Milken Institute Center for Financial Markets

COVID-19 Legislative and Regulatory Recommendations

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The Milken Institute[1] is a nonprofit, nonpartisan think tank that helps people build meaningful lives in which they can experience health and well-being, pursue effective education and gainful employment, and access the resources required to create ever-expanding opportunities for themselves and their broader communities. The Center for Financial Markets (CFM)[2] conducts research and constructs programs designed to facilitate the smooth and efficient operation of financial markets—to help ensure that they are fair and available to those who need them when they need them.

Given the negative economic ramifications the spread of the COVID-19 virus is already causing to the US economy—the potential closure of thousands, perhaps tens of thousands of small businesses, and spiraling unemployment rates—time is of the essence. CFM submits the following recommendations:

I. **Provide Access to Capital for Businesses in Economically Distressed Communities**

II. **Leverage Financial Technology (FinTech) to Accelerate Access to Capital, Financial Inclusion, and Transparency and Compliance to Protect the System**

III. **Protect 3 Million State and Local Jobs and Building Community Resilience**

IV. **Build More Resilient Infrastructure through Local and National Public-Private Partnerships**

V. **Protect Consumers with a Safer, Sustainable, and Functioning Housing Finance System**

VI. **Include the 12.3 million people on the frontlines of the pandemic response in economic stimulus measures**

Individuals, small businesses, and communities are already struggling with the spread of COVID-19, which is unlikely to dissipate anytime soon. In addition to providing immediate economic support and financial assistance to those in need, we must ensure lawmakers, regulators, and administration officials consider the long-term goal of building a more resilient economy to withstand future pandemics and other adverse economic shocks.

1. Milken Institute, https://milkeninstitute.org/.
2. Milken Institute Center for Financial Markets, https://milkeninstitute.org/centers/center-for-financial-markets.

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1. Clarify and increase resources for the Small Business Administration's (SBA's) Paycheck Protection Program (PPP) to ensure access for underserved communities.
2. Amend Federal Deposit Insurance Corporation (FDIC), Federal Reserve, and Office of the Comptroller of the Currency (OCC) regulatory standards to allow banks (less than 5 billion USD in assets) that target lower- and middle-income (LMI) communities more flexibility–such as a wider range within key ratios they must maintain (i.e., liquidity, capital adequacy, and leverage)–to not only be in good standing but also continue to provide capital as needed.
3. Expand Treasury's Minority Bank Deposit Program to increase deposits in MDIs and adjust the Small Business Administration Guarantee Program to cover 100 percent of targeted small business loans that target LMI communities to ensure continued capacity to provide access to capital.
4. Increase appropriations for the Minority Business Development Agency (MBDA) to create growth equity funds in support of affected Minority-owned Business Enterprises (MBEs) and diverse investment managers.
5. Include federal resources to enhance the Tier 1 Capital of banks that support underserved communities (e.g., Minority Depository Institutions and Community Development Financial Institutions) by fully capitalizing and leveraging Treasury's CDFI Fund Program.
6. Amend the 2017 Tax Cuts and Jobs Act to allow investments in MDIs and CDFIs to qualify for Opportunity Zone benefits.
7. Drive repatriation of strategic supply chains and job growth in underserved communities by amending the Opportunity Zone initiatives.
8. Enlist a wider spectrum of Opportunity Zone (OZ) investors in post-COVID recovery efforts by extending key deadlines.
9. Expand the Federal Reserve's Term Asset-Backed Securities Loan Facility (TALF) to all investment-grade asset-backed securities (ABS).
10. Relax Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC) third-party risk management requirements to further enable insured depository institutions with less than $5 billion in assets to leverage technology solutions and bank-nonbank partnerships to more effectively respond to small business concerns in affected communities.
11. Provide guidance on the eligibility of "other lenders" to participate in the Federal Reserve's Paycheck Protection Program Lending Facility (PPPLF).
12. Increase the number of nonbank licenses with proven LMI focus.
13. Create a mechanism to track the types of small businesses receiving funding from the PPP.
14. Develop new revenue sharing strategies to support essential and sustainable public services.
15. Create a public-private community solutions team at the Treasury Department to support long-term recovery through financial innovation.
16. Develop a playbook of replicable activities for local economic development to help train public sector leaders on how to leverage public investment dollars and build economic resilience.
17. Create a State and Local Predevelopment Assistance Fund to close the financing gap and act as a catalyst for public-private partnerships.
18. Create and fund a national network of frontline regional accelerators linking predevelopment assistance with permitting and other best practices to accelerate resilient infrastructure projects.
19. Create a requirement and incentive to encourage local sponsors of major infrastructure projects to conduct an Infrastructure Risk and Resilience Assessment (IRRA) to ensure that life cycle project costs, maintenance needs, and other risks are considered, along with alternative financing and management measures to leverage scarce public dollars.
20. Utilize borrower relief measures such as payment forbearance, foreclosure and eviction moratoria, and relief from reporting COVID-19-driven credit events to credit reporting bureaus.
21. Ensure advance funding liquidity to servicers through Federal Reserve 13(3) financing and a US Treasury backstop or other measures.
22. Continue Federal efforts to support the stability of the housing finance system, including the provision of liquidity to the secondary mortgage markets through Fed Bank MBS purchases, the relaunch of TALF, and similar measures.
23. Renew with appropriate revisions and extend nationwide, Treasury's Hardest Hit Fund (HHF).
24. Consider Qualified Mortgage (QM) rule and other underwriting changes to address longer-term COVID-19 impacts on consumer access to sustainable mortgage credit.
25. Include Main Street Lending, PPP, and paid sick leave relief for all nonprofits regardless of the number of employees.

