Congressional Oversight Panel

September 16, 2010

SEPTEMBER OVERSIGHT REPORT*

Assessing the TARP on the Eve of Its Expiration

*Submitted under Section 125(b)(1) of Title 1 of the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343

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Executive Summary*

In December 2009, in anticipation of the scheduled expiration of Treasury's authority under the Troubled Asset Relief Program (TARP) on December 31, 2009, the Panel issued a report that attempted to gauge the program's overall effectiveness. "There is broad consensus that the TARP was an important part of a broader government strategy that stabilized the U.S. financial system by renewing the flow of credit and averting a more acute crisis," the Panel wrote. "Although the government's response to the crisis was at first haphazard and uncertain, it eventually proved decisive enough to stop the panic and restore market confidence. Despite significant improvement in the financial markets, however, the broader economy is only beginning to recover from a deep recession, and the TARP's impact on the underlying weaknesses in the financial system that led to last fall's crisis is less clear."

The TARP did not, however, expire on its original schedule. Shortly after the release of the Panel's report, the Secretary of the Treasury exercised his legal authority to extend the program until October 3, 2010 – the latest date authorized by statute. This month, in anticipation of this final expiration of the program's most significant authorities, the Panel is revisiting and expanding upon its earlier findings about the program's effectiveness. The Panel will continue to explore these broad issues, as well as to evaluate specific TARP programs, in further monthly reports until its statutory authority expires on April 3, 2011.

When the Secretary extended the TARP, he stated that use of TARP funds in the extension period would be limited to three areas: providing mortgage foreclosure relief, extending capital to small and community banks, and increasing support for the securitization market through the TALF. He also noted that by extending the TARP, Treasury was preserving its authority to intervene swiftly in the event that the financial markets showed signs of another meltdown. This second justification ultimately played a much more important role during the extension period, as Treasury did not add any new funding to any programs intended to address foreclosures, small bank capitalization, or the securitization market. Treasury therefore used the TARP's extension more to extend the government's implicit guarantee of the financial system than to address the specific economic problems that the Secretary cited.

Over the last 10 months, Treasury's policy choices have been increasingly constrained by public anger about the TARP. The program is now widely perceived as bailing out Wall Street banks and domestic auto manufacturers while doing little for the 14.9 million workers who are unemployed, the 11 million homeowners who are underwater on their mortgages, or the

*The Panel adopted this report with a 4-0 vote on September 15, 2010.

countless other families struggling to make ends meet. Treasury acknowledges that, as a result of this perception, the TARP and its programs are now burdened by a public "stigma."

Some of this stigma has arisen due to valid concerns with Treasury's implementation of TARP programs and with its transparency and communications. For example, Treasury initially insisted that only healthy banks would be eligible for capital infusions under the Capital Purchase Program (CPP). When it became clear that some of these banks were in fact on the brink of failure, all participating banks – even those in comparatively strong condition – became tainted in the public eye. Stigma may also have arisen due to deep public frustration that, whatever the TARP's successes, it has not rescued many Americans from suffering enormous economic pain. Treasury claims that the pain would have been far worse if the TARP had never existed, but this hypothetical scenario is difficult to evaluate – in part due to regrettable omissions in data collection on Treasury's part. For example, since the Panel's second report in January of 2009, it has called for Treasury to make banks accountable for their use of the funds they received. It has also urged Treasury to be transparent with the public, in particular with respect to the health of the banks receiving the funds. The lack of these data makes it more difficult to measure the TARP's success and thus contributes to the TARP's stigmatization.

The program is today so widely unpopular that Treasury has expressed concern that banks avoided participating in the CPP due to stigma, and the legislation proposing the Small Business Lending Fund, a program outside the TARP, specifically provided an assurance that it was not a TARP program. Popular anger remains high about taxpayer support of America's largest banks, and that anger has only intensified in light of the continuing economic turmoil. The TARP's unpopularity may mean that, unless the program's effectiveness can be convincingly demonstrated, the government will not authorize similar policy responses in the future. Thus, the greatest consequence of the TARP may be that the government has lost some of its ability to respond to financial crises.

