The Real Estate Roundtable

STATEMENT OF

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ON BEHALF OF

THE REAL ESTATE ROUNDTABLE

UNITED STATES SENATE

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

HEARING

ON

THE STATUS OF THE FEDERAL RESERVE EMERGENCY LENDING FACILITIES

VIA WEBEX

ON

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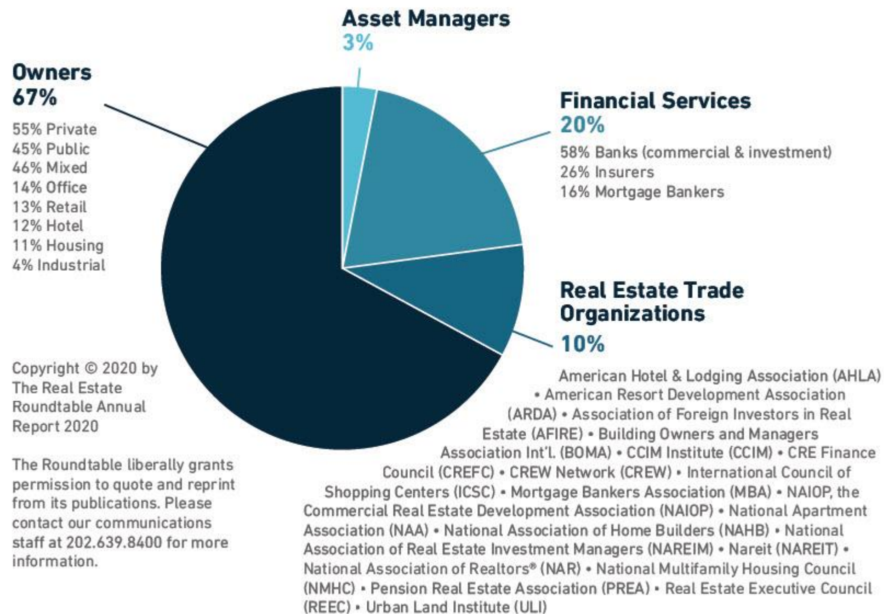
About The Real Estate Roundtable

The Real Estate Roundtable (www.rer.org) brings together leaders of the nation's top publicly-held and privately-owned real estate ownership, development, lending, and management firms with the leaders of major national real estate trade associations to jointly address key national policy issues relating to real estate and the overall economy. By identifying, analyzing, and coordinating policy positions, The Roundtable's business and trade association leaders seek to ensure a cohesive industry voice is heard by government officials and the public about real estate and its important role in the global economy. The Roundtable's membership represents nearly 3 million people working in real estate; about 12 billion square feet of office and industrial space; over 2 million apartments; and nearly 3 million hotels rooms. The collective value of assets held by Roundtable members is approximately $3 trillion.



The Roundtable thanks our partner associations that provided assistance and input in preparing these comments: American Hotel & Lodging Association (AHLA); American Resort Development Association (ARDA); Building Owners and Managers Association (BOMA) International; Commercial Real Estate Finance Council (CREFC); International Council of Shopping Centers (ICSC); Mortgage Bankers Association (MBA); NAIOP, the Commercial Real Estate Development Association; Nareit®; National Apartment Association (NAA); and National Multifamily Housing Council (NMHC).[1]

[1] A full list of The Roundtable's "partner associations" is available here.

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EXECUTIVE SUMMARY

- The Main Street Lending Program (MSLP) has significant untapped potential. Administrative actions could incentivize more lenders to participate. Changes by the Fed to relax its eligibility, underwriting, and affiliation rules could also allow more struggling businesses to access credit from the 13(3) facilities.

- Improving Main Street lending so commercial real estate tenants, builders, and owners can actually ***use*** Fed-purchased and Treasury-backed credit is critical to put our nation on a sustained path to recovery, considering the profound impact that the real estate sector has on the U.S. economy. From jobs to housing and infrastructure, from state and local taxes to pension income and retirement savings, commercial real estate is a key driver of America's jobs, opportunities, security, and long-term growth.

- Supplemental legislative action is also needed to jumpstart the economy on non-MSLP matters, particularly to assist businesses that need a hand but are not looking to take on new debt.

Policy Recommendations to Improve the Main Street Lending Program

- ***The Fed should purchase 100% of MSLP loans – not only 95% as the program's rules currently require***. In the CARES Act, Congress authorized the Treasury Department's Exchange Stabilization Fund to back Main Street loans and thus minimize the Fed's risk exposure. Numerous covenants, certifications, and other program requirements imposed by the Fed on both lenders and borrowers render the 5% bank risk retention requirement unnecessary. It should be eliminated to spur greater lending activity to struggling businesses. Banks should receive a 1% fee to monitor the loan until it matures, to compensate them for servicing the debt after it fully transfers to the balance sheet of the Main Street Special Purpose Vehicle.

- ***Loosen tight "eligibility" and "affiliation" restrictions on borrowers***. The Fed decided on its own to carry-over rules of the Small Business Administration (SBA) from its conventional 7(a) lending program, and wrongly apply them to key MSLP qualification questions regarding borrowers' "eligibility" and consideration of "affiliated" entities. There is no basis in statute to apply these out-of-context SBA rules to Main Street lending, yet they have significantly impeded businesses' ability to access the 13(3) facilities. The Fed should not apply SBA's "ineligibility" and "affiliation" rules developed for a completely different program, long before the pandemic ravaged the economy.

- ***Reform the metrics of MSLP underwriting to better reflect the types of businesses that need Main Street assistance – such as manufacturing, retail, restaurants, real estate owners, and other asset-based borrowers***. The MSLP limits a borrower's maximum loan size based on a multiple of its earnings before interest, taxes, depreciation, and amortization (EBITDA). As the Fed has acknowledged, EBITDA is not a standard underwriting metric for real estate or other asset-based businesses. If the EBITDA test remains, its multiple should be increased substantially. For real estate, restaurants, retail, and other asset-based borrowers, other appropriate tests to size Main Street loans must be developed to consider alternative metrics such as loan-to-value, loan-to-cost, and borrowers' net operating income.

- ***Reasonably extend MSLP maturity and amortization timelines***. Maturity for Main Street loans should be extended to seven years (from five years). Amortization of principal should be pushed back to year four (from year three).

- ***Create a preferred equity program for CRE borrowers***. Congress should allocate unused Title IV CARES Act funds and direct the Fed and Treasury to create a preferred equity program for CRE borrowers, as part of the MSLP or as a separate facility. This would provide a temporary liquidity bridge to CRE borrowers and avoid existing prohibitions on taking on additional debt.

- ***Continue to support the Term Asset-Backed Securities Loan Facility (TALF)***. While not technically part of the MSLP, the TALF falls within the Fed's 13(3) authorities. We commend the Fed's and Treasury's timely decision to revive the TALF and include commercial mortgage backed securities as eligible collateral. Yet, more needs to be done. The Fed should also consider the merits of expanding TALF to investment-grade instruments below the triple-A rating level that support the commercial real-estate market to ensure liquidity is available. Also, new issue CMBS and Single Asset, Single Borrower (SASB) securities should also be included as eligible collateral.

<u>Non-MSLP Policy Recommendations</u>

- ***Pass the RESTART Act (S. 3814)***. This bill would allow the SBA to forgive loans made by banks to businesses with up to 5000 employees that have lost significant revenue during the pandemic. It is precisely the kind of policy we need to provide smaller employers and hard-hit minority-, women- and veteran-owned businesses with an emergency credit lifeline.

- ***Establish an emergency residential tenant assistance fund particularly for as long as any federal eviction moratorium is in place***. The CDC recently announced a federal residential tenant eviction moratorium through the end of 2020. It must be accompanied by a specific financial program that helps renter households meet their contractual lease obligations during the pandemic. A residential tenant assistance fund to mitigate the harsh economic impact of the CDC's action on the multifamily sector, and provide apartment owners with the revenue they need to pay their taxes, payroll, utilities, debt service, and meet other obligations.

- ***Establish an emergency rental assistance fund for small business tenants to give these employers a lifeline that supports their rent payments going forward***. Struggling business tenants, who have lost revenue but are limping through the COVID economic crisis, should also receive emergency rent support. The last thing they need as they try to re-open while their customers have not fully returned is to make up for missed lease payments. A limited program to help small business employers cover three months of rent will restore the rental income chain that ripples throughout the economy to support local tax bases, allow building owners to pay their own workers, support Americans' retirement savings, and keep debt markets functioning.

- ***Promote debt restructurings and workouts***. Congress should remove obstacles to private sector debt restructurings and workouts that could allow businesses to avoid bankruptcies, foreclosures, and layoffs. A debt cancellation event reflects a severe hardship on the part of the borrower, not an enrichment. For the next few years, Congress should allow ***all*** distressed borrowers to exclude cancellation of debt ("COD") income, or economically similar gains, to the extent that they reduce the basis of their depreciable and non-depreciable assets. The tax owed on restructured debt would not be forgiven but would be collected over time by a way of reduced tax attributes that limit and increase taxable income.

- ***Pass the Healthy Workplaces Tax Credit Act (S. 4214)***. This bill would provide a temporary refundable payroll tax credit for employers that incur extra and unforeseen costs to disinfect workplaces, provide employees with PPE, and reconfigure building interiors to curb the spread of COVID-19. A robust recovery cannot occur unless tenants, workers, customers, and other guests feel comfortable returning to their offices, stores, restaurants, and other indoor environments. This bill will help employers pay for "healthy workplace" protocols, and is scaled to provide the greatest amount of support to smaller businesses. We believe the bill can be improved to ensure the tax credit is usable for hotels and other properties that do not directly hire employees but operate under a managed structure.

