear concerns that some of the other terms of the facility are unduly restrictive for some borrowers. For example, extending loan maturities up to six years would provide greater flexibility for borrowers, and we believe that the Federal Reserve should reexamine the "penalty rate" provided for under the program which currently may prove to be a disincentive for many borrowers.

Congress, the Treasury Department, and the Federal Reserve should be cognizant about the possibility of "donut holes" being created that leave out important sectors of the economy. The MSLP was intended to complement the PPP by providing credit to medium and larger businesses that are not eligible for SBA lending. Yet, it appears key eligibility restrictions for the MSLP were copied from PPP requirements that were drawn from the SBA's 7(a) program. The latest FAQ's for the MSLP (May 27, 2020) cite ineligible businesses as those that include those "listed n 13 CFR 120.110(b)-(j), (m)-(s), as modified and clarified by STA regulations for purposes of the PPP…," but do note "The Federal Reserve may further modify the application of these restrictions…". This would, for example, exclude passive businesses owned by developers and landlords that are critical for providing locations for main street businesses to operate.

The Chamber will continue working with the Treasury Department and Federal Reserve to ensure that the terms of the MSLP and other relief programs do not create any harmful gaps that penalize critical industries.

Term Asset-Backed Securities Loan Facility

The Federal Reserve announced the establishment of the Term Asset-Backed Loan Facility (TALF) on March 23, 2020, wherein it noted it would lend up to $100 billion on a nonrecourse basis – an amount equal to the market value of the asset-backed securities (ABS) less a haircut – to holders of certain AAA-rated ABS backed by newly and recently originated consumer and small business loans. This announcement noted that eligible securities will include those backed by student loans, auto loans, credit card loans, loans guaranteed by the SBA, and other certain asset classes – all of which support critical aspects of our economy. Spreads for eligible asset classes tightened almost immediately suggesting the market is responding positively to the program even before it extends credit. TALF's first subscription date for loans backed by eligible ABS will be June 17, 2020, and the first loan closing date will be June 25, 2020.

The commercial real-estate industry has faced a number of unexpected yet severe headwinds in recent months as a result of business disruptions due to Covid-19. In general, tenants that were otherwise creditworthy before the crisis have been unable to pay rent due to disruptions in their business including government orders to limit their operations. Many tenants of commercial properties have found they are ineligible for programs intended to support main street, or are restricted in how funds are used, causing them to miss rent payments or request forbearance. This has imposed stress on creditors that support this market that could be mitigated by TALF.

The Federal Reserve's May 12th term sheet, while positive, appears to fall short of ameliorating some major liquidity issues. Importantly, the May 12th term sheet indicates that TALF-eligible collateral includes the AAA-rated tranches of both outstanding commercial mortgage-backed securities (CMBS). There is evidence to suggest that the announcement to add AAA legacy CMBS to the program has already improved liquidity in the sector. The Chamber supports this expansion of TALF, which we believe would help alleviate the extreme funding pressures in the commercial real-estate market during this period of uncertainty. However, it is our understanding from tenants and creditors that this support for CMBS is inadequate.

We believe the Federal Reserve should expand TALF. First, it should be noted that TALF only includes legacy CMBS, it does not include new securitizations. The liquidity for legacy CMBS is vital but does not adequately address the new issues

facing the commercial real-estate market. There would be great benefit to the commercial real-estate market, including for tenants, if TALF were expanded to new securitizations. Additionally, the Chamber has noted that legacy Single Asset Single borrower and conduit legacy securities should be included in TALF.

Finally, TALF should address financing challenges for private residential mortgage backed securities (RMBS). This asset class was arguably excluded from TALF 1.0 (i.e. the original iteration of the program created in 2008) due to uncertainty of credit risk in the market at this time. However, while TALF 1.0 is a helpful model, it does not fully account for the unique nature of this economic crisis or changes in market structure. At the request of Congress, underwriting has been substantially strengthened by lenders for residential mortgages that provides more transparency for credit risk. And, unlike government guaranteed mortgages, private mortgage are not supported by any emergency lending programs.

