Main Street Lending Comments

Access to Main Street Lending Facilities

(1) ***Waiver of Dividend Distributions Restriction***

ICSC, on behalf of our members organized as a real estate investment trust (REIT), requests a waiver for REITs from the dividend restriction requirement that applies to direct loan programs under Section 4003(c)(3)(A)(ii) of the CARES Act. REITs are required by law to annually distribute their taxable income each year to their shareholders to qualify as a REIT.

ICSC members, regardless of structure, are facing severe economic challenges due to the COVID-19 pandemic. Without a waiver on dividend distributions, REITs must seek assistance from other programs that require ratings by major nationally recognized rating organizations – a requirement not met by many REITs.

(2) ***Borrowers Without Existing Eligible Loans***

Many U.S. businesses that would otherwise be Eligible Borrowers cannot qualify for the Main Street Expanded Loan Facility (MSELF) because they do not have an existing Eligible Loan that can be upsized. In some cases, this is because the borrower's existing lender is not an Eligible Lender. In others, it is because the borrower relies on financing other than a term loan (for example, by using a revolving loan). Such borrowers are not able to access the MSELF based on the existing term sheets, and consequently are forced to rely on the Main Street New Loan Facility (MSNLF), which has a much smaller maximum loan size and more expensive fees.

We request that the MSELF be made available to all Eligible Borrowers with an existing loan originating before April 8, 2020, regardless of whether (i) the loan is a term loan or (ii) the applicable lender meets the definition of an Eligible Lender. In the alternative, we request that the maximum loan size for the MSNLF be increased to the maximum loan size available under the MSELF.

(3) ***Borrowers With Existing Loans With Loan Covenants Prohibiting Non-Subordinated Debt***

Many Eligible Borrowers have existing loans in place that contain loan covenants prohibiting them from taking on additional debt that is not subordinated to the existing loan. These Eligible Borrowers may be unable to obtain consents or waivers from the existing lenders for these covenants. Therefore, in order to allow such Eligible Borrowers to access the MSNLF, we request that the Federal Reserve specify that Eligible Loans under the MSNLF are subordinated, in addition to being unsecured.

ICSC understands it is unlikely that the Federal Reserve would mandate that senior lenders consent or provide waivers with respect to loan covenants that would otherwise prohibit Eligible Borrowers from accessing the Main Street Lending Facilities. We note that while Eligible Lenders may be incentivized to provide these consents or waivers with respect to an upsized tranche of a loan under the MSELF, as noted in our request (2) above many otherwise Eligible Borrowers will not be eligible for the MSELF without our proposed changes.

(4) ***Borrowers With No Employees***

The Main Street Lending Facilities have been made available to a broad number of companies that occupy a range of industries, including retail, real estate, energy, manufacturing and hospitality. This wide range of companies may use a variety of corporate structures such as LLCs or LLPs to enable financing of their operations, including establishing financing vehicles that are separate legal entities from their parent companies or operating companies that may employ the business's employees and conduct other operations.

ICSC requests the Federal Reserve clarify that an entity will meet the definition of Eligible Borrower even if the entity itself does not have any employees, provided that the business enterprise of which it is a part would collectively meet the Eligible Borrower definition, including having significant operations and a majority of its employees in the United States and having up to 10,000 employees or $2.5 billion in 2019 annual revenues. This clarification is necessary in order to allow companies across a range of industries that may make use of complex corporate structures for various tax, administrative or other reasons, to access the Main Street Lending Facilities, as intended by Congress.

(5) Definition of Maximum Loans

The existing maximum loan amounts for the MSNLF and MSELF do not adequately address the economics of the commercial real estate industry. Commercial Real Estate businesses typically have a much higher debt to EBITDA ratios due to the secured nature of the loans, traditionally more predictable cash flow, and the lower-risk nature of the assets. Long construction and lease-up times mean many real estate entities in existence for years have not yet achieved a "stabilized" EBITDA because the property is still under construction, only recently placed in service, or not fully leased up.

ICSC proposes:

For rental real estate, replace "does not exceed [four, or six] times the Eligible Borrower's 2019 earnings before interest, taxes, depreciation, and amortization ("EBITDA")" with (1) for rental real estate that has been placed in service before January 1, 2019, the maximum loan amount does not exceed twelve times the Eligible Borrower's 2019 net operating income; and (2) for rental real estate that has been placed in service on or after January 1, 2019, the maximum loan amount does not exceed twelve times the Eligible Borrower's projected stabilized net operating income as tested by the Eligible Lender issuing a loan to the Eligible Borrower.

Relief for the Commercial Mortgage-Backed Securities (CMBS) Markets

ICSC urges the Treasury and the Federal Reserve to recognize the $135.8 billion in outstanding debt underlying CMBS owed by shopping centers and other retail real estate owners and establish a program within the Main Street Lending Facilities or another emergency lending program utilizing the remaining funding allocated to the Treasury Department under Title IV of the CARES Act to support those borrowers.

The shopping center/retail industry has been devastated by mandated closures necessary for public safety. The latest Census figures indicate a $46.2 billion drop in total retail and food services sales from February to March 2020, or 8.7%. ICSC estimates a $20 billion loss in retail real estate rent in April with the number in May looming even larger. With businesses shuttered and retail tenants unilaterally stopping payment of contractually obligated rent, shopping center owners are facing mounting challenges in meeting their mortgage obligations. In the absence of regulatory flexibility that allows CMBS servicers and borrowers to work out potential solutions during this challenging time, we believe the market relief fund option warrants serious consideration. ICSC requests immediate action to address the CMBS crisis and prevent an economic collapse.

For more information please contact Betsy Laird at **blaird@icsc.com**.