

## Emergency Assistance for Chrysler Financial

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### Abstract

In 2008, due to the confluence of the financial crisis and years of structural decline, Chrysler was nearing bankruptcy. Chrysler's related finance company, Chrysler Financial, was in dire straits. On January 2, the U.S. Treasury extended Chrysler a \$4 billion bridge loan to give the company time to prepare a viable restructuring plan (See Nye 2019 Bridge Loans). Two weeks later, the Treasury arranged \$1.5 billion in low-interest financing for Chrysler Financial to fund the securitization of new consumer car loans. Chrysler Financial drew down the entire \$1.5 billion between January 16 and April 9, 2009. Although the loans bore a 5-year term, Chrysler Financial paid off the loans in July after accessing another government program, the Term Asset-Backed Securities Loan Facility. The \$1.5 billion facility subjected Chrysler Financial to several management restrictions, most of which related to executive compensation. When Chrysler entered bankruptcy on April 30, GMAC (General Motors' related auto finance company) took over most of Chrysler Financial's business. Chrysler Financial continued to do business at a much smaller scale. Treasury expected Chrysler Financial to wind-down its business. In December 2010, TD Bank bought Chrysler Financial from Cerberus for \$6.3 billion. Commentators do not have much to say on the impact of its aid for Chrysler Financial, although the \$1.5 billion facility coincided with several months of increased sales

**Key Words:** Bailout, Securitization, Chrysler, AIFP, Manufacturing, Auto Finance, Chrysler Financial, TALF, TARP

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# Emergency Assistance for Chrysler Financial

## 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). Treasury provided Chrysler's owner, Chrysler Holding, with a \$4 billion bridge loan 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). That funding depended on the idea that saving auto finance companies required saving the auto manufacturers to which they were tied, and vice versa ([Congressional Oversight Panel 2009](#), 74-76). Chrysler's related finance company, Chrysler Financial, was chafing under nearly frozen ABS markets and asked the US government for \$2.5 billion in aid to fund new loans ([Affidavit of Ronald E. Kolka 2009](#), Page 30). In January 2009, the US government agreed to \$1.5 billion in financing to fund new consumer automotive loans ([Treasury 2009](#)).

This financing was structured in a manner that mimicked auto loan securitizations and was offered under favorable interest rates to Chrysler Financial ([AFX Asia 2008](#)) (Nye 2019 Bridge Loans). The financing also imposed several restrictions on Chrysler Financials' management, which mostly related to executive compensation.

The financing facility was announced and became operational on January 16, 2009 ([Treasury 2009](#)). Once Chrysler Financial received the financing, Chrysler sales grew for several months ([Mitchell 2009](#)). Chrysler Financial fully drew on the facility by April 9, 2009 ([Government Accountability Office 2009a](#), 62). Upon finding that it would not receive additional aid, the company paid off the loans on July 14, 2009 through its participation in the Term Asset-Backed Securities Loan Facility (TALF) ([Chrysler Financial 2009](#)).

When Chrysler entered bankruptcy on April 30, 2009, Chrysler Financial did not join ([Dow Jones News Service 2009](#)). Instead, a large portion of its assets were sold to, and its floorplan finance operations taken over by, GMAC ([Congressional Oversight Panel 2010](#), 59). Treasury indirectly supported GMAC and Chrysler Financial in the transition ([GMAC LLC Form 8-K retrieved from S&P Capital IQ May 22, 2009](#), PDF Page 1-2) (Docket 6273 2009, PDF Page 62). Chrysler Financial was expected to be wound down, but Cerberus, its owner since 2007, sold it to TD Bank in 2010 ([Ibid.](#), 50) ([Congressional Oversight Panel 2011](#), 9-12).

## Summary of Key Terms

**Purpose:** To finance the day-to-day operations of Chrysler Financial through the first quarter of 2009 by financing new consumer auto loans in connection with the overall restructuring of Chrysler.

<b>Announcement Date</b>	January 16, 2009
<b>Operational Date</b>	January 16, 2009
<b>Expiration Date</b>	July 14, 2009 (January 16, 2014)
<b>Legal Authority</b>	Emergency Economic Stabilization Act (EESA) of 2008, § 101 (a)(1), § 3 (9)
<b>Rate</b>	Year 1: one month LIBOR plus 100 basis points Years 2-5: one month LIBOR plus 150 basis points
<b>Collateral</b>	Two classes of variable funding floating rate asset backed notes issued by a trust holding liens on all property related to the auto loans financed by the TARP loan to Chrysler Financial
<b>Funder</b>	US Department of the Treasury
<b>Participants</b>	Chrysler Financial Services Americas LLC, Chrysler Balloon Depositor II LLC, Chrysler LB Receivables Trust
<b>Amount used</b>	\$1.5 billion

## **Summary Evaluation**

The effectiveness of the aid to Chrysler Financial is uncertain. Chrysler Financial survived 2009 and Chrysler survived long enough to enter a planned bankruptcy ([Dow Jones News Service 2009](#)). There were questions as to the extent the program actually benefitted Chrysler or Chrysler dealers ([Reuters News 2009](#)) ([Asset Securitization Report 2009](#)).

## I. Background

By the time that two of America's largest auto makers, General Motors (GM) and Chrysler, obtained a \$17.4 billion financing commitment from the Bush Administration on December 19, 2008, they had been in dire straits for several years ([Klier and Rubenstein 2012](#), 35-36) (Paulson 2011, 361). This was due to a combination of declining market share, miscalculated labor arrangements, slim profit margins, and reliance on gas guzzling vehicles for profit ([Congressional Oversight Panel 2011](#), 9-11) ([Canis et al. 2009](#), 1-2). The Global Financial Crisis had been raging for over a year, and consumer confidence and access to credit was evaporating ([Congressional Oversight Panel 2011](#), 9-11). The companies (and the rest of the American auto industry) were insolvent and unable to fund themselves ([Congressional Oversight Panel 2011](#), 9-11).

Credit was and is the lifeblood of the American auto industry ([Canis et al. 2009](#), 46-50). Dealers use cheap financing to buy cars for their showrooms. Before the crisis, manufacturers themselves typically provided this "floorplan financing" through captive (or de facto captive) finance companies such as General Motors Acceptance Corporation (GMAC) for GM, Ford Motor Credit for Ford, and Chrysler Financial for Chrysler ([Ibid.](#), 46-50).<sup>2</sup> Credit is equally important to fund consumer purchases. Both kinds of credit typically take the form of loans from third-party banks and the same captives. If these two kinds of financing are not available, sales in the US auto market can collapse ([Ibid.](#), 46-50).

Before the crisis, the companies providing auto financing frequently obtained funding by securitizing the loans, i.e., packaging loans into asset-backed securities (ABS), bonds which are sold to provide immediate cash that can be re-lent ([GM Financial 2018](#)). Prior to the crisis, securitization financed about a third of all U.S. auto loans. ([Campbell et al. 2011](#), PDF Page 3).

### **Chrysler Financial: from Crown Jewel to Chief Liability**

In 2007, Daimler-Chrysler sold an 81% stake in Chrysler Holding (the parent company of Chrysler and Chrysler Financial) to private equity company Cerberus Capital Management ([Bel Bruno 2007](#)). The sale of Chrysler Holding does not appear to have been caused by the crisis, but the sale was complicated by the crisis which made it difficult to access the needed funding. ([Bel Bruno 2007](#)).

Daimler was losing money on Chrysler and expected losses to continue to grow due to Chrysler's future benefit liabilities ([Isidore 2007](#)). For that reason, it sold Chrysler for one-fifth of what it had paid nine years earlier ([Isidore 2007](#)).<sup>3</sup> After the sale, DaimlerChrysler and DaimlerChrysler Financial were renamed Chrysler and Chrysler Financial, respectively ([Isidore 2007](#)) ([Chrysler Financial Auto Securitization Trust 2009-B 2009](#), 16). This split

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<sup>2</sup> GMAC (which was GM's former captive auto finance company) and Chrysler Financial were now both controlled by Cerberus Capital Management, but each was still informally acting as a captive finance company for their respective brands ([Congressional Oversight Panel 2010](#), 9)

<sup>3</sup> Daimler had paid \$37 billion for Chrysler, but sold it to Cerberus for \$7.4 billion ([Isidore 2007](#)).

from Daimler would cause Chrysler Financial to lose its business providing auto financing for Mercedes and Maybach in North America.

