American Hospital Association™
Advancing Health in America

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April 12, 2020

The Honorable Steven Mnuchin
Secretary of the Treasury
Main Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

The Honorable Jerome Powell
Chair of the Board of Governors
The Federal Reserve
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

RE: Guidance needed to support hospitals' ability to access Main Street New Loan Facility

Dear Secretary Mnuchin and Chairman Powell:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinician partners — including more than 270,000 affiliated physicians, 2 million nurses and other caregivers — and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) is writing to supplement its letter dated April 3, 2020 regarding access by hospitals to financing provided under Section 4003(b)(4) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), including the Main Street New Loan Facility (the New Loan Facility) described in the term sheet posted by the Federal Reserve on April 9, 2020. The AHA and our members appreciate the speedy efforts of the Department of the Treasury and the Federal Reserve to create and outline new credit facilities to assist numerous business sectors, including the country's health care organizations, in surviving the health care and financial crises instigated by the COVID-19 virus pandemic.

As noted in our April 3 letter, access by health care organizations to the low-cost loans described under Section 4003(b)(4) of the CARES Act and/or the New Loan Facility is an essential component of federal support for hospitals. Whether or not additional loan facilities are developed with Section 4003(b)(4) funds, time is of the essence for working capital support of the hospitals and other organizations on the frontline of battling the virus, and the New Loan Facility is the facility most likely to address federal loan assistance needs for health care organizations ineligible for Paycheck Protection Program (PPP) loans or for which PPP loan maximums are insufficient. We urge Treasury and the Federal Reserve to supplement the New Loan Facility term sheet with prompt guidance on the following points to ensure that access to this critically-necessary loan facility will be attainable for hospitals without delay.

Eligibility of Non-profit Organizations. Section 4003(c)(3)(D) of the CARES Act tasks Treasury and the Federal Reserve with implementing a non-exclusive emergency loan program under Section 4003(b)(4) that provides assistance to mid-sized businesses, including non-profit organizations, that have up to 10,000 employees. The New Loan Facility is, at this time, that loan program. The New Loan Facility term sheet describes eligible borrowers as “businesses with up to 10,000 employees or up to $2.5 billion in 2019 revenues.” The term sheet does not distinguish between for-profit businesses and non-profit businesses, or mention nonprofits. Many hospitals are nonprofits. It is AHA’s understanding, bolstered by congressional intent expressed in Section 4003 of the CARES Act, that “businesses” include non-profit organizations, and that nonprofits which otherwise meet the New Loan Facility eligibility requirements are eligible for loans thereunder. In order to avoid uncertainty or delay with participating lenders under the program, AHA urges Treasury and the Federal Reserve to make an unequivocal statement that nonprofits are included.

In addition, guidance should clarify that the eligibility requirements are satisfied if either the 10,000 employee maximum or the $2.5 billion revenue maximum are satisfied, and that exceeding one of these two criteria is not disqualifying.

Moreover, the New Loan Facility term sheet is silent on the applicability of affiliation principles in calculating employees and revenues. In the event further guidance on this topic is contemplated, we reiterate, as discussed in AHA’s April 3 letter, that a non-profit applicant should be permitted to establish eligibility for the New Loan Facility program by reference to the number of employees of that entity, and the revenues of that organization, without regard to any affiliated entities.

Eligibility of Public Hospitals. Public hospitals operated by states, counties or cities are involved in the battle against the COVID-19, and are essential to the viability of the economies of their geographic locations, as are for-profit- and non-profit hospitals. Due to the size and other requirements of the Municipal Liquidity Facility described in the applicable term sheet posted by the Federal Reserve on April 9, 2020, it appears that the Federal Reserve’s municipal liquidity facility will not be directly available to public hospitals, and indirect availability, much less timely indirect availability, also is doubtful given the complexities of intermediated financings. These separate enterprises of state, county or local government should not be permitted to fall into a no-man’s land in which they are ineligible for assistance under any of the Federal Reserve facilities developed for this crisis. AHA urges Treasury and the Federal Reserve to either specify that public hospitals are considered businesses eligible under the New Loan Facility if the remaining eligibility criteria are satisfied, or to supplement the Municipal Liquidity Facility to make public hospitals independently and directly eligible under that facility.

Compensation Restrictions. The New Loan Facility term sheet indicates that the compensation restrictions in Section 4004 will be applicable to loans under that facility although Section 4004 does not impose such restrictions on Section 4003(b)(4) assistance. For the reasons stated in its April 3 letter, AHA urges that the Secretary of the Treasury waive such requirements, as the CARES Act authorizes, in the case of "employees" providing medical services. As previously noted, given the national undersupply of medical professionals, hospitals and health systems receiving this type of federal loan should not be pitted against those that do not receive such loans and are able to compensate physicians and other medical personnel at market rates. At a minimum, guidance should clarify that borrowers may honor employment contracts executed prior to March 1, 2020, just as Section 4004 excludes from its restrictions compensation determined pursuant to a collective bargaining agreement entered into prior to March 1, 2020.

EBITDA Test. The New Loan Facility term sheet restricts the loan size to an amount that, when added to the borrower's existing outstanding and committed but undrawn debt, does not exceed four times the borrower's 2019 earnings before interest, taxes, depreciation, and amortization (EBITDA). We urge Treasury and the Federal Reserve to provide an override mechanism for hospitals and/or other borrowers that do not satisfy this EBITDA test, or cannot obtain adequate loan assistance as a result of this EBITDA test, as long as other stated provisions, such as partial collateralization, are met which satisfy the taxpayer protection objective. In addition, guidance should clarify that undrawn lines of credit are excluded from the leverage ratio calculation.

Once again, we appreciate your leadership on these issues relating to this health, financial and societal crisis, and we look forward to continuing to work with you during this critical time to protect the health of our nation.

Sincerely,

/s/

Thomas P. Nickels
Executive Vice President