- ***Protect schools, non-profits, and businesses from frivolous COVID lawsuits***. Employers that meet government "re-opening" standards issued by the federal, State and local governments should receive a "safe harbor" from baseless litigation. Grossly negligent, reckless, or willful conduct should not be shielded. However, employers should be afforded some modest sense of surety that they will not need to fight expensive court battles filed by opportunistic plaintiffs that assert specious injury claims related to the coronavirus.

- ***Authorize federal pandemic risk insurance***. Moving forward, the federal government should provide a pandemic risk/business continuity insurance program to backstop the economic impact of a future public health crisis.

I. INTRODUCTION

Thank you Chairman Crapo, Ranking Member Brown, and Members of the Committee, for conducting today's hearing on ***The Status of the Federal Reserve Emergency Lending Facilities***. I am Jeffrey DeBoer, President and Chief Executive Officer of The Real Estate Roundtable ("The Roundtable") (www.rer.org). We are grateful for the Committee's efforts to support the U.S. economy during the COVID-19 public health crisis. We also appreciate the July 31, 2020, letter from Chairman Crapo encouraging Treasury Secretary Mnuchin and Federal Reserve Chair Powell to address the "unique circumstances faced by commercial real estate" during these historic times.[2] In addition, we appreciate the focus that Ranking Member Brown has brought to a residential rent assistance program and we look forward to continuing our discussions on that front. Also, we are grateful for the foresight shown by the Main Street program's authors, including Senators Warner and Toomey, who have rightfully advocated on behalf of employers that need access to credit so they can remain operational and keep their workforce employed during this unprecedented moment on our nation's history.

I am pleased to provide the Roundtable's recommendations to improve borrowers' and lenders' interest in the Main Street Lending Program (MSLP) while also providing worker protections. My testimony also will offer an update on the state of commercial real estate (CRE) markets, and address why CRE owners and our tenants generally lack access to the MSLP. Importantly, my comments are in the spirit of promoting Main Street lending for struggling Main Street businesses, including asset-based businesses – and not just simply for CRE owners. Struggling business tenants need access to the 13(3) emergency lending facilities because missed rent payments will become legacy obligations that will burden these employers' long-term recovery. The Roundtable urges that policy makers must improve the MSLP as a platform to place business tenants in an optimal position to retain and rehire their workforce. Furthermore, a program to help business tenants meet their lease obligations will shore-up the rental income stream that supports state and local tax bases; sustains millions of jobs in the building construction, management and operations workforce; maintains the value of income-producing real estate assets for retirees and pensioners; and keeps mortgage markets healthy and functioning.

The MSLP has promising, untapped potential. It can be fixed to help businesses emerge stronger than ever, and maximize opportunities so American workers have good jobs to return ***to*** on the other side of the pandemic. Let me state at the outset that an improved MSLP can be a critical component to spur recovery and job growth – but it is not a silver bullet. An optimized MSLP must be complemented by direct support for America's families and workers, such as:

- ***New rounds of expired CARES Act relief including expanded federal unemployment benefits, stimulus checks, and Paycheck Protection Program (PPP) loans that have kept workers on payroll with benefits.*** The Roundtable applauds Congress and the Administration in enacting the CARES Act "safety net." Federal leaders did their job to avoid an even deeper recession. We implore policy makers to reach bipartisan compromise on a new package that re-starts these programs to avoid worsening an already serious economic crisis while the health crisis lingers.

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[2] Available on the Senate Banking Committee's website.

- ***Direct assistance to renter households to meet their residential lease obligations.*** The Centers for Disease Control (CDC) and the Department of Health and Human Services (HHS) recently announced a federal eviction moratorium through the end of 2020.[3] The CDC's action underscores the need to couple the eviction moratorium with an emergency rental assistance program that supports struggling low-income and middle class renter households. Financial support is needed not only to help tenants meet their rent obligations, but also to provide the critical revenue that apartment owners need to pay state and local property taxes, employ their own workers, cover the elevated costs for safe and healthy building environments in the COVID-19 era, and pay their mortgages.[4]

- ***Emergency rent assistance for struggling business tenants to help these employers pay workers' salaries and benefits.*** Business tenants (like residential tenants) that fail to pay contractual rents when they become due will be saddled with outstanding lease obligations that prolong and dampen their financial recovery. The last thing struggling employers need to worry about as they try to re-open and operate under the "new normal" is to catch-up on missed rent payments. Any direct ***residential*** tenant assistance program should be combined with a direct ***business*** tenant assistance program. Rent assistance for businesses will free-up dwindling resources so tenant-employers can direct whatever available revenues they have to compensate their workers and cover health insurance and other employee benefits.

Hitting the "refresh" button for Main Street lending – with terms and conditions that speak to current market conditions – can amplify the financial support that the next COVID response package should afford to families, workers, and residential tenants. Indeed, MSLP is as much a ***jobs*** stabilization program for the U.S. workforce as it is a ***credit*** program for businesses: "Businesses eligible for the [MSLP] provide work for 45 million Americans and account for nearly 40% of private sector employees."[5]

II. REAL ESTATE'S BROAD ECONOMIC IMPACT

The contribution of commercial real estate to the nation's economy and Americans' well-being is vast and far-reaching. From jobs to housing and infrastructure, from state, local, and airport taxes to pension income and retirement savings, America's commercial real estate is a driver of economic activity and security in the United States.

A. *Commercial Real Estate (CRE) and Current Economic Conditions*

Since the onset of the pandemic, conditions in real estate have largely tracked the underlying economy. Government social distancing mandates shuttered stores, restaurants, and other establishments – causing millions of Americans to lose their jobs and work greatly reduced hours. Those more fortunate have worked from home, but families have been forced to juggle the demands and stress of their jobs while somehow providing day care and education for their

[3] 85 Fed. Reg. 55,292 (Sept. 4, 2020)
[4] Speaker Pelosi has been reported to state, "If they extend the moratorium, people won't have to pay their rent just yet. It'll get pushed down the road, unless we get some money for them to compensate for what they have to get. And that's not just for the renters, that's for the landlords" too. *White House moves to halt evictions as fears of coronavirus-fueled housing crisis grow,* CNBC (Sept. 1, 2020).
[5] *The Fourth Report of the Congressional Oversight Commission* (Aug. 21, 2020), at p. 13 (hereafter, "COC Fourth Report").

children. Larger conditions that drive economic productivity and job growth ground to a halt, as many jurisdictions stopped construction.

The most vulnerable among us – our nation's seniors – have suffered a terrible toll because of COVID. While the long-term outlook for seniors housing remains positive, the independent living, assisted living, and nursing home properties that seniors call home are enduring immediate losses to asset values and slow-downs in leasing activity.[6] This CRE asset class has been among the hardest hit by the COVID-induced recession.

The Great Recession of 2008-09 was a financial crisis largely stemming from changes in credit and other financial practices. The ***current*** stress in real estate markets reflects events arising from the ground up, in the real economy – notably the erosion of incomes for commercial tenants and residential renters, and in the case of hotels, reduced business and leisure travel. Appendix A provides greater detail on the economic status of certain real estate asset classes as well as real estate debt markets as they weather the pandemic, with data provided by The Roundtable's partner organizations.[7]

As demonstrated in the August 7, 2020, hearing before the MSLP Oversight Commission,[8] emergency lending through the programs established under Federal Reserve Act Section 13(3), and supported by the Treasury Department with monies appropriated under the CARES Act, has missed entire swaths of Main Street businesses. The Roundtable respectfully suggests that the MSLP will not have the impact Congress intended unless it helps businesses who cannot obtain conventional credit in the lending marketplace, particularly because they have lost significant revenue since the pandemic started.

To jumpstart the sluggish economic recovery from COVID, the MSLP must become better suited to lend to struggling businesses including those employers that lease building space and pay rent. Asset developers, owners, and managers must also be considered an important Main Street beneficiary. These CRE audiences bear the high, unforeseeable extra costs of providing their business tenants and employees with safe and healthy environments as buildings re-open and prepare for fuller re-entry – through expensive protocols relating to heightened ventilation, flushing-out plumbing systems, cleaning and disinfecting surfaces, workplace reconfiguration to curtail the virus's spread, and contact-tracing applications. Improving Main Street lending so CRE tenants, builders, and owners can actually ***use*** Fed-purchased credit is particularly critical to put our country on a sustained path to recovery considering the profound impact the real estate sector has on the nation's economy, as set forth below.

B. *Market Value*

Commercial properties across asset classes – apartment, office, retail, industrial, health care, and hotels – represent a major share of the overall economy. At the end of 2018, the total value of America's commercial real estate was between $14.4 and $17 trillion.[9] To put that in

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[6] *The Short- and Long-Term Implications of COVID for Seniors Housing,* National Real Estate Investor (April 13, 2020)

[7] See Appendix A, *infra* at p. 21. RER's partner associations are listed here.

[8] See https://coc.senate.gov/main-street-lending-program.