Credit conditions were bad and getting worse by fall of 2008. From early 2008 through at least mid-2009, the market for ABS was essentially nonexistent ([Congressional Oversight Panel 2010, 34, 55](#)). Chrysler Financial had tried to renew its \$30 billion line of credit from 22 large banks, but settled for just \$24 billion on August 4, 2008. Credit was also growing increasingly expensive ([Koons 2008](#)). The banks lent the \$24 billion at an interest rate between LIBOR plus 110 basis points and LIBOR plus 225 basis points, a rate that was unexpectedly high and which would have made offering attractive consumer financing difficult ([Rappaport 2008](#)) ([WSJ 2008](#)).

In part, as a condition of its new financing, Chrysler Financial rapidly tightened lending requirements, increased interest rates, stopped leasing vehicles to consumers, and began charging Chrysler dealerships additional fees for older unsold inventory ([Banks 2008](#)). Cerberus directed Chrysler to cut dealerships in early 2008 ([Banks 2008](#)). Together, these factors crippled Chrysler's ability to sell vehicles ([Banks 2008](#)). It is especially important to note that Chrysler Financial had a significantly lower debt-to-equity ratio than its peers, but Treasury considered its situation to be worse than that of GMAC because all of its outstanding debt was set to mature in July 2009 ([Congressional Oversight Panel 2010, 22](#)) ([DBRS 2009](#)).

### **The Path to Aiding Chrysler Financial**

Throughout 2008, automotive sales for the "Big Three" rapidly declined, thrashing GMAC and Chrysler Financial's balance sheets ([U.S. Bureau of Economic Analysis 2019](#)) ([Government Accountability Office 2009](#), Page 10 of PDF). In response, the Bush Administration announced a \$4 billion bridge loan to Chrysler Holding (to pay for Chrysler's operating costs) and a \$13.4 billion loan to GM under the Troubled Asset Relief Program (TARP) (See Nye 2019 Bridge Loans for more on the late 2008 funding for the auto industry)(Affidavit of Ronald E. Kolka 2009, Page 30). Treasury explained this support by linking funding for the auto industry with support for auto finance companies (See Nye 2019 Bridge Loans for more on the late 2008 funding for the auto industry) (Affidavit of Ronald E. Kolka 2009, Page 30).

At the end of December 2008, Treasury promised up to \$6 billion in aid for Chrysler Financial's competitor, GMAC ([Shepardson 2009](#)). Officials from the two Chrysler companies complained that the aid put Chrysler Financial (and therefore Chrysler) at a "competitive disadvantage" ([Ibid.](#)).<sup>4</sup> On January 16, 2009, days after the complaints were aired to the press, Treasury announced \$1.5 billion in aid from TARP to Chrysler Financial as a measure to improve consumer access to credit and prop up auto sales ([Treasury 2009](#)).

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<sup>4</sup> As part of Chrysler's requests for aid from TARP, Chrysler had asked for \$2.5 billion to aid Chrysler Financial's floorplan and consumer financing operations (Affidavit of Ronald E. Kolka 2009, Page 30). This was subsequently lowered to a request for \$1.5 billion in aid that would be allocated to only consumer financing ([Ibid.](#), Page 30).

## Program Description

### Use of Federal Reserve Broad-based Liquidity Programs

In an attempt to stabilize itself, Chrysler accessed a number of government programs that assisted Chrysler Financial's auto finance business. Two Federal Reserve programs that the companies accessed were not customized for Chrysler or Chrysler Financial and will not be described in detail in this case study: the Commercial Paper Funding Facility (CPFF) and the Term Asset-Backed Securities Loan Facility (TALF) (See cases on the CPFF and the TALF for more information on these interventions) ([Board of Governors of the Federal Reserve System 2016](#)) ([U.S. Treasury Department Office of Financial Stability 2018](#)).<sup>5</sup>

#### *Commercial Paper Funding Facility*

The CPFF was launched on October 27, 2008. It provided funding for third parties to purchase highly rated unsecured and asset-backed commercial paper from eligible primary dealers ([Fed CPFF](#)). Chrysler Financial benefitted from the CPFF by way of \$4.8233 billion in purchases of Chrysler Financial Auto Conduit Receivables between October 27, 2008 and September 8, 2009 ([Board of Governors of the Federal Reserve System 2016](#)).

#### *Term Asset-Backed Securities Loan Facility (TALF)*

TALF allowed eligible institutions<sup>6</sup> to borrow from the Federal Reserve Bank of New York (FRBNY) using, among other types, auto loan asset-backed securities as collateral ([BOG TALF 2015](#)). Chrysler Financial issued enough auto ABS on July 14, 2009 to pay the remaining \$1.384 billion principal and interest on the \$1.5 billion loan discussed in this case study; TALF funded a portion of those purchases by investors ([U.S. Treasury Department Office of Financial Stability 2018](#)) ([Chrysler Financial 2009](#)).<sup>7</sup> It seems the conditions of the TALF loans were preferable to continuing to comply with the executive compensation restrictions in the Chrysler Financial Loan Agreement.

### The two interventions customized for Chrysler Financial

Two interventions were customized for Chrysler and Chrysler Financial. In early 2009 Chrysler Financial accessed a \$1.5 billion lending facility from Treasury under the Troubled Asset Relief Program (TARP) ([U.S. Treasury Department Office of Financial Stability 2018](#)). After Chrysler Financial drew down that funding, Chrysler Financial became involved in Treasury's restructuring of Chrysler via the bankruptcy code ([Congressional Oversight Panel 2010](#), PDF page 26, 46). This led to the second intervention: Starting in late-April 2009, as part of Chrysler's bankruptcy proceedings, Treasury facilitated GMAC's replacement of

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<sup>5</sup> The CPFF aimed to "backstop the CP market and revive term lending" while the TALF aimed to "facilitat[e] [...] renewed issuance of consumer and small business ABS at more normal interest rate spreads" ([New Bagehot Project 2019](#)).

<sup>6</sup> See here for the FRBNY's description of eligible borrowers ([FRBNY TALE](#))

<sup>7</sup> Sum cells U56 and U57 in the spreadsheet to obtain the ~\$1.384 billion figure.

Chrysler Financial as Chrysler’s auto finance partner ([Viability Summary 2009](#), 5) ([Congressional Oversight Panel 2010](#), PDF Page 27,49).<sup>8</sup>

### **Treasury’s \$1.5 billion funding facility under TARP**

Pursuant to a loan agreement between Treasury and Chrysler LB Receivables Trust (a bankruptcy-remote trust established by Chrysler Financial) (“Chrysler Trust”), dated January 14, 2009, Treasury provided \$1.5 billion in aid for Chrysler Financial that would fund a new pool of Chrysler Financial ABS ([AFX Asia 2008](#)) ([Chrysler Financial Loan Agreement 2009](#), PDF Page 5) ([Treasury 2009](#)). The ultimate purpose of the program was the same as the original \$17.4 billion Bridge Loan program that provided funding to the auto manufacturers: provide financing to “Restore stability to the domestic automobile industry in the United States” and “restore liquidity to its business” (Nye Bridge Loans 2019) ([Chrysler Financial Loan Agreement 2009](#), PDF Page 5). The proximate purpose of the program was financing retail loans made by Chrysler Financial, on or after January 1, 2009, with respect to the purchase of Chrysler vehicles, including cars, light duty trucks and recreational vehicles to “stimulate manufacturing and sales” of such vehicles ([Chrysler Financial Term Sheet 2009](#)) ([Chrysler Financial Loan Agreement 2009](#), PDF Page 5). It was thought that the extension and securitization of new consumer loans (starting January 1, 2009) would temporarily help keep Chrysler Financial and Chrysler afloat ([Treasury 2009](#)) ([Chrysler Financial Loan Agreement 2009](#), PDF Page 5, 47-73) ([Dombey and Simon 2009](#)). Tangentially, this would “preserve and promote the jobs of American workers employed directly by the Borrower’s Affiliates and in related industries” and “safeguard the ability of the Borrower’s Affiliates to provide retirement and health care benefits for their retirees and their dependents” ([Chrysler Financial Loan Agreement 2009](#), PDF Page 5).

