

# Restructuring Chrysler through Bankruptcy

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## Abstract

In late 2008, due to the confluence of the financial crisis and years of structural decline, Chrysler was nearing bankruptcy ([Klier and Rubenstein 2012, 35-37](#)). Treasury provided Chrysler's owner, Chrysler Holding, with a \$4 billion bridge loan and Chrysler's related finance company, Chrysler Financial, with a \$1.5 billion financing program under the Troubled Asset Relief Program (TARP) ([U.S. Treasury Department Office of Financial Stability 2018](#)) ([Canis et al. 2009, 9](#)) (Nye 2019 Bridge Loans) ([Treasury 2009](#)). The government-led restructuring through bankruptcy involved the commitment of roughly \$5 billion in debtor-in-possession loans from the U.S. Treasury and the Canadian government, under which the U.S. Treasury ultimately lent \$1.89 billion, using TARP funds, and Canada lent about \$1 billion, proportional to its share of the NAFTA auto industry ([Canadian Press Release 2009](#)). It also involved concessions from stakeholders, corporate governance arrangements for the "New Chrysler," and a merger with Italian automaker Fiat Automobiles SpA ([DIP Financing Agreement 2009](#), PDF Page 95, 317, 322). Treasury financed the purchase by the New Chrysler of substantially all of the Old Chrysler's assets with a \$7.14 billion loan. The bankruptcy case was controversial and nearly reached the Supreme Court, but the restructuring ultimately rescued Chrysler ([Fred 2010, 38](#)). In the Chrysler rescue, Treasury lost about \$2.93 billion on an investment of about \$10.47 billion ([SIGTARP 2016, 103](#)).

**Key Words:** Bailout, Bankruptcy Code, Section 363, Chapter 11, General Motors, Chrysler, AIFP, Manufacturing, Auto Finance, Non-Banks, Industrial Policy, Canada, Treasury, Export Development Canada

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# Restructuring Chrysler through Bankruptcy

## At a Glance

In late 2008, due to the confluence of the financial crisis and years of structural decline, Chrysler was nearing bankruptcy ([Klier and Rubenstein 2012](#), 35-37). In December, Treasury provided Chrysler's owner, Chrysler Holding, with a \$4 billion bridge loan and Chrysler's related finance company, Chrysler Financial, with a \$1.5 billion financing program under the Emergency Economic Stabilization Act of 2008 ([U.S. Treasury Department Office of Financial Stability 2018](#)) ([Canis et al. 2009](#), 9) (Nye 2019 Bridge Loans) ([Treasury 2009](#)). Treasury also provided Chrysler's parts suppliers with aid and created a warranty guarantee program ([U.S. Treasury Department Office of Financial Stability 2018](#)). Treasury, in collaboration with the Canadian government, helped the company develop a plan to turn itself around ([Mathilakath and Urie 2009](#), PDF Page 14). The plan, first announced on March 30, 2009, involved assisting Chrysler in negotiating concessions from its stakeholders, financing Chrysler's bankruptcy, and developing corporate governance arrangements for the "New Chrysler" that would support the restructuring ([New Path to Viability 2009](#), 1). The plan also depended on the company merging with Italian automaker Fiat Automobiles SpA.

Treasury and Export Development Canada (EDC) kept Chrysler alive with a roughly \$5 billion debtor-in-possession (DIP) facility, under which the U.S. Treasury ultimately lent \$1.89 billion and Canada lent about \$1 billion, until the bankruptcy court could approve Fiat-managed New Chrysler's purchase of Chrysler's usable assets ([DIP Financing Agreement 2009](#), PDF Page 95, 317, 322). The bankruptcy case was controversial and nearly reached the Supreme Court ([Fred 2010](#), 38). Treasury then financed this purchase as well as New Chrysler's early operations and partial assumption of debt associated with the bridge loan with a \$7.14 billion loan (the First Lien Credit Agreement facility). The bankruptcy court liquidated what remained of the old Chrysler's assets over the next several years; Treasury recovered ~\$160 million on the sale of those assets, less than 10% of the \$1.89 billion it extended under the DIP facility ([U.S. Treasury Department Office of Financial Stability 2018](#)).

Management, creditors, and organized labor gave significant concessions. Labor also received a majority stake in New Chrysler (Rattner 2010, 157-159) ([LLC Agreement 2009](#), PDF Page 86-88). Treasury sold its remaining equity

## Summary of Key Terms

**Proximate Purpose:** "Make it easier for [...] Chrysler to quickly clear away old debts [...] so that they can get back on their feet" ([Obama 2009](#))

**Ultimate Purpose:** "help revive modern manufacturing and support our nation's effort to move toward energy independence, but only in the context of a fundamental restructuring that will allow these companies to prosper without taxpayer support" ([New Path to Viability 2009](#), 1)

**Bankruptcy Filing Date** April 30, 2009 ([Docket 190 2009](#)).

**DIP Financing Date** May 5, 2009 ([DIP Financing Agreement 2009](#), PDF Page 12)

**363 Sale Date (effective end of bankruptcy)** June 10, 2009 ([Fred 2010](#), 39)

**First Lien Credit Agreement Date** June 10, 2009 ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 1, 41)

**Legal Authority** Emergency Economic Stabilization Act (EESA) of 2008, §101 (a)(1), §3 (9); Bankruptcy Code Chapter 11 §363

**Initial New Chrysler Capital Structure** Fiat: 20%  
Treasury: 9.85%  
UAW VEBA: 67.69%  
CDIC (Canadian Government): 2.46% ([LLC Agreement 2009](#), PDF Page 86-88)

**Funder** US Department of the Treasury, Export Development Canada

**Participants** Chrysler Holding LLC ("Old Chrysler"), NewCarCo LLC ("New Chrysler")

**Total Commitment** \$10.47 billion ([SIGTARP 2016](#), 103)<sup>2</sup>

**TARP Loss on Investment** \$2.93 billion ([SIGTARP 2016](#), 103)

<sup>2</sup> \$4 billion in bridge loans; \$280.13 million in supplier support; \$1.89 billion in DIP financing; \$6.64 billion in working capital

investments in New Chrysler in mid-2011, but ultimately booked a net loss on its investments in Chrysler overall ([U.S. Treasury Department Office of Financial Stability 2018](#)).

### **Summary Evaluation**

The restructuring successfully turned around Chrysler, though policymakers acknowledge that they saved Chrysler because of the potential damage to “the industrial Midwest”, not Chrysler’s systemic importance ([Rattner Chicago Fed 2010](#), PDF Page 5). Some legal scholars argued that the bankruptcy circumvented the Bankruptcy Code’s safeguards for creditors ([Congressional Oversight Panel 2009](#), PDF Page 95-103). Others argued that the government’s actions merely mimicked that of any other DIP lender ([Congressional Oversight Panel 2009](#), PDF Page 101). Some observers have questioned whether making the auto companies eligible for TARP went beyond the intent of Congress ([Congressional Oversight Panel 2009](#), PDF Page 71-80, 83-84).

# I. Overview

## Background

Due to a number of factors stemming from the ongoing financial crisis and years of decline, Chrysler reached out to the United States government for financial assistance in late 2008 ([Congressional Oversight Panel 2011](#), 9-11) ([Canis et al. 2009](#), 1-2) ([Klier and Rubenstein 2012](#), 35-36). Upon hearing that the United States government was aiding its auto industry, the Canadian government decided to join in on the restructuring ([Letter from Ambassador Michael Wilson to John Podesta 2008](#)). The Treasury responded with a \$4 billion Loan and Security Agreement (the Bridge Loans) under its Automotive Industry Financing Program's (AIFP) on January 2, 2009 (see Nye 2019a).<sup>3</sup> The terms of the Bridge Loans<sup>4</sup> were that Treasury would provide interim financing to the manufacturer, but additional funding would be conditioned on Chrysler submitting a viable restructuring plan by February 17, 2009 ([Chrysler LSA 2009](#), PDF Pages 59-60) (Paulson 2011, 350-355).

## The February 17, 2009 Viability Plan

Chrysler submitted a Viability Plan for three scenarios ([Chrysler 2009](#), PDF Page 11). One envisioned Chrysler continuing to survive on its own after a restructuring entailing “sacrifices from all key stakeholders” ([Kolka 2009](#), PDF Page 33). The second scenario described a restructuring leveraging “the positive impact of synergies from” an alliance with Fiat (an Italian auto manufacturer) ([Kolka 2009](#), PDF Page 33). This plan would see Fiat receiving a 35% stake in Chrysler (that could be increased to 55% based on the achievement of several milestones) in exchange for Chrysler’s access to technology and distribution channels ([Chrysler 2009](#), PDF Page 87). The third scenario anticipated the failure of the other two plans, and provided for Chrysler’s orderly wind-down and liquidation ([Kolka 2009](#), PDF Page 33).

Chrysler proposed that the United Auto Workers (UAW) union (and its Voluntary Employee Benefits Association (VEBA)) make significant concessions and Chrysler Financial alter its auto finance relationship with Chrysler ([Kolka 2009](#), PDF Page 33-34). It also proposed that suppliers and dealers make significant concessions while Chrysler itself undertake a number of other cost-cutting measures ([Chrysler 2009](#), PDF Page 15). Chrysler anticipated that Treasury would support its plans with \$5 billion in TARP funding, \$6 billion in Department of Energy Section 136 funding, and that its secured creditors would agree to convert \$5 billion in debt into Chrysler equity ([Kolka 2009](#), PDF Page 26, 33-35).<sup>5</sup>

*Chrysler’s Initial Viability Plan was rejected*

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<sup>3</sup> For the same reasons General Motors entered into a similar Loan and Security Agreement under the same program. Similar to Chrysler, it also underwent a restructuring via bankruptcy after Treasury initially rejected its viability plan.

<sup>4</sup> See Nye 2019 for detailed description of the Bridge Loan.

<sup>5</sup> For comparison, GM’s viability plan asked for up to \$16.6 billion more in TARP funds ([Government Accountability Office 2009](#), PDF Page 17).

In a document entitled *Obama Administration New Path to Viability for GM & Chrysler* (New Path to Viability), issued March 30, 2009, the Administration rejected the Viability Plan and “determined that Chrysler has not demonstrated that it can achieve long-term viability as a stand-alone company,” as required ([New Path to Viability 2009](#), 1). The Administration concluded that the Chrysler-Fiat partnership was not yet sufficient to support further taxpayer investment ([New Path to Viability 2009](#), 1).

The Administration granted Chrysler an additional 30 days to meet certain requirements for an amended plan, which if successful, would trigger the government’s investment of up to \$6 billion and a restructuring ([New Path to Viability 2009](#), 1).<sup>6</sup> If Chrysler failed to meet the stated conditions, however, “the government will not invest any additional money in the company” ([New Path to Viability 2009](#), 1).

The conditions set forth in the New Path to Viability included: (1) restructuring Chrysler’s balance sheet to extinguish the vast majority of its secured debt and all of unsecured debt and equity, other than to trade creditors; (2) further concessions from the UAW and Fiat; (3) an agreed plan with Fiat that would not require more than \$6 billion of taxpayer investment to be successful; (4) a more viable plan for profitably operating in a normal business environment; (5) a viable mechanism for dealer and customer financing; (6) a “credible plan” for implementing the restructuring ([New Path to Viability 2009](#), 1).

The Bridge Loans were accompanied by a similar Canadian program. The Canadian government also rejected a similar viability plan on March 30, 2009 ([C-SPAN 2009](#)).

## **Program Description**

### *Program Purpose*

On March 30, 2009, President Obama described his administration’s program for a successful Chrysler rescue ([Obama 2009](#)). The goal was to save Chrysler and provide it an opportunity “to fundamentally restructure in a way that would justify an investment of additional taxpayer dollars” and ultimately “stand on [its] own” ([Obama 2009](#)). This meant making Chrysler a company that would be internationally competitive, create new jobs for Americans, and produce fuel-efficient vehicles that would help the United States become energy independent ([Obama 2009](#)). The government support would also enable Chrysler to consummate its merger with Fiat, who could bring its small-car technology (Rattner 2010, 80). An additional key factor was to “[M]ake it easier for [...] Chrysler to quickly clear away old debts [...] so that they can get back on their feet” ([Obama 2009](#)).

The Canadian government’s involvement in the program had a similar purpose. It wanted to return Chrysler “to a viable, sustainable future,” which would help sustain an automotive industry that was arguably largest segment of Canadian manufacturing ([Office of the Auditor General of Canada 2014](#)) ([C-SPAN 2009](#)) ([Canadian Press Release 2009](#)).

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<sup>6</sup> Chrysler requested \$3.5 billion in Department of Energy Section 136 funding, but withdrew the request in 2012 without having received any funds from the program ([Canis and Yacobucci 2015](#), 15).

## Key Elements of the Program

The government took several steps to restructure Chrysler after the March 30 announcement. These included (i) direct and indirect participation in negotiations with Chrysler, Fiat and other stakeholders to achieve concessions that would enable Chrysler to meet the viability plan's requirements, (ii) directly and indirectly financing Chrysler to facilitate a bankruptcy via the Bankruptcy Code, (iii) developing corporate governance arrangements with Chrysler's stakeholders that would protect the taxpayer while supporting Chrysler's future success.

## The Revised Viability Plan of April 2009<sup>7</sup>

### *Negotiating the Revised Viability Plan*

To reorganize quickly, Chrysler had to renegotiate with a number of its stakeholders. During this time, Treasury acted as a facilitator, a mediator, and sometimes as a lead negotiator (Rattner 2010, 152-159, 173-177).

### *A Viable Mechanism for Dealer and Consumer Financing<sup>8</sup>*

Treasury facilitated a new automotive financing relationship for Chrysler. In the relationship, GMAC was to replace Chrysler Financial as Chrysler's auto finance partner ([Viability Summary 2009](#), 5) ([Congressional Oversight Panel 2010](#), PDF Page 27, 49). After "extended, intense, arms length negotiations between Chrysler, GMAC and the U.S. Treasury," GMAC and Chrysler agreed on a Master Auto Finance Agreement Term Sheet Dated April 30, 2009 (the GMAC MAFA) ([Keegan 2009](#), 4). This term sheet established the Chrysler-GMAC financing relationship contingent on GMAC receiving a capital injection from Treasury, various regulatory approvals, and Chrysler meeting several milestones in the bankruptcy court by May 16, 2009 ([Keegan 2009](#), 4) ([MAFA Term Sheet 2009](#), PDF Page 6).

### *Extinguishing Unsecured Debt:*

Treasury played an active role in negotiations addressing Chrysler's unsecured debt. The UAW VEBA agreed to restructure its \$8.8 billion in unsecured claims against Chrysler, cutting Chrysler's health care costs by over 40% in the process (Rattner 2010, 153-154, 157)<sup>9</sup>. In

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<sup>7</sup> On April 30, 2009, after negotiations similar to Treasury's, the Canadian and Ontarian governments issued a press release announcing that Chrysler had met its requirements for viability. Chrysler Canada received additional secured loans and the Canadian government also announced financial support for Chrysler's bankruptcy in the US. For Canada, the overall goal of the program was to support Chrysler's "return to a viable, sustainable future" ([Government of Canada 2009](#)). The means for achieving this goal was contributing to the efforts of the United States and maintaining Canada's 20% production share in the industry ([Office of the Auditor General of Canada 2014](#)).

<sup>8</sup> For more details, see "Emergency Assistance to Chrysler Financial" (Nye 2019b)

<sup>9</sup> There is not a consistent figure on the size of the unsecured claims that the UAW VEBA intended to restructure. Some sources say the VEBA had \$8.8 billion in unsecured claims, some say \$8 billion, and some say figures as high as \$10.6 billion ([Congressional Oversight Panel 2009](#), 28) (Rattner 2010, 153-154, 157) (Foley et al. 2010, 5).

exchange, “New Chrysler” (the company that would emerge from the bankruptcy as the operating company) agreed to give the VEBA a 55% stake in a restructured Chrysler and a \$4.6 billion promissory note ([Congressional Oversight Panel 2009](#), 28).

#### *Further Concessions from the UAW*

Treasury facilitated negotiations between Fiat, Chrysler, and the UAW that led to “a new collective bargaining relationship” ([Kolka 2009](#), PDF Page 5, 8). This included, but was not limited to:

- increasing the number of lower wage “tier-two” workers that Chrysler would be allowed to hire (Rattner 2010, 158-159);
- committing to freeze wages for “Entry Level” employees through the end of the collective bargaining agreement (2011) ([Exhibit J \(part 1\) 2009](#), PDF Page 8)
- committing “to have any open issues at the end of the next negotiation be subject to binding arbitration based on maintaining competitive wages with the transplants” (Rattner 2010, 157-159)<sup>10</sup>

#### *Agreeing on a More Viable Business Plan and an Agreed Partnership with Fiat that would need no more than \$6 billion in Government Support*

Treasury acted as mediator between Fiat and Chrysler as they negotiated their partnership (Rattner 2010 156-157). Fiat and Chrysler agreed on a more aggressive business plan that would form the foundation of their negotiations with the First Lien Secured creditors. Fiat would obtain a stake in New Chrysler in exchange for technological and management resources ([Treasury 2009a](#)). It is not clear what else was in the agreement.