[9] Nareit®, *Estimating the Size of the Commercial Real Estate Market* (July 2019) (ground-up estimate using CoStar data). Approximately one-third of CRE value is located in the seven "gateway" markets, half is in the next largest 47 markets, and the balance is in other markets.

perspective, the value of our nation's commercial real estate is more than half of the market capitalization of all U.S. publicly traded companies.[10]

C. Contribution to GDP

The operation of existing nonresidential commercial real estate (retail, office, and industrial/warehouse), combined with the development of new commercial buildings, contributed an estimated $1.14 trillion to GDP and $396 billion in personal earnings last year.[11] The multifamily industry, which provides shelter to 40 million residential renters, contributes an additional $400 billion to GDP through apartment construction, improvements, and operational expenditures.[12] The operation of America's hotels, along with hotel construction and capital investment, generate an additional $314 billion in direct economic output.[13] These numbers do not include the enormous indirect benefits that flow from real estate activity such as the revenue generated by retail tenants and further induced guest, employee, and supplier spending in the case of hotels.

D. *Jobs*

Real estate represents much more than just fixed capital, The industry is one of the leading employers in the United States. Real estate companies are engaged in a broad array of activities that directly support an estimated 12.6 million real estate-related jobs. These include jobs in construction, planning, architecture, building maintenance, hotel operations, management, leasing, brokerage, cleaning, security, and other activities. [See Appendix B, *"Real Estate – An Engine of Job Creation"*] In addition, real estate employs millions more indirectly in fields such as mortgage lending, accounting, legal services, investment advising, and environmental consulting.

E. Leverage

U.S. commercial real estate is financed with $4.6 trillion of debt,[14] mostly provided by commercial banks, life companies, government-sponsored enterprises and commercial mortgage backed securities (CMBS). Assuming an aggregate value of $16 trillion (as per Nareit® estimate), U.S. commercial real estate is conservatively leveraged with 71% equity and 29% debt.

F. *Contribution to the Tax Base*

Real estate ownership and activity accounts for nearly one-quarter of taxes collected at all levels of government (this includes income, property and sales taxes). Taxes derived from real estate ownership and transfer represent the largest source — over 72% — of local tax revenues, helping to pay for schools, roads, law enforcement, and other essential public services. Collectively, real estate owners paid more than $509 billion in property taxes to local governments in 2017, the most recent year of available Census data on the topic.[15] In 2018,

[10] The total market capitalization of U.S.-based public companies traded on the NYSE, NASDAQ, and OTC markets was $30.1 trillion at the end of 2018. Siblis Research Limited (2020), available here.

[11] Stephen Fuller, Ph.D., *Economic Impacts of Commercial Real Estate* (NAIOP Research Foundation 2020).

[12] Hoyt Advisory Services, *The Contribution of Multifamily Housing to the U.S. Economy* (National Apartment Association and the National Multifamily Housing Council, 2019).

[13] Oxford Economics, *Economic Impact of the U.S. Hotel Industry* (Aug. 2019).

[14] Federal Reserve, *Financial Accounts of the United States* (June 2020) (Table L.217 Total Mortgages).

[15] U.S. Census Bureau, *2017 Census of Governments: Finance* (March 2020); *see also* Urban Institute, *State and Local Finance Initiative: Property Taxes*.

businesses paid nearly $300 billion in state and local property taxes, more than they paid in sales taxes, corporate income taxes, and individual income tax on pass-through business income combined.[16] Local property taxes provide more than a third of all money used to finance public education.[17] In addition, according to the Near Airport Parking Industry Trade Association (NAPITA), real estate owners operating properties proximate to U.S. airports paid nearly $25 million in 2019 directly to such airports, supporting their budgets and operating expenses.

According to one study, an average commercial property pays 1.724 times *more* in taxes compared to taxes associated with a home.[18] A recent survey of all 50 States found that the typical large city in the United States imposes an average annual tax of 1.92% on the value of commercial properties (land and building, combined).[19] As a result, the health of state and local governments – and the quality of the services they are able to provide – are closely related to the strength of real estate markets.

G. *Contribution to American's Retirement Savings*

The retirement security of workers and retirees is closely connected to the strength of U.S. commercial real estate. Pension funds, educational endowments, and charitable foundations have invested nearly $800 billion in real estate, which generally delivers a predictable, long-term revenue stream that is tied to rental income and property appreciation.[20] Real estate investments can be found in 87 percent of all public and 73 percent of all private sector pension funds.[21] Insurers, another critical source of retirement savings and survivor benefits, also rely on real estate returns to fund policy payouts to beneficiaries. An estimated 68 percent of insurance companies are actively invested in real estate.

Labor unions, through their pension funds, represent some of the largest and most active investors in U.S. real estate. America's building trades unions manage $600 billion in pension fund assets and maintain a report card on how well asset managers connect pension fund investments to projects that create union jobs.[22] Since its inception in 1977, the real estate arm of the Union Labor Life Insurance Company (Ullico), organized labor's group insurance provider, has participated in the funding of more than 500 real estate projects nationwide totaling in excess of $16 billion.[23]

H. *Contribution of Rents Paid by Business Tenants*

Monthly rents paid by business tenants to real estate owners and operators are a critical income source that flows throughout the economy. Rents enable businesses to lease the work spaces where they profitably operate, and where their employees gather and collaborate. Rent revenues further support an "obligation chain" that links essential, interdependent markets that keep the economy humming.

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[16] Ernst & Young LLP, *Total State and Local Business Taxes: State-by-State Estimates for FY18* at p. 10 (Oct. 2019)
[17] Lincoln Institute of Land Policy, *The Future of U.S Public School Revenue from the Property Tax* (July 2017).
[18] Tax Foundation, *State and Local Property Taxes Target Commercial and Industrial Property* (Nov. 21, 2012).
[19] Lincoln Institute of Land Policy & Minnesota Center for Fiscal Excellence, *50-State Property Tax Comparison Study* (June 2020).
[20] Meredith Despins, *The Role of Real Estate in Pension Funds*, Nareit Developments (Aug. 2019).
[21] Preqin, *Pension Funds Investing in Real Estate*, Real Estate Spotlight (Sept. 2016).
[22] North American Building Trades Unions, *NABTU Real Estate Manager Report Card* (Jan. 2020).
[23] Ullico Bulletin, *J for Jobs Adds Projects in Chicago and New Jersey* (2018).

A stable stream of tenants' rent revenues provides employers with income they use to compensate the millions of workers across all skill-levels in building operations and maintenance jobs; pay the taxes owed by building owners to state and local governments to support schools, first-responders, public health care, infrastructure, and other critical community services; keep mortgage and debt markets solvent and healthy; and safeguard the billions of dollars of Americans' pension and retirement savings invested in real estate assets.

Often overlooked and underestimated is commercial real estate's contribution to economic productivity and growth. The output of any economic activity is a product of the space in which it is created. By its very nature, as the place in which goods and services are produced, real estate makes other productivity gains possible. Optimizing the location, configuration, and architecture of a business's physical structures contributes directly to the productivity and efficiency of an enterprise and its workers. The functionality and needs of industrial, office, retail, and multifamily residential buildings are constantly changing as markets and ways of doing business transform. At no time has this been more true than today. COVID-19 is causing business owners to rethink how employees, customers, and residents will interact with one another.

I appreciate the opportunity to have described the macro-level impact that real estate has on the economy. Please further consult Appendix A for a snapshot of how specific CRE asset classes are faring in the COVID economy. The data sets a predicate for The Roundtable's policy recommendations to improve access to the 13(3) facilities.

III. MSLP CREDIT RISK SHOULD BE SHIFTED AWAY FROM LENDERS TO HELP BUSINESSES AND THEIR WORKERS THROUGH THE COVID CRISIS

Data on MSLP loans to date show that the program has fallen far short of expectations to help small and mid-sized employers navigate the turbulence caused by COVID-19. The MSLP's Congressional Oversight Commission ("Oversight Commission") has noted the program's "low utilization rate" and "modest initial activity thus far."[24] Others have used stronger words, asserting that the program is "too stingy to banks and borrowers"[25] and deeming it an outright "failure" thus far.[26]

According to the Oversight Committee's most recent report, the Fed has thus far participated in 0.07% of the MSLP's current lending capacity – or $472 ***million*** out of $600 ***billion*** available

[24] COC Fourth Report, *supra* n. 5 at pp. 8, 10.

[25] Glenn Hubbard and Hal Scott, *'Main Street' Program Is Too Stingy to Banks and Borrowers*, Wall Street Journal (July 20, 2020).

[26] *Months into recession, Fed's Main Street loan program is at a crossroads,* Washington Post (Aug. 7, 2020) (reporting statement of COC Commissioner Bharat Ramamurti: "By any measure the Main Street program has been a failure").

capacity.[27] Only 160 lenders are accepting MSLP loan applications from new customers.[28] The difference compared to the PPP's deployment is stark: more than 5.2 million PPP loans have been approved to date, totaling over $525 billion, from 5,460 lenders.[29]

These disparities are readily explained because PPP loans can be ***forgiven*** under the CARES Act. The forgivable aspect of PPP loans allows the federal government to shoulder some of the economic impacts of the pandemic; insulate lenders from exposure to credit risks from defaults; and rely on the banking system to efficiently dispense COVID-relief loans to businesses with the primary purpose to keep workers on payroll with benefits.[30] In contrast, MSLP loans are ***not*** forgivable and banks ***retain*** risk by holding on to 5% of the amount of the loan (while the Main Street Special Purpose Vehicle (SPV) purchases 95% participations).[31] Moreover, the CARES Act "expressly prohibits the Federal Reserve from forgiving the principal amount of loans."[32] And, the Fed's own self-created standards (such as maturity and amortization terms that deter borrowers' interest, and sizing loans based on EBITDA criteria that do not apply to asset-based businesses[33]) are too restrictive on banks and borrowers even if the Fed was taking on ***all*** of the risk.