#### *Authority*

Funding for the loans to Chrysler Financial came from Treasury’s Automotive Industry Financing Program (AIFP), which Treasury authorized under TARP pursuant to the Emergency Economic Stabilization Act of 2008 (EESA). This was the same authority Treasury relied on for all of its direct aid to the auto industry ([U.S. Treasury Department Office of Financial Stability 2018](#)).

#### *Loan terms*

Treasury agreed to loan to Chrysler Trust up to \$1.5 billion.

Treasury would make advances under the \$1.5 billion commitment in specified amounts on several funding dates specified in the agreement upon Chrysler Trust’s request. Once advances were repaid, they could not be re-borrowed. The initial funding date was January

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<sup>8</sup> On March 30, 2009 Treasury had released a Determination of Viability for GM and Chrysler ([Viability Summary 2009](#)). In the Chrysler document, the US government announced its expectations for Chrysler Financials’ future ([Ibid.](#), PDF Page 5). In spite of Chrysler’s reliance on Chrysler Financial for nearly half of its sales, Treasury cited the possibly divergent customer mix, “separation and independence of Chrysler Financial and increased credit standards,” and “substantial financing challenges” faced by Chrysler Financial as causes for its suggestion that Chrysler’s “future demand may depend on [it] finding alternate lending sources” ([Ibid.](#), PDF Page 5). This meant that Chrysler would likely further distance itself from Chrysler Financial and Chrysler Financial would have to survive as a third party auto finance company, which would not follow Chrysler into the bankruptcy process ([Congressional Oversight Panel 2010](#), PDF Page 27,49).

16, 2009 ([Chrysler Financial Loan Agreement 2009](#), PDF Page 60).<sup>9</sup> Loans were for a term of five years and were fully repayable on January 16, 2014 with any outstanding interest and/or fees ([Chrysler Financial Term Sheet 2009](#)). Advances could be prepaid by Chrysler Trust in whole or in part. However, in the event of any prepayment, Chrysler Trust would be responsible for making Treasury whole for any losses or costs that it suffered in redeploying funds maintained for Advances ([Chrysler Financial Loan Agreement 2009](#), PDF Page 7, 11).

Each advance under the loan was evidenced by the following two classes of Variable Funding Floating Rate Asset Backed Notes (promissory notes) issued to Treasury by Chrysler Trust ([Chrysler Financial Loan Agreement 2009](#), PDF Page 10, 137, 145).<sup>10</sup>

The loans were primarily issued as Variable Funding Floating Rate Asset Backed Notes that Treasury referred to as Class A promissory notes. These required Chrysler Trust to pay Treasury the outstanding principal and interest on the Advance on a monthly basis ([Chrysler Financial Loan Agreement 2009](#), PDF Page 90, 171-172) ([Chrysler Financial Term Sheet 2009](#), PDF Page 1-2). Principal and interest accrued at a rate of LIBOR plus 100 basis points for the first year and LIBOR plus 150 basis points for the second through fifth years. For Class A notes, overdue installments of interest accrued interest at a penalty rate of LIBOR plus 4% for the first year and LIBOR plus 4.5% for years 2-5 ([Chrysler Financial Loan Agreement 2009](#), PDF Page 184).

Treasury also required Chrysler Trust to issue what it called Class B notes, which were a second type of Variable Funding Floating Rate Asset Backed Notes ([Chrysler Financial Loan Agreement 2009](#), PDF Page 179). These Class B notes functioned as additional consideration fulfilling Treasury's requirement that it had to receive "a warrant for common or preferred stock, or a senior debt instrument" when it purchased troubled assets from financial institutions under EESA Section 113(d)(1)(b) ([Emergency Economic Stabilization Act \(EESA\) of 2008](#), § 113). Class B notes had the same terms and maturity date as the Class A Notes. Treasury received 5% of the maximum loan amount, or \$15 million, at closing and on each anniversary of the closing, up to a total of \$75 million. The Class B notes ranked below the Class A notes in the payment waterfall (Figure 3).

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<sup>9</sup> We have not been able to determine other funding dates, or their frequency, as this information was included on Appendix A to the agreement, which is fully redacted in the public copy of the agreement. However we know Chrysler LB Receivables Trust drew on the facility multiple times before April 9, 2009 ([Chrysler Financial Loan Agreement 2009](#), PDF Page 60) ([Government Accountability Office 2009a](#), 62).

<sup>10</sup> Treasury could have received a third class of these notes (called Class C notes) in the case that Chrysler Financial wanted to deploy supplemental loans that enhanced the credit of the ABS master trust through overcollateralization (although it is not clear whether these loans would have been extended by the US government or some other entity) ([Chrysler Financial Term Sheet 2009](#), PDF Page 2). However, Chrysler Financial appears to have chosen not to draw these supplemental loans ([Chrysler Financial Loan Agreement 2009](#), PDF Page 154-162, 171-179). The Class C notes appear to have carried the same interest rate and many of the terms of the other notes ([Chrysler Financial Loan Agreement 2009](#), PDF Page 154-162, 171-179).

Figure 1: Attributes of Promissory Notes<sup>11</sup>

Note Category	Principal	Interest Rate	Term	Purpose	Security
Class A variable funding floating rate asset backed notes	<ul style="list-style-type: none"> <li>• Minimum principal: \$100 million</li> <li>• Maximum principal: \$1.5 billion</li> <li>• Actual Principal: \$1.5 billion</li> </ul>	Year 1: One-month LIBOR plus 100 bp Years 2-5: One-month LIBOR plus 150 bp (Penalty rate adds 300 bp)	Five years (beginning January 16, 2009)	To enable the securitization trust to fund retail loans made on or after January 1, 2009 to finance the purchase of Chrysler automobiles	<ul style="list-style-type: none"> <li>• All Pooled Receivables and Related Property</li> <li>• The Collection Account and its contents</li> <li>• Hedges entered or acquired by Chrysler Trust</li> <li>• Any right to payment facilitated by the financing</li> </ul>
Class B variable funding floating rate asset backed notes	<ul style="list-style-type: none"> <li>• \$75 million, with \$15 million vested at closing and on each anniversary of the loan closing in which the loan is outstanding</li> </ul>	Year 1: One-month LIBOR plus 100 bp Years 2-5: One-month LIBOR plus 150 bp (Penalty rate adds 300 bp)	Five years (beginning January 16, 2009)	Issued as additional consideration for the Treasury in lieu of warrants, to fulfil the EESA Section 113(d)(1)(b) requirement	
Class C variable funding floating rate asset backed notes [ <b>not issued</b> ]	<ul style="list-style-type: none"> <li>• Minimum principal: \$0</li> <li>• Maximum principal: \$1.4 billion (\$1.5 billion less \$100 million minimum borrowing under Class A)</li> <li>• Actual Principal \$0</li> </ul>	Year 1: One-month LIBOR plus 100 bp Years 2-5: One-month LIBOR plus 150 bp (Penalty rate adds 300 bp)	Five years (beginning January 16, 2009)	To enable the securitization trust to overcollateralize the ABS master trust	<ul style="list-style-type: none"> <li>• All Pooled Receivables and Related Property</li> <li>• Hedges entered or acquired by Chrysler Trust</li> <li>• Any right to payment facilitated by the financing</li> </ul>

<sup>11</sup> Chrysler Financial Loan Agreement 2009

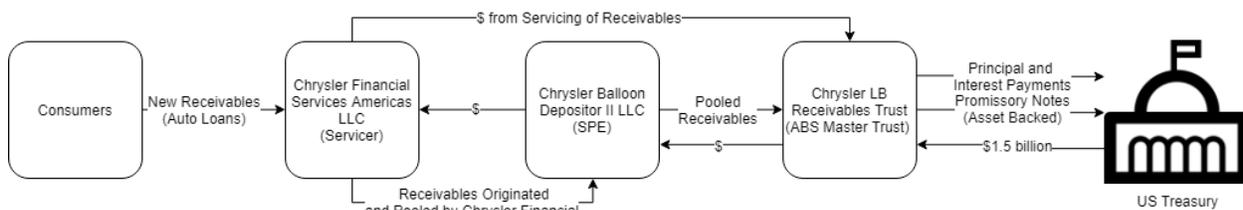
*Collateral/Security*

The loans and Treasury’s right to payment of principal and interest under the notes were secured by all the property of the Chrysler Trust, the pool of loans that it purchased and the related receivables, the funding account and any hedges. These were held by the Indenture Trustee, who held perfected first-priority liens on all of Chrysler Trust’s property for Treasury’s benefit ([Chrysler Financial Loan Agreement 2009](#), PDF Page 15, 72, 79-81, 288-289).<sup>12</sup>

