

ELIZABETH WARREN
MASSACHUSETTS

UNITED STATES SENATE
WASHINGTON, DC 20510-2105
P: 202-224-4543

2400 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
P: 617-565-3170

1550 MAIN STREET
SUITE 406
SPRINGFIELD, MA 01103
P: 413-788-2690

www.warren.senate.gov

COMMITTEES
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

May 18, 2020

John C. Williams
President and Chief Executive Officer
Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045

Dear Mr. Williams:

I write concerning the certification process for the recipients of bailout funds distributed through lending facilities developed by the Federal Reserve System (Fed) and approved by the Secretary of the Treasury using taxpayer dollars from the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act). The Primary Market Corporate Credit Facility (PMCCF) and Secondary Market Corporate Credit Facility (SMCCF) were announced on March 23, 2020¹, and are being implemented by the Federal Reserve Bank of New York as part of the response to the economic collapse caused by the coronavirus-disease 2019 (COVID-19) pandemic.

I remain disappointed that you have not established strong requirements for these programs to ensure that taxpayer dollars are used wisely and in support of workers and the economy as a whole.² You did, however, establish several minimum requirements for participating companies, including that they have a majority of their employees in the United States, they not receive “specific support” from other provisions of the CARES Act, and they meet CARES Act conflict of interest requirements.³⁴ As the Fed develops the process by which companies will certify that they meet these requirements to participate in the lending programs, I urge you to implement a comprehensive and robust set of requirements for top executives of these companies to verify their eligibility before they receive any bailout funds.

Certification that bailout funds are being used appropriately by the recipients is critical to ensuring that only companies that meet the specified eligibility criteria receive this taxpayer-subsidized money. Following the 2007-2008 financial crisis, multiple companies improperly

¹ Board of Governors of the Federal Reserve System, “Federal Reserve announces extensive new measures to support the economy,” March 23, 2020,

<https://www.federalreserve.gov/newsevents/pressreleases/monetary20200323b.htm>.

² Letter from Senator Warren to Secretary Mnuchin and Chairman Powell, March 31, 2020,

<https://www.warren.senate.gov/imo/media/doc/2020.03.31%20Letter%20to%20Mnuchin%20re%20CARES%20Act.pdf>.

³ Board of Governors of the Federal Reserve System, “Primary Market Corporate Credit Facility,” April 9, 2020,

<https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a5.pdf>.

⁴ Board of Governors of the Federal Reserve System, “Secondary Market Corporate Credit Facility,” April 9, 2020,

<https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a2.pdf>.

accepted bailout money and abused taxpayer-funded relief programs such as the Troubled Asset Relief Program (TARP).⁵ One such example was Colonial Bank, which applied for \$570 million in TARP funds while submitting “materially false information related to mortgage loans and securities held by Colonial Bank” in connection with their application.⁶ These types of abuses must not be allowed to happen again. And you must ensure that – unlike in the wake of the 2008 financial crisis – companies that rip off taxpayers and the executives that run them are not let off the hook with minimal fines, no criminal liability, and no requirements that they even admit guilt.⁷

The Fed has announced the PMCCF and the SMCCF to fund debt issued by corporations that are struggling as a result of COVID-19 and support credit to large employers.⁸ To operate and maintain these facilities, the Department of Treasury made a \$75 billion equity investment using bailout funds appropriated by the CARES Act.⁹ Issuers will be required to certify their compliance with CARES Act requirements “before participating in the PMCCF and SMCCF.”¹⁰ The issuer certification requirements and operational details for these facilities are still under development.¹¹

To simply require CEOs and executives to check a box claiming that they intend to meet these requirements before they issue bonds to be purchased through the facilities would not be sufficient. Instead, as you finalize the process through which recipients of the assistance will certify their eligibility for these facilities, I urge you to impose three requirements:

- First, the certification procedures put in place must be robust and comprehensive.
- Second, businesses must be required to reaffirm their eligibility so long as bonds they issue have not yet matured and any syndicated loans remain outstanding. This means that CEOs and executives should be required to periodically conduct due diligence to ensure that they still meet the relevant eligibility criteria.
- Third, all certification paperwork should contain clear language that indicates that the executives are subject to civil and criminal penalties, including disgorgement, if they provide fraudulent or misleading information or misuse funds, and should be required to

⁵ Office of the Special Inspector General for the Troubled Asset Relief Program, “Notable Investigations,” <https://www.sig tarp.gov/Pages/investigations.aspx>.