### **Restructuring the Balance Sheet**

#### *Extinguishing Second Lien Secured Debt*

Treasury did not appear to play a major role in negotiations with the Second Lien Secured creditors, Cerberus and Daimler, who were also Chrysler’s majority and minority shareholders. Much of this debt was related to Cerberus’ acquisition of Chrysler from Daimler in 2007 ([Docket 190 2009](#), 7). Chrysler (under orders from Cerberus) and Daimler had issued pension guarantees to the Pension Benefit Guaranty Corporation (PBGC) with respect to Chrysler’s underfunded pension obligations (a \$1 billion guarantee by Daimler and \$200 million guarantee from Chrysler)([Docket 190 2009](#), 7) ([Kolka 2009](#), 5, 15, 32). The two parties agreed to relinquish their equity stakes in Chrysler, forgive \$2 billion in loans to Chrysler, return ownership of the Chrysler headquarters, and contribute over \$600 million toward pension claims )([Docket 190 2009](#), 7) ([Kolka 2009](#), 5, 15, 32). ([Treasury 2009a](#)) ([PBGC 2011](#)).

#### *Extinguishing First Lien Secured Debt*

Treasury led negotiations with the holders of Chrysler’s \$6.9 billion in First Lien Secured debt and managed relations with holdout creditors from this group ([Rattner 2009](#), 4-5) ([Reuters 2009](#)). This resulted in an April 28, 2009 agreement among the holders of 70% of

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<sup>10</sup> This effectively amounted to a “no-strike” provision ([Barkholz 2011](#)).

the First Lien Secured debt ([Kolka 2009](#), 33) under which they would be paid about 29 cents on the dollar.<sup>11</sup> However, the holders of 70% of the First Lien Secured debt were unable to convince the remaining holdout creditors to join an agreement before the government-imposed April 30, 2009 deadline (Rattner 2010, 176-181).<sup>12</sup>

### *Chrysler met the Viability Conditions*

The results of Chrysler's negotiations did not fully conform to the requirements in the New Pathway to Viability ([Treasury 2009a](#)) ([New Path to Viability 2009](#), 1). Nevertheless, on April 30, 2009, Treasury issued a press release declaring that Chrysler had met the requirements for viability ([Treasury 2009a](#)). The press release noted that "Chrysler's key stakeholders have made unprecedented sacrifices and executed an agreement that positions Chrysler for a viable future" ([Treasury 2009a](#)). This press release also outlined Treasury's plan to use the Bankruptcy Code to "clear away" Chrysler's liabilities without rewarding First Lien Secured holdout creditors, the "group of investment firms and hedge funds [...] [that] failed to accept reasonable offers to settle on their debt" ([Treasury 2009a](#)). Chrysler then filed a bankruptcy petition on April 30, 2009, beginning the company's pathway through Chapter 11 ([Docket 190 2009](#)).

The following lays out the mechanics of the restructuring. Pursuant to a Master Transaction Agreement (MTA), Chrysler (which would then be called "Old Chrysler") would sell all of the assets and liabilities necessary for running the post-restructuring business to New Chrysler (a new corporation formed by Fiat) using Section 363(b) of the Bankruptcy Code. In exchange, New Chrysler assumed most of Old Chrysler's liabilities (approximately \$29 billion out of about \$50 billion) and paid Old Chrysler \$2 billion in cash ([Congressional Oversight Panel 2009](#), 19) ([Securities and Exchange Commission 2011](#), 51, 252, 326).<sup>13</sup> Old Chrysler would retain the claims of the First Lien Secured Creditors, who would receive about 29 cents on the dollar. It would also retain obligations to Second Lien creditors (Daimler and Cerberus), and the US Treasury and Canadian government DIP loans, but there would be no money left over for these parties ([Congressional Oversight Panel 2009](#), 20). The \$2 billion received by Old Chrysler and any retained assets would become its "bankruptcy estate" which it would use to partially repay First-Lien Secured creditors, and it would gradually wind down ([Congressional Oversight Panel 2009](#), 20).

New Chrysler would operate the auto manufacturing business that everyday people identified as Chrysler. It would begin with \$33 billion in assets and \$29 billion in liabilities ([Securities and Exchange Commission 2011](#), 326).

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<sup>11</sup> One account said that this agreement (which was not publicized or was merely an informal agreement) would have allowed Chrysler to restructure outside of bankruptcy while \$2.5 billion from Treasury would be used to settle Chrysler's First Lien Secured debt (Rattner 2010, 172-177).

<sup>12</sup> Law professor Henry Hu said that some of these creditors may have become holdouts because they were able to purchase CDS on Old Chrysler's debt and/or "securities of Chrysler's competitors (i.e., Ford and General Motors) on the theory that, were Chrysler to go bankrupt, those securities would increase in value," therefore de-risking their exposure to an Old Chrysler bankruptcy ([Hu 2014](#), 371).

<sup>13</sup> Chrysler's Canadian and Mexican subsidiaries fell under Old Chrysler subsidiary "Alpha Holding LP," which itself underwent Chapter 11 proceedings joined with Old Chrysler's for administrative reasons ([Docket 2188 2009](#)) ([Docket 1784 2009](#)).

## Program Funding

*Treasury and Canada covered Chrysler's negative cash flows during the bankruptcy under a Joint Debtor-In-Possession (DIP) Facility, which Treasury team members did not expect to be repaid.*

Treasury and EDC jointly executed a \$4.1 billion Joint DIP Facility with Old Chrysler on May 5, 2009.<sup>14</sup> However, they revised this commitment to \$4.96 billion when the bankruptcy court entered a Final Order approving DIP financing on May 20, 2009 ([Docket 1309](#), PDF Page 1-2). Each lender was responsible only for the portion of the total that it had committed to make. ([DIP Financing Agreement 2009](#), PDF Page 37). The allocation was roughly 3:1, U.S. to Canadian as shown in Figure 1. ([DIP Financing Agreement 2009](#), PDF Page 95. Prior to the bankruptcy court's Final Order being issued, the agreement limited the amount that Treasury and EDC could lend under the facility to an "Interim Commitment" of \$1.4 billion (which was later revised to \$1.8 billion) ([DIP Financing Agreement 2009](#), 7, 15).

Chrysler did not expect to pay back the DIP loan and Treasury did not expect to be paid. In a court document filed on April 30, Robert Manzo, Chrysler's financial advisor, provided cash flow and balance sheet projections that assumed Treasury would not be repaid either for the \$4 billion Bridge Loan or the \$4.5 billion DIP facility ([Manzo 2009](#), PDF Page 49). The DIP loan would be "forgiven immediately." His cash flow analysis, submitted to the court three days later, projected that the DIP funding would be just sufficient to cover Chrysler's cash flow needs during the expected nine-week bankruptcy process ([Bankruptcy Filing](#), May 3, 2009, 180).

Treasury Auto Team members also told the GAO in June 2009 that they did not expect the Treasury would receive repayment for the DIP investments ([SIGTARP 2009](#), 108).

In the bankruptcy filing, Chrysler Vice Chairman Thomas LaSorda stated that the government's DIP financing was essential to cover Chrysler's negative cash flows. "No party other than the United States Government is willing to provide the necessary DIP financing. Chrysler's cash situation is dire and it continues to function only because of the \$4 billion it has already received from the U.S. Government. Without the Government's support over the past four months, Chrysler would not have had the cash flow to continue and would already be in bankruptcy. And without the Government's support going forward, Chrysler will have no choice but to liquidate" ([Bankruptcy Filing](#), April 29, 2009, 75).

### *Principal and Additional Consideration*

Under the Joint DIP Facility, any advances requested by Old Chrysler would concurrently and proportionately draw on both parties' (Treasury and EDC) commitments based on how much each party committed to the Joint DIP Facility.<sup>15</sup> With each advance under the commitments, Treasury and EDC would receive additional promissory notes for 6.67% of

<sup>14</sup> The Joint DIP Facility was officially called the "Second Lien Secured Priming Superpriority Debtor-In-Possession Credit Agreement" ([DIP Financing Agreement 2009](#), PDF Page 32).

<sup>15</sup> For example, if Chrysler requested a \$100 advance when the Joint DIP Facility had a maximum commitment of \$4.1 billion, Chrysler would receive approximately \$26 from EDC's commitment and approximately \$74 from Treasury's commitment.

the value of their respective advances (these promissory notes were called “Additional Notes”) bearing the same interest rate and terms as the Facility as additional consideration ([DIP Financing Agreement 2009](#), PDF Page 9, 49) ([Manzo 2009](#), PDF Page 168). Any payments that Old Chrysler made on the loans or on the Additional Notes would be similarly distributed *pro rata* between Treasury and EDC ([DIP Financing Agreement 2009](#), PDF Page 36-37).

Figure 1: Joint DIP Facility Commitments

Joint DIP Facility Commitments as of 5/5/2009	Interim Commitments	Maximum Commitment	Usage	Additional Consideration (Interest-Bearing Promissory Notes known as “Additional Notes”)
Treasury (United States)	\$1.04billion <sup>16</sup>	\$3.04billion (later increased to \$3.8 billion) <sup>17</sup>	\$1.89 billion <sup>18</sup>	\$202.98million (later increased to \$253.46 million) <sup>19</sup>
Export Development Canada (Canada)	\$0.36billion <sup>20</sup>	\$1.06 billion (later increased to \$1.16 billion) <sup>21</sup>	~C\$1.28 billion (US\$1 billion) <sup>22</sup>	\$70.49million (later increased to \$77.37 million) <sup>23</sup>
Total	\$1.4 billion	\$4.1billion (later increased to (\$4.96 billion) <sup>24</sup>	Unknown <sup>25</sup>	\$273.05 million (later increased to \$330.83 million) <sup>26</sup>

<sup>16</sup> Estimated by multiplying the total Interim Commitment by the percentage of the Maximum Commitment contributed by Treasury before the DIP was amended ([DIP Financing Agreement 2009](#), PDF Page 49)

<sup>17</sup> See [DIP Financing Agreement 2009](#), PDF Page 95, 317, 322

<sup>18</sup> See [U.S. Treasury Department Office of Financial Stability 2018](#)

<sup>19</sup> See [DIP Financing Agreement 2009](#), PDF Page 49, 322

<sup>20</sup> Estimated by multiplying the total Interim Commitment by the percentage of the Maximum Commitment contributed by EDC before the DIP was amended ([DIP Financing Agreement 2009](#), PDF Page 49)

<sup>21</sup> See [DIP Financing Agreement 2009](#), PDF Page 95, 317, 322

<sup>22</sup> See [Office of the Auditor General of Canada 2014](#), dollar figure approximated using exchange rate of \$0.80 per C\$1.00

<sup>23</sup> See [DIP Financing Agreement 2009](#), PDF Page 49, 322

<sup>24</sup> See [DIP Financing Agreement 2009](#), PDF Page 95, 317, 322

<sup>25</sup> There is not a report showing the peak usage of the combined Treasury and EDC commitments.

<sup>26</sup> See [DIP Financing Agreement 2009](#), PDF Page 49, 322

### *Form of Proceeds*

The loans and the Additional Notes were dollar denominated and either Eurodollar Rate loans (which the loan documents called Eurodollar loans) or Alternative Base Rate loans (referred to in the loan documents as ABR loans) ([DIP Financing Agreement 2009](#), PDF Page 8-9, 15-18, 20-21, 302). The default form was Eurodollar loans ([DIP Financing Agreement 2009](#), PDF Page 32, 35-36). These Eurodollar loans functionally had an interest rate of the three-month Eurodollar rate (with a 2.00% floor) plus 3.00%, though the ABR rate depended on circumstances in the market ([Government Accountability Office 2009a](#), 135).

### *Maturity Date*

The loans and Additional Notes matured at the earliest of:

- “60 days after the [...] [April 30, 2009] Petition Date”
- “35 days after [...] [April 30, 2009] if the Final Order has not become final and non-appealable prior to the expiration of such 35-day period”
- “the effective date of a plan of reorganization or liquidation that is confirmed pursuant to an order entered in the Cases by the Bankruptcy Court”
- “the acceleration of any Loans and the Additional Notes and the termination of the Commitment in accordance with the terms of this Agreement”
- September 30, 2009 ([DIP Financing Agreement 2009](#), PDF Page 22)

### *Collateral and Priority*

The Joint DIP Facility was secured by substantially all of Old Chrysler’s assets as collateral ([DIP Financing Agreement 2009](#), PDF Page 7-8). Before the bankruptcy, the Treasury only enjoyed third priority liens on most of Chrysler’s assets, but the Joint DIP Facility lent to Old Chrysler under section 364(c)(2) of the Bankruptcy Code ([Docket 2130 2009](#), PDF Page 279) ([DIP Financing Agreement 2009](#), PDF Page 44). With the approval of the bankruptcy judge, this loan under the Joint DIP Facility, could jump ahead of, or “prime,” the loans of other secured creditors and gain perfected, first-priority security interests in and liens on substantially all of Old Chrysler’s assets (this was colloquially referred to as “superpriority status”)([DIP Financing Agreement 2009](#), PDF Page 7, 30, 44).<sup>27</sup>

### *Use of Proceeds, Prepayment, and Oversight*

Old Chrysler was to use the proceeds of the loans to finance Old Chrysler’s “working capital needs, capital expenditures, [...] payment of warranty claims and other general corporate purposes [...] including the payment of expenses associated with the administration” of the bankruptcy ([DIP Financing Agreement 2009](#), PDF Page 47).

Old Chrysler was required to make prepayments when it incurred any indebtedness or received funds from a transaction (called an “Extraordinary Receipt”) not permitted by the

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<sup>27</sup> Some of Old Chrysler’s assets were not included in the collateral. Specifically, the capital stock of foreign subsidiaries of Old Chrysler that “would not result in deemed dividends to” Old Chrysler ([DIP Financing Agreement 2009](#), PDF Page 44-45).

Joint DIP Facility.<sup>28</sup> Any such prepayment would be applied to Old Chrysler's financial obligations under the Joint DIP Facility and correspondingly reduce the maximum commitment by the same amount ([DIP Financing Agreement 2009](#), PDF Page 33-34).

The Joint DIP Facility seemed to contain more stringent oversight requirements than the Bridge Loans (Nye 2019 on Bridge Loans). For example, the Bridge Loans demanded biweekly reporting while the Joint DIP Facility required weekly reporting from Chrysler. On a weekly basis, Old Chrysler had to certify to Treasury and EDC that Chrysler had not defaulted and was in compliance with covenants relating to the company's financial condition ([DIP Financing Agreement 2009](#), PDF Page 53,61). Old Chrysler also had to submit weekly updates to their 13-week projections and weekly variance reports detailing how Chrysler's practices conformed to its bankruptcy budget ([DIP Financing Agreement 2009](#), PDF Page 31, 53-54).

Old Chrysler had to give the lenders notice of and copies of its pleadings in the bankruptcy case ([DIP Financing Agreement 2009](#), 54). On top of that, Old Chrysler had to submit a "Monthly Budget [...] in form and substance satisfactory to the Required Lenders" within ten days after the first successful use of section 363(b) of the Bankruptcy Code ([DIP Financing Agreement 2009](#), PDF Page 54). The Joint DIP Facility also included several other reporting requirements. Old Chrysler had to submit quarterly reports (beginning with September 30, 2009) detailing the implementation of an internal controls policy and Old Chrysler's compliance with those internal controls to the lenders as well as Old Chrysler's actual use of the loan proceeds ([DIP Financing Agreement 2009](#), PDF Page 59).

### *Covenants*

The Joint DIP Facility contained several affirmative covenants (in layman's terms, promises to do something) that created conditions on lending to Old Chrysler and incorporated various burden sharing arrangements from earlier Treasury loans to Chrysler. In effect, these would help make sure that Chrysler did not collapse during the bankruptcy or help reduce taxpayers' pain if Chrysler could not survive bankruptcy.

In addition to the usual affirmative commitments that come with large secured loans (e.g., that Old Chrysler had to file its taxes in a timely manner), the Joint DIP Facility made the interim \$1.4 billion and final \$4.1 billion commitments contingent on Old Chrysler quickly meeting a number of milestones in the bankruptcy process ([DIP Financing Agreement 2009](#), PDF Page 55). For example, Old Chrysler was required to file motions to approve the section 363 transaction by May 4, 2009 ([DIP Financing Agreement 2009](#), PDF Page 61).

The Joint DIP Facility also incorporated various burden-sharing provisions related to executive privileges and compensation, restrictions on expenses, private aircraft divestment, and compliance with the Employ American Workers Act (EAWA) imposed on Chrysler as well as Chrysler Financial by the Bridge Loans and the January 16, 2009 Chrysler Financial facility (See Nye 2019 Cases) ([DIP Financing Agreement 2009](#), PDF Page 57-59).

The Joint DIP Facility had several typical negative covenants (put simply, promises not to do certain things) for large secured loans. However, there were also negative covenants that

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<sup>28</sup> This functionally meant indebtedness outside of the ordinary course of business.

distributed the burden between the two lenders and limited the lenders' financial risk. Canadian subsidiaries had to maintain a certain cash balance, but there was a limit on how much Chrysler could invest in subsidiaries like Chrysler Canada ([DIP Financing Agreement 2009](#), PDF Page 62, 66, 68). As for covenants managing taxpayer risk, the Joint DIP Facility forbade Old Chrysler from conducting asset sales outside of a limited set of circumstances including but not limited to a successful bankruptcy proceeding, a wind-down, and the licensing of intellectual property ([DIP Financing Agreement 2009](#), PDF Page 63). The Joint DIP facility also restricted Old Chrysler's (and its subsidiaries') ability to pay dividends ([DIP Financing Agreement 2009](#), PDF Page 63-64).

