Richard J. Pollack
President & Chief Executive Officer

800 10th Street, NW
Two CityCenter, Suite 400
Washington, DC 20001-4956
(202) 638-1100
www.aha.org

April 3, 2020

VIA Electronic Mail and Hand Delivery

Steven Mnuchin
Secretary of the Treasury
Main Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

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

RE: Guidance needed to support hospitals' ability to access loan program under Section 4003(b)(4) of the CARES Act

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) appreciates the variety of just-enacted statutory and regulatory efforts to assist our country's health care organizations. Hospitals and health systems are on the frontline of the fight to protect potentially millions of citizens against the ravages of the COVID-19 virus, while continuing to meet the ongoing health needs of their communities.

The financial and operational needs of hospitals and health systems at this time and in the near future are and will remain enormous, and must be addressed if our health care system is to survive and continue its central role in supporting the health and wellbeing of our nation. The enormous expense of treating COVID-19 patients coupled with the forgone income from hundreds of thousands of cancelled surgeries and other elective procedures has created multiple burdens that will likely threaten the viability of many of our nation's hospitals. Therefore, access to the low-cost loans available under Section 4003(b)(4) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) is an essential component of federal support for hospitals.

We urge the Department of the Treasury and the Federal Reserve to implement this loan program quickly and in a manner that ensures such access will be attainable for hospitals, including the following items:

Eligibility. 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 nonprofit organizations, that have between 500 and 10,000 employees (the Mid-Sized Business Emergency Loan Program). Eligibility should extend to hospitals of all ownership types, including municipal, county and other public hospitals. We urge that guidance clarify that employees of an applicant's corporate affiliates need not be included in determining eligibility. While many of the nation's hospitals are affiliated with larger systems, most function with substantial operational and financial independence, with their own mission to serve a particular geographic region with particularized health needs. The fact that a hospital may have affiliates in other locations or a "parent" as a direct or indirect "member" has little bearing on its need for loan assistance under Section 4003(b)(4). An applicant should be permitted to establish eligibility for Fed Emergency Loan Program assistance by reference to the number of employees of that organization without regard to any affiliated entities.

Workforce Maintenance. The Mid-Sized Business Emergency Loan provisions require an applicant to certify that the funds it receives will be used to retain at least 90% of the recipient's workforce, at full compensation and benefits, until Sept. 30, 2020. The AHA understands that such loans are intended in part to preserve jobs. However, current federal and/or state mandates to defer providing elective medical procedures will impact a significant number of highly-trained physicians and other medical personnel who cannot be easily retrained to care for COVID-19 patients. This epidemic has upended health care delivery and required hospitals to reshape their workforce to protect workers and maintain operations. For worker and patient safety reasons hospitals may be required to furlough or lay off now-nonessential personnel. Many back-office functions have become unnecessary due to loss of normal patient flow. In addition, clinicians are being asked to move to harder hit areas to create surge capacity. Labor costs are the largest portion of a hospital's budget. Addressing those costs is essential if they are to maintain a presence in their communities, and while non-forgivable loans will reduce the incidence of layoffs, it will be unsustainable for many hospitals to increase their debt burden to a level consistent with cash resources sufficient to pay 90% of workforce — even if the Mid-Sized Business Emergency Loan program were to make loans available in the amounts necessary, which is unknown. If a minimum percentage of a loan recipient's workforce needs to be maintained, we recommend that for hospitals such percentage be no more than 60% and that there be flexibility for a hospital borrower to demonstrate that special circumstances necessitate a lower percentage.

Workforce Restoration. The Mid-Sized Business Emergency Loan provisions require an applicant to certify its intent to restore not less than 90% of its workforce that existed as of Feb. 1, 2020, and to restore all compensation and benefits to its workers no later than four months after the termination date of the COVID-19 public health emergency declared by the Secretary of Health and Human Services (HHS). The pace at which elective medical procedures will be rescheduled and resumed following any decision by the HHS Secretary to declare an end to the public health emergency cannot be predicted, but there can be little doubt that four months is far too short a period for a presumed return to normal given the scale of this crisis. Maintaining the necessary medical personnel to be responsive to community needs is fundamental to hospitals' mission and therefore a top priority. If a deadline for restoration of workforce and compensation and benefits is required, we urge a longer period, and would recommend six months.

Offshoring and Outsourcing. The Mid-Sized Business Emergency Loan provisions require an applicant to certify that it will not outsource or offshore jobs for the term of the loan and two years after completing repayment of the loan. We urge Treasury and the Federal Reserve to clarify that this requirement does not preclude the continuation of arrangements in place prior to receipt of the loan. For example, many health care organizations currently use offshore enterprises for certain coding and other back office administrative tasks. In the midst of their economic recovery, it would be highly disruptive to require hospitals to procure new vendors or in-house capacity for tasks on which ongoing operations depend, and such requirements could subsume a significant amount of the loan that would otherwise be put toward restoring or maintaining domestic staff. Similarly, there should be clarification that "outsourcing" does not include the continuation of existing arrangements and does not apply to the use of agency nurses, interim physicians and other types of independent contractors and non-employees to supplement the employee workforce when required.

Neutrality on Unionizing Activity. We urge Treasury and the Federal Reserve to clarify that this requirement does not preclude a loan recipient from providing factual information to employees during the pendency of unionizing activity.

Compensation Restrictions. The CARES Act is internally inconsistent on whether the compensation restrictions in Section 4004 apply to Section 4003(b)(4) loans. However, it is clear that the Secretary of the Treasury may waive such requirements if applicable. The Section 4004 compensation restrictions apply to "employees" as well as to executive officers. As noted above, hospital and health care organization "employees" may include highly trained and accordingly highly compensated physicians and other medical personnel, whose employment is often governed by contract. A hospital or health system should not be forced into a position where it must choose between breaching employment contracts (which will not ultimately avoid the payment of the contractually due amount) or receiving this important financial lifeline. 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. We urge Treasury to waive this requirement and/or clarify its inapplicability to employees providing medical services.

Loan Terms. The CARES Act gives Treasury discretion as to the period of time before the initial payment of interest or principal on a Mid-Sized Business Emergency Loan is required. There is great uncertainty as to when COVID-19 cases will peak, how long the crisis will last and at what pace normalcy will be restored. The answers may differ in different regions of the country. The AHA urges that Treasury exercise its discretion to provide a minimum no-payment period of 12 months after a loan is made. The CARES Act also does not specify the maximum term of loans made under Section 4003(b)(4). Due to the uncertainties mentioned above, AHA urges that the maximum term, if one is imposed, be up to 10 years.

Communities rely on America's hospitals and health systems to be there for them in times of emergencies. Hospitals and health systems and the front-line providers who work in them are fulfilling their commitment to their patients in these unprecedented times. While our members continue to do everything they can to address COVID-19 cases, making these funds available quickly and on terms that take into account the unique circumstances of hospitals would help them continue to put the health and safety of patients, communities and personnel first, and in many cases, may ensure they are able to keep their doors open during the crisis and after it abates.

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

Sincerely,

/s/

Richard J. Pollack
President and Chief Executive Officer

Cc: Members of the Federal Reserve Board of Governors