*Mechanics*

The legal structure of the loan mimicked that of an auto securitization, with the US Treasury playing the role of the bond buying investor. Proceeds of the loan were received by Chrysler Trust, a bankruptcy remote ABS master trust ([Chrysler Financial Loan Agreement 2009](#), PDF Page 171-172). The loans promoted the sale of Chrysler vehicles through the following process:

**Figure 2: Simplified Mechanics of the Facility**



Source: Created by YPFS; based on the [Chrysler Financial Loan Agreement 2009](#)

Chrysler Financial would make loans to consumers buying Chrysler vehicles, then bundle these loan receivables into a pool that it would sell to a bankruptcy remote Special Purpose Entity created for this purpose, which was called Chrysler Balloon Depositor II LLC (the “SPE” or the “Depositor”) ([Chrysler Financial Loan Agreement 2009](#), PDF Page 53, 64-65, 67). The SPE purchased the pooled receivables from Chrysler Financial using funds it received from Chrysler Trust, which held the proceeds from the Treasury loan ([Chrysler Financial Loan Agreement 2009](#), PDF Page 137-141, 274). Chrysler Trust then issued to Treasury two classes of notes providing for the repayment of the loan and for additional consideration for Treasury. Thus, Chrysler Financial funded a new pool of Chrysler Financial ABS, with Chrysler Trust acting as a purchaser for auto loan receivables ([Chrysler Financial Loan Agreement 2009](#), PDF Page 5, 171-172, 226-226) ([AFX Asia 2008](#)). This allowed Chrysler Financial to originate new loans and leases for consumers at better terms, increasing its volume from the low levels of late 2008 ([Chrysler Financial Loan Agreement 2009](#), PDF Page 10, 47-73, 242-257).

<sup>12</sup> The indenture trustee’s (Deutsche Bank Trust Company Americas) role was to act as trustee on behalf of those holding the various notes (Class A, Class B, and Class C) issued by Chrysler Trust ([Chrysler Financial Loan Agreement 2009](#), PDF Page 60). The indenture trustee had a number of other duties to Treasury and Chrysler Trust under an indenture agreement ([Chrysler Financial Loan Agreement 2009](#), PDF Page 79-81).

Chrysler Financial serviced the pooled receivables held by Chrysler Trust and used the related proceeds from those receivables to fund the administrative fees associated with the securitization, Chrysler Financial's servicing fees, hedging costs, and the Chrysler Trust's loan repayments to Treasury as the holder of Chrysler Trust's notes ([Chrysler Financial Loan Agreement 2009](#), PDF Page 75-97, 115-117, 283).

**Figure 3: Payment Priority<sup>13</sup>**

<b>Name and type of obligation</b>	<b>Principal</b>	<b>Recipient</b>	<b>Priority</b>
<b>Trustee fees</b>	Monthly assessed, but must in total be less than or equal to \$100,000 per annum	Pro rata among priority 1 to the Indenture Trustee and the Owner Trustee	1
<b>Servicing Fees</b>	The monthly assessed Servicer Fee and any unpaid Monthly Servicer Fees	Pro rata among priority 1 to the Servicer (Chrysler Financial)	1
<b>Hedging Fees</b>	Net payments assessed monthly (excluding termination payments)	Hedge Counterparties	2
<b>Interest, Fees, and Costs of relevant Notes</b>	Assessed monthly	Class A noteholders (Treasury); Class B noteholders (Treasury); Class C noteholders (Chrysler Retail Residual Depositor LLC, which can then transfer them to Chrysler Retail Residual Trust)	3
<b>Principal on relevant Notes</b>	Outstanding principal amount under relevant Notes until said outstanding principal has been reduced to zero	Class A noteholders (Treasury); Class B noteholders (Treasury); Class C noteholders (Chrysler Retail Residual Depositor LLC, which can then transfer them to Chrysler Retail Residual Trust)	4
<b>Trustee Fees Overflow</b>	Any fees owed beyond the \$100,000 per annum cap	Indenture Trustee and Owner Trustees	5
<b>Termination Fees under Hedges</b>		Hedge Counterparties	6
<b>Distributions to Trust Certificateholders</b>		Certificateholder (assumed to be Chrysler Financial)	7

## Parent Company Guarantee

The loan documents also included a Guarantee Agreement under which Chrysler Financial's parent company, Chrysler Holding, guaranteed penalties that Chrysler Financial might become obligated to pay if it violated "dividend and distribution restrictions" contained in the loan agreement. ([Chrysler Financial Term Sheet 2009](#), PDF Page 3) ([Chrysler Financial Loan Agreement 2009](#), PDF Page 237-241). We have not been able to determine the substance of these restrictions ; they have been redacted in the loan documents released to

<sup>13</sup> See [Chrysler Financial Loan Agreement 2009](#).

the public ([Chrysler Financial Loan Agreement 2009](#), PDF Page 342) ([Chrysler Financial Term Sheet 2009](#), PDF Page 3).

### *Executive Compensation Requirements*

The executive compensation requirements imposed by the loan aimed to limit the benefits and compensation enjoyed by Chrysler Financial senior employees and executives. These restrictions were of two types: (i) regulations regarding compensation to senior executive officers issued by the Department of the Treasury in connection with EESA Programs<sup>14</sup> and (ii) restrictions contained in the loan agreement. It is not clear however, what restrictions were contained in the loan agreement, because these terms have been redacted from the public version of the agreement. However, the loan term sheet included the following:

(A) Chrysler Financial shall comply with EESA terms,

“(B) Chrysler Financial shall comply in all respects with the limits on annual executive compensation deductibles imposed by Section 162(m)(5) of the Code, as applicable;

“(C) Chrysler Financial shall reduce by 40.00% the aggregate amount of bonus compensation that may be paid to Senior Executive Officers [the top five highest paid officers] or Senior Employees [the next 20 most highly compensated employees] in fiscal year 2009 from the aggregate bonus compensation actually paid to such employees in 2007, subject to certain adjustments;

“(D) Chrysler Financial shall not adopt or maintain any compensation plan that would encourage manipulation of its reported earnings to enhance the compensation of any of its employees; and

“(E) Chrysler Financial shall maintain all suspensions and other restrictions of contributions to Benefit Plans that are in place or initiated as of the closing date” ([Chrysler Financial Term Sheet](#), PDF Page 3-4).

In particular, the 40% bonus reduction appeared to be unusually restrictive compared to similar TARP programs at the time. The Treasury press releases referred to the proposed executive compensation terms as “enhanced restrictions on executive compensation” ([2009](#)).<sup>15</sup>

### *Corporate Governance Terms*

Pursuant to the loan agreement, Chrysler Financial was required to suspend payment of dividends. It also had to comply with corporate governance requirements imposed by EESA,

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<sup>14</sup> These terms were automatically imposed under 31 CFR 30 and Section 111 of EESA on organizations that received TARP money ([Treasury 2009a](#)) ([31 CFR 30.16](#), 2015). These rules defined Senior Executive Officer as the top five highest paid officers and Senior Employees as the next 20 most highest compensated employees. Among other things, the rules prohibit or limit cash compensation, total compensation, short-term stock incentives, severance payments, and the adoption of any new benefit plan for senior executive officers that did not comply with the rules. <https://www.treasury.gov/press-center/press-releases/Documents/011608%20term%20sheet%20chrysler%20fin.pdf>

<sup>15</sup> As part of the loan agreements, Chrysler Financial and its individual CEOs and executive officers were required to sign individual waivers foregoing any claims against the company and Treasury for any changes to any compensation ([Chrysler Financial Loan Agreement 2009](#), PDF Page 12(sec. o), 39-43.)

which included, among other things, a semi-annual risk review by the compensation committee and certain disclosures.<sup>16</sup>

#### *Reporting Requirements and Administrative Burden*

The reporting requirements included in the loan between the US Treasury and Chrysler Trust were limited to standard conditions (notification of defaults, litigation, changes in control, right of lender to perform due diligence, etc.) ([Chrysler Financial Loan Agreement 2009](#), PDF Page 22-31).