*Treasury lent New Chrysler \$7.14 billion to finance the 363 sale and subsidize Chrysler's reorganization*

On June 10, 2009, the bankruptcy court approved the section 363 sale and Treasury's proposed \$7.14 billion loan to New Chrysler, known as the First Lien Credit Agreement ([Fred 2010](#), 31-32). That loan consisted of \$6.64 billion in new funding to New Chrysler ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 1, 41).

New Chrysler also assumed from Old Chrysler a \$500 million obligation to Treasury. This obligation represented a portion of the \$4 billion Bridge Loan that Treasury had extended to Chrysler in January 2009 ([Docket 3232 2009](#), PDF Page 210). (The remaining \$3.5 billion principle on the Bridge Loan stayed with the Old Chrysler. It was settled with a \$1.9 billion payment in May 2010; Treasury took a \$1.6 billion loss on the Bridge Loan).

The \$7.14 billion loan was divided into two tranches. In Tranche B, New Chrysler paid \$2 billion of the new funding to Old Chrysler in exchange for substantially all of its assets ([MTA 2009](#), PDF Page 10). Old Chrysler used the \$2 billion to partially repay secured creditors who were owed \$6.9 billion).

In Tranche C, New Chrysler received \$4.64 billion that it could use for working capital, the various administrative fees associated with the \$2 billion purchase, and transitioning its auto financing partnership to GMAC ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 41, 44, 59).

Tranche B and Tranche C shared terms related to the loans' security, prepayment, the use of payments, oversight, contingencies, and various covenants.

#### *Tranche B*

Funding from Tranche B became available to New Chrysler on June 10, 2009, as soon as the First Lien Credit Agreement closed in the aftermath of the section 363 sale's approval in bankruptcy court ([Fred 2010](#), 39) ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 12). As additional consideration for the loan, Treasury would receive a 9.85% stake in New Chrysler ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 52) ([Congressional Oversight Panel 2011](#), 56-57). To borrow funds under Tranche B, New Chrysler had to submit a document indicating the "amount of the Tranche B Loan requested from the Lender and [...] the amount of loans concurrently requested by Chrysler Canada" under its post-

petition financing arrangement with EDC ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 41).<sup>29</sup>

Proceeds from Tranche B would either carry an Eurodollar interest rate or an ABR interest rate (See Figure 3 for details on the interest rates) ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 44, 47-50). The per annum interest rate would be the former in most circumstances, the three-month Eurodollar rate (with a 2.00% floor) plus 5.00% ([Government Accountability Office 2009a](#), 135). The Tranche B loans matured on December 10, 2011, but the underlying loan documents gave New Chrysler the ability to “extend the maturity date of up to \$400 million of the Tranche B loans to the Tranche C Maturity Date,” which was June 10, 2017 for a 1.50% per annum penalty fee ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 8, 41, 45, 47-48). Any overdue principal payments imposed a 2.00% penalty rate (regardless of the form of the loan) and any overdue interest payments bore an interest rate of the applicable ABR rate plus 2.00% ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 47-49).

Figure 3: Tranche B Interest Rates ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 7-8, 16, 18, 23-24, 48-49, 52)

<p><b>Eurodollar Per Annum Interest = Eurodollar Rate for Interest Period + Applicable Margin</b></p> <p>Eurodollar Rate for Interest Period Formula: <math display="block">\frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurocurrency Reserve Requirements}}</math></p> <p>Applicable Margin:</p> <ul style="list-style-type: none"> <li>• From closing until maturity: 5.00%</li> <li>• From maturity on: 6.50%</li> </ul> <p>Eurodollar Base Rate: Floor set at 2.00%</p> <p>Eurocurrency Reserve Requirement: Aggregate of maximum rates of reserve requirements under any regulations of the Federal Reserve Board of Governors or any other Governmental Authority with jurisdiction over “reserve requirements prescribed for eurocurrency funding [...] maintained by a member bank of the Federal Reserve System”<sup>1</sup></p> <p>For EDC, the First Lien Credit Agreement set the Eurocurrency Reserve Requirement to \$0.</p>
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<p><b>ABR Per Annum Interest = ABR + Applicable Margin</b></p> <p>ABR: the largest of the Prime Rate, the Federal Funds Effective Rate plus ½ of 1.00%, and the one month Eurodollar Rate plus 1.00%</p> <p>Applicable Margin:</p> <ul style="list-style-type: none"> <li>• From Closing Date until Maturity: 4.00%</li> <li>• From Maturity on: 5.50%</li> </ul>
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<sup>29</sup> This Canadian arrangement was the “Amended and Restated Loan Agreement dated as of June 10, 2009 between Chrysler Canada and EDC” (alternatively known as the Canadian Facility Agreement”) ([Canadian Facility Agreement 2011](#))

*Tranche C*

New Chrysler could access funding from Tranche C once it started drawing on the Tranche B loans ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 41). Tranche C contained a \$4.64 billion commitment by Treasury for working capital ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 41). The underlying agreement said that New Chrysler would assume \$500 million in Old Chrysler's pre-petition Bridge Loan from Treasury, which were categorized as Tranche C loans ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 45)(See Nye 2019 for more on the Bridge Loans). Also, \$350 million of the Tranche C funding was earmarked for GMAC Loans, which New Chrysler could solely use "to fund Additional GMAC Transfers" related to New Chrysler's impending transition to using GMAC as its financing partner ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 20, 44, 50).<sup>30</sup>

In consideration of the Tranche C commitment, on the closing date, New Chrysler would issue Additional Notes (additional promissory notes) with a principal of \$288 million to Treasury ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 65). The notes would carry the same interest rate as the corresponding loan and would have the same term ([Post-Petition First Lien Credit Agreement 2009](#), 7-8, 16). This consideration for Tranche C also included a Zero Coupon Note (zero coupon promissory notes) with a principal of \$100 million<sup>31</sup>, which had the same term as the Tranche C loans and carried a Eurodollar interest rate ([Securities and Exchange Commission 2011a](#), 85, 182) ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 47, 52). The Zero Coupon Notes only carried a Eurodollar interest rate (see Figure 4).

Each form of the Tranche C loan proceeds had its own interest rate (See Figure 4 for details). In most circumstances, the Eurodollar interest rate per annum for the loans and Additional Notes would be the three-month Eurodollar rate (with a 2.00% floor) plus 7.91% ([Government Accountability Office 2009a](#), 135). The loans would mature on June 10, 2017 ([Chrysler LLC Form 10 2011](#), 182). Any overdue principal payments bore an additional 2.00% of interest per annum (regardless of the form of the loan) and any overdue interest payments bore an interest rate of the applicable ABR rate plus 2.00% per annum ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 47-50). Loans advanced under Tranche C would accrue "PIK Interest on a quarterly basis in an amount equal to \$17,000,000 per quarter, which will accrete on a straight line basis through the [June 10, 2017] Tranche C Maturity Date" and then "be added to the principal balance of the Tranche C Loans" quarterly in addition to any other interest ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 42). New Chrysler could prepay the Tranche C to reduce this quarterly PIK Interest "by a calculated percentage" ([Chrysler LLC Form 10 2011](#), 205).

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<sup>30</sup> The First Lien Credit Agreement referred to this earmark as the "GMAC Sublimit" ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 20)

<sup>31</sup> Technically, the First Lien Credit Agreement said that the principal of the Zero Coupon Notes would be the amount in the Loss Sharing Payment Account remaining on "the first business day after the 363 sale and immediately after U.S. Dealer Automotive Receivables Transaction LLC transferred funds in the Loss Sharing Payment Account in excess of \$100 million" to New Chrysler ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 20, 40). In theory, this would make the amount remaining in the Loss Sharing Payment Account \$100 million.

Figure 4: Tranche C Interest Rates ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 7-8, 16, 18, 23-24, 48-49, 52)

<p><b>Eurodollar Per Annum Interest = Eurodollar Rate for Interest Period + Applicable Margin</b></p> <p>Eurodollar Rate for Interest Period Formula: <math display="block">\frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurocurrency Reserve Requirements}}</math></p> <p>Applicable Margin:</p> <ul style="list-style-type: none"> <li>• Eurodollar Loans: 7.91%</li> <li>• Eurodollar Additional Notes: 7.91%</li> <li>• Zero Coupon Notes: 0% (before the May 2013 expiration of the GMAC Master Agreement) and 7.91% after such a date</li> </ul> <p>Eurodollar Base Rate: Floor set at 2.00%</p> <p>Eurocurrency Reserve Requirement: Aggregate of maximum rates of reserve requirements under any regulations of the Federal Reserve Board of Governors or any other Governmental Authority with jurisdiction over “reserve requirements prescribed for eurocurrency funding [...] maintained by a member bank of the Federal Reserve System”<sup>1</sup></p> <p>For EDC, the Eurocurrency Reserve Requirement was set to \$0.</p>
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<p><b>ABR Per Annum Interest = ABR + Applicable Margin</b></p> <p>ABR: the largest of the Prime Rate, the Federal Funds Effective Rate plus ½ of 1.00%, and the one month Eurodollar Rate plus 1.00%</p> <p>Applicable Margin:</p> <ul style="list-style-type: none"> <li>• ABR Loans: 6.91%</li> <li>• ABR Additional Notes: 6.91%</li> </ul>
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*Terms Shared between Tranche B and Tranche C*

The loans appear to have been dollar denominated and were either Eurodollar loans or ABR loans, similar to the terms of the DIP as described above at page 7 ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 41, 44). The default form was Eurodollar loans. However, if lenders were unable to determine Eurodollar Rate adequately or if Eurodollar loans become illegal, the proceeds took the form of ABR loans. Both Tranches operated as nonrevolving and any amount repaid or prepaid reduced the respective commitment amount ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 36, 41, 46). For both tranches, any interest that accrued from June 10, 2009 through December 31, 2009 would be added to the principal of the loan as payable in kind interest (PIK Interest) rather than being paid off in cash ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 47-48). This effectively deferred the first half year of New Chrysler’s interest payments to Treasury until December 2011 ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 8, 41, 45, 47-48). New Chrysler also granted Treasury powers under an Equity Recapture Agreement as consideration, though not as consideration for Tranche B or Tranche C ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 52). These powers would cause Treasury, rather than the VEBA to be the main economic beneficiary of increases in the value of Chrysler equity above a certain level ([Congressional Oversight Panel 2011](#), 56-57). Treasury evidently received the powers on account of its “making available financial accommodations” to New

Chrysler ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 52). Other shared terms included the prepayment provisions, which imposed a burden-sharing measure with Canada and a prepayment priority order ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 46-48).

### *Prepayment Policy*

First, any prepayment made by New Chrysler related to the First Lien Credit Agreement would trigger an obligation for Chrysler Canada to prepay to EDC an amount proportional to such a payment to Treasury. ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 36, 41, 46). This prevented New Chrysler from prepaying its debts to Treasury before its debts to EDC. There was also a mandatory prepayment of 50% of the outstanding loans, Additional Notes, and Zero Coupon Notes under Tranche C due on June 10, 2016 ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 46-47).<sup>32</sup>

### *Security and Collateral*

The Loans, Additional Notes, and Zero Coupon Notes under the First Lien Credit Agreement were secured using a “Security Agreement”<sup>33</sup> that created what appears to be a blanket lien on substantially all of New Chrysler’s tangible and intangible assets (with exceptions for certain types of subsidiaries and joint ventures. ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 61-62, 70-72).

### *Oversight*

The First Lien Credit Agreement dispensed with the weekly reporting requirements from the Joint DIP Facility. Instead, it imposed less frequent reporting requirements similar to those in the Bridge Loans. For example, New Chrysler had to provide unaudited financials within 45 days of “the end of each of the first three quarterly periods” beginning September 30, 2009 and audited financials within 120 days of the end of each fiscal year ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 66-67).

### *Conditions*

Similar to the affirmative covenants in the Joint DIP Facility, the First Lien Credit Agreement had many conditions. These made drawing on Tranche B and Tranche C conditional on the auto company’s success in the bankruptcy proceedings, in addition to the usual requirements for large secured loans (e.g. New Chrysler’s “environmental affairs” must have satisfied Treasury) ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 62, 64-65).

### *Covenants*

The affirmative and negative covenants in the First Lien Credit Agreement included a domestic production volume requirement that would last until the later of five years or until New Chrysler finished repaying any obligations under the Agreement ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 76-77). The Agreement also gave Treasury a veto over the re-nomination of certain members of New Chrysler’s board as well as a veto over

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<sup>32</sup> This provision also automatically reduced Treasury’s commitment under Tranche C by 50% on this same date. The remaining 50% of Tranche C matured on June 10, 2017, as indicated earlier ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 46-47)

<sup>33</sup> The “Security Agreement” is not accessible as of July 1, 2019

the nomination of successors or replacements for certain members of the board ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 77-78). New Chrysler would also find itself bound by a minimum EBITDA requirement for over a year, which would further restrict its operations ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 78, 82-83). In addition to several generic restrictions on New Chrysler's operations (restrictions on new indebtedness, asset sales, payment of dividends), New Chrysler had to adhere to the various TARP and EAWA burden sharing conditions (encompassing expense policies, private aircraft use, executive compensation, etc.) imposed by Treasury's various loans to Old Chrysler ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 73-76, 78-83). However, New Chrysler could free itself from some of the more generic restrictions (asset sale restrictions, restricted transactions with affiliates, etc.) by obtaining and maintaining "Investment Grade Ratings from two Rating Agencies" ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 82-83).

Figure 5: Summary of financing for Chrysler’s restructuring

<b>Summary of Joint DIP Facility and the Post-Petition First Lien Credit Agreement</b>			
Facility	Joint Debtor-In-Possession (DIP) Facility	First Lien Credit Agreement	
Tranche	N/A (one tranche)	Tranche B	Tranche C
Recipient	Old Chrysler (and indirectly GMAC)	New Chrysler (indirectly Old Chrysler)	New Chrysler (and indirectly GMAC)
Maximum Principal	\$4.1 billion (\$1.4 billion until final approval from bankruptcy court); increased to \$4.96 billion on May 15, 2009 <sup>34</sup>	\$2 billion <sup>35</sup>	\$5.14 billion <sup>36</sup>
Usage at Peak	\$1.89 billion (US) and approximately \$1 billion (Canada) <sup>37</sup>	\$7.14 billion <sup>38</sup>	
Purpose	Funded Old Chrysler during bankruptcy	Tranche B was used to purchase Old Chrysler assets in 363 sale  Tranche C was used for working capital with \$350 million earmarked for the GMAC transition. \$500 million provided for the payment of a \$500 million portion of Old Chrysler’s Bridge Loan debt assumed by New Chrysler	
Form	<ul style="list-style-type: none"> <li>• Default: Dollar denominated “Eurodollar Rate” loans</li> <li>• Dollar denominated “Alternative Base Rate” loans</li> </ul>		
Default Interest Rate	3-month Eurodollar (with a floor of 2.00%) + 3.00% <sup>39</sup>	3-month Eurodollar (with a	3-month Eurodollar (with a floor of 2.00%) + 7.91%

<sup>34</sup> See [DIP Financing Agreement 2009](#), PDF Page 49, 95, 317, 322

<sup>35</sup> See [Post-Petition First Lien Credit Agreement 2009](#), PDF Page 41, 44, 59

<sup>36</sup> See [Post-Petition First Lien Credit Agreement 2009](#), PDF Page 45

<sup>37</sup> There is not a report showing the peak usage of the combined Treasury and EDC commitments.