I. Provide Access to Capital for Businesses in Economically Distressed Communities.

Many individuals and businesses were unable to survive the economic recession that followed the 2008 global financial crisis because they did not have adequate access to capital to pay their obligations (e.g., employee wages, supplier invoices, and debt payments). Unfortunately, a significant number of bank closures ensued, particularly in economically disadvantaged communities. Already underserved, small businesses in low- and moderate-income (LMI) census tracts experienced worsening access to capital.

Today, we face a global health crisis that will undoubtedly result in a deep economic recession. As Congress debates the contours of an economic stimulus package, it must prioritize historically disadvantaged communities. As such, there is a need to ensure financial institutions that support these communities—Community Development Financial Institutions (CDFIs) and Minority-owned Depository Institutions (MDIs)[3]—have the resources they need to continue to do so.

1) **Enhance the Paycheck Protection Program (PPP): Clarify and increase resources for the SBA's PPP to ensure access for underserved communities.** Within the first few hours of the PPP accepting applications during both the first and second rounds, billions of dollars in applications were received, causing many lenders to limit their involvement due to resource capacity constraints. Clearly, as the original $350 billion threshold was quickly met, so will the second round, prompting the question of a need for additional resources. Notwithstanding the high adoption, many stakeholders have complained of a lack of clarity on a number of issues that have limited its effectiveness. First, with a significant number of low-income populations living in communities without a bank branch, ensuring community lenders (i.e., MDIs and CDFIs) that have a presence in those areas have an earmarked allocation to the PPP will be critical to its effectiveness. Efforts to create a $60 billion set-aside, although laudable, missed the fact that 99 percent of all banks fall into the sub-$50 billion in assets category, and thus, did little to assure MDIs and CDFIs were able to meet the needs of their communities. There is a need for a dedicated carve out for MDIs and CDFIs, explicitly. Similarly, there are a number of potential secondary market lenders interested in contributing to the PPP's mission; however, the SBA's requirements that only PPP lenders can purchase PPP loans on the secondary market is limiting and should be amended to allow any lender to purchase the loans, with full assignability of guarantee terms. In addition, many small businesses are supported by different equity investors with varying capital structures. The current affiliation rules prohibit many small businesses that have multiple equity investors (i.e., private equity) from participating and lenders from being able to certify them appropriately.

2) **Regulatory Relief: Amend FDIC, Federal Reserve, and OCC regulatory standards to allow banks (less than 5 billion USD in assets) that target LMI communities more flexibility—such as a wider range within key ratios they must maintain (i.e., liquidity, capital adequacy, and leverage)—to not only be in good standing but also continue to provide capital as needed.** Past research has shown most small businesses only have a few short weeks of cash on hand. A significant number of small businesses in affected neighborhoods will suffer substantial reductions in income, and therefore, require even more access to capital. Banks that may be willing to support these businesses are not going to be able to if it exceeds their regulatory thresholds. Banks with less than 5 billion USD in assets represent 96 percent of all banks, but only 14 percent of all assets. Given the smaller scale of these banks and limited risk to the broader financial system, adjusting some thresholds could be an acceptable risk to reduce the effect of the current economic shock.

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3. CDFIs are mission-focused financial institutions that serve low-income communities and people, as well as others lacking access to capital. There are 1,104 US Treasury Department certified CDFIs nationwide that include a wide range of regulated (banks and credit unions) and nonregulated (loan funds and venture capital funds) entities as of July 2018. In particular, a subset of banks, MDIs as defined under Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), some of which are also CDFIs, have a particularly long-standing history of service to low-income communities.

3) **Balance Sheet Relief: Expand Treasury's Minority Bank Deposit Program to increase deposits in MDIs that target LMI communities to ensure continued capacity to provide access to capital.** Irrespective of regulations and equity capital on their balance sheets, banks need deposits to lend back out into the community. Programs like Treasury's Minority Bank Deposit Program should be resourced to increase deposits for MDIs rapidly. With such actions, banks that target underserved communities will be better resourced to maintain their critical functions.

4) **Minority Business Investment Support: Increase appropriations for the Minority Business Development Agency (MBDA) to create growth equity funds in support of affected Minority-owned Business Enterprises (MBEs) and diverse investment managers.** MBDA is the only federal agency tasked with promoting the growth and competitiveness of MBE. Traditionally, the primary source of startup and acquisition funding for all small businesses is savings and equity investments from personal networks and, secondarily, bank loans. However, to minority-owned businesses, the second most prevalent source of funding is credit cards, which are typically higher-cost products designed to fund short-term liquidity, not catalyze long-term growth. With minority founders receiving only 1 percent of venture capital funding, ensuring a more diverse set of asset managers that target them is critical. With the economic slowdown, this period can be even more arduous, and the ability of MBEs to secure appropriate capital will largely depend on a more diverse set of asset managers that target them. With dedicated focus and resources to create growth equity funds in support of affected MBEs, affected communities can be helped to not only withstand the immediate crisis, but to also be in a stronger position to recover and grow, resulting in more jobs, economic activity, and resilience in underserved communities.