Because the Fed does not assume a meaningfully higher level of MSLP credit risk than a lender, the same underwriting standards apply to a Main Street loan as they do to any other loan. "Eligible [Main Street] borrowers undergo the bank's standard underwriting process for commercial loans, and each bank evaluates applications according to its [usual] underwriting criteria."[34] Based on the limited uptake of MSLP loans to this point, it seems safe to assume that current origination and other fees[35] are not high enough to lure banks to assume more credit risk while they must still retain 5% of the loan.

This is the Catch-22 that confronts potential MSLP borrowers. If they have lost revenue they may be deemed too "risky" to receive conventional bank lending, yet the Fed's standards also shut the doors of Main Street credit to struggling employers because they do not meet a lender's typical underwriting criteria. While we strongly believe that businesses should have an appropriate level of reserves to rely upon, no employer could have reasonably been expected to retain a buffer of "COVID capital" in anticipation of a prolonged shutdown caused by once-in-a-century viral spread.[36] In our view, in the CARES Act, Congress clearly considered the Fed (as backed by the Treasury's Exchange Stabilization Fund) as best positioned to assume ***more*** credit

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[27] COC Fourth Report, *supra* note 5 at p. 8.
[28] *Id.*
[29] Small Business Administration, *PPP Report,* slide 2 (reflecting PPP loan approvals through 08/08/2020).
[30] The CARES Act originally provided that a portion of PPP loans could be forgiven for an eight-week period after loan origination. Subsequent PPP reforms enacted by Congress in June further liberalized the forgiveness period, giving borrowers up to six months to spend PPP funds while still allowing debt forgiveness. See *Paycheck Protection Program Flexibility Act,* Pub. L. 116-142, section 3(b) (June 5, 2020)
[31] *Main Street Lending For-Profit FAQs* (Aug. 24, 2020). In particular, see FAQ # L.7 at p. 69 ("The Main Street SPV intends to purchase 95% in any MSNLF Loan, MSPLF Loan, or MSELF Upsized Tranche that are submitted to the SPV for purchase …."
[32] COC Fourth Report, *supra* note 5, at p. 27. The Fed also interprets its 13(3) emergency lending authority as precluding its ability to issue grants or forgive loans. *Id.*
[33] Recommendations to address these problems are provided *infra* at pp. 13-16.
[34] COC Fourth Report, *supra* note 5, at p. 11.
[35] *Main Street Lending For-Profit FAQs* (Aug. 24, 2020). In particular, see FAQ # G.7 at p. 23.
[36] The COC cites a JPMorgan Chase Institute report to the effect that "[f]ifty percent of small businesses pre-COVID were operating with fewer than 15 cash buffer days – the number of days of typical outflows a business could pay out of its cash balance in the event of a disruption to inflows." COC Fourth Report, *supra* note 5, at p. 30.

risk during this historic crisis ***precisely*** to help struggling employers assemble their "COVID capital buffer" and offer a bridge to post-pandemic conditions.

We recognize that the Fed's 5% retention requirement was likely written with the objective of reducing the central bank's risk of loss by theoretically ensuring higher underwriting standards by banks that have some "skin in the game." Section 13(3) precludes the Fed from lending to insolvent borrowers and it cannot "aid a failing financial company."[37] Under the Dodd-Frank Act, the policies and procedures governing any emergency lending program under section 13(3) must provide "that the security for emergency loans is sufficient to protect taxpayers from losses . . ."[38] However, even after removal of the 5% risk retention rule, several layers of protection are in place to prevent losses by the Federal Reserve. The MSLP's numerous and stringent requirements imposed on both lenders and borrowers are designed to prevent excessive losses. Ninety pages of certifications, covenants, and restrictions are set forth in the Fed's "Frequently Asked Questions" document. Term sheets for each separate MSLP facility regarding "New Loans," "Priority Loans," and "Expanded Loans" further detail the covenants and certifications required from participating banks, and from potential borrowers, to support ***full-recourse*** Main Street lending. These exhaustive prerequisites establish the integrity of Main Street underwriting and function to expose the Fed to only minimal losses.[39]

In addition, perhaps most importantly, the ***Treasury's*** investment in the MSLP is available to absorb losses and mitigate Main Street lending risks. The Oversight Commission "notes that the Treasury does not need new statutory authorization to increase its risk tolerance and potentially incur losses to the $454 billion appropriated to the Treasury's [Exchange Stabilization Fund], which backs the Main Street Lending program."[40]

Policymakers should not ease up on the pedal in exploring how to stimulate greater participation in the 13(3) facilities. We strongly encourage the Committee to consider solutions that can appropriately shift risk away from banks who are reticent to lend under the MSLP. Some indicators that conditions might be improving from the nadir of the current crisis (such as a roaring stock market) may camouflage the economy's uncertain future as infections continue to spread and as the world waits for a vaccine that works and engenders the public's trust. In this regard, we note the following:

- "The U.S. added 1.4 million jobs in August as unemployment fell to 8.4 percent," but "[p]ayrolls are still more than 11 million jobs below their pre-pandemic level."[41] Moreover, the Oversight Commission highlighted the outsized negative jobs impact that business shutdowns have had on people of color, "with the Black unemployment rate at 14.6% and the Hispanic unemployment rate at 12.9%."[42]

- Businesses owned by minorities, women, and veterans have disproportionately felt the pandemic's economic brunt. One estimate reports, "from February to June 2020, the number of Black business owners dropped 19%, Hispanic business owners dropped 10%, and Asian business owners dropped 10%, in comparison to a smaller (but still alarming)

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[37] *Federal Reserve Act* § 13(3)(B), codified at 12 U.S.C. § 343(3)(B)(i), (ii).
[38] *Dodd-Frank Wall Street Reform and Consumer Protection Act* § 1101(a)(6), Pub. L. 111-203 (2010).
[39] See generally *Main Street Lending For-Profit FAQs* (Aug. 24, 2020).
[40] COC Fourth Report, *supra* note *5,* at p. 20.
[41] *U.S. Added 1.4 Million Jobs in August,* New York Times (Set. 4, 2020).
[42] COC Fourth Report, *supra* note 5, at p. 14.

drop of 5% for white business owners."[43] One poll revealed that 34% of small businesses overall did not have the revenue to pay their rent – with "Covid-19 quarantines … especially difficult on women-owned, minority-owned, and veteran-owned businesses."[44] Likewise, Fed data cited in a recent McKinsey & Company report indicate the coronavirus's disparate impact on minority-owned businesses, which are twice as likely to be classified as "at risk" or "distressed" compared to businesses ***not*** owned by minorities.[45]

- Retail sales are recovering month-to-month – more slowly in July (1.4%) as the coronavirus surged in certain parts of the country, compared to June's increase (8.4%). Rent collections from national retail tenants increased this summer after a spring of abysmally low payments to commercial owners – particularly in covered malls from movie theaters, restaurants, gyms, and apparel retail businesses.[46] Yet, compared to a year ago, rents paid by retail tenants to owners in August were down 19%.[47] Twenty-six national retailers have reportedly filed for bankruptcy thus far in 2020.[48]

- Residential rent collections in the multifamily space have been faring relatively well. The National Multifamily Housing Council (NMHC) reported that 92% of apartment households paid August rent through August 27.[49] However, the industry now enters uncharted waters. Expanded unemployment insurance and other CARES Act "safety net" programs, which have helped households pay rent for months, are now expired. The CDC eviction moratorium provides a public health response that assures renters' housing ***without*** an economic response to support rent payments.[50] "Household Pulse Survey" Census data further reveal warning signs on the horizon. One-third of renters surveyed in May – when CARES Act programs were up and running – nonetheless had "no" or "slight" confidence in making their next monthly rent payment.[51] A recent Executive Order that allows the Federal Emergency Management Agency (FEMA) to provide some limited extra unemployment insurance benefits from the Disaster Relief Fund[52] may help in the near term, but it will not aid families deep into the fall and winter if the virus surges again.

Unfortunately, the MSLP has been a glaring gap in Congress's and the Administration's COVID-19 recovery structure. The program's reliance on the intermediation of banks, and by extension their regulators, has produced relatively low demand for the program's loans. As long as banks are required to retain risk, bank underwriting will be the predominant gating mechanism

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[43] *Id.* at p. 13.

[44] *34% of Small Businesses Can't Cover May Rent*, Alignable (April 28, 2020) (results of poll conducted April 24-26) ("[M]ore than half of all women-owned businesses (52%) report being closed, while similar figures surfaced for minority-owned businesses (48%) and veteran-owned companies (44%). That's compared to all other businesses, where only 38% have shut their doors.").

[45] *Covid-19's effect on minority-owned businesses in the United States,* McKinsey & Company (May 2020).

[46] *Retail Rent Collections Begin to Increase,* GlobeSt.com (Aug. 24, 2020).

[47] *U.S. Retail Rent Collections Up from July, Down 19 Percent from Last Year*, Commercial Observer (Aug. 21, 2020) (citing rent collections data from Datex Property Solutions).