<sup>38</sup> See [U.S. Treasury Department Office of Financial Stability 2018](#)

<sup>39</sup> See [DIP Financing Agreement 2009](#), PDF Page 8-9, 15-18, 20-21, 34-37, 302

		floor of 2.00%) + 5.00% <sup>40</sup>	(Zero Coupon Notes did not bear interest until May 2013) <sup>41</sup>
Maturity Date	<p>Earliest of:</p> <ul style="list-style-type: none"> <li>• June 5, 2009 (in the case that the Final Order in the bankruptcy became “final and non-appealable” before such a date)</li> <li>• June 29, 2009</li> <li>• “the effective date of a plan of reorganization or liquidation that is confirmed pursuant to an order entered in the Cases by the Bankruptcy Court”</li> <li>• The date of “the acceleration of any Loans and the Additional Notes and the termination of the Commitment in accordance with the terms of this Agreement”</li> <li>• September 30, 2009 (<a href="#">DIP Financing Agreement 2009</a>, PDF Page 22)</li> </ul>	<ul style="list-style-type: none"> <li>• December 10, 2011 (could delay to June 10, 2017 for up to \$400 million) (<a href="#">Post-Petition First Lien Credit Agreement 2009</a>, PDF Page 8, 41, 45, 47-48)</li> </ul>	<ul style="list-style-type: none"> <li>• June 10, 2017 (50% balloon payment due on June 10, 2016) (<a href="#">Post-Petition First Lien Credit Agreement 2009</a>, PDF Page 46-47)</li> </ul>
Security	First lien on substantially all of Old Chrysler’s assets	<ul style="list-style-type: none"> <li>• Blanket lien on substantially all New Chrysler’s assets</li> <li>• Equity recapture powers</li> </ul>	
Additional Consideration	<ul style="list-style-type: none"> <li>• Additional Notes (\$253.46 million principal for Treasury and \$77.37 million principal for EDC) (<a href="#">DIP Financing Agreement 2009</a>, PDF Page 22)</li> </ul>	<ul style="list-style-type: none"> <li>• 9.85% stake in New Chrysler for Treasury</li> </ul>	<ul style="list-style-type: none"> <li>• Additional Notes (\$288 million principal)</li> <li>• Zero Coupon Notes (\$100 million principal)</li> </ul>

<sup>40</sup> See [Post-Petition First Lien Credit Agreement 2009](#), PDF Page 7-8, 16, 18, 23-24, 48-49, 52

<sup>41</sup> See [Post-Petition First Lien Credit Agreement 2009](#), PDF Page 7-8, 16, 18, 23-24, 48-49, 52

	<a href="#">Agreement 2009</a> , PDF Page 322)		
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**The Operations of the “New” Chrysler**

The UAW VEBA, Treasury, the Canadian government and Fiat set down New Chrysler’s corporate governance arrangements in the Amended and Restated Limited Liability Company Operating Agreement of Chrysler Group LLC (Signed 06/10/2009), which this paper refers to as the LLC Agreement ([LLC Agreement 2009](#), PDF Page 1).

The first order of business for the parties was to set down New Chrysler’s capital structure and the provisions for changing that capital structure over time (See Figure 6).

Figure 6: New Chrysler Capital Structure ([LLC Agreement 2009](#), PDF Page 86-88) (author's calculations)

Stakeholder	Class and Number of Shares Issued	Initial Total Interest	Total Interest Upon One Class B Event <sup>42</sup>	Total Interest Upon Two Class B Events <sup>43</sup>	Total Interest if All Class B Events Occur <sup>44</sup>	Total Interest if Additional Call Options are Fully Exercised
Fiat North America LLC	200,000 Class B	20.000%	25.000%	30.000%	35.000% <sup>45</sup>	51.000%
United States Department of the Treasury	98,461 Class A	9.846%	9.231%	8.615%	8.000%	6.031%
VEBA Holdcos (UAW VEBA Holdco LLC CH-00 through 12)	676,924 Class A	67.692%	63.461%	59.231%	55.000%	41.462%

<sup>42</sup> Effective January 10, 2011, after a Class B Technology Event ("Governmental Approvals for an engine (or a vehicle containing an engine for which the Company received a Technology Event Governmental Approval) to be manufactured in the United States and [...] delivery to the US Treasury of an irrevocable commitment by the Company [...] to begin commercial production of the engine (or a vehicle) as soon as commercially practicable") ([LLC Agreement 2009](#), PDF Page 10-11)

<sup>43</sup> Effective April 12, 2011, after a Class B Non-NAFTA Distribution Event (the "Company recording cumulative revenues following the date of this Agreement of \$1,500,000,000 or more [...] attributable to the Company's sales made outside of [...] [NAFTA] following the date of this Agreement" and "execution by the Company of one or more franchise agreements covering in the aggregate at least ninety percent (90%) of the total Fiat Group Automobiles S.p.A. dealers in Latin America pursuant to which such dealers will carry Company products") ([LLC Agreement 2009](#), PDF Page 10-11)

<sup>44</sup> Effective by July 2011 ([Webel and Canis 2012](#), 5, 15), after a Class B Fuel Economy Event ("completion by the Company of the Fuel Economy Test on a Chrysler-produced pre-production vehicle appropriate for such testing purposes based on Fiat platform or vehicle technology resulting in a fuel economy of at least 40 miles per gallon" and "an irrevocable [Treasury] commitment by the Company [...]to begin assembly of such a vehicle in [...] commercial quantities in a production facility in the United States as soon as commercially practicable") ([LLC Agreement 2009](#), PDF Page 10-11)

<sup>45</sup> Represented by 200,000 Class B Membership Interests.

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Government of Canada (Canada CH Investment Corporation)	24,615 Class A	2.462%	2.308%	2.154%	2.000%	1.508%
Total	800,000 Class A 200,000 Class B	100%	100%	100%	100%	100%

While Treasury had already received a 9.85% equity stake and Canada received its own 2.46% equity stake as additional consideration for their post-petition lending ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 52) ([Chrysler Canada Amended and Restated Loan Agreement 2009](#), 6.18-1), the VEBA received a 67.69% stake in return for waiving a portion of its debt obligation and other concessions ([Klier and Rubenstein 2012](#), 41) and Fiat received a 20% stake as compensation for its technical contribution to New Chrysler ([Klier and Rubenstein 2012](#), 41).

The LLC Agreement also set down terms regulating changes in New Chrysler's capital structure. The most detailed of these related to Fiat, which had a number of mechanisms for increasing its equity stake, but was also prohibited from obtaining a controlling stake in New Chrysler until New Chrysler repaid all of its loans from Treasury and the Canadian government ([Congressional Oversight Panel 2011](#), 53-55). As detailed in Figure 6 above, Fiat's ownership of Class B Membership shares would automatically increase by 5%, (diluting the stake of the other three owners, which held the Class A shares, accordingly) ([Congressional Oversight Panel 2011](#), 53-55) upon the occurrence of any of three types of designated events, each which was intended to significantly further Chrysler's recover effort. (See notes to Figure 6).

If Chrysler was unable to bring about any of these events by January 1, 2013, Fiat would still have an option to acquire additional Class A Membership Interests (diluting the other owners). In such a situation, "the Fiat Group's Total Interest [...] [would] increase by five percent (5%) in the aggregate for each Class B Event that has not occurred" ([LLC Agreement 2009](#), PDF Page 13).

Although Fiat remained locked out of a controlling stake in New Chrysler until the governments' exited, Fiat also enjoyed the right to "buy up to 40 percent of the VEBA's equity stake at a market-based formulaic price prior to the IPO or a market price after the IPO" at any time ([Congressional Oversight Panel 2011](#), 55). Once New Chrysler repaid its government loans, lifting the restriction on Fiat's stake in the company, Fiat could exercise an Incremental Equity Call Option as well as a Treasury Call Option ([Congressional Oversight Panel 2011](#), 55). The former allowed Fiat to increase its "stake by up to 16 percent" at a "market-based formulaic price" before a New Chrysler IPO or a "market price" if the option is used after the occurrence of a New Chrysler IPO by diluting the other parties. The latter gave Fiat the right to be the first to purchase Treasury's equity during the year following New Chrysler's repayment of its government loans ([Congressional Oversight Panel 2011](#), 55).

Treasury had several restrictions on the disposition of its equity (by virtue of Fiat's Treasury Call Option), but had significant powers over sales of the VEBA's equity stake ([Congressional Oversight Panel 2011](#), 56-57). Under an equity recapture agreement, Treasury was entitled to "all proceeds from the sale of any of the VEBA's equity stake in Chrysler above a Threshold Amount, set at \$4.25 billion and growing from January 1, 2010 at 9 percent per year," but could alternatively purchase VEBA's equity "for the then-applicable Threshold Amount" ([Congressional Oversight Panel 2011](#), 56-57). However, the Canadian government maintained a claim over 20% of such proceeds ([Congressional Oversight Panel 2011](#), 59).

*Corporate Governance and Management*

The LLC Agreement set down a Board of Directors with nine initial members and gave the CEO position to the CEO of Fiat ([LLC Agreement 2009](#), PDF Page 21-24, 29-30). The distribution of the seats on the Board were related to the distribution of equity stakes in New Chrysler. Correspondingly the seats on the Board would change as follows ([LLC Agreement 2009](#), PDF Page 22-24):

Figure 7: Chrysler board seat distribution plan ([LLC Agreement 2009](#), PDF Page 22-24, 86-88)

Seats on New Chrysler's Board of Directors	Fiat holds at least a 20% stake (Fiat's initial stake)	Fiat holds at least a 35% stake	Fiat holds at least a 50% stake
Fiat North America LLC's Seats on Board	3	4	5
United States Department of the Treasury	4	3	2

Seats on New Chrysler's Board of Directors	Canada maintains its initial stake and the Canadian loan to New Chrysler is active	Canada had sold any portion of its stake or Canadian loan has terminated
Governments of Canada and Ontario	1	0

Seats on New Chrysler's Board of Directors	VEBA holds at least a 15% stake	VEBA holds less than a 15% stake
VEBA	1	0

*Oversight*

Even as the governments decreased their stakes in the auto company, they continued to enjoy significant oversight powers. Each of the four parties would receive comprehensive financial statements from New Chrysler if the party in question maintained an equity stake of at least 5% ([LLC Agreement 2009](#), PDF Page 42-45). The governments also had additional oversight powers. Canada only had to retain a seat on the Board to maintain access to financial statements ([LLC Agreement 2009](#), PDF Page 42-45). The US maintained limited oversight by mandating that New Chrysler act as if it had to file 10-K's and 10-Q's with the

SEC so long as the US retained any of its initial stake in New Chrysler ([LLC Agreement 2009](#), PDF Page 42-45).

### *Regulating Fiat's Involvement*

In addition to regulating Fiat's stake in New Chrysler, the LLC Agreement also regulated Fiat's involvement in New Chrysler's affairs. For example, the terms of the LLC Agreement prohibited Fiat from terminating "any of its rights" as an organization with seats on New Chrysler's Board before June 10, 2011 ([LLC Agreement 2009](#), PDF Page 34). The LLC Agreement also regulated Fiat's involvement with several other terms. There were terms governing the necessary conditions for a Chrysler IPO ([LLC Agreement 2009](#), PDF Page 39, 54-55). The LLC Agreement also required that equity in New Chrysler acquired by Fiat through means other than the "Class B" events would be held in a voting trust until certain other conditions were fulfilled ([LLC Agreement 2009](#), PDF Page 39, 54-55). Additionally, the LLC Agreement restricted the Board from taking action that would disproportionately affect non-Fiat members if said actions were taken while Fiat had a majority interest in New Chrysler ([LLC Agreement 2009](#), PDF Page 39, 54-55).

## **Outcomes**

### **DIP Financing**

Old Chrysler eventually accessed \$1.89 billion from Treasury ([U.S. Treasury Department Office of Financial Stability 2018](#)) and C\$1.28 billion (approximately \$1 billion) from EDC under the Joint DIP Facility ([Office of the Auditor General of Canada 2014](#)). The US commitment terminated on June 30, 2009. Treasury recovered \$159.57 million from the sale of the remaining collateral that constituted Old Chrysler between May 10, 2010 and February 26, 2016 ([U.S. Treasury Department Office of Financial Stability 2018](#)). Information on EDC's recovery from its DIP lending commitments was unavailable.

### **The Section 363 Asset Sale**

With the beginning of the case, objections to the 363 sale from various creditors began to pile up, the most notable of these being from a group of First Lien secured creditors calling themselves the "Chrysler Non-TARP Lenders" (which included the "Indiana Funds": the Indiana State Teachers Retirement Fund, the Indiana State Police Pension Trust, and the Indiana Major Moves Construction Fund) ([Docket 3073](#), 11-12).<sup>46</sup>

The Indiana Funds argued the sale would violate the Bankruptcy Code's rule of absolute priority because New Chrysler would pay in full certain lower-priority creditors (the secured debts of the government and the unsecured debts of the UAW's VEBA as well as several trade creditors) before paying the First Lien secured creditors ([Docket 3073](#), 11-12)

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<sup>46</sup> The Indiana Funds held only \$42 million of the \$6.9 million in first priority secured debt ([Docket 3073 2009](#), 11-12). Other groups objecting to various conditions of the bankruptcy included the National Chrysler Retirement Organization (Chrysler's non-union retirees) and various Chrysler dealerships ([Docket 1195 2009](#)) ([Docket 1045 2009](#)) ([Docket 1488 2009](#)).

([Congressional Oversight Panel 2009](#), PDF Page 15).<sup>47</sup> The Indiana Funds also argued that Old Chrysler was being underpaid for its collateral. They believed that the collateral securing its loans, which was to be moved to New Chrysler, “would be worth significantly more than the money paid to the First-Lien Lenders” ([Docket 3073](#), 11-12) and that Old Chrysler “could sell the assets for more money if they did not rush the sale, or that first lien debt holders could recover more in liquidation” ([Congressional Oversight Panel 2009](#), PDF Page 15).<sup>48</sup> Therefore, the assets of Old Chrysler would not be a “melting ice cube” (a situation where the value of the assets or business is degrading) and there would therefore not meet the “good business reason” standard needed to allow the section 363 sale.

The bankruptcy court rejected the Indiana Funds’ arguments and, on May 31, 2009, granted Old Chrysler authorization to sell substantially all of its assets under the proposed section 363 Sale ([Docket 3073 2009](#), 1). This order asserted that the proposed section 363 sale was “similar to that presented in other cases in which exigent circumstances warrant an expeditious sale of assets prior to confirmation of a plan.” The court concluded that “The fact that the U.S. government is the primary source of funding does not alter the analysis under bankruptcy law” ([Docket 3073 2009](#), 1). It argued the court had the discretion to approve the restrictive bidding procedures and accelerated sale conditions, writing that “if a favorable business opportunity is presented that is only available if acted upon quickly, the court has to have the ability to authorize what is best for the estate” ([Docket 3073 2009](#), 15). Furthermore, the bankruptcy court said that Old Chrysler demonstrated the section 363 sale was such a situation, as Old Chrysler had already spent years seeking alliances, finding that “the Fiat Transaction is the only option that is currently viable” and that “The only other alternative is the immediate liquidation of the company” ([Docket 3073 2009](#), 16-19).<sup>49</sup> The court opined that any material delay of the section 363 sale would damage Old Chrysler’s ability to succeed as a going concern ([Docket 3073](#), 16-19) and noted that the government’s post-petition financing (and thus the section 363 sale itself) was “contingent upon a sale

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<sup>47</sup> Warren Buffet, a financier that was well known for his support for the Obama Administration, worried that a disruption of creditor priority in the Chrysler case would “disrupt lending practices in the future” ([The Deal 2009](#)).

<sup>48</sup> The Non-TARP Lenders (which included the Indiana Funds) also argued that the short timeline and restrictive bidding procedures proposed by Old Chrysler and the DIP Lenders were “designed to prevent, not encourage, competitive bidding,” which the Non-TARP Lenders said contravened the “fundamental purpose for bidding procedures” (i.e. “to maximize the sale price for the Debtors’ assets”) ([Docket 286 2009](#), 2). The court was not amused. The court would later declare that the First Lien Secured Creditors (of which the Indiana Funds were a part) consented to the section 363 sale on the basis that all of its members agreed to be bound by the actions of an Administrative Agent, which would be “made at the request of lenders holding a majority of the indebtedness” in the creditor class ([Docket 3073](#), 25). As the holders of the 92.5% of this indebtedness directed the Administrative Agent to consent to the section 363 sale, the Indiana Funds and other dissenting Non-TARP Lenders had already functionally consented to the sale themselves ([Docket 3073](#), 27).

<sup>49</sup> Further, the bankruptcy court also explained that Fiat’s technology and access to international markets materially contributed value to New Chrysler in return for its equity, which was essential to the legality of the provisions of the Master Transaction Agreement granting Fiat its equity stake in New Chrysler. The court also argued that the resources offered to New Chrysler (which would allow it to continue operating as a going concern) and the \$2 billion offered to Old Chrysler’s creditors, would provide creditors with more than what would be seen in a liquidation ([Docket 3073 2009](#), 16-19).

closing quickly,” which made the proposed MTA “the only optional available other than piecemeal liquidation” ([Docket 3073](#), 16-19).<sup>50</sup>

The bankruptcy court also rejected the Indiana Funds’ assertion that the \$2 billion offered by New Chrysler under section 363 sale did not constitute “fair value for the assets being sold” ([Docket 3073](#), 16-19). The opinion contended that the Indiana Funds failed to offer an alternative valuation or rebut the analysis by Old Chrysler that its assets were worth less than the \$2 billion being offered by New Chrysler ([Docket 3073 2009](#), 16-19).<sup>51</sup>

The bankruptcy court then issued another order on June 1, 2009, which formally authorized the section 363 sale, but the Indiana Funds quickly responded by appealing to the Second Circuit Court of Appeals, which stayed the sale on June 2, 2009 ([Ind. State Police Pension Trust v. Chrysler LLC \(In re Chrysler LLC\)](#)). The Second Circuit heard arguments on the case on June 5, 2009 and affirmed the decision of the bankruptcy judge nearly immediately ([Ind. State Police Pension Trust v. Chrysler LLC \(In re Chrysler LLC\)](#), 7). However, the Indiana Funds then appealed to the Supreme Court for a permanent stay, where Justice Ginsburg issued another temporary stay of the sale on June 8, 2009 (before it could be consummated) ([Fred 2010](#), 38). The Court issued an opinion denying the request for a permanent stay and vacating the temporary stay the next day ([Fred 2010](#), 38) ([U.S. Supreme Court Cases 2009](#)).<sup>52</sup> The sale went forward on June 10, 2009 ([Fred 2010](#), 39). A decision by the Supreme Court on December 14, 2009 vacated the judgements of the bankruptcy court and the Second Circuit, and also dismissed “the Indiana Funds’ appeal as moot” ([Fred 2010](#), 39). Some legal scholars argue that this indicates the Supreme Court wished to keep the Second Circuit’s favorable Chrysler opinion from being used as precedent ([Fred 2010](#), 39).