5) **Short-term Capital Support: Include federal resources to enhance the Tier 1 Capital of banks that support underserved communities (e.g., MDIs and CDFIs) by fully capitalizing and expanding Treasury's CDFI Fund Program.** A critical component of the resilience of the banking sector is the amount of Tier 1 Capital it has. Without sufficient Tier 1 Capital, not only are banks limited in the amount of deposits they can take in, but it also hampers their ability to weather loan losses. In this unprecedented economic shock, many financial institutions, especially those in underserved communities, will have increased delinquent loans. Although federal government efforts to stand up new loan loss reserves are important, standing up a new federal program with significant red tape will create a bottleneck when speed is necessary. A more sustainable effort would be to fully capitalize and leverage Treasury's CDFI Fund Program to provide direct Tier 1 capital support to banks that support LMI communities, and without triggering Bank Holding Company (BHC) US Code, Title 12, Section 1841 limitations.

6) **Long-term Capital Support: Amend the 2017 Tax Cuts and Jobs Act to allow investments in MDIs and CDFIs to qualify for Opportunity Zone benefits.** Because Qualified Opportunity Zone Businesses cannot have more than 5 percent of their assets in "nonqualified financial property" (as defined in US Code, Title 26, Section 1397C(b), Paragraph 8), CDFIs are excluded from eligibility for Qualified Opportunity Fund investments. CDFIs are already working in low-income communities eligible for Opportunity Zone designation. They know the markets and have strong records of accomplishing positive impact in low-income communities. There is a need for an amendment that makes the inclusion of CDFIs as qualified Opportunity Zone investment to Section 1400Z-2 because this would enable critical private capital to contribute to the economic stimulus and development of low-income communities. Moreover, the amendment should protect minority-ownership status, to the extent that they are also MDIs, from related party rules in order to comply with Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Similar to short-term capital support, this should not trigger BHC limitations, including investments from other larger financial institutions.

7) **Drive repatriation of strategic supply chains and job growth in underserved communities by amending the Opportunity Zone (OZ) initiatives.** After decades of globalization and corporations building complex supply chains around the world, the vulnerability of the United States' ability to secure necessary supplies in an emergency was made vividly clear in the COVID-19 crisis. Although the OZ benefits, introduced in the 2017 Tax Cuts and Jobs Act, are available for corporations to leverage, early uses have been muted. Because the contemplated investments are strategic, the benefit of investing in OZs is significantly reduced because they don't plan on selling the strategic investments (i.e., if they build a medical device factory, they are planning on owning the factory forever). This limits the benefit to the deferral (solely timing) and the tax reduction. That is further compounded by the fact that GAAP-reporting companies do not get any benefit from a deferral (due to deferred taxes), and many companies value GAAP benefits as much if not more than cash flow benefits. There is a need to amend legislation (for corporates in strategic sectors, especially medical devices and pharmaceuticals) to automatically get a step-up to the fair market value of an investment after ten years, even if corporations do not sell the Qualified Opportunity Zone Business Property. Further consideration should be made to prioritize strategic industries as designated by CFIUS (Committee on Foreign Investment in the United States) and Department of Homeland Security.

8) **Enlist a wider spectrum of Opportunity Zone (OZ) investors in post-COVID recovery efforts by extending key deadlines.** The landmark OZ initiative, created in the 2017 Tax Cuts and Jobs Act, required an unprecedented set up of rules and regulations to govern the initiative. Given the fact that the rules were not finalized until the end of 2019 meant a number of investors were dissuaded from participating and mobilizing capital to these underserved communities. Moreover, the early 2020 COVID crisis has further hampered investor confidence. As we seek to mobilize private capital in the post-COVID recovery, a series of extensions should be made to key deadlines. First, any capital gain realized in 2019 should have its effective date be deemed as December 31, 2019, regardless of when the realization occurred in 2019, and thus still be eligible for Opportunity Zone benefits. Second, the 180-day rule for 2019 and 2020 gains should be extended to 360 days. Third, the 2026 deadline for reaching the seven-year threshold to obtain maximum deferral and reduction benefits should be extended to 2027. With these key deadline extensions, incentives for OZ investor participation will be increased and ensure capital goes to key underserved communities throughout the country.

9) **Expand the Federal Reserve's Term Asset-Backed Securities Loan Facility (TALF) to all investment-grade asset-backed securities (ABS).[4]** Recognizing the unprecedented scale of the current crisis, the Federal Reserve reopened many lending facilities that it established during the global financial crisis, including the TALF. This time, the Treasury Department provided an initial investment of $10 billion—*one-hundred times larger* than the original TALF. The current crisis is different than previous crises only in scale but also in scope. Small businesses—the heart and soul of our economy—in every sector are on the precipice of closing simply because they do not have adequate access to capital. With each passing day, the situation moves closer to spiraling out of control and causing permanent damage. A simple change to the TALF's term sheet will provide the necessary funding to save the livelihoods of millions of consumers and businesses. The TALF should be immediately expanded from AAA-rated securitizations to include all investment-grade securitizations. To mitigate credit risk and protect taxpayers, the Federal Reserve could apply bigger haircuts to non-AAA investment-grade securitizations.