#### **Replacing Chrysler Financial with GMAC**

In early April 2009, Treasury realized that Chrysler's bankruptcy filing would cause Chrysler's bankers to withdraw all \$22 billion of its remaining credit lines (Rattner 2011, 147). Given its significant relationship with Chrysler and other concerns regarding the company, Treasury sought to arrange a more secure financing source for Chrysler. The plan proposed was to have GMAC replace Chrysler Financial. Chrysler Financial would go into "runoff mode," continuing to hold the loans that it had made but not making new ones ([Congressional Oversight Panel 2011](#), 11) ([Congressional Oversight Panel 2010](#), 48) (Rattner 2011, 147). Treasury would not save Chrysler Financial. Chrysler made this plan public; it announced that it "will enter into an agreement with GMAC that will provide dealer and customer financing after bankruptcy, in lieu of Chrysler Financial, which agreed to cooperate in the transition of its current dealer agreements to GMAC" ([Canis et al. 2009](#), PDF Page 31) ([Emergency Motion 2009](#), PDF Page 8-11).<sup>17</sup>

#### **Outcomes**

##### **Outcomes of the \$1.5 billion facility**

###### *Early Impact*

Chrysler began to feel the benefits of the loan soon after implementation began. From January to February of 2009 the number of loans written by Chrysler Financial "more than quadrupled" ([Mitchell 2009](#)). Chrysler Financial and its parent began to announce that loans would become more available and lending conditions would be relaxed. The companies also announced that the proceeds of the loan would be used to support an up-to-60 month, 0% interest loan program and other incentive programs ([Shephardson and Priddle 2009](#)) ([Mitchell 2009](#)). As of early February, however, Chrysler's dealers complained that many of their customers were still unable to these incentive programs, as they were only "available to customers with top-tier credit ratings" ([WSJ 2009a](#)).

###### *Further Difficulties*

Although the aid from the US government was lightening the financial load on Chrysler Financial, the company continued to be squeezed; Chrysler Financial's financial burden was increasingly felt by Chrysler and its dealerships. Less than a month after the Treasury loan

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<sup>16</sup> See pages A8-A9 of the Special Master's letter for a list of these requirements ([TARP EXEC COMP 11-12](#)).

<sup>17</sup> For MAFA 2009, see PDF pages 212 to 222 of the Form 10-Q dated August 07, 2009 for the terms of Chrysler's transition from Chrysler Financial to GMAC.

closed, the Wall Street Journal reported that Chrysler Financial “has focused increasingly on protecting its own bottom line, often at the expense of the auto company” ([WSJ 2009a](#)). Chrysler Financial continued to face significant problems, evidenced by the fact that it asked for additional TARP funds in March 2009 ([WSJ 2009b](#)). The Washington Post reported that Treasury offered Chrysler Financial another \$750 million in loans ([Krisher and Manning 2009](#)). However, the Associated Press wrote that a “government official with knowledge of the negotiations” said Chrysler Financial was unwilling to agree to the accompanying executive pay cuts demanded by Treasury ([Krisher and Manning 2009](#)). The deal never came together or fell apart during negotiations over these pay cuts and soon Chrysler Financial indicated that it no longer needed such aid from the government ([Ibid.](#)).

Chrysler Financial reached the \$1.5 billion maximum loan amount by April 9, 2009, and subsequently Chrysler Financial returned to raising lending rates, this time by an average of over 1% ([WSJ 2009b](#)) ([Government Accountability Office 2009a](#), 62). They repaid the loan in full (with interest and fees) quickly and made their last payment on July 14, 2009 ([Ibid.](#), 62, 132). As a result, taxpayers received an extra \$22.4 million (beyond the \$1.5 billion they lent) ([Government Accountability Office 2009a](#), 134). Chrysler Financial stated that its speedy repayment was due to its successful participation in the Term Asset-Backed Securities Loan Facility (TALF) ([Chrysler Financial 2009](#)).

### **Outcomes of GMAC’s replacement of Chrysler Financial**

With the filing of Chrysler’s Chapter 11 petition at the end of April, Chrysler Financial’s financing sources dried up (Docket 482, PDF Page 8). As a result, Chrysler Financial stopped providing floorplan financing to dealers and financing to consumers ([Dow Jones News Service 2009](#)). Chrysler Financial “announced that it would no longer provide additional advances under the wholesale lines of such Dealers,” and Chrysler’s attorney worried about the fact that Chrysler Financial had liens “on most of these Dealers’ assets (including, among other things, new and used cars, parts, and other inventory) (Docket 482, PDF Page 8-9). Even worse, Chrysler Financial’s contacts with dealers apparently had several quirks that barred any party “from placing new liens on Chrysler Financial’s collateral without a waiver from Chrysler Financial” ([Ibid.](#)). Chrysler Financial asserted that imposing new liens, like those of GMAC, would “result in an event of default under the financing documents between Chrysler Financial and the Dealers,” permitting Chrysler Financial “to exercise its remedies against the Dealers and their assets “ (Docket 482, PDF Page 8-9).<sup>18</sup> Chrysler’s attorneys asserted Chrysler’s “businesses cannot survive without financing for their Dealers and the Debtors cannot procure this substitute financing without the consent of Chrysler Financial” ([Ibid.](#), PDF Page 14). Accordingly, “Chrysler had to convince Chrysler Financial to waive the

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<sup>18</sup> In theory, convincing Chrysler Financial to waive these liens would not be difficult; the security from Chrysler Financial’s various pre-existing auto finance contracts with Chrysler protected it from some of the negative effects of a Chrysler bankruptcy. The 2007 Master Autofinance Agreement governing Chrysler Financial’s services for Chrysler also made \$1.5 billion (\$500 million in cash and a \$1 billion Chrysler note pledged to Chrysler Financial) in collateral available to Chrysler Financial in case of certain bankruptcy events and PBGC demands (Docket 482, PDF Page 10). However, Chrysler’s obligations toward Chrysler Financial outstripped the \$1.5 billion by the time of the April 30, 2009 bankruptcy filings (Docket 482, PDF Page 10).

“new liens” prohibition in order for the GMAC transition to proceed (Docket 483, PDF Page 12).

Treasury effectively subsidized Chrysler’s solution to this problem by increasing the \$4.1 billion debtor-in-possession loan<sup>19</sup> that it had provided to Chrysler by \$896 million, some of which Chrysler would use to pay Chrysler Financial to waive a number of its potential claims against Chrysler once Chrysler had successfully restructured ([DIP Financing Agreement 2009](#), PDF Page 21) (Docket 1903 2009) (Docket 6273 2009, PDF Page 62).

Although Treasury originally intended for GMAC to acquire all of Chrysler Financial’s assets, Treasury noticed that Chrysler Financial had substantial debts coming due in July 2009 ([Congressional Oversight Panel 2010](#), 26). To avoid exposing GMAC to these debts, Treasury determined that it would only finance “GMAC’s acquisition of only a part of Chrysler Financial’s business.”

In July 2009, the Treasury and Chrysler also amended the documents underpinning the \$4 billion in Bridge Loans from late 2008 as part of the transition ([Chrysler LSA 2008](#), PDF Page 383-401). The amendment required Chrysler to pay Treasury 40% of any distributions Chrysler Holding received from its stake in Chrysler Financial, including the first \$1.375 billion ([Chrysler LSA 2008](#), PDF Page 383-401).

#### *Winding Down the Old Chrysler(s)*

By September 2009, Treasury issued a directive to Chrysler Financial “to liquidate its business” and the Special Master for TARP Executive Compensation had noted that Chrysler Financial planned to wind down operations by the end of 2011 ([Government Accountability Office 2009](#), 6) ([Treasury 2009a](#)). On December 21, 2010, TD Bank announced that it would buy Chrysler Financial from Cerberus for about \$6.3 billion ([Congressional Oversight Panel 2011](#), 16-17). Chrysler Financial was rebranded as TD Auto Finance and as of 2019 has continued operating ([TD Auto Finance 2015](#)). The alliance between Chrysler and GMAC did not last, and was terminated in April 2013 ([Chrysler Group LLC 10-K 2014](#), 155). Chrysler then replaced GMAC with Chrysler Capital, which was associated with Santander Bank ([Chrysler Capital 2019](#)).