### **Immediate Outcomes of the Sale**

The sale resulted in a restructuring of Chrysler through a process similar to the FDIC’s bad bank process. ([Roe and Skeel 2010](#), 728) ([FDIC 1998](#), PDF Page 17). New Chrysler’s balance sheet looked much like Old Chrysler’s and the process was concluded in a record forty-two days. “Never before had the government used bankruptcy to bail out a major industrial corporation.” ([Roe and Skeel 2010](#), 728). One commenter termed the process “unorthodox” and “a tour de force” criticizing it for its opaqueness and its impact on the rights of certain creditors, whose priorities under the traditional bankruptcy rules seemed to be disregarded in favor of the intended outcome ([Roe and Skeel 2010](#), 728).<sup>53</sup> The pre-petition First Lien

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<sup>50</sup> The creators of the Master Transaction Agreement partially accomplished this with a term in the MTA declaring that “if a sale has not closed by June 15th, Fiat could withdraw its commitment” to purchase Old Chrysler’s assets ([Docket 3073 2009](#), 16-19).

<sup>51</sup> The analysis claimed that the \$2 billion offer (the value the experts found for Old Chrysler’s assets as a going concern) exceeded the liquidation value of the assets by at least \$800 million (having concluded that the liquidation of Old Chrysler’s assets “would generate between zero and \$1.2 billion”) ([Docket 3073](#), 16-19).

<sup>52</sup> The Court wrote that the Indiana Funds failed to pass three tests required for their requested stay: “(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari [...]; (2) a fair prospect that a majority of the Court will conclude that the decision below was erroneous; and (3) a likelihood that irreparable harm will result from the denial of the stay” ([Fred 2010](#), 38).

<sup>53</sup> Roe and Skeel argued that the court violated the creditors priorities and did not appropriately apply the bankruptcy rule §1129 which provides inter alia, for voting by creditors, requires disclosure of the company’s business operations and the impact of the plan on creditors and careful evaluation by the court. They argued

Secured Creditors ended up with 29 cents on the dollar and general unsecured creditors received nothing from Old Chrysler (although a significant portion of Old Chrysler's unsecured debt was assumed by New Chrysler, namely debts to a number of dealers and trade creditors as well as unsecured pension obligations) (See Figure 8 for a summary of the actions and outcomes involved in the restructuring) ([Blaylock et al. 2015](#), 326) ([Ben-Ishai and Lubben 2011](#), 81, 84).

Chrysler eventually borrowed around \$1.89 billion from the \$4.96 billion Joint DIP Facility and about \$5.08 billion from the \$6.64 billion First Lien Credit Agreement ([U.S. Treasury Department Office of Financial Stability 2018](#)).

In the reorganization that followed, 789 of Chrysler's 3,200 dealership closed, over twelve plants closed, the two tier wage system was expanded, defined benefit pensions disappeared for new hires, and health benefits were dramatically rolled back ([Goolsbee and Krueger 2015](#), 18). Although various dealerships that were "left behind" attempted to pass legislation at the state and national level to ameliorate their situation, it doesn't appear that they succeeded beyond Congress' creation of "an arbitration procedure for automobile dealerships to seek continuation or reinstatement of franchise agreements that had been terminated by Chrysler during its bankruptcy proceedings" ([Chrysler Group LLC v. Fox Hills Motor Sales, Inc.](#), 776 F.3d 411 2015, 3) ([Goolsbee and Krueger 2015](#), 30).

New Chrysler continued coordinating a wind-down of Old Chrysler through the bankruptcy courts until Old Chrysler "transferred its remaining assets and liabilities to a liquidating trust and was dissolved in accordance with the bankruptcy court plan" on April 30, 2010 ([U.S. Treasury Department Office of Financial Stability 2018](#)) ([Webel and Canis 2012](#), 7). Old Chrysler's liquidation only returned ~\$160 million of the \$1.89 billion it borrowed under the Joint DIP Facility ([U.S. Treasury Department Office of Financial Stability 2018](#)). Old Chrysler was unable to fully repay its prepetition liabilities from the Bridge Loans. Instead, it settled its \$3.5 billion plus interest liability with a payment \$1.9 billion payment in May 2010 (Treasury took a write-down of \$1.6 billion) ([Government Accountability Office 2011](#), 5).

On the other hand, New Chrysler repaid all of its borrowing under the First Lien Credit Agreement with interest ([U.S. Treasury Department Office of Financial Stability 2018](#)).

Fiat steadily increased its stake in New Chrysler to 25% in January 2011 and 30% in April 2011. It purchased what remained of the government stakes in New Chrysler by July 21, 2011 (6% from Treasury for \$500 million and 1.5% from the Canadian government for C\$132 million) after New Chrysler had finished repaying its post-petition financing obligations to Treasury on May 24, 2011 ([U.S. Treasury Department Office of Financial Stability 2018](#)) ([Klier and Rubenstein 2012](#), 41) ([Office of the Auditor General of Canada 2014](#)).

New Chrysler's equity was entirely divided between Fiat (58.5%) and the UAW VEBA (41.0%) by autumn 2011 ([TARP Assistance for Chrysler: Restructuring and Repayment Issues 2012](#), 8). In January 2014, Fiat purchased what remained of the UAW VEBA's stake for

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that the court's seemingly failure to follow this "long, precise §1129 checklist for compliance" has set a harmful precedent (See [Roe and Skeel 2010](#)).

\$3.65 billion and took full control of New Chrysler ([Goolsbee and Krueger 2015, 29](#))([Securities and Exchange Commission 2014, 81](#)).

Figure 8: How Chrysler’s stakeholders shared the burden of restructuring ([SIGTARP 2009, 107](#))

CHRYSLER-FIAT ALLIANCE STAKEHOLDERS ACTIONS AND EQUITY STAKE		
Stakeholders	Action	Equity Stakes with New Chrysler-Fiat Alliance <sup>a</sup>
Fiat	<ul style="list-style-type: none"> <li>Contribute billions of dollars in technology and intellectual property</li> <li>Offer access to global distribution network</li> </ul>	<ul style="list-style-type: none"> <li>20% equity in New Chrysler</li> <li>15% additional equity based on performance metrics<sup>b</sup></li> <li>Selection of three directors</li> </ul>
Secured Lenders	<ul style="list-style-type: none"> <li>Exchange \$6.9 billion secured claim</li> </ul>	<ul style="list-style-type: none"> <li>Receive \$2 billion cash</li> </ul>
UAW (VEBA)	<ul style="list-style-type: none"> <li>Make concessions on wages, benefits, and retiree health care</li> </ul>	<ul style="list-style-type: none"> <li>55% equity in New Chrysler, <i>pro forma</i> for Fiat additional equity</li> <li>Selection of one director</li> </ul>
United States Treasury	<ul style="list-style-type: none"> <li>Waive repayment of \$1.9 billion DIP financing provided during bankruptcy<sup>c</sup></li> <li>Provide \$4.7 billion in working capital<sup>d</sup></li> <li>Waive \$3.5 billion of the \$4 billion pre-bankruptcy loan, with the remaining \$500 million carried over to the new financing<sup>e</sup></li> </ul>	<ul style="list-style-type: none"> <li>8% equity in New Chrysler, <i>pro forma</i></li> <li>Selection of four directors</li> </ul>
Canadian Government	<ul style="list-style-type: none"> <li>Lend money alongside the U.S. Treasury based on a 3:1 formula</li> </ul>	<ul style="list-style-type: none"> <li>2% equity in New Chrysler, <i>pro forma</i></li> <li>Selection of one director</li> </ul>
Daimler	<ul style="list-style-type: none"> <li>Waive its share of Chrysler’s \$2 billion second-lien debt</li> <li>Waive 19% equity in Chrysler’s parent</li> <li>Pay \$600 million to Chrysler’s Pension Plan to settle PBGC obligation</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>
Cerberus	<ul style="list-style-type: none"> <li>Waive its share of Chrysler’s \$2 billion second-lien debt</li> <li>Forfeit its entire equity stake in Chrysler</li> <li>Transfer ownership of old Chrysler headquarters building to the New Chrysler-Fiat alliance</li> <li>Contribute to a claim against Daimler to help settle with PBGC</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>
PBGC	<ul style="list-style-type: none"> <li>Settle claim with Daimler</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>

Notes: Numbers affected by rounding.

<sup>a</sup>The listed ownership percentages are based on the assumption that Fiat will achieve all three performance metrics.

<sup>b</sup>Fiat can earn this 15% equity by achieving certain performance metrics. It would receive 5% for meeting each of three performance goals: produce a vehicle at a Chrysler factory in the United States that performs at 40 mpg or better; provide Chrysler with a distribution network in numerous foreign jurisdictions; manufacture state-of-the-art, next generation engines at a U.S. Chrysler facility.

<sup>c</sup>\$3.8 billion DIP financing was originally committed but \$1.9 billion of that commitment was never funded.

<sup>d</sup>A total of \$6.6 billion is committed; \$2 billion is used to pay senior secured lenders.

<sup>e</sup>\$4.5 billion was originally committed, but \$500 million of that commitment was never funded.

Sources: Treasury, “Obama Administration Auto Restructuring Initiative: Chrysler-Fiat Alliance,” 4/30/2009, [www.financialstability.gov/docs/AFP/Chrysler-restructuring-factsheet\\_043009.pdf](http://www.financialstability.gov/docs/AFP/Chrysler-restructuring-factsheet_043009.pdf), accessed 6/9/2009; Treasury, responses to SIGTARP draft reports, 7/9/2009 and 7/13/2009.

## Overall Outcomes

As a whole, the US government lost either about \$1.2 billion (which incorporates returns from the Additional Notes and interest) or about \$2.93 billion on the Chrysler rescue, depending on which source one relies on ([ProPublica 2019](#)) ([SIGTARP 2016, 103](#)), but Chrysler recovered and as a whole the US automotive industry ended up playing a significant role in the larger economic recovery, according to two former members of President Obama’s Council of Economic Advisers ([Goolsbee and Krueger 2015, 27](#)). “Although it is not unusual for the auto industry to punch above its weight early in a recovery, it has played an unusually large role relatively long into the current recovery,” with autos contributing over “25 percent of the rise in total manufacturing industrial production, even though motor vehicles and parts account for only about 6 percent of total manufacturing value added” ([Goolsbee and Krueger 2015, 27](#)). Chrysler’s market share grew in the years following the restructuring, albeit some of this growth came at the expense of other domestic auto manufacturers ([Goolsbee and Krueger 2015, PDF Page 22](#)).

By the time that Treasury exited from New Chrysler, the company still had some underfunded pension liabilities, though they were no longer a threat to its viability ([Government Accountability Office 2011](#), 15). Chrysler also remained reliant on trucks and SUVs as its profit centers after the restructuring ([Government Accountability Office 2011](#), PDF Page 21). Labor tensions reemerged in 2015, when the UAW nearly struck over more labor concessions after years of austerity ([Woodall 2015](#)). The labor issues did not disappear. In 2019, workers demanded better compensation amid a lengthy strike at GM and revelations of alleged bribery of UAW officials by New Chrysler ([Naughton 2019](#)). Also in 2019, Fiat Chrysler launched talks with Peugeot owner PSA regarding a possible merger, which were aimed at creating an entity with the “leadership, resources and scale to be at the forefront of a new era of sustainable mobility” ([CNN 2019](#)) ([FCA 2019](#)).

## II. Key Design Decisions<sup>54</sup>

### 1. The bankruptcy-based restructuring was part of a multi-faceted program to assist Chrysler and GM

The restructuring of Chrysler was only one part of a larger attempt to rescue the American automotive industry. Under the auspices of the AIFP the government provided financing for restructuring to GM and Chrysler, but also created programs to aid related stakeholders like suppliers, financiers and customers deemed necessary because of the highly integrated and inter-dependent nature of the industry ([U.S. Treasury Department Office of Financial Stability 2018](#)). GM and Chrysler first received aid under a set of Bridge Loans in late 2008 and early 2009 (See Nye 2019 Bridge Loans). Treasury provided assistance to suppliers that would continue delivering parts, to finance companies that would maintain financing for new car purchases, and to special purpose vehicles that would guarantee warranties on new cars ([Klier and Rubenstein 2012](#), 39-41, 49). GM also received support from Treasury during its bankruptcy, which followed a similar legal framework (See Nygaard 2019 on the Restructuring of General Motors).

### 2. The policymakers decided to save Chrysler largely because of the risk its failure posed to the auto industry and the economy.

Despite the sentiment among the staffers working on the restructuring that “from a highly theoretical point of view, the correct decision could be to let Chrysler go,” they and President Obama eventually agreed that Chrysler should be saved ([Klier and Rubenstein 2012](#), 40). A paper from two former members of the CEA quotes “numerous experts” who questioned the wisdom of saving Chrysler, believing that it would make it more difficult to rescue GM, the failure of which would have been a “major blow to consumer confidence [...] at exactly the wrong moment for the economy” ([Goolsbee and Krueger 2015](#), PDF Page 2, 11). President Obama ultimately decided that the “political and social reality,” rather than the economic fundamental made the case for saving Chrysler (Rattner 2010, 120). That is not to say a

<sup>54</sup> **Yellow** text marks interesting features that we do not know were effective. **Light blue** text marks interesting features that appear to have been effective.

Chrysler liquidation would have been an easy decision. Approximately 300,000 jobs would have disappeared, with the impact falling heavily on districts that already had unemployment rates as high as 24% ([Rattner Chicago Fed 2010](#), PDF Page 4). The CEA economists noted that “66 percent of Chrysler suppliers were also suppliers to GM and 54 percent were suppliers to Ford,” meaning that Chrysler’s liquidation could also endanger other producers at an extremely vulnerable time ([Goolsbee and Krueger 2015](#), PDF Page 15).

### **3. Legal Authority: the financing for the restructuring was authorized under EESA’s TARP**

The Bush Administration cited its authority under EESA’s TARP in funding the United States’ portion of the Joint DIP Facility and the Post-Petition First Lien Credit Agreement, much like the rest of the spending under the Automotive Industry Financial Program (AIFP). Although the Bush Administration initially argued that EESA did not give it the authority to use TARP funds for aid to the automotive industry, Congress’s failure to pass a legislative solution forced it to pivot ([Canis et al. 2009](#), 9). On December 23, 2008, Secretary Paulson relied on Section 101(a)(1), Section 3(5), and Section 3(9)(B) of EESA to send an official determination to Congress (Treasury 2008).<sup>55</sup> Paulson defined “certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles” as “financial institutions” pursuant to EESA. He further defined their assets as “troubled assets” eligible for purchase with TARP funds to promote financial stability (Treasury 2008).

During the litigation associated with GM and Chrysler’s 2009 bankruptcies, the government further justified Paulson’s determination as being in line with the intentions of Congress in passing TARP, even after Treasury Secretary Tim Geithner issued a more specific determination on April 29, 2009, which specified that the relevant “troubled assets” were “the debt obligations or equity of [...] certain companies engaged in the manufacturing of automotive vehicles” ([Congressional Oversight Panel 2009](#), 74-76) (Geithner Determination 2009). The government argued that there was “a certain connection between the automotive companies’ financing entities and the automotive companies themselves that permits the use of TARP funds to support the automotive companies, thereby supporting the companies’ financial divisions” ([Congressional Oversight Panel 2009](#), 74-76). The Congressional Oversight Panel discussed the validity of the Treasury’s arguments and concluded that the issue of TARP authorization “may never be answered with any finality” because it had not been brought to any court to adjudicate ([Congressional Oversight Panel 2009](#), 79).

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<sup>55</sup> Section 101 (a)(1) authorized the Secretary of Treasury to establish the TARP to “purchase, and to make and fund commitments to purchase, troubled assets from any financial institution” ([Congressional Oversight Panel 2009](#), 158-159). Section 3(5) broadly defined “financial institutions” as “any institution [...] established and regulated under the laws of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands, and having significant operations in the United States, but excluding any central bank of, or institution owned by, a foreign government” ([Congressional Oversight Panel 2009](#), 71). Section 3(9)(B), allowed the Secretary of Treasury (after consultation with the Chairman of the Fed) to define “troubled assets” as any financial instrument for which the Secretary determines purchases “[are] necessary to promote financial market stability [...] upon the transmission of said determination, in writing, to the appropriate Committees of Congress” ([Congressional Oversight Panel 2009](#), 71-72).