II. Leverage Financial Technology (FinTech) to Accelerate Access to Capital, Financial Inclusion, and Transparency and Compliance to Protect the System.

4. Michael Klowden and Michael Piwowar, "To Boost Liquidity, Expand the Definition of Collateral," *Wall Street Journal*, April 8, 2020, https://www.wsj.com/articles/to-boost-liquidity-expand-the-definition-of-collateral-11586386803?.

In addition to traditional banks, we need to consider how "other specialized lenders" could make an immediate, lasting impact for individuals and businesses adversely affected by COVID-19.

10) **Relax Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC) third-party risk management requirements to further enable insured depository institutions with less than $5 billion in assets to leverage technology solutions and bank-non-bank partnerships to more effectively respond to small business concerns in affected communities.** Banks with less than $5 billion in assets represent 96 percent of all banks, but only 14 percent of all assets. Given the smaller scale of these banks and limited risk to the broader financial system, adjusting some provisions could be an acceptable risk to facilitate bank-non-bank collaboration better and reduce the effect of the current economic shock.[5]

    The FDIC could also revisit its proposed guidance for third-party lending published in October 2016,[6] and further encourage partnerships between small community financial institutions and FinTech lending platforms. Such partnerships can contribute to meeting the capital needs of small businesses and individuals affected by the COVID-19 pandemic. Consideration should be made to avoid taking a blanket approach to assessing an insured institution's relationship with a third-party lender. In addition, the FDIC should be mindful of the costs that could be borne on smaller, community financial institutions that could further tilt the competitive playing field in favor of larger financial institutions.[7]

11) **Provide guidance on the eligibility of "other lenders" to participate in the Federal Reserve's Paycheck Protection Program Lending Facility (PPPLF).** In the PPPLF Term Sheet, the Federal Reserve Board states that it is working on expanding eligibility to other lenders that originate PPP loans in the near future. To ensure alignment, the eligibility requirements to participate in the PPPLF should resemble the qualifications set forth by the Small Business Administration for non-bank participation in the Paycheck Protection Program. Inconsistent requirements risk convoluting the process to partake in an all-out effort to support and maintain the small business ecosystem.

    Before the next funding round commences under the Paycheck Protection Program via the SBA, the Fed should announce guidance on the eligibility of non-depository institutions for the purposes of PPPLF. Since the launch of the PPP, eligible non-depository institutions have faced considerable constraints in being able to partake in the program given delayed guidance provided by the SBA/Treasury on eligibility. The Fed announced the launch of PPPLF in mid-April but, as of the end of this month, has yet to provide eligible non-depository institutions with any guidance on how to participate. If we truly are 'all in this together', then the Fed should provide guidance to provide capacity to these lenders to truly meet the needs of the smallest of small businesses.

12) **Increase the number of non-bank licenses with proven LMI focus.** Since the early 1980s, the SBA has limited the number of non-bank licenses for the 7(a) loan program at 14. That limitation has remained unchanged for nearly 40 years. While thousands of banks can participate in the 7(a) loan program, the SBA has kept limits on non-bank participation, despite the influx of non-bank financial services providers to the small business lending market. Current SBA policy puts non-banks at a substantial competitive disadvantage. The SBA could review

5. Aron Betru, Christopher Lee, Ragini Chawla, "Empowering Communities and Their Banks: Strategies for Enhancing Minority Depository Institutions" (Milken Institute, January 13, 2020), https://milkeninstitute.org/reports/empowering-communities-and-their-banks-strategies-enhancing-minority-depository.
6. FDIC Seeking Comment on Proposed Guidance for Third-Party Lending, Federal Deposit Insurance Corporation, Press Release, October 27, 2016, https://www.fdic.gov/news/news/financial/2016/fil16050.html.
7. Aron Betru and Jackson Mueller, Comment Letter to the FDIC: Proposed Guidance for Third-Party Lending, Milken Institute, October 27, 2016, https://milkeninstitute.org/reports/comment-letter-fdic-proposed-guidance-third-party-lending.

its policies related to non-bank licensing and lift the ceiling that currently prevents non-bank lenders from leveraging the 7(a) program to make further inroads into supporting small businesses in underserved markets.

13) **Create a mechanism to track the types of Small Businesses receiving funding from the PPP.** Given the information currently provided to the SBA by participating financial institutions and non-bank entities in the Paycheck Participation Program, the SBA could develop a detailed web interface providing an aggregated view of the types of small businesses that applied and those that have received SBA guaranteed loans under the PPP. Implementation of such an effort could be launched as part of the information gathering required during the forgiveness process, to begin in six months. Currently, the public is only aware of differentiating top-line numbers covering approved applicants and total loan amounts. There is currently no public information available to ascertain what types of "small businesses"—as defined by the SBA—are receiving the funding. We need to make sure that Main Street firms, representing the smallest of small businesses, are receiving aid given how encompassing the SBA's definition of small businesses really is.