[48] *The running list of 2020 retail bankruptcies*, Retail Dive (updated Aug. 17, 2020).

[49] See https://www.nmhc.org/research-insight/nmhc-rent-payment-tracker/.

[50] *Supra* notes 3-4.

[51] *New Household Data Show Renters Face an Uncertain Housing Future,* NMHC (May 29, 2020).

[52] *Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019* (Aug. 8, 2020).

for access to the program. If instead credit risks were fairly shifted to the Fed as backstopped by the Treasury's Exchange Stabilization Fund, Congress's vision to provide liquidity to small- and mid-sized businesses would be more fully realized. Injections of Main Street liquidity will propel the recovery of employers – including the business tenants that lease commercial building space – that drive jobs markets and provide the rental income that ripples throughout the economy and upon which the CRE industry depends.

IV. MSLP POLICY RECOMMENDATIONS

The "unusual and exigent" circumstances caused by COVID-19 are precisely the kinds of conditions that warrant emergency lending from 13(3) facilities. The Roundtable accordingly welcomes the opportunity to offer specific options to improve access to the MSLP to help keep workers employed in our industry, provide liquidity to small- and mid-sized tenants that lease CRE space to operate their businesses – and support the employers that develop, construct, and own income-producing real estate.

As a general matter, we believe that the key to unlocking more MSLP loans is to reconsider the program's delivery and underwriting apparatus. As long as banks are required to retain risk, their normal underwriting standards will be the predominant gating mechanism that impedes robust access to Main Street. If policy makers amended lenders' risk retention requirements, then more CRE business tenants could borrow, more CRE companies would have resources to support their workforce and pay their taxes and mortgages, and it could even create avenues of liquidity to the CMBS market.

The Roundtable believes that most of our MSLP improvement recommendations do not require further legislation from Congress, and could be achieved by administrative changes to the Fed's and Treasury's existing rules and guidance. We accordingly encourage the Committee and Administration officials to consider and collaborate on the following measures to improve the MSLP:

- ***The Fed should purchase 100% of MSLP loans:*** Banks are Main Street's gatekeepers. To incentivize them to promote the program, we suggest eliminating the 5% loan retention requirement. The MSLP facilities' "term sheets"[53] should be modified for the Fed to purchase 100% of originated loans – not 95% as per current constraints. The Fed's purchases should also apply to existing debt. Generous origination fees up to 20% have not spurred lender interest to date, because "even a 5 percent participation in [an MSLP] loan to a borrower that is anything but creditworthy carries significant disincentives for a bank to participate."[54] The Roundtable submits that the 5% risk retention requirement is not even necessary to protect the Fed, considering the MSLP's numerous and stringent requirements imposed on both lenders and borrowers aimed to prevent excessive losses.[55]

  We accordingly urge the Committee and the Fed to consider sale of 100% of an MSLP loan to the Main Street Special Purpose Vehicle (SPV). If lenders no longer retain a 5% default risk, their standard underwriting would not raise a too-high bar to preclude

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[53] MSLP "term sheets" for its loan facilities available here.

[54] COC Fourth Report, *supra* n. 5, at p. 39 (citing testimony of Lauren Anderson, Senior Vice President and Associate General Counsel of the Bank Policy Institute, at the COC's August 7 hearing).

[55] See *supra* notes 37 – 39 and accompanying text

borrowers from accessing 13(3) lending in the midst of the COVID economy's "unusual and exigent circumstances."[56] And, as noted earlier, the Treasury's pledge of Exchange Stabilization Fund assets to backstop the MSLP[57] minimizes the Fed's risk exposure and furthers the Governors' mandate to "support employers of all sizes" by providing "powerful support for the flow of credit in the economy."[58]

The Roundtable recognizes that the Fed likely has neither the resources nor expertise to monitor and service an MSLP loan once it is fully transferred to the SPV's balance sheet. We recommend that continued servicing should remain the responsibility of the originating bank, and/or a bank already servicing a borrower's existing debt. The lender is best positioned to attend to the loan and help the borrower manage its Main Street debt and emerge post-COVID as a thriving business. To make it worth lenders' while and compensate their participation as "Main Street servicers," the MSLP should accommodate a special servicing fee of 1% of the loan's balance until it matures – a typical servicing fee amount in the private market – over our recommended seven-year maximum term.

I would be remiss in failing to note that one of my esteemed fellow witnesses, Mr. Scott, has likewise recommended that "[t]he Fed should purchase the entire loan … so that the lenders would have little or no credit risk."[59] This recommendation is also within the spirit of Chair Powell's remarks in May that "timely and appropriately large" steps by Congress, the Fed, and Treasury are needed at this time to so that "liquidity problems" do not morph into "solvency problems."[60]

- ***Loosen overly tight "eligibility" and "affiliation" restrictions on borrowers:*** The Committee should also consider policies to motivate borrower-side interest. The basic point here is that worthy borrowers and industries should be eligible ***in the first place*** to access Main Street loans. In this regard, Treasury and the Fed should revise the MSLP FAQs[61] to state that the "ineligibility rule"[62] – promulgated by the Small Business Administration (SBA) in a completely different lending context[63] – should ***not*** block entry to Main Street. ***All*** businesses with up to 15,000 employees should be MSLP-eligible.

  The Fed and Treasury wrenched the SBA's "ineligibility rule" out of context, and carried it over to Main Street through their own administrative interpretation — not at the direction of Congress, the text of the CARES Act, or the language of the Federal Reserve Act. Small- and mid-sized businesses meeting the required MSLP "employee count" should determine 13(3) lending eligibility here. To be clear, The Roundtable further

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[56] *Federal Reserve Act* section 13(3)(A), codified at 12 U.S.C. § 343(3)(A).
[57] *Supra* notes 5, 40. See also Congressional Research Service, *Treasury's Exchange Stabilization Fund and COVID-19* (updated April 10, 2020).
[58] Press release, *Federal Reserve takes additional actions to provide up to $2.3 trillion in loans to support the economy,* (April 9, 2020).
[59] *Supra* n. 25.
[60] Chair Jerome H. Powell, *Current Economic Issues*, speech to the Peterson Inst. for International Economics (Washington, D.C.) (May 13, 2020).
[61] *Main Street Lending For-Profit FAQs* (Aug. 24, 2020). In particular, see FAQ # E.1.3 at p. 23.
[62] 13 C.F.R. 120.110.
[63] Namely, the 7(a) loan program, the SBA's "primary program for providing financial assistance to small businesses." See https://www.sba.gov/partners/lenders/7a-loan-program/types-7a-loans.

believes that the "ineligibility rule" should ***not*** apply to the PPP, either. The CARES Act states that ***any*** business with 500 workers or less (or of a size established by the SBA for a given industry) should be PPP eligible, and PPP loan proceeds can only be used for payroll, benefits, and other fixed expenses – not for the "speculative" purposes that ostensibly justify the rule in the context of SBA's 7(a) loan program.[64]

The MSLP and PPP are already off-limits to public companies and well-capitalized firms that can compete in the marketplace for fair and reasonable borrowing. No ***legal*** business that meets the programs' employee-sizing counts – that also cannot access credit on competitive terms in the COVID economy – should confront the out-of-context "ineligibility rule" as a categorical bar to emergency liquidity.

Similarly, for purposes of determining MSLP's 15,000 employee threshold, the carry-over of SBA's "affiliation rule"[65] is inapt. Rather than applying the SBA's subjective and complicated test to determine affiliated entities, we think the federal government should defer to State laws on business formation. If an entity is legally formed under State laws as its own LLC, LLP, or other structure, that should end the matter for purposes of counting employees. Perhaps some "pandemic revenue loss" requirement might be considered if a particular affiliated entity applies for an MSLP loan. However, a lawfully-formed employer that complies with State-level business structure laws should govern borrowers' access to the MSLP.

- ***Reform MSLP underwriting metrics to better reflect the types of businesses that need Main Street assistance – such as manufacturing, retail stores, restaurants, real estate owners, and other asset-based borrowers:*** Banks underwriting MSLP loans should be granted greater discretion in assessing credit worthiness across industries, with respect to individual borrower circumstances, and based on the types of assets involved. Currently, the MSLP limits a borrower's maximum loan size to a multiple of its earnings before interest, taxes, depreciation, and amortization (EBITDA). As the Fed has acknowledged, EBITDA is not a standard underwriting metric for real estate or other asset-based businesses. If the EBITDA multiple test remains, the number should increase substantially. We recommend that the Fed also allow lenders to use conventional metrics of the real estate industry:

  ✓ For construction and development projects, a 75% maximum loan-to-cost (LTC) ratio.

  ✓ For other assets, an 80% maximum loan-to-value (LTV) ratio, or a 1.2x minimum debt service coverage ratio, based on 2019 operating income.

  ✓ In addition, we believe Net Operating Income (NOI) is a better metric to reflect the long construction and lease-up times in commercial and residential property. The MSLP should allow the maximum loan size for CRE borrowers whose buildings were placed into service after January 2019 based on their projected stabilized NOI.

[64] See The Real Estate Roundtable's *8-Point Plan to Reform the Paycheck Protection Program,* Point #1 (April 8, 2020).
[65] 13 C.F.R. 121.103, made applicable to the MSLP through # E.5 (at p. 26) of the Fed's FAQ, *supra* note 35.