## II. Key Design Decisions<sup>20</sup>

### 1. Treasury committed financing to Chrysler Financial from TARP using EESA based on the idea that Chrysler Financial’s existence depended on Chrysler

The official determination by the Secretary of Treasury that authorized TARP funding for auto manufacturers defined “certain [...] companies [...] engaged in the manufacturing of

<sup>19</sup> The debtor-in-possession loan was a three-way agreement between Chrysler, Treasury and Export Development Canada (EDC)’s dated May 5, 2009 ([DIP Financing Agreement 2009](#), PDF Page 21). See Nye, the Restructuring of Chrysler for details.

<sup>20</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.

automotive vehicles and the provision of credit in connection with the manufacturing and purchase of such vehicles” were “financial institutions” for the sake of EESA (Treasury 2008, PDF Page 1). This enabled Treasury to purchase the “troubled assets” of Chrysler Financial. When litigation over the bankruptcy court’s approval of Chrysler’s restructuring reached the Second Circuit Court of Appeals, Treasury expounded on the Secretary’s determination:

[T]he Secretary of the Treasury, in determining what is a financial institution, looks at the interrelatedness [of the company and its financing arm].

Chrysler Financial can’t survive without Chrysler...Without [Chrysler], the financial institution goes down...[Chrysler Financial] is the financial institution and the relationship [with Chrysler is the one] that the Secretary of the Treasury based his determination on, and that determination is entitled to deference by this court under administrative law principles ([Congressional Oversight Panel 2009](#), 75-76).<sup>21</sup>

## **2. The support for Chrysler Financial was part of a multi-faceted program to assist Chrysler and GM**

Under the auspices of the AIFP, the government would ultimately provide funding to not only the auto manufacturers and auto finance companies, but also to other related stakeholders such as suppliers and customers. Because of the interdependence of companies in the industry, such aid was thought necessary to ensure the success of the restructuring plans and survival of the manufacturers. Assistance was provided to suppliers, to finance companies to maintain financing for new car purchases, and to special purpose vehicles that guaranteed warranties on new cars. The government also helped the two companies restructure using the bankruptcy code, committing billions of dollars in debtor-in-possession and post-petition financing ([Klier and Rubenstein 2013](#), 148-150).

## **3. The loans had a five-year term, but could be prepaid**

The term of this loan is slightly shorter than the common loan terms for automobile asset-backed securities in a normal market (i.e. 72 months in 2016) ([Lei et al. 2017](#)). This was longer than the three-year term loans TALF announced at the close of 2008, which would have made it more attractive than waiting for TALF to be implemented ([Leinfuss 2008](#)).

Treasury also allowed Chrysler Financial to prepay its advances under the loan in whole or in part ([Chrysler Financial Loan Agreement 2009](#), PDF Page 7, 11). However, in the event of any prepayment, Chrysler Financial had to make Treasury whole for any losses or costs that it suffered in redeploying funds maintained for Advances ([Ibid.](#), PDF Page 7, 11).

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<sup>21</sup> However, that’s exactly what eventually happened: Chrysler Financial survived without However, the courts never decided if Treasury’s argument was satisfactory because “the judge determined that the objectors [a set of public pension funds in Indiana] did not have standing to raise the issue or that the issue was moot” ([Ibid.](#), 75-76).

Chrysler.

#### **4. Treasury authorized \$1.5 billion in lending to aid Chrysler Financial's consumer financing**

As part of Chrysler's requests for aid from TARP, the manufacturer had asked for \$2.5 billion to aid Chrysler Financial's floorplan and consumer financing operations ([Affidavit of Ronald E. Kolka in Support of First Day Pleadings, In re Chrysler LLC, 405 B.R. 84 \(No. 09-50002\), 2009 WL 1266134](#), Page 30). This was subsequently lowered to a request for \$1.5 billion in aid that would be allocated to only consumer financing (Affidavit of Ronald E. Kolka in Support of First Day Pleadings, In re Chrysler LLC, 405 B.R. 84 (No. 09-50002), 2009 WL 1266134, Page 30). On January 16, 2009, days after the complaints were aired to the press, Treasury announced \$1.5 billion in aid from TARP to Chrysler Financial as a measure to improve consumer access to credit and cushion auto sales ([Treasury 2009](#)). The \$1.5 billion in financing was a relatively small amount compared with the \$6 billion commitment to GMAC less than a month before the aid for Chrysler Financial was announced ([Canis et al. 2009](#), 48). Additionally, the \$1.5 billion commitment for Chrysler and the \$6 billion committed to GMAC were not counted as part of the initial \$17.4 billion authorized by the Bush Administration for aid to automotive companies ([The White House 2008](#)).

Several dealerships complained about the lack of support for floorplan financing. While the \$1.5 billion facility could stimulate consumer financing, dealerships found it increasingly difficult to finance their inventories ([WSJ 2009a](#)) ([Automotive News 2009](#)). However, Treasury and Chrysler wished to shrink Chrysler's dealer network anyways; it considered the dealer network oversized and unprofitable (Rattner 2011, 194).

#### **5. Auto loans had to comply with geographic, credit quality, and other standard overconcentration limits to benefit from the loan**

The term sheet for the program stated that the loans extended to consumers had to meet "certain geographic, credit quality and other standard overconcentration limits for transactions of this type" ([Chrysler Financial Term Sheet 2009](#), PDF Page 1). However, beyond the eligibility date for loans, more information does not appear in the Chrysler Financial Loan Agreement itself.

It is unclear why Treasury settled on January 1, 2009 as the earliest eligible date, as the loan was executed on January 16, 2009 ([Chrysler Financial Term Sheet 2009](#), PDF Page 1). However, this tactic dovetails with a goal of stimulating new, rather than subsidizing existing auto purchases. There is not publicly available information on what these other requirements were, how they were enforced, or why they were put in place.

**6. The legal structure of the loan mimicked that of an auto securitization, with the Treasury playing the role of the bond buying investor**

This is important because this was a much more complicated structure for lending than any of the other programs under the AIFP. However, there is no public information available on the drafting of this agreement to explain why this structure was chosen ([GM Financial 2018](#)).

The interest and principal of the \$1.5 billion loan was secured by the receivables and related property arising from the auto loans that Chrysler Financial would be making to consumers ([Treasury 2009](#)). These receivables would have included the proceeds of defaulted consumer loans that were subsequently liquidated. Any funds related to the Collection Account also served as collateral, but only for the Class A and Class B noteholders ([Chrysler Financial Term Sheet 2009](#), PDF Page 3-4).

**7. Treasury could transfer the loan, but Chrysler Financial faced restrictions on hypothecating the loan's underlying collateral**

Treasury could engage in repurchase agreements with or pledge the collateral from its loan for Chrysler Financial (by way of Chrysler LB Receivables Trust) ([Chrysler Financial Loan Agreement 2009](#), PDF Page 27). However, Chrysler LB Receivables Trust was prohibited from assigning (in addition to selling, transferring, hypothecating, etc.) any of its obligations or rights under the loan without Treasury's prior written consent ([Chrysler Financial Loan Agreement 2009](#), PDF Page 26-27). In theory, this could have kept Chrysler Financial from diverting the proceeds of the loan and would have centralized liability for violating the agreement in Chrysler LB Receivables Trust. Also, these terms allowed Treasury to transfer the loan to another party if need be.

**8. The loans had lower interest rates than Chrysler's other recent loans, but had significant terms that would trigger penalty interest rates**

The loans had an interest rate of the one-month LIBOR plus 100 basis points for the first year and an interest rate of the one-month LIBOR plus 150 basis points for the second year through the fifth year. For an asset backed security, the interest rate is significantly less than what Chrysler Financial had to pay when it renewed its \$24 billion credit line in August 2008 ([Paritosh and Krolicki 2008](#)) as well as what Chrysler paid to Treasury under the Bridge Loans (Nye 2019). However, the additional Class B notes provided further upside to Treasury for extending the loans to Chrysler Financial, worth as much as 5% of the loan amount.