III. Protect 3 Million State and Local Jobs and Building Back Community Resilience.

Even before the current COVID-19 crisis, state and local government was already under fiscal stress—down 71,000 employees since January 2009 and $280 billion in lost funding since the 2008 crash. Now new estimates from the Center on Budget and Policy Priorities are predicting local and state deficits of $500 billion or more. Because the three million employees in the state and local economic sector are at the frontlines of short-term COVID-19 crisis management and essential to long-term economic recovery, we should all work to ensure that the economic stimulus package includes both short-term and long-term assistance for state and local governments. State and local communities will need ongoing support to maintain essential public services in the next six months and build a resilient recovery in the years after that utilize public-private partnerships.

14) **Develop new revenue sharing strategies to support essential and sustainable public services.** Working with federal, state, and local leaders to ensure that any economic stimulus package includes targeted and flexible emergency assistance for state and local governments is critical. Discussions could include a return to General Revenue Sharing (used from 1972-1986) that may offer direct federal support to state and local governments with a greater deal of speed and flexibility than other available programs. This program could be managed directly by the US Treasury.[8] There is also a need to consider developing new options to ensure that the new Municipal Liquidity Facility managed by the Federal Reserve offers equitable re-financing access to small- and medium-sized cities and counties.

15) **Create a public-private community solutions team at the Treasury Department to support long-term recovery through financial innovation.** To build a foundation for long-term economic recovery, it is necessary to lift up the importance of capacity-building incentives to stretch public investment impact using public-private partnerships. Recognizing that this funding gap would affect essential public services and distressed communities during the next recession, stakeholders need action-oriented research, trainings, and policy development to help communities learn how to better leverage public investment through public-private partnerships, impact capital, and Opportunity Zones (OZs). Considerations should be made to disseminate information transparently and frequently. For example, publish an upcoming blog on state and local fiscal stress and major policy options to help ease the pain, including revenue-sharing and predevelopment funding, to occur in phases.

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8. Backgrounder on revenue sharing: https://www.everycrsreport.com/reports/RL31936.html.

16) **Develop a playbook of replicable activities for local economic development to help train public sector leaders on how to leverage public investment dollars and build economic resilience.** Pre-COVID-19, the lack of local and state capacity to coordinate public-private collaborative solutions was a known deficiency. On the onset of COVID-19, coordinating between different federal and state economic development agency needs and private capital mobilization efforts (such as Opportunity Zones) presented both challenges, opportunities, and the need for public sector leadership to drive the economic development agenda. Through a comprehensive economic resilience playbook to help local leaders leverage public investment to maximum effect, highlights of potential best practices in procurement, economic development, and the use of public-private partnerships could be harnessed for the post-COVID recovery.

IV. Build More Resilient Infrastructure through Local and National Public-Private Partnerships.

We must build a foundation for long-term economic recovery, capacity-building incentives to stretch public investment impact using public-private partnerships. Recognizing that this funding gap would affect essential public services and distressed communities, we must learn how to better leverage public investment through public-private partnerships, impact capital, and Opportunity Zones.

The funding gap between local infrastructure needs was already trillions of dollars *before* the COVID-19 crisis. Because local infrastructure needs and natural resources differ—and 2/3 of US infrastructure is funded locally—we believe the best way to close the funding gap is through a series of bottom-up reforms to address local capacity and barriers impeding greater use of public-private partnerships. Key recommendations include:

17) **Predevelopment Assistance Funding: Create a State and Local Predevelopment Assistance Fund to close the financing gap and act as a catalyst for public-private partnerships.**[9] Predevelopment is the funding that pays for tasks that need to be completed before project construction and outside investment can occur, such as project finance expertise, architectural and engineering work, market assessments and economic feasibility studies, site/lease acquisition costs, and permitting. Predevelopment funds typically represent 10-12 percent of total project costs, and the public sector project sponsor (not investors) typically pays these upfront costs. Supporting predevelopment technical assistance funding will help build local community capacity to catalyze next-generation impact infrastructure, using public-private partnerships, impact capital, and Opportunity Zone funds.

18) **Regional Deployment Accelerators: Create and fund a national network of frontline regional accelerators linking predevelopment assistance with permitting and other best practices to accelerate resilient infrastructure projects.** To meet the national infrastructure challenge, Congress has been debating a "national infrastructure bank" for 15 years. But given the urgent challenges of resilience and climate, and the on-the-ground realities of how projects really get done at a local level, we think it is time to deploy smarter and faster by creating a national network of frontline regional acceleration centers to tackle project predevelopment, permitting, innovative public-private partnerships, and cross-agency work, in tandem with local communities.

19) **Infrastructure Risk and Resilience Assessment: Create a requirement and incentive to encourage local sponsors of major infrastructure projects to conduct an Infrastructure Risk and Resilience Assessment (IRRA) to ensure that life cycle project costs, maintenance needs, and other risks are considered, along with alternative financing and management measures that leverage scarce public dollars.** The current way we "buy" infrastructure in the US is broken. We typically buy the "low-cost" capital bid with no plan for maintaining an asset meant to last 30-40 years. To fix that, federal infrastructure funding should be

9. Dan Carol, "The Case for an Infrastructure Predevelopment Fund," *Milken Institute Review*, April 3, 2020, https://www.milkenreview.org/articles/the-case-for-an-infrastructure-predevelopment-fund.

conditioned on requiring local sponsors of major infrastructure projects to consider the whole life cycle cost and maintenance of a project.