In order to gain a full perspective on the TARP, the Panel consulted with several outside experts: Professors Alan Blinder, Simon Johnson, Anil Kashyap, and Kenneth Rogoff. While differing on numerous points, these economists generally agreed that the TARP was both necessary to stabilize the financial system and that it had been mismanaged and could pose significant costs far into the future. The early change in TARP strategy from asset purchases to capital injections, followed by the rollout of numerous seemingly unconnected programs, combined with largely ineffective communication of the reasoning behind these actions, spread confusion in the public and undermined trust in the TARP. Further, the experts consulted by the Panel unanimously felt that the program created significant moral hazard. After all, the government had alternatives for the form of its intervention. As an alternative to subsidizing large, distressed banks, it had the option of putting them into liquidation or receivership, removing failed managers, and wiping out existing shareholders. The fact that the government

chose not to impose such stringent costs upon TARP recipients meant that the program's moral hazard costs were much greater than necessary.

Ultimately, any evaluation of the TARP must be guided by the program's stated goals. Congress authorized Treasury to use the TARP in a manner that "protects home values, college funds, retirement accounts, and life savings; preserves homeownership and promotes jobs and economic growth; [and] maximizes overall returns to the taxpayers of the United States." But economic weaknesses persist. Since the TARP was authorized in October 2008, 7.1 million homeowners have received foreclosure notices. Since their pre-crisis peaks, home values have dropped 28 percent, and stock indices – which indicate the health of many Americans' most significant investments for college and retirement – have fallen 30 percent. In short, although the TARP provided critical government support to the financial system when the financial system was in a severe crisis, its effectiveness at pursuing its broader statutory goals has been far more limited.

Section One:

A. Introduction

Next month marks the two-year anniversary of the inception of the Troubled Asset Relief Program (TARP).[1] It also coincides with the termination of Treasury's capacity to authorize new expenditures under the TARP. This milestone provides an opportunity to evaluate the program's performance from a variety of perspectives.

The TARP was enacted at the height of the severe financial collapse that shook the world in the latter half of 2008. Although initially conceived as a government initiative to rescue financial institutions by purchasing their worst assets, the Treasury Department quickly shifted the program's focus to providing hundreds of billions of dollars of capital support for hundreds of banks. Over the initial months the program evolved to rescue a major insurance company and two domestic automobile manufacturers. Additional efforts were undertaken to support the restart of the securitization markets, to bolster small business lending, and to address the mortgage foreclosure crisis.

In December 2009, Treasury Secretary Timothy Geithner sent a letter to congressional leaders exercising his authority to extend the TARP through October 3, 2010. In his letter, the Secretary made renewed commitments to use TARP resources to address remaining critical issues in the Administration's efforts to promote financial recovery. Except in an emergency, the Secretary's letter promised to focus new commitments of TARP resources in three areas: (1) mortgage foreclosure relief; (2) small business lending, including by providing capital to small and community banks; and (3) increasing support for securitization markets through the Term Asset-Backed Securities Loan Facility (TALF).

At the time of its initial enactment, the TARP was limited to making no more than $700 billion in financial commitments at any time.[2] The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), enacted in July 2010, reduced the ceiling on TARP expenditures from $698.7 billion to $475 billion, and prohibited the Treasury Department from establishing any new programs under EESA. Hence, Treasury has only a limited amount of time

[1] The Troubled Asset Relief Program (TARP) was authorized and funded in the Emergency Economic Stabilization Act of 2008 (Pub. L. 110-343) enacted October 3, 2008. *See* 12 U.S.C.§ 5201.

[2] Congress reduced the $700 billion ceiling, originally specified in EESA, by $1.3 billion to $698.7 billion in the Helping Families Save Their Homes Act of 2009, enacted on May 20, 2009. *See Helping Families Save Their Homes Act of 2009*, Pub. L. 111-22, § 202(b) (May 22, 2009) (online at frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ022.111.pdf) (hereinafter "Helping Families Save Their Homes Act of 2009").

remaining – until October 3, 2010 – to undertake any further TARP spending, and its remaining funding has been sharply reduced.