The loan also provided for penalty rates in cases of default or overdue payments ([Chrysler Financial Loan Agreement 2009](#), PDF Page 7-8). The loans added 300 basis points to the interest rate for overdue payments (penalty rate of 400 basis points in year one and penalty rate of 450 basis points in years two through five). The penalty is significantly smaller than

the one imposed under the Auto Bridge Loans, which added a 500 basis point penalty (Nye Bridge Loans 2019).

#### **9. Treasury received the Class B notes as additional consideration for its commitments**

These promissory notes, known as Class B notes, served as an alternative method for fulfilling EESA Section 113(d)(1)(b)'s requirement that the Secretary of the Treasury could only purchase the troubled assets of financial institutions that do not have their securities traded on a national securities exchange if the Secretary of Treasury received "a warrant for common or preferred stock, or a senior debt instrument" from the financial institution in question ([Chrysler Financial Term Sheet 2009](#), PDF Page 4) ([Emergency Economic Stabilization Act \(EESA\) of 2008](#), § 113). As Chrysler Financial was a private company, it did not have its securities traded on a national securities exchange at that time. The Class B note fulfilled the requirement as a "senior debt instrument" that would act as additional consideration beyond the \$1.5 billion offered by the facility ([Emergency Economic Stabilization Act \(EESA\) of 2008](#), § 113) ([DBRS 2009](#)).<sup>22</sup> The Class B notes carried similar terms and conditions to the Class A notes in terms of maturity and interest rates. The Class B Note issued to Treasury had a face value of \$75 million—set at 5% of the maximum loan amount—and would vest over five years, with \$15 million vested on issuance and an additional \$15 million vesting annually on the anniversary of issuance while the loan was outstanding ([Chrysler Financial Loan Agreement 2009](#), PDF Page 145-146, 171-187) ([Chrysler Financial Term Sheet 2009](#), PDF Page 4).

#### **10. Chrysler Financial was subject to restrictions on its executive compensation**

The press release announcing Chrysler Financial's aid indicated that the firm would be required to "be in compliance with the executive compensation and corporate governance requirements of Section 111 of the Emergency Economic Stabilization Act, as well as enhanced restrictions on executive compensation" ([Treasury 1/16/2009](#)). The accompanying term sheet included a requirement that bonuses of Senior Executive Officers (SEOs) and senior employees for the 2009 fiscal year be reduced to no more than 60% of their 2007 levels ([Chrysler Financial Term Sheet 2009](#), PDF Page 3). This was a strong public message, however, we have not located evidence that this term was implemented (See discussion below of the Special Master's determinations). It is worth noting that this term appears to be more onerous than restrictions imposed on Chrysler and GM, which were subject to the ESSA provisions, but not to specific compensation caps.

As noted above, because it was receiving TARP funds, Chrysler Financial's executive compensation was subject to the requirements of EESA Section 111, which provided for review by the Special Master for TARP Executive Compensation, much like Chrysler and GM

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<sup>22</sup> The author inferred that the purpose of the Class B Notes was to satisfy the TARP requirements because there was a lack of other instruments within the assistance for Chrysler Financial that would fulfill such requirements and because the language Treasury used for the Class B Notes in the Chrysler Financial term sheet is similar to the language it used for the Additional Notes in the Bridge Loans term sheets.

([Treasury 2009a](#)). As required, on October 22, 2009, the Special Master for TARP Executive Compensation issued its review of Chrysler Financial’s proposed executive compensation, which took into account that at the time, the company was “following Treasury’s directive to liquidate its business in an orderly fashion” ([TARP EXEC COMP-CF1, p.A5](#)). The Special Master was charged “to determine whether the compensation structure for each senior executive officer and certain most highly compensated employees ‘will or may result in payments inconsistent with the purposes of section 11 of EESA or TARP, or [is] otherwise contrary to the public interest (31 C.F.R. §30.16(a)(3)) ([TARP EXEC COMP-CF1, 1,6](#)).” This is often referred to as the Public Interest Standard ([TARP EXEC COMP-CF1 6](#)).

The company proposed cash salaries that represented decreases from 2008 levels of between 10% to 67% for its CEOs and highly compensated employees. Total cash compensation for this group would be reduced by 30% from 2008 levels and total compensation would be reduced by 56%. The Special Master found these terms to be consistent with the Public Interest Standard ([TARP EXEC COMP-CF1,1, A6](#)). The Special Master also limited all other compensation and perquisites to no more than \$25,000 and ordered no increases in severance arrangements. The Special Master also ruled that severance paid in excess of its ruling would have to be reclaimed ([TARP EXEC COMP-CF1, A7](#)). The Special Master found that the proposed compensation for the company’s other highly compensated employees (the 26<sup>th</sup> through 100<sup>th</sup> highly compensated employees) was consistent with the rule ([TARP EXEC COMP-CF2](#)).

#### **11. The loan agreement provided for a Class C Note that was ultimately never used**

The Class C notes anticipated that Chrysler Financial might may arrange for supplemental subordinated loans. The holders of these loans would receive Class C Notes to represent the funding that they provided. The Class C Notes would accrue interest and would be subordinate to the Class A and Class B Notes, with related secondary payment priorities. However, we have not been able to determine why these provisions were never used or why the credit enhancement and hedging contemplated by the Class C loans was given such attention in the Chrysler Financial Loan Agreement.

#### **12. Chrysler Holding offered a limited guarantee of Chrysler Financial that served as a clawback mechanism in some cases of noncompliance**

Pursuant to the loan agreement, Chrysler Financial was required to suspend payment of dividends while the loan was outstanding and could incur certain penalties payable to Treasury. Chrysler Holding, Chrysler Financial’s parent company, guaranteed to Treasury “the payment in full of all amounts paid by FinCo, if any, in violation of Section 18 of Schedule B of the Purchase Agreement (the “Guaranteed Obligations”;<sup>23</sup> The Term Sheet provided for Chrysler Holding to pay “any amount paid to Chrysler Holding by Chrysler Financial” that violated “certain dividend and distribution restrictions” ([Chrysler Financial Term Sheet](#)

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<sup>23</sup> Need to find Sec 18 of Sched b and verify what the Guaranteed Obligations re.

[2009](#), PDF Page 3). This functioned as a way to clawback funds from Chrysler Holding in the case that Chrysler Financial violated the aforementioned restrictions and could not pay.

### **13. Treasury communicated the support for Chrysler Financial as a secured loan to Chrysler Financial's Special Purpose Entity**

Treasury only released a short press release announcing the Chrysler Financial support and some (redacted) documents related to the underlying loan ([2009](#)). The press release described the loan as “a \$1.5 billion loan to a special purpose entity created by Chrysler Financial to finance the extension of new consumer auto loans [...] secured by a senior secured interest in a pool of newly originated consumer automotive loans” ([2009](#)). Treasury also noted that Chrysler Financial would have to comply with the executive compensation and corporate governance restrictions under EESA in addition to “enhanced restrictions on executive compensation” ([Ibid.](#))

Later, Treasury foreshadowed the need for Chrysler to modify its auto finance arrangement with Chrysler Financial. In its Determination of Viability for Chrysler, Treasury described Chrysler Financial as having “substantial financing challenges of its own” such that “future demand may depend on Chrysler finding alternate lending sources” ([Viability Summary 2009](#), PDF Page 5). Treasury also pointed to Chrysler Financial’s “separation and independence” from Chrysler as a barrier to increasing demand for Chrysler’s cars ([Viability Summary 2009](#), PDF Page 5).

### **14. Treasury indirectly subsidized GMAC's assumption of Chrysler Financial's auto-finance relationship with Chrysler**

Treasury indirectly subsidized both GMAC and Chrysler Financial during the transition. On May 15, 2009, Treasury and EDC amended their debtor-in-possession (DIP) loan to Chrysler, increasing the \$4.1 billion facility by \$896 million ([DIP Financing Agreement 2009](#), PDF Page 21) (Docket 1903 2009). A portion of this DIP loan was to “be used solely to reimburse” GMAC for qualifying losses connected with GMAC taking on the majority of Chrysler Financial’s business ([United States Department of the Treasury et al. 2009](#)). Rather than directly provide for a loss sharing facility with GMAC, Treasury provided at least \$600 million to Chrysler under its DIP lending facility that would reimburse GMAC for losses connected to a set of dealer loans during the transition.

