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## Lessons Learned: Mara McNeill

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# Yale Program on Financial Stability

## Lessons Learned

Mara McNeill

By Mary Anne Chute Lynch

*Mara McNeill was senior counsel to the US Department of the Treasury on the Obama administration's Automotive Investment Financing Program (AIFP) during the Global Financial Crisis (GFC) of 2007–09. As senior counsel, McNeill was responsible for the department's \$80 billion financing of General Motors, Chrysler, Ally Financial, and Chrysler Financial. She worked with the Auto Team Task Force, the Troubled Assets Relief Program (TARP) legal team, and the Department of Treasury. The bipartisan AIFP team was charged with overseeing the government's efforts to assist the companies toward a "new lease on life," while exercising strong financial principles to protect the government's debt and equity investments.*

*The majority of the Auto Team left in August 2009, but McNeill served the Treasury for two years, directing other Treasury attorneys and outside counsel working on ongoing pieces of the project. In May 2011, McNeill returned to private practice, and she is currently president and CEO of Toyota Financial Savings Bank at Toyota North America. This "Lessons Learned" summary is based on an interview with Ms. McNeill.*

**In a crisis, having the right people on the government team is critical to its success. They should have key industry knowledge and the other essential skills, such as leadership, needed to do the task.**

Faced with a crisis as enormous as the Great Recession, a leader needs to know the right industries to turn to that can bring in people with a breadth of deep financial expertise and experience in structuring sophisticated deals, McNeill said. An effective team will be able and willing to apply their knowledge to ask the difficult questions. He notes that policymakers need:

the willingness to dig in and understand, to ask a lot of questions, and push on the assumptions. Questions like, "Is the industry pivotal or are there other emerging entities that can pick-up some of the things that the legacy institution is lifting?" . . . You need government officials who have understanding of the private sector and [its] dynamics.

In light of her experience during the Great Recession, McNeill also believes that strong leadership is vital to success, especially when deciding how significant and prolonged the government's involvement will be. She worries about a government that has an anti-business bent and constituencies taking government in that direction.

**Especially in a crisis, actions should be grounded in solid legal analysis.**

The initial issue facing the Treasury was whether the loans issued to auto companies were within the authority of the Troubled Assets Relief Program (TARP). The auto companies qualified as financial institutions because of their internal auto financing divisions, McNeill said. With the Department of Treasury's General Counsel, George Madison, McNeill briefed the Secretary of Treasury Tim Geithner on the legal analysis of how the loans fell within the TARP legislation:

[There were] risks in terms of people who could later come up and object that we weren't within proper authority. It was a lot of triage regarding what we could do with the loans, what an exception would look like, [and] what were the risks around the new administration making new advances.

It was equally important during a restructuring, said McNeill, to work with the business negotiators on the Task Force and the auto company representatives to delineate the rights under the current documents and the direction of the restructuring. "We had to think about structuring because we couldn't offer guarantees," she added.

As for utilizing the expedited Section 363 bankruptcy option, McNeill said: "I can't think of anything, when companies are at that stage, that could have been more expedient than a 363 bankruptcy."

**Attaching "strings" to the government's investment serves a very important purpose: to protect the taxpayers' investment in the companies.**

The government's assistance to the auto companies differed from its assistance to the finance companies—the auto companies had a much longer list of requirements to meet as conditions for ongoing assistance, including providing business plans for their restructurings, negotiating concessions from various stakeholders, and a change in management. The crux of it, McNeill explained, was that the government was the only debt financier out there, and with the funds coming from the American taxpayers, the Treasury aimed to get as much money back as it could.

Notably, Treasury's criteria for accepting restructuring proposals hinged on whether the auto companies offered viable plans to change their businesses in a way that put them on a path to long-term success. McNeill explained why this was so important:

There's no way to keep lending to an insolvent company because [then the loan] isn't really a loan anymore. It's an equity investment. You don't want to put equity investments in something that didn't already shed the extra liabilities that it had.

In shedding those liabilities, many stakeholders in General Motors, Chrysler, and Delphi, were disgruntled with the amounts they received. McNeill discussed why all stakeholders might not have been treated the same—"We're the Treasury, and we're going to bail them out; but that was not the government's obligation," she said. "You have to make the costs of interacting with the government a little painful." On a different note, she explained that when

seeking union concessions, parties had to acknowledge that the companies that emerged from bankruptcy would need a work force if they were going to succeed. This position gave them more leverage than so other stakeholders. Another condition to the loan to General Motors, McNeil explained, was that they bring in a new chairman from outside the auto industry and replace the CEO and half the board members putting new management in place to give the company a new a start and attend to the government's investment. (Since Fiat was partnering with Chrysler, and would control its day-to-day operations, this was not similarly required of Chrysler.)