As with prior reports, this report can provide only an interim evaluation of the TARP. The effects of the TARP will be debated and analyzed for years to come. The impact of the financial crisis that shook the world beginning in 2007 continues to be felt, and much of the economic and financial data necessary to reach more definitive conclusions about the effectiveness of the TARP are not yet available.

This month's report first provides an update to the topics encompassed by the Panel's reports since December 2009, the last time that the Panel broadly evaluated the TARP. It then describes current estimates on the subsidy cost – likely losses or gains – of the various programs that Treasury established under the TARP. The report then describes the actions taken since Treasury extended its authority, in December 2009, and concludes with an evaluation of the TARP in the context of the health of the U.S. economy, aided by the views of several prominent economists. This report builds on all of the Panel's previous work, but in particular, it is intended as a follow-up to the Panel's April 2009 and December 2009 reports, which also provided evaluations of the TARP as a whole.

B. Summary of the TARP in 2010

1. Updates to the Panel's Oversight of the TARP in 2010

To assess the overall effect of the TARP, it is necessary to consider the performance of the programs that underlie it. This section provides updates on the major TARP investments either since the Panel's December report or the most recent report on each topic, focusing on actions by the Administration, Congress, or Treasury.[3]

The Panel concluded in its December 2009 report, when TARP had been in existence for slightly more than a year, that the "TARP was an important part of a broader set of government actions that stabilized the U.S. financial system by renewing the flow of credit and averting a more acute crisis" but that "the TARP's impact on the underlying weaknesses in the financial system that led to [the] crisis is less clear." Nine months later, few comprehensive empirical studies on the government's concerted response to the crisis have been published that would supplement that finding.[4] Research attempting to isolate only the TARP's impact is even more

[3] With the release of this report, the Panel has published 22 monthly reports and two supplementary reports since December 2008. To view these reports, *see* cop.senate.gov/reports/. *See* Section C for a description of the projected costs of the TARP, and Sections D and E for a fuller analysis of the TARP's effect.

[4] Although some government agencies have released commentary assessing TARP's impact, including Treasury and the Federal Reserve, these lack either empirical evidence or peer-review or both, thereby limiting some of their analytic value. *See* Alan Blinder and Mark Zandi, *How the Great Recession Was Brought to an End* (July 27, 2010) (online at www.economy.com/mark-zandi/documents/End-of-Great-Recession.pdf) (hereinafter "How the

sparse. The obstacles to analysis are many: not only is the program still in process, but numerous financial rescue programs were also implemented by different agencies, including Treasury, the FDIC, and the Federal Reserve. These programs interact with each other by design, and it is therefore difficult to isolate the TARP's effect. Second, "markets were dynamically reacting and adjusting" to rapid changes in financial conditions around the time of the government's interventions, which makes it almost impossible to sort out causal effects and difficult to develop a compelling hypothetical alternative scenario against which to test theories.[5] Such research requires large amounts of data, particularly firm-level data, some of which is not publicly available and much of which was not required to be kept or collected by Treasury.[6]

Great Recession Was Brought to an End"); John B. Taylor, *An Exit Rule for Monetary Policy* (Feb. 10, 2010) (online at www.stanford.edu/~johntayl/House%20FSC%20Feb%2010%202010.pdf) (hereinafter "An Exit Rule for Monetary Policy").

[5] An Exit Rule for Monetary Policy, *supra* note 4, at 2.