As for Chrysler Financial, some of the \$896 million increase by Treasury would effectively pay Chrysler Financial to cap its potentially large “superpriority administrative expense claims” and pay for an agreement that Chrysler’s post-bankruptcy successor (which would later be known as Chrysler) would assume Chrysler’s obligations under the RSA [the Risk Sharing Agreement between Chrysler and Chrysler Financial] after Chrysler successfully restructured (Docket 6273 2009, PDF Page 62).<sup>24</sup>

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<sup>24</sup> The superpriority administrative expense claims are Chrysler’s obligations to Chrysler Financial related to the management of its bankruptcy proceedings; they enjoy an extremely high payment priority under 11 U.S. Code § 503,507. Under the RSA, Chrysler would convey the \$1.5 billion in collateral to Chrysler Financial and

### III. Evaluation

There has not been much academic discussion of the Chrysler Financial support on a stand-alone basis, so it is difficult to assess its separate impact. However, there is some evidence that it fulfilled its original purpose “to finance the extension of new consumer auto loans as part of a broader program to assist the domestic automotive industry in becoming financially viable.”

Once the loan was executed, sales ticked up slightly in February (+4,501), showed a major boost in March (+34,343), and stabilized somewhere in the mid-70,000s unit per month range (-24,219) in April after the loan was fully drawn (Data from PR Newswire 2009). However, the drop in sales in April may have been because some Chrysler Financial loan rates increased over 1% as the loan was fully drawn in April 2009 ([Dow Jones News Service 2009](#)). By then, the TALF was operational, which allowed Chrysler Financial to continue securitizing new loans. Thus, given its limited purpose, the program can be said to have achieved its goal of maintaining and even stimulating Chrysler sales as the government worked with the company on a broader rescue plan.

Once TALF was available, Chrysler Financial was able to use TALF to fund an exit from the Treasury loan ([Federal Reserve 2011](#), 1-2) ([Chrysler Financial 2009](#)).<sup>25</sup> Commentators note that this Federal Reserve program seemed to “improve the liquidity of the auto ABS market,” with AAA auto ABS spreads plummeting in the month after its December 2008 second announcement ([Ibid.](#), PDF Page 18). Besides an uptick in sales (which could have been due to TALF) there was not a significant public reaction to the \$1.5 billion Chrysler Financial loan from Treasury.

It’s unclear how the Treasury loan impacted Chrysler Financial other than increased sales. Even as Chrysler announced that the loan allowed customers with credit scores as poor as the 620s “to apply for affordable loans,” sales continued to decline for Chrysler relative to 2008 ([Shephardson and Priddle 2009](#)). The impact of the loan is also obscured by the fact that Chrysler and Chrysler Financial behaved more independently from each other in early 2009 than Treasury had anticipated. Chrysler Financial provided wholesale financing to 62% of Chrysler dealerships and made up 50% of Chrysler’s consumer financing (Docket 483, PDF Page 8). However, Chrysler Financial seemed to have a relationship with Chrysler defined more by conflict than by cooperation. While Chrysler attempted to sell the vehicles piling up in its inventory to dealerships, there were multiple media reports of Chrysler Financial attempting to frustrate dealership access to the floorplan financing they needed to purchase vehicles from Chrysler ([WSJ 2009a](#)) ([Automotive News 2009](#)).

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would commit to several other agreements in favor of Chrysler Financial in exchange for Chrysler waiving the “new liens” prohibition (Docket 483, PDF Page 9-10, 12).

<sup>25</sup> One commentator alleged that the loans to Chrysler Financial “were also intended as a bridge to further funding from a \$200bn Federal Reserve programme intended to support consumer credit,” i.e. TALF (See Dombey and Simon 2009)

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## V. Key Program Documents

### Summary of Program

- Automotive Industry Financing Program Chrysler LB Receivables Trust Secured Term Loan Summary of Terms (Chrysler Financial Term Sheet 2009)– Treasury document outlining the initially proposed terms of lending to Chrysler Financial's ABS master trust, Chrysler LB Receivables Trust. <https://www.treasury.gov/press-center/press-releases/Documents/011608%20term%20sheet%20chrysler%20fin.pdf>

### Implementation Documents

- Chrysler Financial Loan Agreement (January 14, 2009) (Chrysler Financial Loan Agreement 2009)– agreements executing lending to the Chrysler Financial ABS master trust which includes documents setting up the ABS master trust, a Trust Indenture, a Depositor Agreement, a Sale and Servicing Agreement, a Limited Guarantee Agreement, a Trust Agreement, and a Purchase Agreement. <https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/automotive-programs/Documents/05202009-chrysler%20financial.pdf>
- Chrysler Original Loan and Security Agreement (with amendments) (December 31, 2008) (Chrysler LSA 2008)– agreements (including amendments) to execute lending to Chrysler by Treasury. <https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/automotive-programs/Documents/Chrysler%20LSA%20as%20of%2005-26-10.pdf>
- Determination of Viability Summary Chrysler, LLC (March 30 2009) (Viability Summary 2009)– short evaluation of Chrysler's viability plan as well as the conditions under which the government will grant Chrysler further funding. It assumes Chrysler Financial's continued independence. <https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/automotive-programs/Documents/Chrysler-Viability-Assessment.pdf>

- Automotive Industry Financing Program (December 31, 2008) (Treasury AIFP Program Descriptions 2009)– *Initial regulatory guidance for aid under the AIFP. This document includes a discussion of what institutions would be eligible for participation in AIFP.*  
<https://web.archive.org/web/20090109120529/http://www.treasury.gov/initiatives/eesa/program-descriptions/aifp.shtml>

## Legal/Regulatory Guidance

- Re: Proposed Compensation Payments and Structures for Senior Executive Officers and Most Highly Compensated Employees (03/23/2010) (Treasury 2009a)– *Guidance on Chrysler Financial executive compensation and details on the plans for winding down Chrysler Financial.*  
[https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/executive-comp/Documents/20100323%20Chrysler%20Financial%202010%20Top%2025%200Determination%20\(3-23-10\).pdf](https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/executive-comp/Documents/20100323%20Chrysler%20Financial%202010%20Top%2025%200Determination%20(3-23-10).pdf)
- Master Auto Finance Agreement Term Sheet Dated April 30, 2009 (MAFA 2009)– *See PDF pages 212 to 222 of the Form 10-Q dated Aug 07, 2009 for the terms of the transitioning Chrysler’s preferred finance company from Chrysler Financial to GMAC.*  
<https://www.ally.com/about/investor/sec-filings/>

## Press Releases/Announcements

- Treasury Announces TARP Investments in Chrysler Financial (January 16, 2009) (Treasury 2009)– *statement announcing aid to Chrysler Financial that summarizes the terms of the loans.*  
<https://www.treasury.gov/press-center/press-releases/Pages/hp1362.aspx>

## Reports

- 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)
- Chrysler Financial Services Americas LLC (02/18/2009) (DBRS 2009) – *DBRS Rating Report analyzing the outlook and positioning of Chrysler Financial in early 2009.*  
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- 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->

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- The Unique Treatment of GMAC Under the TARP (03/10/2010) (Congressional Oversight Panel 2010) – *Congressional Oversight Panel analysis of the use of TARP funds in the support of GMAC and Chrysler Financial. Analysis centers on GMAC, but also cover Chrysler Financial in spring 2009.*  
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- FINANCIAL AUDIT: Office of Financial Stability (Troubled Asset Relief Program) Fiscal Year 2009 Financial Statements (December 2009) (Government Accountability Office 2009a) – *oversight report that includes the first mention by the GAO of the date that Chrysler Financial reached the maximum loan amount.*  
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- TROUBLED ASSET RELIEF PROGRAM: Continued Stewardship Needed as Treasury Develops Strategies for Monitoring and Divesting Financial Interests in Chrysler and GM (November 2009) (Government Accountability Office 2009) – *oversight report detailing the conditions of the support provided to the automotive industry and evaluating the government's actions in the auto rescue through November 2009. This includes the first mention by the GAO of Chrysler Financial's wind-down.*  
<https://www.gao.gov/products/GAO-10-151>
- 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>