The Roundtable understands that MSLP Oversight Commissioners and members of this Committee share our belief: the Fed and Treasury should continue exploring whether Main Street might include asset-based and second-lien lending for creditworthy businesses with reasonable cash flow and valued collateral. Such a facility could affect employment by preserving asset-based businesses so workers have jobs that survive the pandemic. We thus encourage policymakers to establish an asset-backed lending facility in conjunction with the MSLP in short order.

- ***Reasonably extend maturity and amortization timelines:*** The Roundtable suggests that the MSLP permit lenders and borrowers to agree to terms of at least six years, and permit borrowers and lenders to agree to amortization schedules that reflects their unique circumstances and borrowing needs. We support recommendations submitted to the Oversight Commission that the maturity for Main Street loans should be extended to seven years (from five years), and amortization of principal should be pushed back to year four (from year three).[66]

- ***Create a preferred equity program for CRE borrowers:*** Congress should allocate unused Title IV CARES Act funds and direct the Fed and Treasury to create a preferred equity program for CRE borrowers, as part of the MSLP or as a separate facility. The new program would purchase positions and provide full or partial guarantees to insured financial institutions to make purchases of preferred equity. This would provide a temporary liquidity bridge to CRE borrowers and avoid existing prohibitions on taking on additional debt. The following technical amendment to Section 4003(b)(4)(A) of the CARES Act would achieve this objective:

    a. TECHNICAL AMENDMENT. Clarify that "obligations or other interests directly from issuers of such obligations" is intended to encompass both the direct purchase of and the provision of full or partial guarantees to insured financial institutions to enable them to purchase preferred equity positions in commercial real estate firms that require the capital to satisfy outstanding debt obligations.

    b. REGULATORY CAPITAL REQUIREMENTS RISK WEIGHT. With respect to the appropriate Federal banking agencies or the National Credit Union Administration Board applying capital requirements under their respective risk-based capital requirements, a preferred equity investment in a commercial real estate firm that receives a full or partial guarantee in accordance with subparagraph (a) shall receive a risk weight of zero percent.

- ***Continue to support the Term Asset-Backed Securities Loan Facility (TALF):*** While not technically part of the MSLP, the TALF falls within the Fed's 13(3) authorities. We commend the Fed's and Treasury's timely decision to revive the TALF and include commercial mortgage backed securities as eligible collateral. The TALF – which includes as eligible collateral triple-A rated agency and non-agency tranches of outstanding (legacy) commercial mortgage backed securities (CMBS) – has thus far proven beneficial to CMBS markets.

[66] COC Fourth Report, *supra* note 5, at p. 32.

The Fed should also expand TALF to investment-grade instruments below the triple-A rating level that support the commercial real estate market – to ensure liquidity is available where it is needed most without exposing itself to credit losses that would cause a net loss for the program. These could include new issue conduit CMBS and Single Asset, Single Borrower (SASB) new issue and legacy securities.

V. NON-MSLP POLICY RECOMMENDATIONS

We share Chair Powell's view that for some firms, more debt may not be the right answer at this point.[67] In this section, I appreciate the opportunity to provide the Committee with other recommendations – outside of 13(3) authorities – that complement our Main Street options. These further suggestions can provide critical relief to help families, workers, and businesses endure the pandemic and put the U.S. economy on a sustainable path to recovery.

- ***Pass the RESTART Act:*** The Roundtable strongly supports S. 3814, championed by Senators Bennet (D-CO) and Young (R-IN), and endorsed by an impressive list of 53 bipartisan co-sponsors. *RESTART* is where the PPP and the MSLP intersect on a Venn diagram. The bill would mimic the PPP's forgivable loan structure and provide credit to qualifying businesses to cover payroll, benefits, and other fixed costs such as rent obligations. Businesses with up to 5,000 employees could qualify, with streamlined procedures for <500 employee firms. Its provisions would boost lending for underserved businesses owned by minorities, women, and veterans, and target credit for concerns that have sustained a 25% loss in revenue. The Roundtable recommends several minor modifications to the *RESTART* Act similar to the "eligibility" and "affiliation" issues discussed earlier.[68] Overall, this is precisely the kind of policy we need to jumpstart small to mid-sized businesses to help them overcome on-going challenges caused by the pandemic.

  We also encourage that the *RESTART* Act (or any associated PPP improvement efforts) capture the significant reforms proposed by the *Small Business Expense Protection Act.* S. 3162 is championed by Senators Cornyn (R-TX) and supported by 31 bipartisan co-sponsors including Finance Committee Chairman Grassley (R-IA) and Ranking Member Wyden (D-OR). The bill would clarify that employers are not precluded from deducting business expenses, such as employee wages, simply because the expenses are paid out of funds from PPP loans that are subsequently forgiven under the CARES Act.

- ***Establish a residential tenant assistance fund particularly for as long as any federal eviction moratorium is in place:*** As noted earlier, the CDC/HHS eviction moratorium announced recently is incomplete as a policy solution.[69] The moratorium is in place even though expanded unemployment insurance, PPP loans for payroll, and stimulus checks – that were all available for months to help households pay rent – have now expired. In this regard, we appreciate efforts to craft legislation that would provide emergency rental assistance. The Roundtable suggests that these efforts are headed in the right direction precisely because they would provide critical funding for renters to pay their lease obligations. We humbly recommend that any such measure incorporate the following elements:

[67] *Supra* note 60.
[68] *Supra* notes 61-64 and accompanying text.
[69] *Supra* notes 3-4 and accompanying text.

- ✓ Ensure any protections for struggling residential (and business) tenants from evictions be aligned with financial assistance that makes those protections unnecessary in most cases. An eviction moratorium itself only delays eviction if rents go unpaid.[70] Rental assistance can prevent evictions in the first place.

- ✓ Provide corollary economic relief to multifamily owners and lenders in consideration of the harm they may suffer from tenants' missed rent payments, for as long as any eviction protections may endure.

- ✓ "Opportunistic tenants" – that have the ability to pay rent but nonetheless avoid payments – should not benefit from federal eviction protection.

- ✓ Eviction protections should only extend to tenants that make some certification and showing of economic harm as a result of COVID-19 (*e.g.*, lost job, reduction in income). Indeed, mortgagors could obtain CARES Act forbearance only if they sustained COVID-related economic harm.

- ✓ Partial rent payments should be encouraged as much as practicable. Any rent assistance program should be structured so that federal support is available to pay the rent increment that a qualifying residential tenant is unable to pay.

- ✓ Income-level restrictions should be expanded – so that more middle class households renting units geared to "workforce housing" income levels receive support during the COVID-19 economic crisis.

- ✓ Qualifying tenants that already receive some means of rental assistance through an existing program (such as Section 8 housing choice vouchers) should not ***also*** receive support through a temporary emergency rent assistance program. Limited resources should be economized so as much assistance as possible can be made available to renter households.

- ***Establish an emergency rental assistance fund for small business tenants made eligible because they have lost significant revenue during the pandemic.*** As the Committee considers creation of a residential rent assistance program, The Roundtable likewise encourages your careful deliberation of a similar program devoted to help ***business*** tenants meet their rent obligations. Ensuring that business tenants' rents are paid will allow this stream of income to spread throughout the economy, as the revenue supports worker salaries, state and local property tax bases, utility providers, mortgage and debt service, and Americans' retirement savings. The University of Pennsylvania's Wharton School has provided an estimate that a meaningful program designed specifically to help struggling U.S. small businesses meet three-months of their rent obligations would cost around $100 billion. (Wharton analysis available upon request.)

- ***Promote debt restructuring and workouts:*** Government-mandated closures and scaled-back operations mean millions of employers are struggling to cover basic fixed costs, including their debt service payments. Congress should remove obstacles to private sector debt restructurings and workouts that could allow businesses to avoid bankruptcies, foreclosures, and layoffs. Specifically, current tax rules discourage

[70] *Id.*

creditors and debtors from mutually agreeing to modify existing loans because any resulting debt forgiveness can generate immediate tax liability for the borrower, even though he or she has received no actual cash income. Keep in mind, lenders operating at arm's length will reduce or forgive the amount of outstanding debt only when the borrower has suffered a commensurate, and normally greater, loss in the value or earning power of its assets. A debt cancellation event reflects a severe hardship on the part of the borrower, not an enrichment. This is especially true in the case of a debt cancellation due to foreclosure.

In prior economic downturns, Congress has provided relief for cancellation of debt ("COD") income, including the farm crisis in the 1980s, the commercial real estate depression in the early 1990s, and the financial crisis of 2008-09. More recently, the CARES Act exempted loan forgiveness under the $670 billion PPP from COD income. For the next few years, Congress should allow ***all*** distressed borrowers to exclude COD income, or economically similar gains, to the extent that they reduce the basis of their depreciable and non-depreciable assets. The tax owed on restructured debt would not be forgiven, but would be collected over time by way of reduced tax attributes that limit deductions and increase taxable income. In short, the tax will still be paid, gradually, in a way that avoids undue hardship for struggling businesses and hastens the economic recovery. The Roundtable has provided the tax-writing committees with detailed recommendations on how to address pandemic-related COD income and would welcome an opportunity to discuss the issue with this Committee in greater detail.

