



KEY FEDERAL POINTS

The retail real estate industry faces an existential threat, which if left unaddressed, will cause long-term damage to financial markets, rampant unemployment and irreparable harm to communities across our country.

Positioning the shopping center industry for recovery is critical to the economic, civic and social viability of communities across the nation. The majority of the estimated \$6.7 trillion of consumer activity occurs within America's shopping centers, with nearly 1 out of 4 U.S. jobs retail related. Approximately \$400 billion of state and local taxes that support local communities, public safety resources and infrastructure is generated by the industry. Our entire industry is at risk if further action to support it is not taken.

ICSC, on behalf of its 70,000-member network, seeks the following relief:

Paycheck Protection Program

The PPP loans are now available to small businesses, generally those with fewer than 500 employees, and are designed to encourage businesses to keep employees on the payroll during the pandemic. Importantly, not more than 25% of the loan can be used for non-payroll costs, such as rent, utilities and interest on permitted mortgages. Additionally, the amount of the PPP loan is calculated as the lesser of 2.5x payroll or \$10 million, whichever is less.

Recommendations to Congress and Regulators:

- Loan eligibility requirements should follow the CARES law, not the SBA 7(a) "ineligibility" rule that excludes businesses that own and lease real estate property.
- Remove the 75%/25% formula to allow loan proceeds to be used towards a greater percentage of non-payroll costs.
- Any LLP and LLC recognized under state law should be considered an eligible borrower for PPP loans.
- Loan amounts should be calculated relative to the business "operating expenses" — not only "payroll expenses." Many businesses have small payrolls relative to their other fixed costs like rent and debt payments.

Main Street Lending Program & Expanded Loan Facility

ICSC is still reviewing this program but the guidance released April 9 by the Federal Reserve indicates this program for small and medium-size businesses has the potential to be helpful. We will be analyzing both to make other recommendations. Eligible Borrowers are businesses with up to 10,000 employees or up to \$2.5 billion in 2019 annual revenues. PPP borrowers may also participate in the Main Street Program.

Recommendation to Treasury:

- Waive the dividend prohibition in the Federal Reserve direct loan facility under Title IV for REITS so that they can meet statutory requirements set by the Internal Revenue Code.

Commercial Mortgage Backed Securities (CMBS) Loans

ICSC was pleased at action by the Treasury/Federal Reserve on April 9 to add CMBS loans to the Term Asset-Backed Securities Loan Facility (TALF). More needs to be done in this area to assist CMBS borrowers and the regulatory hurdles confronting servicers.

Recommendations to Treasury:

- ICSC and the broader real estate community recommends inclusion of a wider range of investment grade commercial real estate debt instruments, specifically:
 - Legacy and new issuance, investment grade, non-agency CMBS;
 - Investment grade Agency Credit Risk Transfer (CRT) securities;
 - Legacy and new issuance Single-Asset, Single-Borrower (SASB) CMBS;
 - Commercial real estate (CRE) collateralized loan obligations (CLOs); and
 - U.S. commercial real estate (CRE) first mortgage loans (which have capital charges equivalent to investment grade/NAIC CM 1 and 2 and loans in good standing, or can obtain a rating agency letter confirming that the pledged loan is rated at least single-A).

Business Recovery Fund

ICSC has organized a diverse coalition of business groups in support of a Business Continuity and Recovery Fund. Initially patterned after business interruption insurance, this “Recovery Fund” would create a streamlined and tailored federal fund to provide rapid liquidity to small businesses and commercial sectors impaired by COVID-19 to help businesses retain and rehire employees, maintain worker benefits and resume or continue economic activity. The fund includes strong anti-abuse provisions, including audits and Special Inspector General oversight, and would be leveraged through private sector servicers. Legislation is forthcoming.

Request for Congress:

- Please support the Business Continuity and Recovery Fund when legislation is introduced.

Bankruptcy Relief

ICSC recommends a temporary change to the U.S. Bankruptcy Code to help landlords and tenants under the current environment.

Recommendation to Congress:

- Under Bankruptcy Code (section 547), a bankruptcy court may “claw back” certain out-of-the-ordinary payments, such as deferred rent, made by a business in the months leading up to a bankruptcy filing. ICSC recommends a temporary exception of deferred rent from the “claw back” provision. This exception will incentivize landlords to provide flexible financing terms to distressed tenants without the risk the concessions made now, in a time of crisis, will permanently reduce the revenue to landlords, should a tenant file bankruptcy.

The information above is based on ICSC’s current understanding of the CARES Act and Interim Rules and is subject to change.