[6] The Panel has been consistent in its calls for additional data collection and disclosure. *See* Congressional Oversight Panel, *January Oversight Report: Accountability for the Troubled Asset Relief Program*, at 10 (Jan. 9, 2009) (online at cop.senate.gov/documents/cop-010909-report.pdf) ("Treasury should monitor lending at the individual TARP recipient level"); Congressional Oversight Panel, *March Oversight Report: Foreclosure Crisis: Working Toward a Solution*, at 15, 26, 48 (Mar. 6, 2009) (online at cop.senate.gov/documents/cop-030609-report.pdf) (hereinafter "March 2009 Oversight Report") (recommending that Congress "create a national mortgage loan performance reporting requirement," and that federal banking and housing regulators make these data publicly available); Congressional Oversight Panel, *May Oversight Report: Reviving Lending to Small Businesses and Families and the Impact of the TALF*, at 56 (May 7, 2009) (online at cop.senate.gov/documents/cop-050709-report.pdf) (hereinafter "May 2009 Oversight Report") ("Treasury, the Federal Reserve Board, the SBA, or some other agency must strive to compile comprehensive, timely information on small business lending across the country."); Congressional Oversight Panel, *August Oversight Report: The Continued Risk of Troubled Assets*, at 50 (Aug. 11, 2009) (online at cop.senate.gov/documents/cop-081109-report.pdf) (hereinafter "August 2009 Oversight Report") ("Treasury and relevant government agencies should work together to move financial institutions toward sufficient disclosure of the terms and volume of troubled assets on banks' books."); Congressional Oversight Panel, *September Oversight Report: The Use of TARP Funds in Support and Reorganization of the Domestic Automotive Industry*, at 92 (Sept. 9, 2009) (online at cop.senate.gov/documents/cop-090909-report.pdf) (hereinafter "September 2009 Oversight Report") ("New Chrysler and New GM should provide the taxpayer investors with a set of metrics by which the companies' success can be measured."); Congressional Oversight Panel, *October Oversight Report: An Assessment of Foreclosure Mitigation Efforts After Six Months*, at 93, 111, 112 (Oct. 9, 2009) (online at cop.senate.gov/documents/cop-100909-report.pdf) (hereinafter "October 2009 Oversight Report") (recommending Treasury: (1) release redefault assumptions to the public, (2) collect data on a broader universe of borrowers facing foreclosure, beyond those eligible for HAMP, and (3) apply appropriate sanctions so that all participants follow program guidelines); Congressional Oversight Panel, *November Oversight Report: Guarantees and Contingent Payments in TARP and Related Programs*, at 4 (Nov. 6, 2009) (online at cop.senate.gov/documents/cop-110609-report.pdf) (hereinafter "November 2009 Oversight Report") (recommending Treasury provide regular detailed disclosures relating to Citigroup's asset guarantee, and disclose a cost-benefit analysis of all options considered before implementing the asset guarantee protection); Congressional Oversight Panel, *December Oversight Report: Taking Stock: What Has the Troubled Asset Relief Program Achieved*, at 108-111 (Dec. 9, 2009) (online at cop.senate.gov/documents/cop-120909-report.pdf) (hereinafter "December 2009 Oversight Report"); Congressional Oversight Panel, *January Oversight Report: Exiting TARP and Unwinding its Impact on the Financial Markets*, at 141 (Jan. 13, 2010) (online at cop.senate.gov/documents/cop-011410-report.pdf) (hereinafter "January 2010 Oversight Report") ("Any future recipient of TARP funds … must be obligated to give a complete accounting of what they did with the money…"); Congressional Oversight Panel, *March Oversight Report: The Unique Treatment of GMAC under the TARP*, at 121 (Mar. 10, 2010) (online at cop.senate.gov/documents/cop-031110-report.pdf) (hereinafter "March 2010 Oversight Report") ("Treasury should periodically disclose its estimate of the overall

This task is further complicated by a lack of similar prior crises to use in comparisons. Finally, such an analysis would need to look at both institutions that received TARP assistance and those that did not.

Two studies that review the performance of the government's concerted rescue efforts, including the TARP, conclude that the government's intervention had a dramatic impact in preventing a much more severe economic downturn and promoting economic recovery. Economists Alan Blinder and Mark Zandi find that the "TARP has been a substantial success, helping to restore stability to the financial system and to end the freefall in housing and auto markets."[7] Similarly, the International Monetary Fund (IMF) in its Financial Sector Assessment Program for the United States finds that "[a]n aggressive policy response helped avert the collapse of the U.S. financial system" and that "[t]he TARP played a critical role in this success."[8]

Other studies by economist John Taylor draw a different conclusion, assessing the government's response during three periods: "pre-panic, panic, and post panic, where the period of the panic is from September to November 2008." One study finds that the government's "unpredictable and confusing" intervention before the panic failed to stem, and even contributed