#### 4. The restructuring used a section 363 sale rather than a typical Chapter 11 reorganization plan or a restructuring outside of bankruptcy

The legal mechanics for Chrysler's restructuring came from Chapter 11 of the Bankruptcy Code. Team Auto<sup>56</sup> was concerned that a Chapter 11 restructuring might drag on for so long that Chrysler would be destroyed in the process (Rattner 2010, 107). Consequently, Team Auto facilitated a surgical bankruptcy for Chrysler using the section 363 of Chapter 11, which could allow Chrysler to sell substantially all of its assets to Fiat and hopefully "clear away old liabilities" quickly (Canis et al. 2009, 24).<sup>57</sup> Bankruptcy scholars advocate for the use of section 363 in cases dealing with "ongoing losses, limited lender funding commitments, and rapidly depleting assets," where the faster procedure can help "maximize the value of the estate, thereby increasing creditors' returns" (Ben-Ishai and Lubben 2011, 81). This type of organization had become popular among creditors by the late 2000s, and, as a creditor, the Treasury decided to take advantage of it. However, the Supreme Court vacated the various judgements approving the section 363 sale in late 2009, which makes whether the courts would approve a similarly aggressive section 363 sale again an open question (Fred 2010, 39). Some legal scholars argue that the order indicates that the Supreme Court wished to keep the Second Circuit's favorable Chrysler opinion from being used as precedent (Fred 2010, 39).

That being said, Team Auto did consider a more conventional Chapter 11. Team Auto began looking at the feasibility of restructuring Chrysler without Chapter 11 (even then, using a prepackaged bankruptcy) only as the April 30, 2009 deadline closed in and Chrysler's First Lien Secured Creditors offered a restructuring plan that would allow Chrysler to avoid bankruptcy (Rattner 2010, 173-177). Apparently, "avoiding bankruptcy seemed so unlikely that we [Team Auto] hadn't so much as studied the numbers of [such a] case where all the secured lenders were on board," but the cost of such a restructuring was surprisingly close to the planned bankruptcy (Rattner 2010, 175-176). Officials in Team Auto still opted for the section 363 sale when it became apparent that some of the First Lien Secured Creditors would not agree to this new restructuring plan (Congressional Oversight Panel 2009, 49), even though they knew that the 363 sale would provoke legal challenges (Rattner 2010, 175-178) (Feldman interview).

A section 363 sale, in contrast to a conventional Chapter 11, could be executed much more quickly. This is because they do not require various creditor protections like "the drafting of a complete plan and disclosure statement, creditor voting, and a confirmation," which can delay the completion of a bankruptcy (Congressional Oversight Panel 2009, PDF Page 45-49, 132). To have the sale approved, Treasury just had to get a majority of the creditors' committee to agree and obtain approval from the bankruptcy judge. The governments involved in the rescue believed that a faster restructuring would thus "preserve the value of the business, restore consumer confidence, and avoid the costs of a lengthy chapter 11 process" (Ben-Ishai and Lubben 2011, 81). However, Treasury also was able to use its

<sup>56</sup> "Team Auto" was an internal name for the government officials working on the restructuring (See Rattner 2010, 90)

<sup>57</sup> Thinking on a GM acquisition of Chrysler's top brands floated around Team Auto as Chrysler neared bankruptcy (Rattner 2010, 160-162). Such an arrangement would have cost the taxpayer less money but would not save as many American jobs (Rattner 2010, 160-162).

leverage as DIP lender to create a highly restrictive bidding process for Old Chrysler, which essentially ensured that Fiat's New Chrysler would successfully purchase Old Chrysler's good assets ([Skeel 2015](#), 135). Unlike most section 363 sales, Treasury had New Chrysler purchase Old Chrysler's assets at a relatively low price while assuming large "liabilities to favored creditors" ([Skeel 2015](#), 135).

Treasury officials emphasized that each stakeholder affected would still have "full opportunity to have his or her claim heard" in the reorganization ([Congressional Oversight Panel 2009](#), 35). Other figures, like the Indiana Funds and some bankruptcy scholars, thought that Chrysler's aggressive use of section 363 circumvented safeguards necessary to the functioning of the bankruptcy code like absolute priority ([Ben-Ishai and Lubben 2011](#), 79) ([Docket 3073 2009](#)).

## **5. The United States and Canada jointly extended debtor-in-possession financing to Old Chrysler**

Treasury and EDC agreed to a Joint DIP Facility to provide Old Chrysler with "the necessary liquidity to sustain [Old] Chrysler during the bankruptcy period" ([Government Accountability Office 2009a](#), 135). Although Old Chrysler only drew \$1.89 billion from the Joint DIP Facility, Treasury and EDC increased the facility to \$4.96 billion less than a month after creating it ([U.S. Treasury Department Office of Financial Stability 2018](#)).<sup>58</sup>

It is also important to note that Treasury believed lending under the facility would probably not be repaid in its entirety ([Congressional Oversight Panel 2009](#), 55-56). However, the DIP loan still gave Treasury two useful things that would allow it, and Chrysler to succeed.

First, the Joint DIP Facility gave Treasury liens on nearly all of Old Chrysler's assets that were senior to all of Old Chrysler's other creditors ([DIP Financing Agreement 2009](#), PDF Page 7-8, 30, 44). With this advantage, Treasury (and EDC) would be first in line to recover funds from the company if Fiat pulled out of the deal and Old Chrysler collapsed during the Chapter 11 bankruptcy.

Second, the Joint DIP Facility gave Treasury and EDC a lot of control over the bankruptcy process as major creditors ([Congressional Oversight Panel 2009](#), 44-45) (Feldman Interview). The Bankruptcy Code imposes no statutory limits on the conditions that DIP lenders can attach to their loans beyond requiring approval from the bankruptcy judge ([Congressional Oversight Panel 2009](#), 44-45). In the case of Chrysler, this meant that Treasury and Canada could effectively determine what creditors (whether they be suppliers, trade creditors, secured creditors, or the UAW) would have their liabilities assumed by the New Chrysler ([Congressional Oversight Panel 2009](#), 44-45). The Joint DIP Facility's financing (and, as seen in KDD 10, Fiat's acquisition of a fair amount of Old Chrysler via New Chrysler) was conditional on Old Chrysler quickly meeting several milestones in the bankruptcy process ([DIP Financing Agreement 2009](#), PDF Page 55). For example, the facility had several different maturity dates, each linked with one of the various paths the bankruptcy proceedings could take ([Government Accountability Office 2009a](#), 135). Some of these terms had maturity be triggered by the confirmation of Chrysler's reorganization plan, by a set

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<sup>58</sup> This brought Treasury's commitment to \$3.8 billion and EDC's commitment to \$1.16 billion ([Securities and Exchange Commission 2011a](#), 260)

number of days after an early event in the bankruptcy process elapsing, or simply by the end of Q3 of 2009 ([DIP Financing Agreement 2009](#), PDF Page 22). Restrictive terms like this reflect the extent that the bankruptcy code allow DIP lenders to obtain leverage over the speed and shape of a section 363 sale ([Fred 2010](#), 66) ([Wilkerson 2012](#), 605-606). However, terms, like the various oversight requirements, would conceivably help diminish the risk of Chrysler collapsing during the bankruptcy.

## **6. The bankruptcy was exceptionally speedy (Canis et al. 2009, 24)**

While the Old Chrysler's bankruptcy case remained active through at least March 1, 2016 ([Docket 8460](#), 1-3), it only took Chrysler forty-two days to complete the portion of the bankruptcy relevant to financial stability: the sale of the majority of Old Chrysler's assets under section 363 of the Bankruptcy Code ([Congressional Oversight Panel 2009](#), 13). This was unprecedentedly fast ([Canis et al. 2009](#), 24) ([Docket 8490](#), PDF Page 4-5) ([Docket 8460](#)).

One reason for the speedy asset sale was that many policymakers saw Chrysler's section 363 sale as a test case for the GM restructuring (See Feldman interview) (Foley et al. 2010, 2). The results of the Chrysler restructuring would give Treasury time to modify the plan for restructuring GM if anything went wrong (See Feldman interview). Additionally, the damage from a Chrysler liquidation following a failed attempt at restructuring via section 363 would have been significant, but much more limited than it would have been if the same were to happen to GM ([Goolsbee and Krueger 2015](#), PDF Page 2, 10).

Another reason Treasury pursued such a fast bankruptcy was the cost of keeping Chrysler alive with taxpayer money. Steven Rattner argued that "each additional month of life support [for Chrysler] was going to cost \$500 million to \$1 billion, money that the Treasury would never see again if the company ended up liquidating" (Rattner 2010, 127). Intuitively, more Chrysler spending more time in Chapter 11 would mean that that Chrysler would have to draw more DIP funding to stay alive. More DIP funding would mean that Treasury would receive less per dollar invested in Old Chrysler when Old Chrysler liquidated its remaining collateral.

## **7. Bankruptcy-related aid to Chrysler was structured much differently than the bankruptcy-related aid to GM**

While most of GM's bankruptcy related aid came via a DIP loan that Treasury and EDC swapped for equity in New GM, most of Chrysler's bankruptcy related aid came through a Treasury loan to New Chrysler ([U.S. Treasury Department Office of Financial Stability 2018](#)). Two members of the Obama-era CEA provided an explanation for this difference:

Because of their different financial positions, most of the support provided to GM took the form of equity, while support for Chrysler was in the form of debt that needed to be repaid. One former Treasury official who worked on the restructuring said that Chrysler aid was also less attractive because "we felt as stewards of the taxpayers' money, we could not put more money into Chrysler than the minimum that we thought was reasonable for it to have a chance to succeed" ([Brookings 2014a](#), 87). One could justify the less generous terms of support for Chrysler in part because Chrysler was in more precarious financial shape than GM in 2009, and in part because Chrysler was less pivotal

for the near-term course of the auto industry and economy given its smaller size ([Goolsbee and Krueger 2015](#), PDF Page 17).

## 8. Treasury (and by proxy EDC) protected the taxpayers' investment by obtaining blanket liens, additional promissory notes, equity, and additional powers<sup>59</sup>

The primary way that Treasury and EDC protected their interest in Chrysler (both Old Chrysler and New Chrysler) in the Joint DIP Facility and First Lien Credit Agreement was obtaining first priority liens on substantially all of the company's assets. The Bankruptcy Code allowed the lenders under the Joint DIP Facility to bypass more senior creditors by granting the DIP financiers superpriority status and priming liens with a few exceptions for foreign joint ventures ([DIP Financing Agreement 2009](#), PDF Page 7-8, 27). Treasury similarly obtained a "first priority lien on all of [New] Chrysler's assets" under the First Lien Credit Agreement ([Treasury Press Center 2009](#)).

Treasury and EDC also received the Additional Notes as additional consideration for their lending ([DIP Financing Agreement 2009](#), PDF Page 9, 49) ([Manzo 2009](#), PDF Page 168). Under the law that created TARP, Treasury was mandated to receive some type of warrant or some other type of additional security as consideration ([Emergency Economic Stabilization Act \(EESA\) of 2008](#), § 113). For reasons related to Chrysler's (both New and Old Chrysler) private status, warrants were not considered a desirable option, so the Additional Notes were issued.<sup>60</sup>

For the Joint DIP Facility, Treasury and EDC received Additional Notes worth 6.67% of the "Maximum Loan Amount" committed by each Lender (i.e. \$3.04 billion yielding a \$202,98 million Additional Note for Treasury and \$1.06 billion yielding a \$70,492,361.90 Additional Note for EDC) ([DIP Term Sheet 2009](#), 6) ([DIP Financing Agreement 2009](#), PDF Page 9, 49). These notes had the same interest rates and terms as their related loan ([DIP Financing Agreement 2009](#), PDF Page 9, 49).

Under the First Lien Credit Agreement Treasury received a \$288 million principal Additional Note, about 6.67% of the working capital offered by Tranche C ([Securities and Exchange Commission 2011a](#), 182). Treasury also received \$100 million in zero coupon promissory notes (called "Zero Coupon Notes") as additional consideration for its Tranche C financing ([Securities and Exchange Commission 2011a](#), 182).

In return for providing \$2 billion in financing under Tranche B of the First Lien Credit Agreement, Treasury received a 9.85% equity stake in New Chrysler and an additional power over the VEBA's large stake in New Chrysler ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 52). The equity served to further protect Treasury's investment by giving the

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<sup>59</sup> The KDD titled "International Coordination" will describe the additional powers and equity that Canada used to protect its taxpayers in the Chrysler restructuring.

<sup>60</sup> See P.L. 110-343 Sec. 113(d). This requirement emerged from various lessons of the late 1970s bailouts. Namely, that the government could obtain risk compensation for its aid through equity participation, e.g. receiving warrants, as it did in its support for Chrysler in the late 1970s. In that circumstance, the government, which had guaranteed certain Chrysler----- and received warrants for its assistance, ultimately sold the warrants back to the company at a profit ([General Accounting Office 1984](#), v-vi).

government a stake in New Chrysler's post-bankruptcy growth while the power over the VEBA stake further limited the UAW's influence within New Chrysler.

## **9. Like other elements in the auto rescue, the Chrysler and its stakeholders endured shared sacrifices during the bankruptcy process**

### **Sacrifices by Board and Management**

Team Auto introduced an entirely new board of directors for New Chrysler, replacing the CEO of Old Chrysler with Fiat CEO Sergio Marchionne ([Congressional Oversight Panel 2009](#), 16). As part of New Chrysler's corporate governance arrangements, Treasury appointed four of these new board members, all from outside of the auto industry ([Congressional Oversight Panel 2009](#), 16). Ron Bloom, one of the key members of Team Auto, explained that replacing the board was meant to create a cultural change within Chrysler, saying that Team Auto sought out a

new board of directors of people of extraordinary accomplishment in the private sector [for Chrysler]; [...] we have tasked them with the responsibility of overseeing the management so that this culture change [...] is in fact effectuated ([Congressional Oversight Panel Hearing July 2009](#), PDF Page 34).

The Joint DIP Facility and the Post-Petition First Lien Credit Agreement also maintained the restrictions on Chrysler's spending for executive compensation and perks that were originally imposed by the Bridge Loans (See Nye 2019 Cases) ([DIP Financing Agreement 2009](#), PDF Page 57-59) ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 73-78). In the Bridge Loans, these kinds of restrictions, which included divestment from private aircraft and bans on golden parachutes for executives, attempted to reduce the moral hazard of lending to the company (See Nye 2019 on Bridge Loans, 26).

### **First Lien Secured Creditors**

The First Lien Secured Creditors received \$2 billion from New Chrysler (financed by Treasury) in satisfaction of \$6.9 billion in claims, or 29 cents on the dollar ([Congressional Oversight Panel 2009](#), 152). Treasury played an active role in negotiations with these creditors, with Ron Bloom later explaining that such a strategy was "necessary to administer the government's investments and protect the taxpayers' interests" (Rattner 2010, 172-173) ([Congressional Oversight Panel Hearing July 2009](#), 135) ([Treasury 2009](#)).

### **Second Lien Secured Creditors**

The Second Lien Secured Creditors, Cerberus and Daimler, were also Chrysler's majority and minority shareholders<sup>61</sup> and Old Chrysler owed them a \$2 billion loan ([Docket 190 2009](#), 7-8). They collectively agreed to relinquish their equity and forgive the \$2 billion loan ([Docket 190 2009](#), 7-8). Cerberus also contributed Chrysler's headquarters and Daimler was also

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<sup>61</sup> When it filed for Chapter 11, Chrysler was owned 80.1 percent by Cerberus and its affiliates and 19.9 percent by Daimler and its affiliates. ([Congressional Oversight Panel 2009](#), 24).

able to negotiate an agreement with the PBGC that reduced the size of their pension guarantees ([Docket 190 2009](#), 7) ([Treasury 2009](#)) ([PBGC 2011](#)).<sup>62</sup>

### The UAW

The UAW (as well as CAW) agreed to major concessions that stretched from work-rule changes to retiree healthcare cuts ([Canis et al. 2009](#), 27). The UAW concessions were motivated by two goals. One, Team Auto wanted to bring down costs to be competitive with the non-union transplants (the US-based factories of Toyota, Honda, etc.) (Rattner 2010, 37-38). This is the reasoning behind reforms like the expansion of a two-tier wage system, the suspension of cost of living adjustments, and the UAW's promise not to strike for five years (See Feldman interview) ([Congressional Oversight Panel 2009](#), 18) ([Canis et al. 2009](#), 27, 76) ([Kesselman 2017](#)). The other reason for the concessions was that Team Auto (as well as Chrysler itself) wanted to reduce Chrysler's massive UAW benefit liabilities (Rattner 2010, 153-154).

The UAW's VEBA "exchanged an almost \$8 billion fixed obligation to the [VEBA] [...] for a \$4.6 billion unsecured note" and equity in New Chrysler ([Congressional Oversight Panel 2009](#), 18). While this gave the VEBA a 55% majority stake in New Chrysler<sup>63</sup>, the VEBA was "managed by an independent committee of legally bound fiduciaries" and only had a single vote on New Chrysler's board ([Congressional Oversight Panel 2009](#), 28) ([Canis et al. 2009](#), 58-59) ([LLC Agreement 2009](#), PDF Page 86-88).