- ***Pass the Healthy Workplaces Tax Credit Act:*** The Roundtable strongly supports S. 4214, introduced by Senator Portman (R-OH). The bill would provide a refundable payroll tax credit for the costs incurred by a business though the end of 2020 for certain "safe and healthy" workplace measures implemented due to the COVID-19 outbreak. Building owners and other businesses face exorbitant extra costs for "healthy workplace" protocols as they re-open responsibly and prepare their buildings for fuller re-entry. Temporary support to help cover these unforeseen expenses to enhance the comfort of workers, tenants, and guests will help businesses return to "close-to-normal" operations. The tax credit is scaled to provide more robust assistance to small businesses. We recommend that the legislation ensure that the credit is available to hotel and other owners that do not directly hire employees and operate under a managed structure.

- ***Protect schools, non-profits, and businesses from frivolous COVID lawsuits:*** The Roundtable strongly supports the liability protections developed by Leader McConnell (R-KY) and Senator Cornyn (R-TX) in the *SAFE TO WORK* Act. Building owners and managers – and their tenants – have a shared responsibility to re-open in a manner that protects occupants and guests from undue risks of harm. As we "re-open responsibly," businesses need protection from frivolous COVID-related lawsuits so they can focus on re-building customer bases and re-hiring workers. To be clear, we are not talking about protections for businesses that may engage in reckless, grossly negligent, or willful conduct. However, if a business follows available CDC, EPA, and state/local guidance on re-opening, a "safe harbor" should protect them.

- ***Authorize federal pandemic risk insurance:*** Although many businesses believed they had taken precautions to weather business interruption, their insurance policies have not provided the support they expected. Moving forward, the federal government should

provide a pandemic risk/business continuity insurance program to backstop the economic impact of a future public health crisis. As policymakers consider additional stimulus measures, particularly this Committee, it is important to enact measures that provide liquidity to put American workplaces in a position to reopen and rehire. A prospective federal business continuity insurance program should be put into place before the pandemic recurs or future government orders shutdown businesses again, to provide the economy with the coverage it needs to address future public health crises.

VI. CONCLUSION

COVID-19 has shocked our nation's – indeed our world's – economy. Signs of recovery provide cause for optimism and things appear to be moving in the right direction. However, the trends toward a "new normal" feel fragile at best. Unemployment remains at alarming levels, and businesses struggle to re-open and re-gain lost customers and revenue. Families worry about where their next paycheck will come from, amid lingering concerns that the virus has not yet abated and will surge as the fall and winter months approach.

Accordingly, The Roundtable emphasizes that new and improved rounds of COVID-related support are necessary now as much as at any point since the virus reached our shores. We also urge that further assistance should focus on individuals and businesses that have suffered economically during the pandemic. Congress and the Administration took significant and impactful actions early in the economic crisis, particularly in enacting the CARES Act. However, we are highly concerned that without continued support to struggling people and businesses, the current crisis could worsen resulting in more jobs lost, greater stress on local governments, and a much more protracted employment and economic recovery.

The MSLP could provide significant assistance. Yet Main Street's potential is largely untapped. Administrative actions could incentivize lenders to more actively engage small and mid-sized employers such as by reforming the eligibility, underwriting and affiliation restrictions that have significantly hampered the program to date. Changes by the Fed to its program rules and guidance could allow Main Street credit to flow and assist many more struggling businesses unable to access capital elsewhere. These are precisely the types of businesses that Congress designed the program to assist, and they are disproportionately minority-, women- and veteran-owned businesses. Our MSLP recommendations would require little if any additional budgetary allocation.

Supplemental legislative action also is needed to provide rental assistance for residential and business tenants, promote healthy workspaces, and provide reasonable liability protection from frivolous COVID lawsuits. These and other policy responses will help America's resilient families and employers – our most valuable resources – emerge from the pandemic stronger than ever.

These are critical times and we very much appreciate the focus of this Committee. We are prepared to assist the Committee further on these or other matters.

Thank you.

APPENDIX A

COVID-19's Impact on Specific Real Estate Sectors and Markets

Hotel and Lodging Industry

Labor-intensive with an economic impact that extends to surrounding communities and small businesses, hotels are an important barometer of any locality's economic health. Prior to the COVID-19 pandemic, the U.S. hotel industry was at record performance in occupancy and revenues.[71] Hotels in the United States supported 8.3 million jobs and $395 billion in wages and compensation.[72]

As of August 29, nationwide hotel occupancy was only 48%, down from 67% the same week the prior year, and down from 49% the week prior. The occupancy rate in urban markets, typically comprised of larger hotels with a higher employment base, was only 37% -- versus 74% last year.[73] Hotel room revenues (measured as revenue per available room) were down 45% for the week ended August 29th, continuing a steady trend of declines of 45-50% on a weekly basis,[74] stretching back to the peak declines of 80% or more earlier in the crisis.[75] Many hotels rely on the peak travel season during the summer and the situation is expected to worsen in the fall and winter. Occupancies have already plateaued at historically low levels and begun their descent as what meager leisure travel has occurred dries up. Hotels are not expected to return to pre-pandemic revenue levels before 2024.[76]

At the peak of the pandemic, nearly nine in ten hotels had to lay off or furlough workers, and the hospitality and leisure industry lost 7.5 million jobs. Despite small gains in employment over the summer driven largely by restaurants and bars reopening, the leisure and hospitality sector is still down 4.1 million jobs since February. The unemployment rate in the overall accommodations sector is 34.5%, compared to a national average of 8.4%.[77] Prior to the pandemic, hotels supported the employment of 1 in 25 American jobs and this crisis has devastated hotel workers.

Wide swaths of the hotel industry are in danger of going out of business, putting millions of jobs at risk. Nearly two-thirds of hotels remain at or below 50% occupancy, far below the threshold needed to break even and pay debt. Hotel revenue lost due to COVID-19 is expected to exceed $120 billion, a loss of more than 50% of the hotel industry's total revenue in 2019, according to CBRE and STR, a division of CoStar.[78] The pandemic is projected to reduce hotel-specific state and local tax revenues by nearly $17 billion this year – with an additional $9 billion in hotel real estate taxes at risk.[79]

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[71] Revenue per available room (RevPAR), a widely used industry measure, reached the highest level ever recorded by industry analyst STR, a division of the CoStar Group, at the end of 201. STR, *U.S. Hotel Industry Posts Record Levels in 2019, But Lowest Growth Since Recession* (Jan. 2020).
[72] https://www.ahla.com/sites/default/files/oxford2019.pdf
[73] https://str.com/press-release/str-us-hotel-results-week-ending-22-august
[74] *Id.*
[75] *Id.*
[76] https://str.com/press-release/str-te-slightly-downgrade-us-hotel-forecast
[77] *The Employment Situation – August 2020*," U.S. Bureau of Labor Statistics (rel. Sept, 4, 2020).
[78] https://str.com/press-release/str-te-slightly-downgrade-us-hotel-forecast
[79] https://www.ahla.com/sites/default/files/AHLA%20State%20%20Local%20Tax%20Revenue%20Loss%206-12-20.pdf

Retail Industry

Before the pandemic, first quarter of 2020, the vacancy rate in retail real estate was relatively low at 7.7%[80] and total retail rent collections stood at 91%[81]. By the end of May, retail rent collection had fallen to 57% and vacancies were rising[82]. Over the past three months (June, July, August) the percentage of total retail rent collected has risen 16 percentage points (pp)[83]. The pace of the recovery, however, has slowed over the summer. Between May and June, total retail rent collections increased 9.4 pp, from June to July +3.6 pp, and from July to August +2.8pp[84].

At the same time that income from retail tenants has declined dramatically, operational expenses are surging due to COVID-19. Shopping center operational expenditures have increased by an estimated 20.5% due to new health and safety protocols[85], including allowances for curbside pickup, personal protective equipment, increased cleaning services and significant upgrades to HVAC systems.

Over the last 15 years, retail real estate has experienced a gradually shift away from traditional storefronts to service-oriented businesses, such as restaurants and drinking establishments; personal care, health and wellness businesses; and educational, and entertainment facilities[86]. These service-oriented businesses have been particularly hard hit by COVID-19.

America's shopping centers report $190 billion in reduced sales[87], $54 billion in missed rent[88], and more than 7 million lost jobs due to the pandemic.[89] According to research by the International Council of Shopping Centers, there are 6,359 announced store closures since the end of post COVID-19 shutdown (Q2-Q3 2020). The devastating effect of COVID-19 on retailers has put at risk the approximately $400 billion of state and local taxes[90] generated by the shopping center industry that goes to support local communities, public safety resources and infrastructure.

Multifamily Housing

Over 40 million renters reside in America's multifamily housing communities. Setting aside any government-imposed moratoria, apartment owners are proactively and successfully working with their residents during the pandemic to avoid delinquencies and evictions. In its survey of 11.4 million units of professionally managed apartment units across the country, the National Multifamily Housing Council (NMHC)'s Rent Payment Tracker found 90 percent of apartment households made a full or partial rent payment by August 20. This is a 2.1-percentage point, or

[80] National Council of Real Estate Investment Fiduciaries (NCREIF) and ICSC Research
[81] Datex Property Solutions
[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] NCREIF
[86] US Census Bureau, CoStar Realty Information Inc., and ICSC Research
[87] US Census Bureau and ICSC Research
[88] NCREIF and ICSC Research
[89] U.S. Bureau of Labor Statistics and ICSC Research
[90] ICSC Research

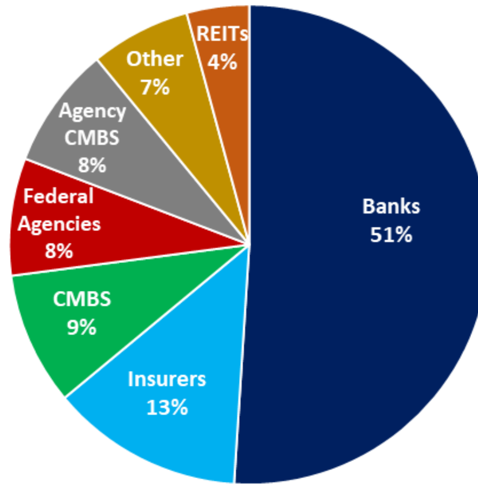
237,056 -household decrease from the share who paid rent through August 20, 2019 and compares to 91.3 percent that had paid by July 20, 2020. These data encompass a wide variety of market-rate rental properties across the United States, which can vary by size, type and average rental price.