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subsidy or loss rate" for each company in the AIFP.); Congressional Oversight Panel, *April Oversight Report: Evaluating Progress of TARP Foreclosure Mitigation Programs*, at 91, 96, 94 (Apr. 14, 2010) (online at cop.senate.gov/documents/cop-041410-report.pdf) (hereinafter "April 2010 Oversight Report") (recommending Treasury release: (1) more specific loan-level data, (2) greater information on compliance results and sanctions, (3) regular publicly available data on the performance of all HAMP permanent modifications through 2017); Congressional Oversight Panel, *May Oversight Report: The Small Business Credit Crunch and the Impact of the TARP*, at 83 (May 13, 2010) (online at cop.senate.gov/documents/cop-051310-report.pdf) (hereinafter "May 2010 Oversight Report") (recommending Treasury "establish a rigorous data collection system or survey that examines small business finance in the aftermath of the credit crunch and going forward."); Congressional Oversight Panel, *August Oversight Report: The Global Context and International Effects of the TARP*, at 4 (Aug. 12, 2010) (online at cop.senate.gov/documents/cop-081210-report.pdf) (hereinafter "August 2010 Oversight Report") ("the Panel strongly urges Treasury to start now to report more data about how TARP and other rescue funds flowed internationally…").

[7] How the Great Recession Was Brought to an End, *supra* note 4, at 2. The Blinder and Zandi paper is interesting because it looks also at the relative impact of the financial rescue efforts, of which the TARP was a major component, and compares them to the separate economic stimulus measure enacted by Congress in the American Recovery and Reinvestment Act (ARRA). Blinder and Zandi estimate that without the financial rescue programs, but assuming enactment of ARRA, the American economy would not have come out of the recession and begun growing again until about July 2010, whereas if only the financial rescue measures had been taken without the stimulus measure, the economy would have begun its recovery in late 2009. *Id.* at 7. Some market commentators have criticized this study for its failure to incorporate the "financial system" into its models in a rigorous fashion. Treasury conversations with Panel staff (Aug.13, 2010).

[8] International Monetary Fund, *United States: Publication of Financial Sector Assessment Program Documentation – Financial System Stability Assessment*, at 12 (July 2010) (online at www.imf.org/external/pubs/ft/scr/2010/cr10247.pdf).

to, the financial crisis.[9] During the panic, Taylor argues, Treasury's clarification that the TARP would be used to make capital injections, rather than purchase troubled assets, was chiefly responsible for halting the market panic.[10] After the panic, another Taylor study contends, at least one part of the government's rescue, the Federal Reserve's extraordinary measures, have had very little effect. The study concludes that "whether one believes that these programs worked or not, there are reasons to believe that their consequences going forward are negative."[11]

The overall recovery of the U.S. economy, as marked by economic expansion, began in the third quarter of 2009, but the recovery, thus far, has been slow and certain economic sectors, particularly housing, continue to struggle, while others, such as the automobile industry, appear just to be beginning to return to pre-2008 levels.[12] The Panel continues to focus on the TARP's role not only in the broad recovery of the macroeconomy, but also in restoring the health of the sectors that have been the subject of special efforts of the TARP and related federal programs. While the TARP was effective in initially calming the market panic and provided critical liquidity to the financial system, it has not so far succeeded in facilitating credit access to small businesses or mitigating the tide of foreclosures.[13]

a. Financial Institutions

i. Treasury's Exit Strategy and the Implicit Guarantee

The Panel's January 2010 report examined Treasury's exit strategy from the TARP and detailed the dual legacy that the program will likely leave behind after its formal expiration: Treasury's holding billions of dollars worth of private-company securities,[14] and an implicit

[9] An Exit Rule for Monetary Policy, *supra* note 4, at 3, 6. *See also* John B. Taylor, *The Financial Crisis and the Policy Responses: An Empirical Analysis of What Went Wrong*, at 18 (Nov. 2008) (online at www.stanford.edu/~johntayl/FCPR.pdf) (hereinafter "The Financial Crisis and the Policy Responses"). ("In this paper I have provided empirical evidence that government actions and interventions … prolonged, and worsened the financial crisis .... They prolonged it by misdiagnosing the problems in the bank credit markets and thereby responding inappropriately by focusing on liquidity rather than risk. They made it worse by providing support for certain financial institutions and their creditors but not others in an ad hoc way without a clear and understandable framework.").

