MORTGAGE BANKERS ASSOCIATION

March 20, 2020

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
S-230, The Capitol
Washington, DC 20510

The Honorable Chuck Schumer
Democratic Leader
U.S. Senate
S-221, The Capitol
Washington, DC 20510

Dear Speaker Pelosi, Leader McCarthy, Leader McConnell, and Leader Schumer:

On behalf of the Mortgage Bankers Association (MBA), the national trade association representing the breadth of both the residential and commercial/multifamily segments of the real estate finance industry,[1] I wish to focus the recommendations contained within this letter on COVID-19 and its impacts on renters and small businesses, reflecting the perspectives of our commercial and multifamily members.

As leaders within the Congress have recognized, COVID-19 is creating an unprecedented health and financial crisis, which in turn calls for an unprecedented response from both the industry and policymakers. To have the necessary impact, that response must include assistance to small businesses and their employees, who are the backbone of the American economy.

MBA appreciates the administration's and Congress' collective efforts to provide meaningful support to those most in need through paid sick leave, family leave, and streamlining the availability of unemployment benefits. We also support current efforts to flatten the COVID-19 epidemic curve to ensure the safety of every American, including pausing non-essential governmental services and closing schools, restaurants, retail establishments, hotels, and other workplaces. However, there are economic consequences to those safety measures that should also be addressed.

Specifically, the financial ability of large numbers of families and small businesses to continue to pay rent and to cover other necessary expenses is severely at risk. As you know, small

[1] The $3.5 trillion commercial/multifamily real estate finance market is an essential and integral part of the national economy that provides the financing for properties that enable the nation's businesses to operate and for multifamily rental housing in which 20 million households reside.

businesses in the retail and hospitality sectors are already feeling the financial consequences of measures like social distancing and mandatory business closures. These severe financial consequences for large numbers of families and small businesses will in turn have cascading consequences throughout the entire economy for months or possibly longer.

In addition, we note that certain actions necessary to flatten the COVID-19 epidemic curve (e.g., the closing of county recording offices) are disrupting the processes of how residential, commercial and multifamily properties are financed, which can similarly have a ripple effect across the larger economy.

To address the current unprecedented circumstances, our members are already working proactively with affected borrowers to mitigate the impacts of COVID-19 on renters and small businesses to every extent possible. However, to adequately mitigate those impacts, and to reduce the impact on the larger economy, we respectfully request that Congress take the following steps that are critical to helping families and small businesses that rent, and to facilitate the process of financing commercial and multifamily properties during the crisis:

1. **Emergency Rental Assistance/Streamlined Voucher Program:** Americans that have lost their jobs, have had wages cut, or cannot go to work as a result of COVID-19 are feeling tremendous financial pressure from the resulting loss or reduction of income. To help affected families, Congress should establish an emergency assistance fund or streamlined voucher program targeted to preventing the unnecessary loss of rental housing. Such direct rental assistance is the most efficient mechanism to quickly ensure that Americans can keep a roof over their heads, that borrowers/owners can meet their financial obligations, and that lenders can work with their customers to keep their loans current. Rental assistance, combined with the reserves built up by borrowers/owners over the long-positive economic cycle, combined with established emergency forbearance programs offered by the FHA and the GSEs, should help the economy reasonably weather a short-term crisis.

2. **Title Insurance Gap Reinsurance:** Every day, more county offices, courts, and local city, town, and village government offices are either reducing services or closing their offices for an indeterminate period. In many cases, those actions are having significant impacts on title insurance companies' access to necessary public records to conduct the required searches as well as their ability to record closing documents at the appropriate recording office. Although e-filing of closing documents for recording is available in some jurisdictions, it is not available in all jurisdictions. If title companies are either unable to secure customary searches, or are unable to record closing documents, they will face severe challenges to insure the title under owner or lender title policies.

   Title companies in some states and circumstances can provide title insurance "gap" coverage for the time lag between the closing/funding and the recording of closing documents, by continuing their title search and risk assessment following the time of closing. In the COVID-19 environment, the uncertainty around title searches as well as the uncertainty of closing and delayed recording is extremely challenging for a title insurance company that is being asked to assume the risk of loss on potential title issues. Under these circumstances, a federal backstop for losses due to gap coverage would encourage the title industry to insure owners and lenders for that gap and would prevent the potential freezing of loan closings, thereby contributing to continued liquidity to the commercial mortgage lending market.