V. Protect Consumers with a Safer, Sustainable, and Functioning Housing Finance System.

Millions of consumers—especially the financially insecure—will struggle with housing payments and face the life-changing, lasting repercussions of delinquency and default. We are working to offer practical and effective solutions to help consumers, businesses, and the housing finance system weather this unprecedented crisis. We are particularly focused on ensuring that no homeowner is left out of proposed solutions and that homeowners have access to materially similar relief without regard to the holder of the mortgage loan.

Additionally, policymakers and stakeholders must work together to deliver necessary relief without triggering another—and potentially more destructive—housing crisis that could also set back the government's broader COVID-19 stimulus efforts. Each mortgage channel—agency, government, and non-agency—has different rules and operational requirements, and providing relief requires different courses of action from different public and private entities. Policymakers and stakeholders must pay close attention to the interconnectedness of the three mortgage channels and prevent market disruptions that could spread like contagion and crater the housing finance system for years to come.

20) **Utilize borrower relief measures such as payment forbearance, foreclosure and eviction moratoria, and relief from reporting COVID-19-driven credit events to credit reporting bureaus.** We support the use of strong borrower relief measures to alleviate the financial burden on millions of Americans who will suffer massive curtailments and loss in income and employment. These measures include:

- Payment forbearance for Federally backed mortgage loans under the CARES Act for an initial period of up to six months, extendable for up to an additional six months. We also support similar forbearance with respect to non-agency mortgages, whether held on balance sheets or in private label securitizations (PLS), depending on need.[10] Shorter-term measures may not address a realistic picture of the current crisis or provide a reasonable amount of time for consumers and businesses to restart a normal-state, functioning economy.

  Additionally, the requirement for documented proof of hardship would cause delays in relief at a time when homeowners cannot afford such delays. While relief dollars would ideally be reserved for homeowners truly in need, the unique nature of the pandemic's impact on the economy and employment merits broad availability.

  Forbearance repayment alternatives must be operationally feasible, borrower-centric, and above all, reasonable, fair, and sustainable. Forborne payments may be tacked on to the end of the mortgage loan, and the loan maturity extended or carried as a non-interest bearing "second," without recasting the loan or requiring "make-up" payments as loan modifications often do. Furthermore, formal term extensions might trigger repayment purchases for certain pooled or securitized loans. Tailored loan modifications or repayment plans are also possible but could pose a payment shock for many borrowers.

  By contrast, we encourage the CFPB to provide guidance that requiring a mandatory lump sum repayment of forborne amounts at the end of the forbearance period is a prohibited predatory practice, with violators subject to punitive action.[11] A mandatory lump sum repayment would negate the relief that forbearance is

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10. We encourage the provision of forbearance relief for non-agency loans similar to that available under the CARES Act, but recognize that loans in private-label mortgage-backed securities (PLS) may be subject to rules that govern loss mitigation efforts. We expect to comment on structural best practices regarding forbearance in PLS.
11. Lump sum repayments can be optional, but guidance must be clear to prohibit threats, coercion, misrepresentation, undue pressure, or other abusive behavior that would effectively render optional repayment mandatory.

intended to provide borrowers in distress. While HUD and FHFA have issued statements prohibiting mandatory lump sum forbearance repayments, reports indicate that this practice has not been fully eliminated in the government and agency channels. Furthermore, several non-agency loan servicers and holders are conditioning forbearance on mandatory lump sum repayments. Formal CFPB action would help to curb this unacceptable practice.

Finally, regulators and stakeholders must collaborate to provide clear guidance about forbearance measures and repayment terms. Confusion and ambiguity in the communication and implementation of forbearance can exacerbate borrower distress or deter them from accessing available and needed relief.

- Foreclosure and eviction moratoria for an initial period of up to six months, to be reviewed for a possible extension if appropriate after the initial period if the National Emergency declaration is ongoing at that time. After the initial period, if a borrower or tenant is eligible for and receiving payment forbearance, the borrower should not be subject to foreclosure or eviction (nor should forbearance be denied as a means to allow the holder to proceed with foreclosure or eviction).[12]
- Relief from reporting late mortgage payments to credit bureaus during the crisis, and for a period thereafter, to give the economy time to ramp back up and those affected to rejoin the workforce.

These measures would help consumers weather the financial crisis caused by COVID-19 and stave off a tidal wave of delinquencies, defaults, and losses, the consequences of which would be felt for years. However, we cannot ignore the implications of consumer relief on investors who are entitled to receive, or on servicers responsible for advancing these forborne payments, and other amounts due and owing. As we will discuss in the next section, the failure to account for these issues could topple what is already a precarious housing finance system.

21) **Ensure advance funding liquidity to servicers through Federal Reserve 13(3) financing and a US Treasury backstop or other measures.** Congress created an unfunded mandate (perhaps the largest ever) when it provided for borrower forbearance in Phase 3 of the CARES Act. This relief will fall to servicers to provide through principal and interest (P&I) and taxes and insurance (T&I) advances. Banks should be able to draw upon sources of liquidity to make these advances. However, non-bank servicers—which constitute over 70 percent of Ginnie Mae issuers—do not have access to the same liquidity.[13] By many calculations, if 25 percent of borrowers seek forbearance for a period of 3 months, the advance bill to servicers would amount to almost $40 billion—and over $100 billion for a period of 9 months. Several of the largest non-bank servicers and other key market participants—including warehouse banks that fund them—anticipate that many servicers would fail in their advance obligations and face default and insolvency beginning in May or June 2020.