[10] *See* The Financial Crisis and the Policy Responses, *supra* note 9, at 16; An Exit Rule for Monetary Policy, *supra* note 4, at 3 ("This clarification was a major reason for the halt in the panic in my view.").

[11] *See* An Exit Rule for Monetary Policy, *supra* note 4, at 3. For a list of the extraordinary Federal Reserve measures discussed in this paper, *see id.* at 7.

[12] The National Bureau of Economic Research, which is widely viewed as the organization that determines when economic recessions begin and end in the United States, has yet to say when the recession that began in the fourth quarter of 2008 came to an end (or if it has indeed done so yet). *See* Section E.1, *infra*, for a discussion of current economic conditions.

[13] *See* Sections D and E.2, *infra*.

[14] The report discussed the process of managing assets purchased under the TARP, or arranging their sale to investors, noting that it may extend over a number of years. The Panel also addressed the various theories on how to eliminate the implicit guarantee for institutions deemed "too big to fail" and described how moral hazard can distort

government guarantee that certain private financial institutions are too systemically important to be allowed to fail. Congress attempted to address the problem of "too big to fail" in the recently enacted Dodd-Frank Act. The Act takes a variety of approaches in its attempt to address "too big to fail." It empowers the Federal Deposit Insurance Corporation (FDIC) to resolve financial companies whose failure poses a systemic risk to the nation's financial stability.[15] The Act provides that systemic considerations will be evaluated jointly by the FDIC, the Federal Reserve Board, and the Treasury Secretary (in consultation with the President).[16] The legislation further requires systemic institutions with more than $50 billion in assets to submit a plan for their "orderly resolution" in the event of severe financial distress, commonly referred to as a "living will."[17] The FDIC is in the process of implementing its new resolution and supervisory authorities. Additionally, the legislation creates a Financial Stability Oversight Council charged with identifying and responding to systemic risks in the U.S. economy.[18] The Council will

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market prices and endanger the long-term health of the nation's economy. *See* January 2010 Oversight Report, *supra* note 6. In the Panel's June hearing, Secretary Geithner elaborated on Treasury's investment management strategy, stating that moving forward Treasury will "dispose of investments as soon as practicable … encourage private capital formation to replace government investments … not intervene in the day-to-day management of private companies in which we have invested, and, as we implement this strategy, we will seek out the best advice available." Congressional Oversight Panel, Written Testimony of Timothy F. Geithner, secretary, U.S. Department of the Treasury, *COP Hearing with Treasury Secretary Timothy Geithner*, at 5 (June 22, 2010) (online at cop.senate.gov/documents/testimony-062210-geithner.pdf).

[15] The FDIC's new resolution authority includes both Bank Holding Companies (BHCs) and nonbank financial companies such as securities broker-dealers and hedge funds. To resolve registered broker-dealers, the FDIC will coordinate its efforts with the Securities Investor Protection Corporation (SIPC). Where an insurance company is concerned, the company will be resolved by the state regulator under state law. The FDIC would step in to complete the resolution if the state regulator had not taken action within 60 days. *See Dodd-Frank Wall Street Reform and Consumer Protection Act*, Pub. L. No. 111-203 (2010) (hereinafter "Dodd-Frank Wall Street Reform and Consumer Protection Act"). Some commentators have raised concerns that final decisions and duties are left to the same federal and state banking and other regulatory agencies that failed to detect or prevent the last financial crisis. *See* Cato Institute, *Dodd's Do-Nothing Financial 'Reform'* (May 21, 2010) (online at www.cato.org/pub_display.php?pub_id=11832) (hereinafter "Dodd's Do-Nothing Financial 'Reform'").

[16] Two exceptions apply. If the failing financial company is a broker-dealer or its largest subsidiary is a broker-dealer, the Securities and Exchange Commission (SEC), rather than the FDIC, would help make the systemic determination. If the company is an insurance company or its largest subsidiary is an insurance company, the Director of the new Federal Insurance Office would help make the systemic determination, instead of the FDIC. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, *supra* note 15.