**You will not be able to make perfectly calibrated predictions and estimates about how much assistance is needed. However, a blunt instrument can still be an effective tool.**

Because of the urgency involved in a crisis, all the facts surrounding an affected company may not be known, yet it is not always possible to delay acting until those facts are known. For these reasons, McNeil shared, decisions must be made based on the information available at the time, and sometimes, in hindsight, these decisions may look somewhat imprecise. There is no way to get around this. For example, McNeil shared, the government had to fund the General Motors debtor-in-possession loan upfront in the face of some uncertainty. The loan, which was converted to equity in the new company, was later criticized when the government sold the stock at a loss. According to McNeil, it was one of the “painful lessons learned”:

I think the only way to have avoided a loss with GM would have been to have predicted with more accuracy the exact amount of good financing that was needed. If we put \$10 billion less in the debt financing, we would have broken even, but there was no way to know that that wasn't going to be needed if we didn't put it in upfront, and there was no going back and getting it. I think when you have a club that you're using to try to solve a policy problem, it leaves room for possible errors . . . given the blunt instrument we had, that was the best we could do.

[...] If the bankruptcy had gone on for three more months, we would have needed that [extra \$10 billion], but we didn't know that we'd be able to get out as quickly as we wanted.

**Diplomacy can be very valuable in crisis negotiations.**

The image of the government in a crisis, even as a lender of last resort or rescuer, is often truncated to being tough and dictatorial—it has the money, and a company must take it or leave it on the terms bluntly stated. However, shared McNeill, it's not always as simple as that image suggests: Everything is complicated when you're the US government. As soon as people realize you are involved, everybody thinks they have hold-up value, she warned.

McNeill attributes the Treasury's success to senior adviser and member of the Auto Task Force Ron Bloom's efficient use of diplomatic tactics, especially when interacting with international creditors.

He was the best . . . He would take the calls from all of them, and he would listen to their sometimes-crazy demands, and tell them why they're so important, and all their great ideas, and why there was no way the Treasury was going to have a part to play in any of it. They would leave happy because of the amount of respect and dignity that he gave them while they were talking to us.

McNeill considers this a key lesson for all business negotiations and in life, and she now incorporates it into her private-sector work.

I think there is a little bit of an art in dealing with people who are not used to dealing with economic reality. That I saw him practice at a higher art level.

You win more people with honey. I do think you have to talk tough and let people know they are not going to extract something from the US government that is going to cause taxpayers to lose money. There's a way you can do that, [while still] showing the other side a lot of dignity.

**While oversight is necessary and a good thing, too many overseers who are not appropriately educated, or overseers who bring their political agendas, can be a bad thing.**

Too much oversight impedes progress when fast action is needed, shared McNeill.

One of the difficult circumstances was that we had 12 people working full time, but we had about 30 people trying to oversee us. Try to get work done when you're getting calls from the GAO and the Congressional Oversight Panel and the Special Investigator General of TARP [SIGTARP].

Clearly, government oversight is needed, but having spent hours with oversight staff, McNeill cautions government leaders:

Remember, it's not only the expertise of the bailout teams, but it's the oversight people that you have monitoring them that matters for proper execution and governance. Don't torture teams in the heat of a crisis by having oversight bodies with people who have absolutely no business experience.

**Crisis fighting is not about just one moment in time. The efforts have lingering effects, and that can be a good thing.**

When asked to compare her GFC experience with the current COVID-19 pandemic, McNeill pointed to how the efforts taken during the GFC are paying dividends for banks. There was little companies could have done to prepare for another crisis she said, however, after the Great Recession, banks were required to hold larger amounts of capital. So, she continued, when the current COVID-19 pandemic occurred, they were well capitalized, minimizing the immediate negative impacts.

As CEO of Toyota Financial Savings Bank at Toyota North America, her bank has benefited from the required increased capital base and from the Paycheck Protection Program (PPP) implemented in the COVID-19 crisis.

My small bank was able to help put out about \$500 million in PPP loans to auto dealers. The program helped tremendously. Dealers were closed for business, and they didn't know how long they were going to be closed. They would have had to fire more people. Nothing's perfect, but I do think that a number of the efforts that have been taken this time have been well-crafted.

[...] We had more of a dip back in the Great Recession—and we really haven't had any dip this go-round . . . We do have good capital, and we are much more linked to the auto industry. It's more of a V-recovery for the auto industry so far, and that's been helpful to us.

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