⁶ LexisNexis Legal NewsRoom, “‘Staggering’ \$1.4 Billion Fraud That Doomed Colonial Bank Nets Farkas 30 Years,” Steven A. Meyerowitz, June 30, 2011, <https://www.lexisnexis.com/legalnewsroom/financial-fraud-law/b/blog/posts/staggering-1-4-billion-fraud-that-doomed-colonial-bank-nets-farkas-30-years>.

⁷ Senator Elizabeth Warren, “Rigged Justice: How Weak Enforcement Lets Corporate Offenders Off Easy,” January 2016, <https://www.warren.senate.gov/oversight/reports/senator-warren-releases-and-quotrigged-justice-and-quot-first-annual-report-detailing-how-weak-federal-enforcement-lets-corporate-offenders-off-easy>.

⁸ Board of Governors of the Federal Reserve System, “Federal Reserve announces extensive new measures to support the economy,” March 23, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200323b.htm>.

⁹ Federal Reserve Bank of New York, “FAQs: Primary Market Corporate Credit Facility and Secondary Market Corporate Credit Facility,” May 4, 2020, <https://www.newyorkfed.org/markets/primary-and-secondary-market-faq/corporate-credit-facility-faq>.

¹⁰ *Id.*

¹¹ *Id.*

immediately repurchase their bonds for the full amount when eligibility criteria are breached.

It is still my hope that the Fed will impose stronger conditions attached to these funds, as I have previously requested.¹² I believe it is essential to ensure that the primary beneficiaries of this bailout are workers, not executives and shareholders. However, the Fed's reluctance to impose these basic conditions to protect workers has made it all the more necessary that the certification process includes strict and severe penalties for violations of eligibility criteria to ensure that individuals do not violate the terms of participation in these taxpayer-backed programs. You have been trusted to administer these bailout funds, and it is incumbent on you to develop a comprehensive certification process that adequately protects the taxpayers who provided them.

Sincerely,



Elizabeth Warren
United States Senator

cc: Jerome H. Powell, Chair, Board of Governors of the Federal Reserve
Steven T. Mnuchin, Secretary, U.S. Department of Treasury

¹² Letter from Senator Warren to Secretary Mnuchin and Chairman Powell, March 31, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.03.31%20Letter%20to%20Mnuchin%20re%20CARES%20Act.pdf>.

ELIZABETH WARREN
MASSACHUSETTS

UNITED STATES SENATE
WASHINGTON, DC 20510-2105
P: 202-224-4543

2400 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
P: 617-565-3170

1550 MAIN STREET
SUITE 406
SPRINGFIELD, MA 01103
P: 413-788-2690

www.warren.senate.gov

COMMITTEES
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

May 18, 2020

Eric S. Rosengren
President and Chief Executive Officer
Federal Reserve Bank of Boston
600 Atlantic Avenue
Boston, MA 02110

Dear Mr. Rosengren:

I write concerning the certification process for the recipients of bailout funds distributed through lending facilities developed by the Federal Reserve System (Fed) using taxpayer dollars from the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act). The Main Street Lending Program, including the Main Street New Loan Facility (MSNLF), the Main Street Expanded Loan Facility (MSELF) and the Main Street Priority Loan Facility (MSPLF), was originally announced on March 23, 2020¹, and is being implemented by the Federal Reserve Bank of Boston as part of the response to the economic collapse caused by the coronavirus disease 2019 (COVID-19) pandemic.

I remain disappointed that you have not established strong requirements for these programs to ensure that taxpayer dollars are used wisely and in support of workers and the economy as a whole.² You did, however, establish several minimum requirements for participating companies, including that eligible borrowers certify their compliance with the conflicts of interest provisions in Section 4019(b) of the CARES Act in addition to committing to follow the “compensation, stock, repurchase, and capital distribution requirements that apply to direct loan programs under Section 4003(c)(3)(A)(ii) of the CARES Act.”³ As the Fed develops the process by which companies will certify that they meet these requirements to participate in these lending programs, I urge you to implement a comprehensive and robust set of requirements for top executives of these companies to verify their eligibility before they receive any bailout funds.

Certification that bailout funds are being used appropriately by the recipients is critical to ensuring that only companies that meet the specified eligibility criteria receive this taxpayer-

¹ Board of Governors of the Federal Reserve System, “Federal Reserve announces extensive new measures to support the economy,” March 23, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200323b.htm>.

² Letter from Senator Warren to Secretary Mnuchin and Chairman Powell, March 31, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.03.31%20Letter%20to%20Mnuchin%20re%20CARES%20Act.pdf>.