The ability of Americans to continue meeting their rental obligations during the pandemic is a testament to the aggressive actions taken by Congress and the Administration to address the economic consequences of COVID-19. That said, there are clear warning signs that should guide policymakers' actions. First, in some cases, multifamily owners may be counting a security deposit as a rental payment, thus overstating actual current collections and suggesting that potential trouble could lie ahead. Second, the continued high unemployment numbers mean that as leases expire, many renters without jobs are going to move back home. During the second quarter of 2020, occupancy rates fell to the lowest level since Q2 2017; U.S multifamily occupancy posted a decrease of 0.6 percentage points year-over-year to 95.3 percent.[91] One highly respected real estate economist foresees apartment occupancy falling to as low as 88% this year.[92]

Renters are likely to be in more high risk occupations, and many were housing cost burdened before the onset of the pandemic. The Terner Center for Housing Innovation at UC Berkeley estimates that nearly 16.5 million renter households have at least one worker in an industry likely to be affected by COVID-19, and among those renter households, more than 7.1 million were already experiencing housing instability.If relief efforts such as the enhanced emergency unemployment benefits and the Paycheck Protection Program are allowed to phase down while unemployment remains elevated and businesses continue to struggle, the percentage of renters unable to meet their rental obligations will undoubtedly rise. The result will be undue economic hardship and further deterioration of the rental obligation chain that underlies much of our economy. For these reasons, it is critical that Congress and the Administration agree to extend, for now, the economic lifelines enacted in the CARES Act, as well as provide rental assistance.

[91] National Apartment Association, *Summer 2020: Weathering the Storm Amid Uncertainty* (Aug. 7, 2020).
[92] Peter Linneman, *Linneman Associates Capital Markets Webinar* (Aug. 2020).

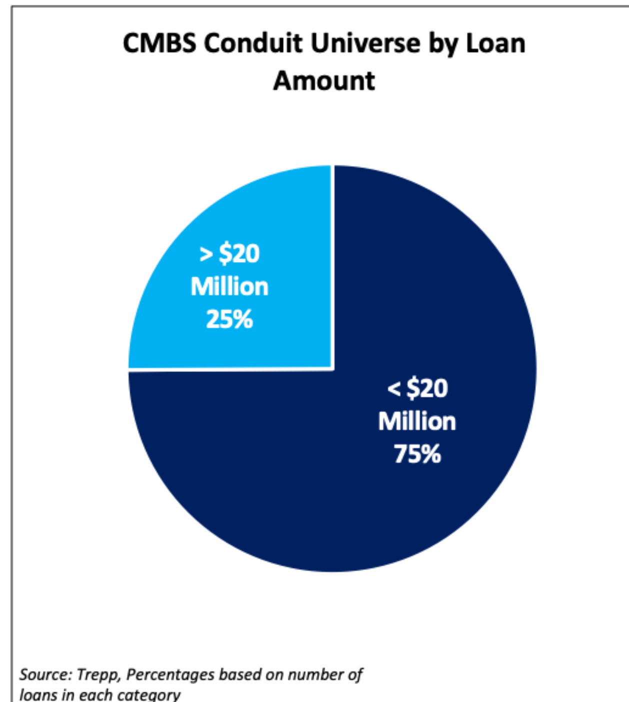
Debt Markets



U.S. commercial real estate debt (including debt associated with multifamily residential properties) totaled $4.66 trillion at the end of the first quarter of 2020. Roughly two-thirds of commercial real estate debt relates to non-residential property with the remainder financing multifamily residential rental property (five or more units). As the pie chart above indicates, the largest holders of the outstanding debt are banks (51%), government-sponsored enterprises and GSE-backed mortgage pools (16%), life insurance companies and pension funds (13%), commercial mortgage-backed securities (9%), and REITs (4%).[93]

Among different capital sources, the CMBS market is most reliant on loans backed by the most impacted property types – namely, hotel and retail – and has thus faced the greatest challenges. Notably, the vast majority – 75% – of CMBS loans are smaller, less than $20 million in size:

[93] Federal Reserve, *Financial Accounts of the United States* (June 2020).



CMBS delinquencies are generally viewed as a reasonable barometer of the health of private commercial real estate credit. The rate of severely delinquent CMBS (121 days late or more) nearly tripled in August.[94] The hotel CMBS delinquency rate has already climbed to the highest figure on record at 23.4%,[95] representing more than $20 billion in debt out of the total $87 billion in the hotel CMBS market. This amount represents a 53% increase in delinquencies over the highest peak during the Great Financial Crisis.[96] As of July, $21.4 billion in troubled retail CMBS loans were in special servicing. This compares to $6.7 billion in December 2019.

Corresponding to the loss of rent which stands at $54 billion (April - August,) CMBS delinquency rates for retail real estate rose by 670-basis points between April and May (3.4% to 10.1%) and by 790-basis points between May and June (10.1% to 18.0%). While delinquency rates declined by 195 basis points between June and July (18.0% to 16.1%), the current delinquency level is almost double the previous record high of 8.2% that was reached following the Great Financial Crisis.

While the current rate of delinquencies and defaults is alarming, the level of stress in commercial real estate debt markets will rise if unemployment remains elevated and COVID-19 continues to put downward pressure on the income of commercial tenants.

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[94] *Commercial Mortgage Debt in Distress Surges 320%, Moody's Says* (Bloomberg, Aug. 25, 2020), *available at*: https://www.bloomberg.com/news/articles/2020-08-25/commercial-mortgage-debt-in-distress-up-320-since-march-moodys.
[95] https://info.trepp.com/trepptalk/an-update-on-the-hard-hit-hotel-and-retail-commercial-real-estate-sectors
[96] *Id.*

APPENDIX B

Real Estate - An Engine of Job Creation

CODE	OCCUPATION	TOTAL EMPLOYMENT
119021	Construction managers	293,380
119081	Lodging managers	38,340
BUSINESS AND FINANCIAL OPERATIONS OCCUPATIONS		
119141	Property, real estate, and community association managers	220,750
132020	Property appraisers and assessors	56,320
ARCHITECTURE AND ENGINEERING OCCUPATIONS		
171010	Architects, except naval	126,130
171020	Surveyors, cartographers, and photogrammetrists	56,520
173011	Architectural and civil drafters	98,800
173031	Surveying and mapping technicians	53,030
LEGAL OCCUPATIONS		
232093	Title examiners, abstractors, and searchers	52,890
ARTS, DESIGN, ENTERTAINMENT, SPORTS, AND MEDIA OCCUPATIONS		
271025	Interior designers	60,650
PROTECTIVE SERVICE OCCUPATIONS		
339032	Security guards (excludes transportation security)	1,126,370
BUILDING AND GROUNDS CLEANING AND MAINTENANCE OCCUPATIONS		
371010	First-line supervisors of building and grounds cleaning and maintenance workers	259,140
372011	Janitors and cleaners, except maids and housekeeping cleaners	2,145,450
373010	Grounds maintenance workers	999,960

CODE	OCCUPATION	TOTAL EMPLOYMENT
PERSONAL CARE AND SERVICE OCCUPATIONS		
396010	Baggage porters, bellhops, and concierges	81,460
SALES AND RELATED OCCUPATIONS		
419020	Real estate brokers and sales agents	205,060
n/a	Real estate agents (self-employed)	1,200,000
OFFICE AND ADMINISTRATIVE SUPPORT OCCUPATIONS		
434081	Hotel, motel, and resort desk clerks	267,940
CONSTRUCTION AND EXTRACTION OCCUPATIONS		
471011	First-line supervisors for construction trades and extraction workers (construction = 90%)	626,180
472000	Construction trades workers	4,617,440
473010	Helpers, construction trades	242,400
474011	Construction and building inspectors	110,420
474021	Elevator and escalator installers and repairers	28,350
474031	Fence erectors	25,900
474041	Hazardous materials removal workers	44,240
INSTALLATION, MAINTENANCE, AND REPAIR OCCUPATIONS		
499011	Mechanical door repairers	23,050
499012	Control and valve installers and repairers	52,270
499021	Heating, air conditioning, and refrigeration mechanics and installers	342,040
TRANSPORTATION AND MATERIAL MOVING OCCUPATIONS		
536021	Parking attendants	147,390
TOTAL		**13,601,910**

Source: U.S. Bureau of Labor Statistics, National Occupational Employment and Wage Estimates (May 2019), available at: https://www.bls.gov/oes/current/oes_nat.htm#00-0000; Estimate for self-employed real estate agents based on NAR membership data available at: https://www.nar.realtor/membership/monthly-report