The UAW did make major concessions, but its workers suffered significantly less than some of Old Chrysler's non-union workers. In a July 2009 Congressional Oversight Panel hearing, Ron Bloom explained that "Product liability and some workers compensation claims will not be permitted to carry their claims forward to New Chrysler" ([Congressional Oversight Panel Hearing July 2009](#), PDF Page 26). The UAW also received a superior arrangement to Old Chrysler's secured creditors. Traditionally, this would be against the Bankruptcy Code's rule of absolute priority because it gave "value to junior claimholders— including the U.S. government, the Retirees' Settlement, the UAW, and unsecured trade creditors—while failing to pay the senior secured creditors' claims in full" ([Fred 2010](#), 32-35). However, the UAW received its equity stake in New Chrysler on account of "new value" brought to the business and not Old Chrysler's obligations to the union, so the courts allowed the arrangement ([Fred 2010](#), 49-50).<sup>64</sup>

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<sup>62</sup> The Congressional Oversight Panel gives background to both of these sacrifices, noting that "[w]hen Chrysler filed for bankruptcy, its pension liabilities were significantly underfunded" and that the \$2 billion loan was part of Cerberus' 2007 leveraged buyout of Chrysler ([Congressional Oversight Panel 2009](#), 14, 27). Additionally, Cerberus, the previous majority owner of Old Chrysler "agreed to transfer its ownership of the Chrysler headquarters in Auburn Hills, Michigan to New Chrysler" ([Congressional Oversight Panel 2009](#), 14).

<sup>63</sup> Some secondary sources say that the VEBA received a 55% stake in New Chrysler ([Congressional Oversight Panel 2009](#), 152), but the LLC Agreement setting out New Chrysler's structure and GAO reports show the VEBA receiving a 67.692% stake ([LLC Agreement 2009](#), PDF Page 86-88) ([Government Accountability Office 2009b](#), 14).

<sup>64</sup> The UAW officially received the equity as "consideration for" the concessions in its new collective bargaining agreement with Chrysler, not for the VEBA restructuring part of Chrysler's debt ([Fred 2010](#), 31-32). Treasury's explanation for this maneuver revolves around the sentiment that New Chrysler would need workers and

## Suppliers

Suppliers agreed to reduce their prices, but many of the suppliers had their contracts assumed by New Chrysler ([Canis et al. 2009](#), 27) ([Barron 2009](#)).

## Warranty Holders and Tort Creditors

New Chrysler agreed to assume the warranty claims of those who had warranties with Old Chrysler ([Congressional Oversight Panel Hearing July 2009](#), PDF Page 37). New Chrysler also agreed to assume “Lemon Law liabilities and executory contracts” outlined in the MTA that were made with Old Chrysler ([Wolff v. Chrysler 2010](#)).

## Dealers

Team Auto, bankruptcy scholars, and eventually Chrysler personnel agreed that Chrysler needed to “dramatically alter its dealer network”; bankruptcy offered an opportunity to do that easily ([Baird 2012](#), 274) (Rattner 2010, 194) ([Congressional Oversight Panel Hearing July 2009](#), PDF Page 83). Dealerships were notoriously difficult to eliminate outside of bankruptcy, due to various “franchising and state laws” (Harreld et al. 2013, 6).

There is not an explanation from Treasury for the sacrifices imposed on Chrysler dealers, though, unlike GM, “Chrysler’s dealer reduction would take place almost immediately” and offered no appeals process for terminated dealers; Chrysler only offered an approximately three-week transition period ([Canis et al. 2009](#), 23) ([Canis and Platzer 2010](#), 21). Dealers that remained alive also made sacrifices; they agreed to reduce their “service contract margins” ([Canis et al. 2009](#), 27). Chrysler dealers set to be wound down loudly protested. They objected to the “short wind-down period (26 days) and lack of appeals process” ([Canis and Platzer 2010](#), 21).

Team Auto recognized that shutting down these dealers would be politically contentious; Rattner noted that the restructuring had “relatively little Congressional intrusion – until the two companies virtually simultaneously announced their dealer reduction plans ([Rattner Chicago Fed May 2010](#), PDF Page 9).

## 10. Treasury treated Fiat differently from Chrysler’s other stakeholders because Fiat was central to its strategy for turning around Chrysler

Treasury’s Team Auto saw Fiat (and its CEO Sergio Marchionne) as a partner integral to the restructuring of Chrysler (Feldman Interview) ([New Path to Viability 2009](#), 1). Fiat’s contribution of technology and access to supply chains (rather than cash or debt) meant that the Italian company would have limited skin in the game, but officials from Team Auto did not comment whether this posed any problems. While Fiat’s knowledge of small, fuel efficient cars and access to international supply chains would help Chrysler’s brands reach overseas, Team Auto used Sergio Marchionne to create lasting cultural change within the

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would not have been able to survive the shock of a rejected collective bargaining agreement (Feldman Interview) ([Baird 2012](#), 279).

organization (Rattner 2010, 80-81) ([MTA 2009](#), PDF Page 10-11). Treasury also structured New Chrysler's operations agreement and its working capital in a way that restricted Fiat's actions. Fiat could not easily exit the affiliation and had to meet predetermined milestones in Chrysler's turnaround to increase its stake in the company (See [LLC Agreement 2009](#), PDF Page 86-88). Treasury connected Fiat's ability to gain new seats on New Chrysler's board with these milestones (See [LLC Agreement 2009](#), PDF Page 86-88). That being said, Fiat would increase its control of Chrysler even if Chrysler did not meet the various milestones set out for its restructuring ([LLC Agreement 2009](#), PDF Page 13). Reflecting on the arrangement as a whole, Fiat's CEO said that he "had a very short leash" ([Brookings 2014a](#), 86). He detailed that if Fiat did anything incorrectly or could not perform, Treasury would have had GM absorb Chrysler ([Brookings 2014a](#), 86).

Terms related to Fiat also lent a sense of urgency to the bankruptcy, potentially speeding it along. The Bankruptcy Court approved the expedited bidding timeline for the section 363 sale because Fiat's purchase agreement mandated the bankruptcy be completed by June 15, 2009 ([Congressional Oversight Panel 2009](#), 132). If the Bankruptcy Court did not execute the sale by that deadline, the government said that Fiat would back out of the sale and receive an additional breakup fee ([Docket 492](#) PDF Pages 5-6) ([Congressional Oversight Panel 2009](#), 132).

## **11. The government's behavior as shareholder**

The government largely had a hands-off approach in managing its stake in New Chrysler ([Congressional Oversight Panel 2009](#), 28-29). It asserted that using New Chrysler "as an instrument of broader government policy [...] [was] inconsistent" with their goals ([Congressional Oversight Panel 2009](#), 29). While the government did have control over a number of seats on New Chrysler's board, it sought to limit potential political influence ([Congressional Oversight Panel 2009](#), 12, 28-29). Treasury set down formalized, but not legally binding rules for government ownership known as the "USG as shareholders," which "would add strict limits on government involvement post-restructuring to the existing edict that [...] [it] not ever meddle in day-to-day management decisions" ([Goolsbee and Krueger 2015](#), 28-30) ([Rattner Chicago Fed 2010](#), PDF Page 8).

The July 2009 Congressional Oversight Panel hearing summarizes some of the other core elements of the rules. In the hearing, Team Auto member Ron Bloom noted that "[t]he government has no desire to own equity stakes in companies any longer than necessary" ([Congressional Oversight Panel Hearing July 2009](#), PDF Page 21). The Government Accountability Office summarized:

Treasury's role as an equity owner focuses on monitoring the financial health of the companies in order to protect the value of Treasury's equity stake.[...] Treasury reserves the right to set up-front conditions to protect taxpayers and promote financial stability [and] Treasury plans to oversee its financial interests in a commercial manner, in which it will focus primarily on maximizing its return and take a hands-off approach to day-to-day management. Treasury plans to reserve its involvement for major transactions such as the sale of a controlling share of the companies. Treasury's role as a creditor is not as clearly delineated, but much like in

its role as equity owner, Treasury has said it will focus on monitoring the companies' financial health." ([Government Accountability Office November 2009](#), 14)

Still, the US government was also willing to use its stake to promote its industrial policy agenda. The post-petition First Lien Credit Agreement's "Vitality Commitment" required that New Chrysler manufacture at least 40% of its yearly sales volume in the US or that New Chrysler's yearly production volume in its US manufacturing plants be at least 90% of Old Chrysler's 2008 fiscal year production volume from its US manufacturing plants ([Post-Petition First Lien Credit Agreement 2009](#), PDF Page 76-77).

## **12. Treasury's "Team Auto" led the administration's efforts to restructure Chrysler**

As its financing came from the AIFP, which itself was part of TARP, the restructuring was administered by Team Auto, which was part of Treasury's Office of Financial Stability ([Treasury 2014](#)) (Rattner 2010, 90). Team Auto drew upon the few automobile industry experts in the federal government but was largely composed of restructuring and bankruptcy experts. The team was "was notable for not including any individuals with close ties to the auto industry" and one team member later reflected that the team had no communications professionals ([Klier and Rubenstein 2012](#), 39) (Feldman Interview). The primary reason for this seems to be that the auto rescue was considered a private equity style restructuring deal, which tends to rely on non-sectoral financial and bankruptcy expertise (Rattner 2010, 218). As such, Team Auto was intimately involved in the planning, negotiation, and execution of the restructuring, and was supported in its efforts by many outside experts ([Congressional Oversight Panel 2009](#), 49) (Rattner 2010, 182).

## **13. Although a private company, New Chrysler agreed to provide periodic financial reports to Treasury and publicly.**

New Chrysler's LLC Agreement committed the company to voluntarily file quarterly reports with the SEC. ([Congressional Oversight Panel Hearing July 2009](#), PDF Page 35) ([Government Accountability Office November 2009](#), 17). However, these reports are only available beginning early 2011 ([Securities and Exchange Commission 2011a](#)). According to Ron Bloom of Team Auto, New Chrysler filed with the SEC "because there are taxpayer dollars at stake [...] giving the American people a periodic quarterly report card [was] [...] proper and appropriate ([Government Accountability Office November 2009](#), PDF Page 43). The LLC Agreement also required New Chrysler to provide Treasury with monthly, quarterly, and yearly financial performance updates until Treasury no longer held over 5% in New Chrysler ([Government Accountability Office November 2009](#), 17).

As funding for Chrysler's restructuring came from TARP, the Government Accountability Office (GAO), and the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) had significant oversight over Old and New Chrysler ([Congressional Oversight Panel 2009](#), 55-56, 174).

Treasury also gained broad oversight over Chrysler through terms in its lending facilities. The lending facilities required Chrysler to provide Treasury with "its consolidated balance sheet and the related consolidated statements of income and cash flow, on a quarterly and annual basis, and [...] updates to its schedules of real property, mortgages property, pledged

equity and notes, subsidiaries, and mortgage filing offices (beginning in 2010)” until Chrysler repaid its loans ([Government Accountability Office November 2009](#), 17).

#### **14. International coordination**

Treasury and EDC collaborated frequently throughout Chrysler’s restructuring, though Canada’s influence on the design of the restructuring appeared limited. Canada was extremely exposed to a collapse in the US auto industry (Foley et al. 2010, 7). Canada ended up assisting Chrysler as part of the Joint DIP Facility, but only contributed to New Chrysler by offering working capital to Chrysler Canada, Chrysler’s Canadian subsidiary ([Office of the Auditor General of Canada 2014](#)). Canada guided its financial contributions using the principle that Canada’s total share of assistance would be based on the ratio of Canadian automotive production to the total automotive production of the three countries of the North American Free Trade Agreement (NAFTA) ([Office of the Auditor General of Canada 2014](#)). Canada and the US established this share at 20% ([Office of the Auditor General of Canada 2014](#)). Canada also included provisions similar to Treasury’s domestic production requirements in its own loan to Chrysler Canada ([Canadian Facility Agreement 2011](#), 76). Under these provisions, Chrysler had to maintain at least 17% of its NAFTA production volume in Canada while the loan (and any of its related agreements) were outstanding and at least 20% of its NAFTA production volume in Canada by June 10, 2017 ([Canadian Facility Agreement 2011](#), 10-33, 76).

Although the Joint DIP Agreement provided for some burden-sharing between EDC and Treasury ([DIP Financing Agreement 2009](#), PDF Page 62, 66, 68), Canada had to adapt a number of its bureaucratic institutions to collaborate effectively with Treasury ([IPAC 2011](#), PDF Page 4, 7). The Canadian government saw that it could use its loose equivalent to the Export-Import Bank, the EDC, to disburse funds abroad through its “Canada Account” ([ISED Canada 2016](#), 10-11). However, when Canada wanted to participate in New Chrysler, it had to find a way to hold its equity, as “the legislation for the Canada Account prevents it from holding equity” ([ISED Canada 2016](#), 10-11).<sup>65</sup> The Canadian government improvised and used the “Canada Development Investment Corporation (CDIC) to hold the equity” ([ISED Canada 2016](#), 10-11). Canada also had no legal framework for the VEBA that was going to take over Chrysler Canada’s health care obligations. It’s parliament later passed amendments to its Income Tax Act that created a new category of trust for the VEBA ([Office of the Auditor General of Canada 2014](#)).

#### **15. Treasury sought to maximize taxpayer return-on-investment and exit as soon as possible (GAO-11-471 P. 9)**

Treasury framed its exit policy as “selling the government’s shares as soon as practicable to recover taxpayer money and return the company to private ownership” ([Goolsbee and Krueger 2015](#), PDF Page 28). Treasury thought this would involve “either a private sale or a gradual sell-off of shares following an IPO” ([Congressional Oversight Panel 2009](#), 38)) The Congressional Oversight Panel noted that Treasury’s “strategy hinges directly on the ability

<sup>65</sup> These adaptations are explained by the fact that Canadian government did not consider the holding of equity in or the disbursement of emergency funds to a private company, let alone one outside of its borders, as part of its “core mandate” ([ISED Canada 2016](#), 10-11)

of the [...] [company] to restructure and become profitable” ([Congressional Oversight Panel 2009](#), 68). Treasury eventually chose a private sale, and began indicating this direction in 2010, with the GAO reporting “that the department is more likely to consider a private sale [for Chrysler] because its equity stake is smaller [than in GM]” ([Government Accountability Office November 2009](#), 24). Treasury finally sold its stake in New Chrysler for \$500 million to Fiat on July 21, 2011 ([Treasury 2011](#)) ([Webel and Canis 2012](#), 12).

## 16. Communications

Although one member of Team Auto later reflected that having a communications professional on the team would have been useful (Feldman Interview), there were frequent and detailed communications regarding the restructuring, which the White House appeared to lead. Communications largely served three purposes throughout the Chrysler restructuring.

### Signaling bankruptcy and preparing Chrysler and its stakeholders for it

Because an automotive bankruptcy of this size was unprecedented, on March 30, 2009, President Obama appeared on TV to discuss the government’s support for the auto companies. He raised the possibility of bankruptcy and said that Chrysler would have to radically change to receive government support. He characterized bankruptcy as a tool for restructuring, rather than liquidation ([PBS 2009](#)). A month later, on April 30, President Obama announced the bankruptcy filing ([Obama 2009a](#)). First, Obama communicated the importance of America’s automakers to the larger economy and the implications of their failure, ([C-SPAN 2009a](#)). Second, Obama asserted that many of Old Chrysler’s stakeholders agreed to make sacrifices to make Chrysler become viable and execute a successful turnaround ([C-SPAN 2009a](#)). Third, the speech painted dissenting stakeholders as “a small group of speculators” endangering Chrysler’s future ([C-SPAN 2009a](#)). Fourth, the speech characterized the government as merely supporting a restructuring that already had “made great progress” ([C-SPAN 2009a](#)) (Rattner 2010, 177-178).<sup>66</sup> Finally, the speech also continued to describe bankruptcy as a tool for restructuring that would “clear away [Chrysler’s] remaining obligations so the company can get back on its feet” ([C-SPAN 2009a](#)) ([Obama 2009a](#)).

### Explaining the government’s direction throughout the bankruptcy

Government communications also painted the use of the Bankruptcy Code as conventional, or even beneficial for Chrysler’s stakeholders. It discussed exactly how the restructuring would use the Bankruptcy Code and that the seemingly heavy-handed terms of the DIP loan were common. Ron Bloom also put forward the idea that the government behaved just like any other commercial actor taken part in a restructuring, but also “gave every affected stakeholder a full opportunity to have his or her claim heard” ([Congressional Oversight Panel 2009](#), 35). He added that “every creditor will almost certainly receive more than they would have had the government not stepped in” ([Congressional Oversight Panel 2009](#), 35).

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<sup>66</sup> In spite of the fact that there was still uncertainty pertaining to Chrysler’s transition to GMAC (Rattner 2010, 171-172, 177-178)

## **Convincing the public that the government was doing a good job and asserting that the administration was going above and beyond their transparency requirements**

At the same time that President Obama announced the Chrysler bankruptcy on April 30, 2009, he also attempted to reassure workers by announcing the “White House Council on Automotive Communities and Workers” ([C-SPAN 2009a](#)). The President noted that the Council would be “reaching out to our hardest-hit areas, cutting through red tape, ensuring that the full resources of the federal government are getting to the workers, the families, and communities that need it the most” ([C-SPAN 2009a](#)). However, reports by the GAO point to the Council being used as a tool for demonstrating successes in the auto recovery, as it did not have a budget to directly assist communities ([Government Accountability Office 2011](#), 39). The White House and Treasury also used other tactics to demonstrate the success of the auto restructuring, which ranged from appearances on television to visits by the President to Chrysler assembly plants ([Obama White House 2010](#)) ([PBS 2009](#)).