3. **Pandemic Risk Insurance Subsidies:** The business interruption insurance coverage purchased by most small businesses does not cover the coronavirus. In the near term, Congress can provide immediate aid to help those businesses stay afloat by providing subsidies that would pay claims to small businesses whose operations have been disrupted by the coronavirus. Such a program would be the most efficient means to help small businesses to weather the current crisis. In the future, it may be necessary to create a permanent pandemic risk insurance program if private property and casualty insurers are unable to offer policies covering comparable business interruptions, using the Terrorism Risk Insurance Program as a possible model. MBA notes that private insurers are currently working on the feasibility of providing pandemic risk insurance coverage.

4. **Expand and Streamline the SBA's Disaster Loan Program:** The SBA's disaster loan program provides low-cost loans to small businesses that have had their operations disrupted by disasters. Currently, the program requires state-by-state and county-by-county certification, making it difficult to efficiently provide funds to all such businesses in need. This program should be made immediately available nationwide. The SBA should also be given authority to streamline the disaster loan approval process for small loan amounts ($500,000 or less) to provide emergency funds more quickly to those businesses most in need.

5. **Payroll Tax Cuts or Cancellations:** Each month, businesses send roughly $100 billion to the federal government for Social Security, Medicare, and unemployment taxes. Temporarily canceling or reducing these taxes would reduce the cost for employers that continue to pay their employees regardless of whether they are working or are on paid sick leave. Combining such a cancellation or reduction with paid sick and family leave included in the Families First Coronavirus Response Act will provide meaningful support to small businesses.

6. **Economic Impact Payments:** Congress should authorize funds to provide direct payment to individual taxpayers, administered by the IRS and Fiscal Service.

7. **Unemployment Compensation Tax Relief:** Unemployment compensation is taxable income under current law. To provide additional relief to those who have lost jobs, Congress could exclude such income from being taxed for those affected by COVID-19.

8. **Estimated Tax Payments:** Congress could help ease cash-flow challenges for the apartment owners and operators who keep a roof over their tenants' heads, by waiving penalties in connection with estimated tax payments. Under current law, sole proprietors, partners, and S corporation shareholders must make quarterly estimated tax payments if they expect to owe $1,000 or more in tax when a return is filed. Corporations must make estimated payments if they expect to owe more than $500 when a return is filed. If taxpayers do not make sufficient estimated payments, a penalty is assessed. The penalty is waived if taxpayers paid 90 percent of the tax for the current year or 100 percent of last year's liability (110 percent for taxpayers with adjusted gross income of over $150,000). Congressional action to waive penalties for taxpayers owing more than $1,000 (sole proprietors, partners, and S corporations) or $500 (corporations) if they paid at least 90 percent of last year's liability in tax would provide meaningful relief to many who own apartments and small businesses.

9. **Net Operating Loss Carryback:** Congress could help ease cash-flow challenges for businesses by allowing net operating losses (NOLs) generated in 2020 to be carried back for three years. Under current law, taxpayers are not able to carry back current-year losses against prior-year income and, thereby, obtain a tax refund. Instead, losses may be carried forward indefinitely with the limitation that only 80 percent of a loss may be offset against any year's income. This proposed change would enable taxpayers to carry back 2020 losses to 2017, 2018, and/or 2019 and eliminate the 80 percent loss limitation.

10. **Reasonable Capital and Accounting Relief for COVID-19 Affected Loans:** Financial institutions that hold commercial and multifamily loans whose performance may be adversely affected by COVID-19, including depository institutions, life insurance companies and other non-depository institutions, should be accorded reasonable and comparable accounting and capital relief in order to provide forbearance to affected borrowers. We appreciate the actions taken by federal prudential regulators to date, and we call upon the Financial Accounting Standards Board to provide accounting relief, and we call on state insurance regulators to provide risk-based capital relief to life insurance companies who are working to help borrowers who have been affected by COVID-19.

We appreciate that Congress recognizes that today's unprecedented circumstances require unprecedented actions. We hope that you find the recommendations in this letter to be helpful as you determine the actions lawmakers must take to provide relief and to prevent additional harm.

Thank you for your consideration of the views expressed within this letter. MBA stands ready to serve as a resource for you throughout this crisis.

Sincerely,

Bill Killmer
Senior Vice President
Legislative and Political Affairs

cc: The Honorable Richard Neal, Chairman, House Ways and Means Committee
The Honorable Maxine Waters, Chairwoman, House Financial Services Committee
The Honorable Charles Grassley, Chairman, Senate Committee on Finance
The Honorable Mike Crapo, Chairman, Senate Banking Committee
The Honorable Kevin Brady, Ranking Member, House Ways and Means Committee
The Honorable Patrick McHenry, Ranking Member, House Financial Services Committee
The Honorable Ron Wyden, Ranking Member, Senate Committee on Finance
The Honorable Sherrod Brown, Ranking Member, Senate Banking Committee