³ Board of Governors of the Federal Reserve System, “Main Street Lending Program Frequently Asked Questions,” April 30, 2020, <https://www.federalreserve.gov/monetarypolicy/files/main-street-lending-faqs.pdf>.

subsidized money. Following the 2007-2008 financial crisis, multiple companies improperly accepted bailout money and abused taxpayer-funded relief programs such as the Troubled Asset Relief Program (TARP).⁴ One such example was Colonial Bank, which applied for \$570 million in TARP funds while submitting “materially false information related to mortgage loans and securities held by Colonial Bank” in connection with their application.⁵ These types of abuses must not be allowed to happen again. And you must ensure that – unlike in the wake of the 2008 financial crisis – companies that rip off taxpayers and the executives that run them are not let off the hook with minimal fines, no criminal liability, and no requirements that they even admit guilt.⁶

The Fed has announced the Main Street Lending Program to “support lending to small and medium-sized businesses that were in sound financial condition before the onset of the COVID-19 pandemic.”⁷ For the Main Street New Loan Facility and the Main Street Existing Loan facility, eligible lenders will extend loans or existing loan terms to borrowers and sell 95 percent of the loan to the lending facility.⁸ The Main Street Priority Loan Facility will work in a similar fashion, but lenders will only sell 85 percent of the loan.⁹ The Fed will be providing “form borrower and lender certifications” to implement the program¹⁰.

To simply require CEOs and executives to check a box claiming that they intend to meet these requirements before they borrow from the facilities would not be sufficient. Instead, as you finalize the process through which recipients of the assistance will certify their eligibility for these facilities, I urge you to impose three requirements:

- First, the certification procedures put in place must be robust and comprehensive.
- Second, businesses must be required to reaffirm their eligibility so long as bonds their loans remain outstanding. This means that CEOs and executives should be required to periodically conduct due diligence to ensure that they still meet the relevant eligibility criteria.
- Third, all certification paperwork should contain clear language that indicates that the executives are subject to civil and criminal penalties, including disgorgement, if they

⁴ Office of the Special Inspector General for the Troubled Asset Relief Program, “Notable Investigations,” <https://www.sig tarp.gov/Pages/investigations.aspx>

⁵ LexisNexis Legal NewsRoom, “‘Staggering’ \$1.4 Billion Fraud That Doomed Colonial Bank Nets Farkas 30 Years,” Steven A. Meyerowitz, June 30, 2011, <https://www.lexisnexis.com/legalnewsroom/financial-fraud-law/b/blog/posts/staggering-1-4-billion-fraud-that-doomed-colonial-bank-nets-farkas-30-years>

⁶ Senator Elizabeth Warren, “Rigged Justice: How Weak Enforcement Lets Corporate Offenders Off Easy,” January 2016, <https://www.warren.senate.gov/oversight/reports/senator-warren-releases-and-quotrigged-justice-and-quot-first-annual-report-detailing-how-weak-federal-enforcement-lets-corporate-offenders-off-easy>.

⁷ Board of Governors of the Federal Reserve System, “Main Street Lending Program,” May 16, 2020, <https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm>

⁸ Board of Governors of the Federal Reserve System, “Main Street Lending Program Frequently Asked Questions,” April 30, 2020, <https://www.federalreserve.gov/monetarypolicy/files/main-street-lending-faqs.pdf>

⁹ *Id.*

¹⁰ *Id.*

provide fraudulent or misleading information or misuse funds, and should be required to immediately repay their loans for the full amount when eligibility criteria are breached.

It is still my hope that the Fed will impose stronger conditions attached to these funds, as I have previously requested.¹¹ I believe it is essential to ensure that the primary beneficiaries of this bailout are workers, not executives and shareholders. However, the Fed's reluctance to impose these basic conditions to protect workers has made it all the more necessary that the certification process includes strict and severe penalties for violations of eligibility criteria to ensure that individuals do not violate the terms of participation in these taxpayer-backed programs. You have been trusted to administer these bailout funds, and it is incumbent on you to develop a comprehensive certification process that adequately protects the taxpayers who provided them.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Warren", written over a horizontal line.

Elizabeth Warren
United States Senator

cc: Jerome H. Powell, Chair, Board of Governors of the Federal Reserve
Steven T. Mnuchin, Secretary, U.S. Department of Treasury

¹¹ Letter from Senator Warren to Secretary Mnuchin and Chairman Powell, March 31, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.03.31%20Letter%20to%20Mnuchin%20re%20CARES%20Act.pdf>.