Team Auto also made an early effort to show taxpayers how their investment in New Chrysler was performing by requiring that New Chrysler file reports with the SEC ([Congressional Oversight Panel 2009](#), 19).

## **II. Evaluation**

The Obama White House said that the restructuring was a success, but responses from within Team Auto were more muted. The White House released a report in 2011 outlining Chrysler’s recovery, pointing to the working capital provided during the bankruptcy as a turning point in its restructuring ([White House 2011](#), PDF Page 2-4). Director of the National Economic Council (NEC) Lawrence Summers broadly said that aiding the auto companies was not a mistake, stating that Chrysler was able to achieve better “relative competitive position [...] than I would have expected in the fall of 2009” ([Brookings 2014](#)). Steven Rattner, one of the key figures in Team Auto, complemented Chrysler’s return to profit during the first two quarters of 2010, as well as the restructuring as a whole (Rattner 2010, 298, 301-302). However, Rattner was initially unsure of whether the “surgery saved the patient” as of mid-2010, writing that only Chrysler’s performance in the next few years would show that (Rattner 2010, 298). Ron Bloom, another key figure in Team Auto, defined a key success metric for the restructuring as the return of taxpayer money ([Congressional Oversight Panel Hearing July 2009](#), 38-39). Based on this metric, the Chrysler restructuring was not entirely successful as it did not result in taxpayers reclaiming all of their investment in Chrysler ([ProPublica 2019](#)). ProPublica’s Bailout Tracker lists the government’s aggregate investments in Chrysler (including the \$4 billion bridge loan) as a \$1.21 billion loss, but SIGTARP estimated it at \$2.93 billion ([ProPublica 2019](#)) ([SIGTARP 2016](#), 103). Two former CEA officials that were involved in the auto restructuring have a more mixed view of the Chrysler bankruptcy. Austan Goolsbee and Alan Krueger were of the view that bankruptcy is an especially clunky tool for addressing problems that implicate “cross-industry spillovers or broader government or social costs” ([Goolsbee and Krueger 2015](#), PDF Page 15, 26-27). While they note that Chrysler outperformed expectations after its restructuring, they also

suggest that “to some extent, Chrysler’s gains [in market share] came at the expense of the other domestic firms” like GM ([Goolsbee and Krueger 2015](#), PDF Page 22).

The Chrysler bankruptcy was subject to intense litigation and was extremely controversial among bankruptcy scholars. While some scholars say that the only abnormal part of the bankruptcy was the identity of the DIP creditors (Treasury and EDC), others criticize the restructuring on two counts ([Congressional Oversight Panel 2009](#), 130-132) ([Ben-Ishai and Lubben 2011](#), 79) (See [Docket 3073 2009](#) for the details of why the bankruptcy court rejected some of these criticisms). One argument is that Chrysler’s 363 sale was so aggressive that it was effectively a stealthy version of a plan of reorganization (the legal term for this is a *sub rosa* plan), which should not have been allowed because it circumvented the Chapter 11 process ([Roe and Skeel 2010](#), 736-737, 741). Although the structure of the 363 sale was sound, it used section 363 in a way that “extended the domain of section 363 far beyond anything that had ever previously been attempted” ([Skeel 2015](#), 136). Without the safeguards required by the conventional Chapter 11 process, these critics argue that Treasury was able to impose a procedure that unfairly discriminated in favor of the UAW, made the bidding process uncompetitive, and ultimately validated sales that “were not really sales at all” ([Roe and Skeel 2010](#), 760) ([Skeel 2015](#), 136). A second argument is that the banks constituting a large portion of the secured lenders (who approved of the 363 sale over the dissenting non-TARP lenders), had a conflict of interest due to their participation in TARP ([Roe and Skeel 2010](#), 770). Perhaps more significantly, these critics thought that these flaws could weave their way into the substance of American bankruptcy law ([Robinson 2010](#), 516).

The Congressional Oversight Panel did not take a position on whether Chrysler’s restructuring was successful in either 2009 or 2011. In its 2011 report, it said that it was too early to tell if the larger auto restructuring exercise was successful, but things appeared “to be on a promising course” ([Congressional Oversight Panel 2011](#), PDF Page 4). Addressing the auto restructurings in 2009, it claimed that Treasury had “not clearly explained how the various competing policy and financial objectives involved in the rescue of the automotive companies influenced its decisions,” signaling a transparency problem ([Congressional Oversight Panel 2009](#), 57).

The Congressional Oversight Panel’s 2009 evaluation of the Chrysler bankruptcy mainly summarized arguments by bankruptcy academics and creditors about the bankruptcy’s potential impact on financial markets and prospects for taxpayer recovery. The panel concluded that “it is both too early and, given the number of variables, perhaps not possible to conclude one way or another as to what effect the government’s involvement in the Chrysler bankruptcy will have on credit markets going forward” ([Congressional Oversight Panel 2009](#), 53). However, it also stated that “Treasury’s involvement in the Chrysler bankruptcy [...] is likely to cause investors to reevaluate their risk assessment regarding certain companies with similar characteristics” ([Congressional Oversight Panel 2009](#), 53). Such a reevaluation might cause the “cost of capital going forward for companies with similar characteristics [...] [to go] up or down depending on how future creditors view the outcome of the Chrysler bankruptcy – whether government intervention left creditors with more, the same, or less than they would have received without such intervention” ([Congressional Oversight Panel 2009](#), 53). By 2011, the Congressional Oversight Panel still had some

misgivings about Chrysler’s post-bankruptcy performance, complaining that “Chrysler’s financial performance has been burdened by the significant and costly debt it still carries, much of it related to the TARP” ([Congressional Oversight Panel 2011](#), 63).

The Government Accountability Office had a less positive view of the Chrysler bankruptcy. Although it complemented New Chrysler for effectively reducing its labor costs, the organization complained about transparency problems and the company’s continued reliance on SUVs ([Government Accountability Office 2011](#), 15-19). The GAO also stated that Treasury’s exit strategy wasn’t transparent enough for it to effectively assess Treasury’s performance as an investor ([Government Accountability Office 2011](#), 26). The Office also had difficulty assessing the White House Council on Automotive Communities and Workers performance, because the Council’s members had “not tracked their assistance to auto communities or measured or assessed the results of that assistance ([Government Accountability Office 2011](#), 38-43). The GAO believed that the restructuring “created economic challenges for communities in which the companies closed a manufacturing plant or otherwise reduced employment” ([Government Accountability Office 2011](#), 38-43).

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Memorandum of Law /Debtors Supplemental Memorandum of Law in Support of Motion, Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 6004 and 6006 for an Order (A) Authorizing the Sale of Substantially All of the Debtors Operating Assets, Free and Clear of Liens, Claims, Interests and Encumbrances, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith and (C) Granting Certain Related Relief (related document(s)[190]) filed by Corinne Ball on behalf of Chrysler LLC. (May 26, 2009) *In re* Chrysler LLC, S.D.N.Y. ((No. 09 B 50002 (AJG) (online at <https://document.epiq11.com/document/getdocumentstbydocket/?docketId=57190&projectCode=CHR&docketNumber=2130&source=DM>)). **(Docket 2130)**

Motion to Allow Motion of Debtors and Debtors in Possession for an Order, Pursuant to Section 105(a) of the Bankruptcy Code, Granting Relief in Connection with the Commencement of Chapter 11 Case by Alpha Holding LP filed by Corinne Ball on behalf of Chrysler LLC (May 22, 2009). *In re* Chrysler LLC, S.D.N.Y. ((No. 09 B 50002 (AJG) (online at

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Motion to Approve /Motion of Debtors and Debtors in Possession, Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006, for (I) An Order (A) Approving Bidding Procedures and Bidder Protections for the Sale of Substantially All of the Debtors Assets and (B) Scheduling a Final Sale Hearing and Approving the Form and Manner of Notice Thereof; and (II) an Order (A) Authorizing the Sale of Substantially All of the Debtors Assets, Free and Clear of Liens, Claims, Interests and Encumbrances, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith and Related Procedures and (C) Granting Certain Related Relief filed by Corinne Ball on behalf of Chrysler LLC. with hearing to be held on 5/4/2009 at 10:00 AM at Courtroom 617 (ALG) (Attachments: # (1) Exhibit A# (2) Exhibit B# (3) Exhibit C) (Ball, Corinne) (May 03, 2009). *In re* Chrysler LLC, S.D.N.Y. ((No. 09 B 50002 (AJG) (online at <https://document.epiq11.com/document/getdocumentstbydocket/?docketId=54455&projectCode=CHR&docketNumber=190&source=DM>)). **(Docket 190)**

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Objection to Motion /Objection Of The Committee Of Chrysler Affected Dealers To Motion Of Debtors And Debtors In Possession For An Order Authorizing The Sale Of Substantially All Of The Debtors Operating Assets And For Other Relief (related document(s)[190]) filed by Stephen D. Lerner on behalf of Committee of Chrysler Affected Dealers. (May 19, 2009) *In re Chrysler LLC*, S.D.N.Y. ((No. 09 B 50002 (AJG) (online at <https://document.epiq11.com/document/getdocumentstbydocket/?docketId=57420&projectCode=CHR&docketNumber=1045&source=DM>)). **(Docket 1045)**

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## IV. Key Program Documents

### Summary of Program

- [Obama Administration New Path to Viability for GM & Chrysler \(March 30, 2009\) \(New Path to Viability 2009\)](https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/automotive-programs/Documents/autoFactSheet.pdf)– *summary of Determinations of Viability for Chrysler and GM as well as the government framework for restructuring going forward.* <https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/automotive-programs/Documents/autoFactSheet.pdf>

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- Obama Administration Auto Restructuring Initiative Chrysler-Fiat Alliance (04/30/2009) (White House Press Release 2009)– *press release discussing the requirements of a viable Chrysler-Fiat Alliance as well as support for Chrysler from the American and Canadian governments going forward.* <https://www.treasury.gov/press-center/press-releases/Pages/tg115.aspx>

### Implementation Documents

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### Key Academic Papers

- A Retrospective Look at Rescuing and Restructuring General Motors and Chrysler (2015) – *Analysis of the government’s involvement in the auto sector by two economists involved in the Obama Administration’s Council of Economic Advisors.*  
<https://www.aeaweb.org/articles/pdf/doi/10.1257/jep.29.2.3>
- Detroit Back from the Brink? Auto Industry Crisis and Restructuring, 2008–11 (2012) – *Federal Reserve Bank of Chicago analysis of the declining auto industry and US government interventions in the industry during the financial crisis that also touches on the changing geography of automotive production in the US.*  
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- Lessons from the Automobile Reorganizations (2012). – *Article analyzing the various abnormalities in the Chrysler and GM bankruptcies. It makes a case for several reforms as a salve for what it considers deeper issues in bankruptcy law that were exposed by the automotive bankruptcies.* <https://doi.org/10.1093/jla/las001>. **(Baird 2012)**
- A Comparative Study of Bankruptcy as Bailout (2011) – *Article comparing the Canadian and American approaches to bailing out their automotive and financial services industries. The article presents a favorable view of Treasury’s legal strategy in the Chrysler restructuring.*  
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- The Role of Government in the Labor–Creditor Relationship: Evidence from the Chrysler Bankruptcy (2015) – *This article uses the Chrysler bankruptcy as a case study for arguing that government bailouts have an impact on bond returns and yields in more unionized industries*  
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- Assessing the Chrysler Bankruptcy (2010) – *This law review article criticizes the procedure used to restructure Chrysler. It presents an argument for why the Chrysler case was bad practice as well as an argument that cases like Chrysler could have a negative effect on financial markets* <http://dx.doi.org/10.2139/ssrn.1426530>. **(Roe and Skeel 2010)**

#### Legal/Regulatory Guidance

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- Opinion signed on 5/31/2009 granting Debtors' motion seeking authority to sell substantially all of the Debtors' assets. (May 31, 2009) *In re Chrysler LLC, S.D.N.Y.* ((No. 09 B 50002 (AIG) – *Opinion from the bankruptcy court authorizing Chrysler to conduct the section 363 sale. The Indiana Funds' appealed it and were heard by the Court of Appeals*  
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## Press Releases/Announcements

- Statement by Timothy F. Geithner U. S. Secretary of the Treasury before the Senate Banking Committee May 20, 2009 – *statement outlining the state of the economy which includes a detailed section on the actions taken by the Obama Administration on the auto industry through May 2009*  
<https://www.treasury.gov/press-center/press-releases/Pages/tg139.aspx>
- Obama Administration Auto Restructuring Initiative Chrysler-Fiat Alliance (04/30/2009) (White House Press Release 2009) – *press release discussing the requirements of a viable Chrysler-Fiat Alliance as well as support for Chrysler from the American and Canadian governments going forward* <https://www.treasury.gov/press-center/press-releases/Pages/tg115.aspx>
- The Resurgence of the American Automotive Industry (2011) – *report making the case that the Obama Administration's actions rescuing GM and Chrysler were successful*  
[https://obamawhitehouse.archives.gov/sites/default/files/uploads/auto\\_report\\_06\\_01\\_11.pdf](https://obamawhitehouse.archives.gov/sites/default/files/uploads/auto_report_06_01_11.pdf). **(White House 2011)**
- Canadian Officials on Auto Industry (March 30, 2009) – *recording of Canadian government officials discussing its similar aid to the automotive industry as well as cooperation with Treasury* <https://www.c-span.org/video/?284974-1/canadian-officials-auto-industry>.
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- Visit to Chrysler Jefferson North Assembly Plant by Barack Obama (2010) *Video of a visit to a Chrysler plant by the president at the time, which touts the success of the auto rescue*  
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## Media Stories

- Auto bailout still largely unpopular (CNN 06/14/2014) (Wallace 2014) – *coverage of polls on additional aid from the auto industry from 2008 and 2014*  
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- President Obama Calls on G.M. and Chrysler to Take Restructuring Steps (PBS 2009) – *PBS transcript which showcases the Obama Administration's approach to communicating its take on the auto rescue through conventional media* <https://global.factiva.com/redirect/default.aspx?P=sa&an=NSHR000020090331e53u00001&cat=a&ep=ASE>. **(PBS 2009)**

## Reports

- A Citizen's Guide to the 2009 Financial Report of the U.S. Government (Treasury 2009) – *oversight report containing a section on the AIFP, which includes the financing for the bankruptcy* [https://www.gao.gov/financial\\_pdfs/fy2009/09frusg.pdf](https://www.gao.gov/financial_pdfs/fy2009/09frusg.pdf)
- An Update on TARP Support for the Domestic Automotive Industry (01/13/2011) (Congressional Oversight Panel 2011) – *Congressional Oversight Panel updating analysis and recommendations related to the creation, implementation, and issues raised by the automotive bailout* [https://fraser.stlouisfed.org/files/docs/historical/fct/cop\\_report\\_20110113.pdf](https://fraser.stlouisfed.org/files/docs/historical/fct/cop_report_20110113.pdf)
- The Use of TARP Funds in the Support and Reorganization of the Domestic Automotive Industry (09/09/2009) (Congressional Oversight Panel 2009) – *Congressional Oversight Panel analyzing and providing recommendations related to the creation, implementation, and issues raised by the use of TARP funds in the automotive bailout* <https://fraser.stlouisfed.org/title/5016>
- Oversight of TARP Assistance to the Automobile Industry: Field Hearing Before the Congressional Oversight Panel, One Hundred Eleventh Congress, First Session, Hearing Held in Detroit, Michigan, July 27, 2009 (Congressional Oversight Panel 2009a) – *statements by various stakeholders in the automotive restructuring shortly after Chrysler's section 363 sale* <https://fraser.stlouisfed.org/title/4988>
- TARP Transactions Report – Investments (10/05/2018) (U.S. Treasury Department Office of Financial Stability 2018) – *transaction-level detail for all TARP programs except housing programs* <https://www.treasury.gov/initiatives/financial-stability/reports/Documents/10-10-18%20Transactions%20Report%20as%20of%2010-05-18%20INVESTMENT%20Convenience%20Copy.xlsx>
- U.S. Motor Vehicle Industry: Federal Financial Assistance and Restructuring (05/29/2009) (Canis et al. 2009) – *Congressional Research Service analysis of the lead-*

*up to and execution of the auto industry bailout as well as the various solutions for restructuring* <https://fas.org/sgp/crs/misc/R40003.pdf>

- GENERAL MOTORS AND CHRYSLER RESTRUCTURING: Lessons Learned in the Management of the Financial Assistance – *Canadian reflection on the organizational and administrative aspects of its government's actions during the auto rescue* [http://publications.gc.ca/collections/collection\\_2016/isde-ised/lu44-102-2016-eng.pdf](http://publications.gc.ca/collections/collection_2016/isde-ised/lu44-102-2016-eng.pdf). **(ISED Canada 2016)**
- TARP Assistance for Chrysler: Restructuring and Repayment Issues. – *short report by the Congressional Research Service which offers an outline of Chrysler's progress post-bankruptcy as of late 2012* <https://fas.org/sgp/crs/misc/R41940.pdf>. **(Webel and Canis 2012)**
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