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April 16, 2020

The Honorable Jerome H. Powell  
Chair  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

The Honorable Steve Mnuchin  
Secretary  
Department of the Treasury  
1500 Pennsylvania Avenue, NW Washington, DC 20220

Dear Chair Powell and Secretary Mnuchin:

I write to you in regard to last week's announcement that the Federal Reserve System (Fed), in conjunction with the Department of Treasury (Treasury), will provide \$600 billion in loans to small and mid-sized businesses with up to 10,000 employees using funds provided in the *Coronavirus Aid, Relief, and Economic Security (CARES) Act*.<sup>1</sup> I am concerned that, in establishing this new program to bail out thousands of medium-sized companies, you did not use your authority to appropriately protect workers and taxpayers, and that you chose not to use a specific provision in the CARES Act that gave you explicit recommendations on how to do so. Congress provided you with this funding to protect workers, taxpayers, and the economy, and I urge you to reconsider program requirements to make sure that these funds are used for those purposes.

The CARES Act contained a specific provision stating that "the Secretary shall endeavor to seek the implementation of a program ... that provides financing to banks and other lenders that make direct loans to eligible businesses ... with between 500 and 10,000 employees," at an annual interest rate no higher than two percent.<sup>2</sup> This provision continued, indicating that businesses that participate in this program must certify that they meet ten conditions,<sup>3</sup> including that (a) funds will be used to keep at least 90% of the recipients workforce until September 30, 2020, and, (b) that the recipient intends to restore at least 90% of its original workforce, with all compensation and benefits, after the public health emergency is over, and (c) that the recipient has a majority of its employees based in the United States, and (d) the recipient will not pay dividends or repurchase stock while the loan is outstanding; and (e) the recipient will not

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<sup>1</sup> Board of Governors of the Federal Reserve System, "Federal Reserve takes additional actions to provide up to \$2.3 trillion in loans to support the economy," April 9, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm>; Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, <https://www.congress.gov/bill/116th-congress/house-bill/748>.

<sup>2</sup> CARES Act 4003(c)(3)(D).

<sup>3</sup> CARES Act 4003(c)(3)(D)(I) through section 4003(c)(3)(D)(X).

outsource jobs during the course of the loan and for two years thereafter, and (f) the recipient will not abrogate collective bargaining agreements and remain neutral in any organizing efforts.

But rather than creating a facility with these requirements in place or incorporating them into the Main Street facility that was already under development you instead proceeded to use \$75 billion in taxpayer funds to create the Main Street Lending Program with more limited requirements from a different section of the CARES Act, requiring only that the companies seeking these “loans must commit to make reasonable efforts to maintain payroll and retain workers,”<sup>4</sup> that the companies refrain from stock buybacks or dividend payments until 12 months after the loan is repaid, and that the company place limits on compensation increases for highly paid executives.<sup>5</sup> Even these limited requirements appear to be full of loopholes and unanswered questions. For example, with regard to the “reasonable efforts” provision, the Fed has “yet to strictly define what that means or how it will be enforced.”<sup>6</sup>

In other words, the Federal Reserve is handing out billions of dollars with little oversight and failing to require basic protections that companies retain workers and maintain payroll, failing to include protections against outsourcing, and failing to retain basic protections for union workers. Absent these protections, it is not clear how these bailouts will help American families and workers.

To be sure, your actions are allowed under the CARES Act. Although Congress recommended the protections noted above for a medium-sized business facility, it did not require them for the Main Street Lending Program, and you may, under your extensive existing authority to provide loans without these requirements. But by the same token, your authority under the CARES Act and the Federal Reserve’s authority under Section 13(3) of the *Federal Reserve Act* gives you the ability to require additional protections to prevent abuse of these taxpayer funds. On Tuesday, March 31, 2020, I sent a letter to both of you regarding this broad authority, urging you to use it to ensure that bailout funds protect workers and do not reward corporate misbehavior, and to ensure that the funds are protected by strong anti-corruption and transparency rules.<sup>7</sup>

Specifically, I urged you to require that any company receiving any backing under the CARES Act use funds to keep workers employed and maintain at least 95% of payrolls, provide a \$15 hourly minimum wage, do not use taxpayer funds to enrich corporate executives through executive compensation mechanisms, and other strict conditions to prevent the misuse of these

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<sup>4</sup> Board of Governors of the Federal Reserve System, “Federal Reserve takes additional actions to provide up to \$2.3 trillion in loans to support the economy,” April 9, 2020,

<https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm>.

<sup>5</sup> These limits are found in section 40039(c)(3)(A)(ii) of the CARES Act. Board of Governors of the Federal Reserve System, Term Sheet: Main Street New Loan Facility, April 10, 2020,

<https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a7.pdf>.

<sup>6</sup> New York Times, “With \$2.3 Trillion Injection, Fed’s Plan Far Exceeds its 2009 Rescue,” April 9, 2020, <https://www.nytimes.com/2020/04/09/business/economy/fed-economic-rescue-coronavirus.html>.

<sup>7</sup> Letter from Senator Warren to Secretary of the Treasury Mnuchin and Board of Governors of the Federal Reserve System Powell, March 31, 2020,

<https://www.warren.senate.gov/imo/media/doc/2020.03.31%20Letter%20to%20Mnuchin%20re%20CARES%20Act.pdf>; Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, <https://www.congress.gov/bills/116th-congress/house-bill/748>.

funds.<sup>8</sup> I also urged you to ensure that companies receiving taxpayer funds are liable for all assistance received if the company violates these terms.<sup>9</sup> You included none of these protections among the requirements for these bailout funds.

I ask that you reconsider and resolve this problem before finalizing program requirements. To do so, I ask that you include the following for any recipient of funds under the Main Street Loan facilities:

1. Ironclad workforce retention and restoration protections, as described in Section 4003(c)(3)(D)(II) and Section 4003(c)(3)(D)(III) of the CARES Act.
2. Protections against outsourcing, as described in Section 4003(c)(3)(D)(II) and Section 4003(c)(3)(D)(VIII) of the CARES Act.
3. Protections for collective bargaining agreements and unionized workers, as described in Section 4003(c)(3)(D)(IX) and Section 4003(c)(3)(D)(X) of the CARES Act.
4. Requirements that the loan recipient provide a \$15 minimum wage within one year of receiving a loan.
5. Requirements that the CEOs of companies receiving bailout make personal, annual certifications to Treasury and the Federal Reserve that their companies are complying with the rules, ensuring that these CEOs would face civil and criminal penalties for violating these terms.
6. Requirements that recipients of funds be held liable to the federal government for all assistance received if they violate any of the terms of their agreements with taxpayers.
7. A ban on political spending or lobbying expenditures for the duration of the assistance for any recipients of bailout funds.

I also ask that, as you administer the program, you do so in a transparent manner, so that Congress and the public have a clear understanding of the rationale for all actions taken by Treasury and the Federal Reserve, knowledge of all recipients of bailout funds, and a clear explanation of the terms and conditions of all loans or assistance.

I appreciate your consideration of these matters and am happy to discuss them in more detail with you or your staff.

Sincerely,



Elizabeth Warren  
United States Senator

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<sup>8</sup> Letter from Senator Warren to Secretary of the Treasury Mnuchin and Board of Governors of the Federal Reserve System Powell, March 31, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.03.31%20Letter%20to%20Mnuchin%20re%20CARES%20Act.pdf>; Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, <https://www.congress.gov/bill/116th-congress/house-bill/748>.

<sup>9</sup> *Id.*