August 12, 2020

Chairman Jay Powell
Board of Governors of the Federal Reserve System
20th St. and Constitution Ave. NW
Washington, DC 20551
ATTN: Staff of Main Street Lending Facilities

President Eric Rosengren
Federal Reserve Bank of Boston
600 Atlantic Avenue
Boston, MA 02210

Dear Chairman Powell and President Rosengren:

On behalf of the 17 undersigned organizations, we are writing concerning the application of the affiliation rules governing eligibility for loans from the Main Street Lending Programs (MSLP), which are only available due to the appropriation of public funds by Congress. These rules determine whether Main Street loans are limited to mid-size businesses or will become accessible to what are effectively much larger companies. We are particularly concerned about the possibility that weakening affiliation rules could provide inappropriate access to Main Street Lending Facilities for private equity owned companies, without requiring strict conditions to protect public funds from being diverted from their public purpose by the private equity owner.

As it stands, a majority owner of a company that collectively employs over 15,000 employees is ineligible for access to the Main Street Lending Program. For important public policy reasons, which the Federal Reserve is well aware of, this affiliation requirement blocks access by larger firms and should not include artificially un-affiliated portfolio firms of private equity companies.

While many businesses are struggling as a result of the pandemic, private equity backed businesses are distinct in that their business model is based on extreme leverage, often pushing the companies to operate on the very edge of bankruptcy to maximize the private equity owners' short term profits. Moreover, private equity firms are generally based on a wealth-extraction business model where the owners often divert funds from portfolio companies to the private equity fund or general partners, through dividend payments or in the form of monitoring or other fees charged to the company. Once diverted, such funds are not available for internal company purposes. Importantly, they will also not be available to pay back the loan, as the private equity firm is structured so the fund owners are bankruptcy remote from the portfolio companies.

Weakening the affiliation rule and making it easier for private equity firms to benefit from these programs – especially in the absence of strong conditions requiring worker retention, wage protection, investment in worker safety, or other public priorities – puts public funds at risk of supporting the private equity firms' partners while doing little if anything to preserve jobs or Main Street businesses.

In previous letters and comments our organizations have supported strong job retention and worker safety preconditions to any Federal Reserve assistance.[1] We continue to support such

[1] "Letter to Congressional Leadership on Conditions for Covid-Related Assistance", available at https://bit.ly/30QPK3V ; Americans for Financial Reform Education Fund, "Comment Letter to the Federal Reserve on April 9th Facilities", available at https://bit.ly/3gMOJzg .

conditions and believe that they would achieve the public purpose of these programs while greatly reducing the likelihood of exploitation and abuse. In the specific case of affiliation rules and potential private equity access to the MSLP, we make the following additional recommendations:

- Maintain strong affiliation rules so that large private equity companies with access to capital markets financing (not to mention access to ample "dry powder") cannot take out loans for their portfolio companies.

- If private equity firms are allowed to access the public funds in the MSLP for their portfolio companies, require that loan proceeds be kept in the portfolio companies by banning dividends, monitoring fees, or any other form of transferring funds from the portfolio firm to the parent fund, general partner, or any other business or individual directly or indirectly affiliated with the parent fund or general partner. While dividends denominated as such are currently banned, other forms of transferring or draining value are not but should be.

- If private equity firms are allowed to access Main Street loans for portfolio companies, the Federal Reserve must require that the private equity fund be jointly liable with the portfolio firm for repaying the loan and for any other liability associated with the receipt or use of the proceeds of the loan. In the absence of such requirements, any funds moved from the portfolio company to the private equity parent will not be available to achieve the public purpose of the loan or to repay the public.

It is also important to take additional steps to make sure that the affiliation rules are properly enforced, including by ensuring that private equity owners do not use controlled shell companies to evade the majority ownership requirement of the affiliation rules. Many private equity backed companies which were not statutorily exempted from affiliation rules have been able to access the PPP program.[2]

We urge you to maintain strong affiliation rules in order to continue to focus the MSLP on genuine middle market companies, and, in the event that the Federal Reserve allows private equity firms to access the public funds made available in the program, to take steps to eliminate the ability of the parent fund to misuse or drain loan proceeds from the portfolio company and avoid liability for paying back the loan. Finally, we urge you, again, to impose meaningful conditions around retaining jobs, worker safety, or adequate protections against diversions to executives for all companies, including those that are owned or controlled by private equity firms. Thank you for your attention to these matters.

Sincerely,

Action Center for Race and the Economy (ACRE)
AFL-CIO

[2] Louch, William, "Private Equity Firms Borrow from PPP Program, Despite Later Rules Barring Them", Wall Street Journal, July 7, 2020. Available at https://on.wsj.com/3iDodJo

American Economic Liberties Project
American Federation of State, County and Municipal Employees (AFSCME)
Americans for Financial Reform Education Fund
Better Markets
California Reinvestment Coalition
Center on Economic and Policy Research (CEPR)
Center for Popular Democracy (CPD)
Communications Workers of America
Consumer Federation of America
Private Equity Stakeholder Project
Project on Government Oversight (POGO)
Public Citizen
Strong Economy for All
Transform Finance
United for Respect