April 16, 2020

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

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

Dear Sirs:

For more than 25 years, the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) have partnered to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of 1,500 firms that own, develop, manage and finance apartments. As a federation of more than 160 state and local affiliates, NAA encompasses over 73,000 members representing nearly 9 million apartment homes globally. One-third of all Americans rent their housing and 40 million of them live in an apartment home.

We commend you for the leadership in supporting businesses during the COVID-19 crisis. As requested, in your announcement, we write to you to provide comments on the Main Street Lending Program: *Main Street New Lending Facility* (MSNLF) and *Main Street Expanded Loan Facility* (MSELF) established on April 9. The scope of this program is potentially very broad, and its impact on the United States economy could be substantial. We are providing our initial observations but also stand ready to continue to work with you to enhance the program to ensure its maximum effectiveness for the multifamily industry.

Our comments concern:
- Ensuring MSNLF and MSELF Conforms to the Intent of the *Coronavirus Aid, Relief, and Economic Security (CARES) Act;*
- Loan Underwriting;
- Loan Parameters; and
- Loan Use

Conforming Changes to CARES Act Intent

The intent of the Payroll Protection Program (PPP) enacted as part of the *CARES Act* is to support small businesses impacted by COVID-19 and to assist those enterprises to retain their employees. Eligible small businesses are provided relief from repayment of PPP loans if certain conditions are met regarding the retention of employees. While the MSNLF and MSELF facilities are also intended to support the needs of small and medium-size businesses during the downturn, these programs, unfortunately, do not offer similar relief offered under the PPP. Given that the goal of supporting businesses is paramount, NMHA and NAA believe that the Federal Reserve should offer a similar approach to repayment relief to the MSNLF and MSELF facilities as the Small Business Administration provides for the PPP. Specifically, we recommend that the Federal Reserve provide a loan forgiveness feature similar to that applicable to the PPP loans. Specifically, The loans from the MSNLF and MSELF facilities could become fully or partially forgivable if tied to specific business activities such as retaining employees and meeting other operational and financial obligations. Rental housing providers are gravely concerned about their ability to keep up with their financial responsibilities, which remain unchanged as more jurisdictions adopt renter protections with limited relief for housing providers. Owners and operators rely on rental income to pay employee payroll, mortgage payments, taxes, insurance and, importantly, use these funds to maintain continuity of essential services for apartment communities as many renters must shelter in place.

Loan Underwriting:

Underwriting Guidance
The Federal Reserve will rely on the banking system to underwrite and disburse funds from the two loan facilities. While the term sheet provided in the Federal Reserve's announcement describes certain loan provisions and qualifying parameters that borrowers must meet to qualify, it falls short in providing details regarding the loan underwriting process. As the expeditious disbursement of funds is critical for businesses to continue operating, we request further guidance on the requirements that lending institutions will need to follow to underwrite loan requests, as well as the specific company financial information that borrowers will need to provide. Without further specific guidance banks that will be underwriting and making the decisions to approve loans, approvals and disbursements will be delayed, denying funds to businesses at a critical time.

Loan Sizing
For the MSNLF, loan limits are based on the lesser of 1) $25,000,000 or 2) an amount when added to outstanding debt plus committed but undrawn debt is no more than 4 times earnings before interest, taxes, depreciation and amortization (EBITDA). Loan sizing using this methodology fails to account for business models that vary widely in their net profitability and debt leverage such as firms in the multifamily business. Real estate businesses often generate passive and/or non-cash expenses that reduce EBITDA, thereby reducing the maximum loan amount available. This could result in a loan amount that would fall short of supporting necessary business operations. Finally, loan limits may be constrained by limiting the use of EBITDA for only 2019. If a company experienced a one-time event in 2019 that reduced their EBITDA, they would have their borrowing capacity reduced. The multifamily industry requests that the Federal Reserve consider changing the underwriting to reflect the business nature of the multifamily business which is a more leveraged business whereby EBITDA may not accurately reflect the financing need of the business. Alternatively, but less desirable as an option, is to allow

the businesses the option to use an average of EBITDA between 2017 and 2019or provide lenders underwriting flexibility to evaluate borrowers that may have experienced a drop in their 2019 EBITDA due to an unusual circumstance unrelated to COVID-19 and that would not have been likely to persist in 2020 in the absence of COVID-19.

Loan Parameters

Borrower Fees
NMHC and NAA request that borrowers be permitted to finance, in the loan proceeds, the obligation to pay the lender a 100bps origination fee based on the loan amount, and, at the option of the lender, pay the origination fee the lender will pay to the Federal Reserve based on the loan amount sold to the Federal Reserve. We also have the following additional questions:

- While loan repayment is deferred for one year, does interest accrue during that time?
- If a loan is fully repaid at the end of the deferral period is the payoff amount simply the loan amount?

Interest Rate Determination
The interest rate for program loans ranges from SOFR+ 250bps to 400bps, yet there is no guidance offered to determine the specific spread the lender will charge. To make the program easier to execute, we recommend selecting a single spread. In particular, we recommend that the spread on the entire loan amount be split with the lender receiving a fixed spread similar to what is proposed in the guidance with the caveat that the portion of the loan purchased by the Federal Reserve should accrue interest at a rate near or under one percent. The blended interest rate on the loan would be at a level appropriate to supporting businesses impacted by COVID-19.

Employee Retention
The facility term sheets require the borrower to attest that they "will make reasonable efforts to maintain its payroll and retain its employees during the term of the Eligible Loan" yet it offers no detail on how this will be determined. We request guidance with respect to how that requirement will be determined, monitored, assessed and enforced. We believe specific guidance must be provided if this requirement is to be included in the term sheet. See our recommendation, in the section titled **Conforming Changes to CARES Act Intent,** on how to utilize employee retention as an evaluative tool.

Loan Uses

Payment on Higher Priority Debt
We note that loan proceeds cannot be used to repay other debt of equal or lower priority. Additionally, while it appears permissible to repay principle of a debt of higher priority, it is unclear if proceeds may be used to repay interest applicable to such debts. We request

that guidance clarify that loan proceeds may be used to repay interest and principle applicable to debt of higher priority.

Restricted Uses
The *CARES Act* imposes restrictions on the use of loan proceeds from the MSNLF and MSELF facilities, including the ability to distribute dividends. We believe that restricting dividend distributions over a four-year loan repayment period is overly restrictive. Accordingly, we recommend that the Federal Reserve enable borrowers to distribute dividends if certain financial metrics are met, such as those pertaining to liquidity levels and financial performance. Further, REITs represent a critical provider of housing yet are precluded from using this program due to the restriction on dividend distribution. We request providing a waiver to enable REITS to participate in the program given that they are statutorily required to distribute net earnings via dividends after satisfying all financial obligations that include loan repayments.

Thank you for your attention to these matters. Please feel free to contact Cindy Chetti, SVP of Government Affairs with any questions at 202-974-2328 or cchetti@nmhc.org if our organizations can be helpful in addressing these or other matters further.

Sincerely,

Doug Bibby
President
National Multifamily Housing Council

Bob Pinnegar
President
National Apartment Association