Municipal Liquidity Facility

State and local government budgets have come under enormous pressure in the wake of the pandemic, as business activity and tax revenues have dried up. Businesses of all sizes depend on the critical services provided by state and local governments – maintaining roads, public safety, healthcare, etc. – to operate their businesses. The continuity of these critical services is especially important during this time of uncertainty.

The Chamber accordingly has supported the establishment of the Municipal Liquidity Facility (MLF), which will provide a $500 billion backstop for the short-term funding needs of states and cities across the country. The Chamber was pleased by changes made by the Federal Reserve to the original terms of the MLF that would expand eligibility to more counties and cities as opposed to just the largest ones, but there are outstanding questions about the effectiveness of its structure in terms of eligibility and the cost of funds.

The primary question the Federal Reserve, and this Committee, should remain focused on is eligibility to access the MLF and the effectiveness of indirect access for non-eligible issuers. The original term sheet (April 9) permitted access for U.S. states, counties with a population of at least two million residents, and U.S. cities with a population of at least one million residents – one estimate determined only 24 local governments (in addition to the states) nationwide would qualify for direct access. The Chamber was pleased the updated term sheet (May 11) expands eligibility for direct access to a total of 86 local governments, but important parts of the country

and economy remain overlooked.[7] We are sympathetic to the Federal Reserve's apparent desire to limit the number of potential counterparties due to operational constraints and understand their approach to permit eligible issuers to provide indirect financing to local governments, but it is an imperfect solution.

However, we do not have confidence that eligible issuers will be an effective mechanism for local governments to indirectly access the MLF. Most states and large cities – the eligible issuers – are facing their own fiscal challenges that will not likely be completely ameliorated by the MLF; therefore, it is highly unlikely they would share access to funds with other issuers. History has shown that states actually tend to push costs down to local governments when encountering fiscal challenges. It is unclear if states have the operational capacity to provide indirect access to the MLF, and some may not currently have the legal authority. Finally, it is unclear if eligible issuers would have to assume credit risk.

The Chamber has recommended to the Fed to provide an exclusive allocation of funds to be made available to non-eligible issuers (e.g. 10% MLF borrowing by states reserved for cities and counties). Another approach may be an incentive structure that allows a state to increase its total borrowing authority if it provides financing to non-eligible issuers. Finally, it is unclear if eligible issuers would have to assume credit risk. There will be little incentive to overcome these operational considerations if the MLF maintains a punitive funding rate.

The Chamber appreciates the Federal Reserve's role as a "lender of last resort," but encourages ongoing review of the funding rates in the MLF. Overly punitive penalty rates (i.e. in excess of market rates) will discourage take up in the program. The MLF should be cognizant of crowding out private capital, but should not lose sight of the dire fiscal situations of state and local governments that were otherwise responsible borrowers with reliable access to financing, before encountering revenue shortfalls due reasons such as delaying income tax filing or decreased sales tax receipts from depressed economic activity. MLF pricing remains too high except for the issuers with the lowest credit ratings. The penalty for AAA/AA/A rated debt is above the current abnormal spreads. The Federal Reserve should lower the funding rate, like it has with other 13(3) programs such as the Commercial Paper Funding Facility (CPFF), if take-up is lower than expected. A more logical target for pricing would be to set a penalty rate to prevailing spreads from January/February 2020 (before the market uncertainty from Covid-19).

[7] https://www.newyorkfed.org/medialibrary/media/markets/municipal-liquidity-facility-eligible-issuers

Expanding the term of the loan to three years in the most recent term sheet is an improvement but may not be long enough. Clearly, the term of the loan should reflect the expected cashflow of the borrower. It is widely believed that it could take three to four years for the economy to recover, and for corresponding revenue levels to return, thus a term length closer to five years may be more appropriate.

Finally, it is important to remember that the Federal Reserve maintains authority to purchase and sell municipal securities in the open market. The Federal Reserve has established similar programs that cover every major asset class except for municipal securities and Congress recognized these liquidity issues in the CARES Act. At that time, there were unexplainable price dislocations that signaled issues with the functioning of the market. These issues have abated, but the market stability may be caused, at least partly, in the Federal Reserve's authority to intervene.