Policymakers have begun to put in place some federal assistance measures to help servicers bridge the gap and make it through what is essentially a liquidity event rather than a credit event (although the liquidity event could become a credit event). Notably, Ginnie Mae has activated the "PTAP" (Pass-Through Assistance Program) through which issuers who experience a P&I advance shortfall can turn to Ginnie Mae to fund the shortfall. This measure provides some relief but does not provide for T&I advances. Ginnie Mae also approved the inclusion of a servicing advance financing facility that leverages securitization of servicing cash flows. This will provide some additional relief but only for those servicers that are large enough to undertake these transactions economically—and such relief, while helpful, will be incremental. Phase 3 also provided for the

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12. We also acknowledge the need to provide similar relief to renters; however, the dynamic is different than in the homeowner context, which is our primary focus at this time. Rental payment relief in the absence of assistance to landlords could be financially destructive to smaller landlords who cannot afford to cover their required payments of taxes, insurance, maintenance, municipal services, and other costs that rents typically support. Solutions that alleviate this quandary are possible not only on federal but also state and local levels. We support the FHFA multifamily directive that affords relief to landlords who in turn agree to forbearance for tenants.
13. Nor did existing government capitalization and liquidity requirements ever contemplate the type of strain that COVID-19 is putting on the markets and the required capitalization and liquidity required for servicers to meet required forbearance advances.

Main Street Lending Facility, which would allow smaller issuers to seek assistance through the facility in the event of advance shortfalls. On April 9, Treasury provided further details of this plan that arguably could help smaller servicers due to the loan amount cap.[14]

Additionally, the FHFA Director recently announced Fannie Mae and Freddie Mac servicing guide revisions that would cap required advances at 120 days. This helps reduce the overall advance exposure of agency servicers.

While these and other measures offer some relief, they fail to address a significant portion of required advances and merely slow the drive towards the failure of over 300 independent mortgage banks. Nevertheless, failure looms as a growing number of borrowers request forbearance each day. In short, the servicers upon whom the government has placed the obligation of funding advances to cover forborne payments need government help to do just that.

Adding to the challenge is the market reaction to the pending liquidity issue. The mortgage market is already showing signs of great turmoil. Credit is constricted and substantial market sectors have dried up or suffered significant curtailment. Warehouse lenders are pulling back, changing terms, or issuing margin calls on warehouse lines.[15] Should these trends continue, sources of servicer liquidity will dry up much faster than policymakers anticipate, hastening the critical date on which servicers will begin the cascade of advance failures. Stakeholders—including many industry and advocate representatives, trade groups, and think tanks, including the Milken Institute—are particularly concerned that this will occur, leaving policymakers with less time to react and enact the federal support necessary to prevent the failure of hundreds of independent mortgage banks and resultant market meltdown.

The federal government should enact an operationally feasible solution as soon as possible and avoid the risk of being too late to stem another housing crisis. This relief would act as a last resort bridge to help servicers make it through the COVID-19 crisis and period of government-directed borrower forbearance. As a first priority, the government should establish a facility that would provide servicing advance liquidity in the government channel, which most stakeholders believe will see the greatest number of forbearance requests given the credit profiles of FHA borrowers. Ginnie Mae program issuers must make all required payments to Ginnie Mae mortgage-backed security holders. This means advancing payments on behalf of borrowers who fail to make their payments for whatever reason, including forbearance. Ginnie Mae backstops these payments only where the issuer fails financially and is unable to fulfill these obligations.

As noted, there is support for widespread use of forbearance as a tool to help homeowners combat what stands to be an unprecedented wave of job and income loss or curtailment. However, as also noted, this means that Ginnie Mae issuers will have to advance tens of billions of dollars of payments and risk failure, most likely by May (and sooner if market contagion eliminates sources of existing liquidity).[16] While issuers will recoup these advances upon loan liquidation, this does nothing to solve for the interim liquidity failure. There is a need to provide a process for issuers to borrow from their creditors (primarily commercial banks) in order to funds billions in advances during the COVID-19 crisis. However, even if allowed, commercial banks would

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14. Loans under this facility are available for businesses with up to 10,000 employees and less than $2.5 billion in revenue, but the loans are capped at $25 million or a lesser amount derived from the business' financial condition. Notably, despite the current focus and press priority on the servicer liquidity issue, no mention has been made of an intended benefit for servicers under the Main Street Lending Facility.
15. In fact, some of the largest REITs in the mortgage market were forced to sell bonds in order to meet margin calls from warehouse lenders. Notably, it was reported in Inside Mortgage Finance on April 3, 2020 that Redwood Trust was forced to sell most of the assets (primarily prime jumbo loans) on a warehouse line provided by the Federal House Loan Bank of Chicago after the bank changed the terms of the line.
16. Note that under current Ginnie Mae rules, issuers are unable to obtain financing of their advance obligations as they can in agency and non-agency channels. Nevertheless, a lack of liquidity in one channel can cause defaults in all three channels, and cross-default provisions can exacerbate a servicer's financial distress.

be reluctant to lend Ginnie Mae issuers the required amount of liquidity due to the credit risk of issuer failure. Therefore, the Federal Reserve and US Treasury should provide support through a repayment guarantee to commercial banks that finance Ginnie Mae issuers for the purpose of providing support to borrowers suffering distress due to COVID-19 and its fallout. These measures will also save millions of dollars in losses to the Federal Housing Administration (FHA), Veterans Affairs (VA), and US Department of Agriculture (USDA), which insure or guarantee loans in the Ginnie Mae program, by allowing forbearance and avoiding needless foreclosure and its costs. We will also avoid the human costs that caused devastation in the wake of the 2008 global financial crisis.

