



# ICSC Policy Recommendations for Additional COVID-19 Relief

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.

The latest numbers illustrating the impact of COVID-19 mandated closures on our industry:

- \$20 billion in estimated lost rent in April. May will be worse.
- \$8 billion estimated loss of retail sales in March.
- Over 26 million people have filed for unemployment in the last 5 weeks, many of those in our tenants' businesses, such as retail and restaurants.
- Retail and food service sales fell by \$46.2 billion from February to March (\$28.7 billion of that was retail; \$17.5 billion was restaurants).

Our entire industry is at risk if further action to support it is not taken.

***ICSC, on behalf of its 70,000-member network, makes the following recommendations:***

## **Business Recovery Fund**

In order to power the renewal of American enterprise, Congress must provide additional economic support to businesses that have been damaged by government-directed stay-at-home orders related to stemming the spread of the COVID-19 pandemic. The COVID-19 Recovery Fund would serve as a business interruption program patterned after the 9/11 Victim Compensation Fund to create a streamlined federal grant program to provide rapid liquidity to impaired workplaces. While the CARES Act provides an initial down payment to businesses impacted by COVID-19 to retain employees, there are fundamental problems (discussed below) that limit the utility of the program. The Recovery Fund would provide a solution to problems that were not contemplated in the CARES Act and an additional stream of funding for essential operating expenses across industries to allow businesses to reopen and rehire at the appropriate time. Legislation is forthcoming.

## **Request for Congress:**

- Please support the Recovery Fund effort to allow for rapid economic restoration.

## **Liability Concerns**

As the economy reopens, businesses will need greater clarity in rules and regulations to ensure the safety of their employees and customers and prevent unnecessary litigation. Congress should acknowledge that the patchwork of advice, industry practices and state responses during a national emergency creates difficulties to identifying a clear standard of care.

## **Main Street Lending Program**

On April 30 the Federal Reserve released additional term sheets and information on the Main Street lending program. ICSC is dismayed that the latest announcement indicates the program will follow the same eligibility rules found in the SBA 7 (a) loan program and the regulations implementing the Paycheck Protection Program, which specifically EXCLUDE owners of passive real estate. This is inconsistent with the language of the CARES law. Further, the Fed has thus far disregarded ICSC's previously suggested improvements to the other eligibility restrictions and aspects of the loan that would make the program more accessible. We urge reconsideration to truly make the program viable to more of America's businesses.

If retail real estate is shut out of the Main Street Lending Program, there are few other options. The Fed's Primary and Secondary Market Corporate Credit Facilities are only available to investment grade companies. This is a lengthy and expensive determination made by the credit rating agencies that few developers normally need to undertake.

#### **Recommendations to Treasury:**

- Drop the "ineligible business rule" that specifically excludes owners of real estate, including shopping centers.
- Waive the dividend prohibition for Real Estate Investment Trusts (REITS) so that they can meet statutory requirements set by the Internal Revenue Code.
- Retail real estate businesses typically have much higher debt to EBITDA ratios due to their traditionally predictable cash flow and low risk. Modifying the definition of the maximum loan to 12x net operating income is needed to provide adequate liquidity for the sector.
- Make the expanded loan program 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, increase the maximum loan size for the New Loan program so it is the same (\$150 million) for both lending programs.
- Specify that new loans are subordinated, in addition to being unsecured, to allow borrowers with loan covenants to access the program.
- Allow eligible borrowers even if the business entity has no employees. Retail real estate assets are typically required by lenders to be held in separate entities from the management business.
- Allow the maximum loan for buildings placed in service after January 2019 to be based on the projected stabilized net operating income to reflect the long construction and lease-up times in retail real estate.

#### **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. 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.

#### **Term Asset-Backed Securities Loan Facility (TALF)**

More needs to be done in this area to assist non-bank borrowers and the regulatory hurdles confronting servicers.

#### **Recommendations to Treasury:**

Include a broader range of commercial real estate debt instruments loans to the TALF, 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).

## Paycheck Protection Program (PPP)

The PPP loans, available to small businesses, 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. 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.
- Loan amounts should be calculated relative to business “operating expenses” — not only “payroll expenses.” Many businesses have small payrolls relative to their other fixed costs (like rent and debt payments).
- Within the parameters established by Congress, borrowers should have flexibility in how they use PPP loan proceeds and seek forgiveness. SBA should thus withdraw the standard that no more than 25% of PPP loan proceeds can be used for non-payroll items.
- Any LLP and LLC recognized under state law should be considered an eligible borrower for PPP loans.
- To encourage borrowers to re-hire workers released due to the COVID-19 economic crisis, borrowers should have flexibility to determine the start of the eight-week forgiveness period.

## 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:

- Review various provisions that relate to landlord rights and obligations to ensure the bankruptcy process does not further disrupt the financial condition of landlords.

## Tax

The CARES Act included tax relief to provide desperately needed liquidity to businesses. Congress should consider additional items to help businesses through the next phase of this pandemic.

### Recommendations to Congress:

- Update REIT tax rules on related parties, IRC Sec. 856(d), so that property owners can invest in financially struggling tenants.
- Exempt from taxation any phantom income from loan modification, forgiveness or cancellation.
- Extend net operating loss (NOL) relief through 2021 as the impacts of COVID-19 will continue to affect taxpayers after year end and expand the lookback period.
- Monetize current year NOLs to address immediate liquidity needs so employers can support their workforces. Consider monetization of additional tax attributes, including, but not limited to, general business credits.
- Further delay all scheduled federal tax payments (including quarterly payments of estimated tax) during this crisis and the initial stages of the economic recovery.
- Provide tax incentives for businesses that invest in safety equipment, including handwashing stations, respiratory equipment and cleaning products.