Primary Market Corporate Credit Facility and Secondary Market Corporate Credit Facility

The Federal Reserve established two facilities to support credit to large employers – the Primary Market Corporate Credit Facility (PMCCF) for new bond and loan issuance and the Secondary Market Corporate Credit Facility (SMCCF) to provide liquidity for outstanding corporate bonds and corporate bond portfolio Exchange Traded Funds (ETFs). The Chamber supports both the PMCCF and SMCCF as sources of liquidity to companies navigating business challenges as a result of the pandemic.

Based on the term sheets that were issued for the PMCCF and SMCCF on April 9, 2020, the Chamber asked the Federal Reserve to address a series of comments and questions regarding the initial terms and conditions surrounding eligible issuers, pricing and limits per issuer, and the documentation, disclosures, and operational mechanics required to access the PMCCF and SMCCF. We commend the Federal Reserve for beginning the process of bringing greater clarity to the terms through FAQs released on May 4, 2020 and May 26, 2020, and we expect further clarification as the Federal Reserve works to make both facilities fully operational. While the Federal Reserve has already begun purchasing ETFs through the SMCCF, we are still awaiting the PMCCF to become operational and the SMCCF to begin purchasing eligible corporate bonds.

Among the issues the Federal Reserve has not yet addressed is whether it would consider amending the ratings eligibility to include additional issuers. Many companies that are important to the economy do not qualify based on the current minimum

rating requirement thresholds of BBB-/Baa3 as of March 22, 2020 or BB-/Ba3 at time of purchase if the issuer has been subsequently downgraded.

Since our original comments to Federal Reserve, it has also been brought to our attention a deep concern that the facilities will lose their effectiveness through its reliance on ratings from only the three major nationally recognized statistical rating organizations (NRSROs): Fitch Ratings, Inc., Moody's Investors Service, Inc., and S&P Global Ratings. Given that the PMCCF and SMCCF may be a critical source of support to larger enterprises that are ineligible for other programs, we encourage the Federal Reserve to consider including all SEC-registered NRSROs, not just those rated by major rating agencies.

In its updated FAQs posted May 26, 2020, the Federal Reserve subsequently decided to allow ratings from DBRS, Inc., Kroll Bond Rating Agency, Inc., and A.M. Best Rating Services, Inc. provided that the issuer seeking support from the PMCCF and SMCCF also has a rating from one of the three major NRSROs. While this is a move in the right direction, such policy will continue to exclude those issuers who require liquidity in these challenging times who do not also have qualifying rating from the major three major NRSROs. Moreover, the Federal Reserve has not provided an explanation of why three of the nine NRSROs have been excluded as acceptable ratings.

Paycheck Protection Program Liquidity Facility

The effectiveness of the Small Business Administration's Paycheck Protection Program (PPP) is a top priority of the Chamber. The PPP is a lifeline for countless small businesses, and it is therefore appropriate the Federal Reserve would offer liquidity to financial institutions issuing these loans. The Paycheck Protection Program Liquidity Facility (PPPLF) will free up room on the balance sheet so financial institutions can do even more support businesses and the economic recovery.

It is worth noting that uptake of the PPPLF has been relatively limited. Over 4 million PPP loans and over $500 billion in total credit, have been approved. However, according to data available from the Federal Reserve earlier this month, total advances outstanding under the PPPLF are approximately $29 billion.[8] While additional updates are forthcoming, further changes regarding the terms of the PPPLF may be necessary to ensure the facility achieves its intended effect.

[8] https://www.federalreserve.gov/publications/files/mlf-msnlf-mself-and-ppplf-5-15-20.pdf#page=3

Conclusion

The lending programs under Title IV of the CARES Act are critical towards helping our economy recover from the sudden shock caused by the coronavirus pandemic. We believe that with some of the changes outlined above and with appropriate oversight from Congress and other bodies, these programs will reach their full potential, allow businesses to weather this storm, and help workers keep their jobs. Thank you again for the opportunity to testify – I would be happy to answer any questions you have.