Ultimately, it will be important for this facility to be available to servicers in the agency, government, and non-agency channels. Working with policymakers and stakeholders, there is a need for various plans that would solidify servicer liquidity in a number of different ways. However accomplished, servicer liquidity as the most critical issue facing the mortgage market—one that must be solved at the risk of a housing crisis worse in several ways than the one we experienced in 2008.

22) **Continue Federal efforts to support the stability of the housing finance system, including the provision of liquidity to the secondary mortgage markets through Fed Bank MBS purchases, the relaunch of TALF, and similar measures.** The steps taken by the Federal government were important in alleviating already significant mortgage market dislocations. Such measures include approval for the Fed Bank to purchase MBS, the relaunch of TALF (which should be expanded to reflect post-crisis developments), and similar measures. By ensuring a liquid secondary market, policymakers will help support the continued orderly function of the primary mortgage market and the extension of mortgage credit to consumers at appropriate prices. Furthermore, in addition to steps taken by the FHFA to allow the GSEs to enter into dollar roll transactions to provide MBS investors with short-term financing of their positions, we would also support the very limited purchase of MBS by Fannie Mae and Freddie Mac. Consideration should be made on ensuring this action is appropriately limited in scope and duration, and subject to stringent oversight by the Federal Housing Finance Agency (FHFA) and full transparency to the public markets. Notably, this action could have a meaningful impact in supporting specified pools, preventing margin calls that could place severe financial strain on important mortgage investors, such as REITs and certain asset managers.[17]

23) **Renew with appropriate revisions and extend nationwide, Treasury's Hardest Hit Fund (HHF).** Created by Congress in 2008, HHF enabled state housing finance agencies (HFAs) to provide targeted aid to families hit hardest by the financial crisis of 2008. An enhanced HHF 2.0 would allow state HFAs to develop locally-tailored foreclosure prevention solutions in localities hit hard by high unemployment caused by COVID-19. Among the most effective uses of HHF during the Great Recession was the provision of mortgage payment assistance for unemployed or underemployed homeowners.

24) **Consider Qualified Mortgage (QM) rule and other underwriting changes to address longer-term COVID-19 impacts on consumer access to sustainable mortgage credit.** The Consumer Financial Protection Bureau (CFPB) and other public and private entities responsible for mortgage eligibility standards must grapple with the impact of COVID-19-driven income and employment shocks. These impairments will cause many consumers to fail eligibility criteria for favorably-priced QM loans and perhaps any form of mortgage credit.

Of note, many borrowers will fail Qualified Mortgage criteria and increasingly tightened underwriting guidelines and credit overlays, notwithstanding government forbearance efforts. As the CFPB contemplates its proposed QM rule changes, it must carefully consider the manner in which alternatives would impact consumers who have suffered loss or curtailment of income and employment due to COVID-19. Under current

17. It is critical to note that warehouse lending from Federal Home Loan Banks to REITS have begun to seize up.

QM and generally utilized underwriting standards, such adverse impacts on credit eligibility could last for a period measured in years, even after a consumer has managed to get back on his or her feet, and we make our way through the pandemic.

Furthermore, because financially vulnerable demographics are more likely to suffer pandemic-driven hardship that damages their credit profiles, COVID-19 threatens those who can least afford it and who are already struggling with financial insecurity and the challenge of access to affordable credit. The CFPB must try to maintain a commitment to credit access without sacrificing the imperative that such credit must be sustainable.

VI. Include the 12.3 million people on the frontlines of the pandemic response in economic stimulus measures.

Nonprofits employ 12.3 million people (the third largest workforce—tied with manufacturing), with payrolls exceeding those of most other US industries, including construction, transportation, and finance. A substantial portion of the nearly $2 trillion nonprofits spend annually is the $826 billion they spend on salaries, benefits, and payroll taxes every year. Yet, in multiple disaster relief laws in the past, Congress has ignored this core economic fact and approved employment-related tax credits that left nonprofit employers and employees out of the provisions.

25) **Include Main Street Lending, PPP, and paid sick leave relief for all nonprofits regardless of the number of employees.** Hospitals, community health centers, and senior living communities will continue to be hit hard by the coronavirus. Most of those organizations are charitable nonprofits. And many other nonprofits are responding to the outbreak; domestically, organizations like Meals on Wheels are aiding the less fortunate, and internationally, organizations like FHI 360 are on the frontlines in emerging hotspots in developing countries. To exclude this vital stakeholder is to exclude a key asset in response to the pandemic both in the US and internationally.