[17] Some market participants question the validity of "living wills," suggesting that the plans would not be updated frequently enough to keep pace with the ever-shifting portfolios of large complex financial institutions. Market participants' conversations with Panel staff (July 30, 2010). Others explain that because many of these firms are interconnected in nontransparent ways, government agencies' resolution authority could not overcome the "enormous operational challenges in unreasonably short periods of time." John F. Bovenzi, *Another View: Why Banks Need Living Wills*, New York Times DealBook Blog (July 8, 2010) (online at dealbook.blogs.nytimes.com/2010/07/08/another-view-why-banks-need-living-wills/).

[18] The Council is made up of 10 voting members and 5 nonvoting members. Voting members are: the Secretary of the Treasury (also Council Chair), the Chairman of the Board of Governors of the Federal Reserve, the Comptroller of the Currency, Chairperson of the FDIC, Chairman of the National Credit Union Administration, Director of the Consumer Financial Protection Bureau, Chairman of the SEC, Chairperson of the Commodity Futures Trading Commission, the Director of the Federal Housing Finance Agency, and an independent insurance

identify nonbank financial companies to be supervised by the Federal Reserve and offer recommendations concerning prudential standards for institutions supervised by the Federal Reserve, including rules for risk-based capital, leverage, liquidity, contingent capital, resolution plans, credit exposure reports, concentration limits, short-term debt limits, enhanced public disclosures, and overall risk management.[19] Despite substantial government activity in this area, however, the implicit guarantee of the TARP is proving difficult to unwind.[20]

ii. AIG

In its June report, the Panel examined Treasury's role in the taxpayer-backed rescue of American International Group (AIG) and its creditors, stating that the Federal Reserve and Treasury failed to exhaust all other options before committing $85 billion in taxpayer funds. Total government assistance to AIG, much of it from the Federal Reserve Bank of New York (FRBNY), ultimately reached $182 billion.[21]

AIG intends to repay the government predominantly through asset sales. At present, however, and as described further in Section C.2, AIG's ability to repay FRBNY and Treasury remains unclear.[22]

iii. Small Banks

The Panel's July 2010 report noted that the 690 small and medium-sized banks that participated in the Capital Purchase Program (CPP) are likely to remain in the program for an

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expert. Nonvoting members are the Director of the Office of Financial Research, the Director of the Federal Insurance Office, a State insurance commissioner, a State banking supervisor, and a State securities commissioner. Dodd-Frank Wall Street Reform and Consumer Protection Act, *supra* note 15, § 18.

[19] Dodd-Frank Wall Street Reform and Consumer Protection Act, *supra* note 15. Some commentators argue that by allowing the Financial Stability Oversight Council to designate firms as systemically risky, these firms receive an unfair marketplace advantage and an implicit governmental stamp of approval, allowing them to obtain lower costs of funds. *See , e.g.*, Dodd's Do-Nothing Financial 'Reform', *supra* note 15.

[20] For a discussion of various effects of the implicit guarantee, such as a ratings increase associated with "too big to fail," *see* Sections E.2, E.3.b, and F.1, *infra*.

[21] The Panel also stated that the government failed to address perceived conflicts of interest. By not exercising the government's negotiating leverage to protect taxpayers or to maintain market discipline, AIG's rescue created an implicit guarantee of an institution that was "too big to fail." This resulted in risk to taxpayers and distortion of the marketplace by transforming highly risky derivative bets into fully-guaranteed payment obligations. *See* Congressional Oversight Panel, *June Oversight Report: The AIG Rescue, Its Impact on Markets, and the Government's Exit Strategy*, at 15 (June 10, 2010) (online at cop.senate.gov/documents/cop-061010-report.pdf) (hereinafter "June 2010 Oversight Report").

[22] As of July 2010, CBO, OMB, and Treasury are projecting losses in the amount of $36 billion, $50 billion, and $45 billion, respectively, from the assistance provided to AIG; however, the estimated losses have steadily decreased since the initial phases of the AIG rescue. *See* Sections C and C.2 for an assessment of the costs of TARP assistance to AIG.

extended period, and that some may experience difficulty exiting.[23] Since the Panel's report, Treasury released the results of its 2009 "use of capital" survey for banks that participated in the CPP. According to the survey, 85 percent of respondents stated that they used their CPP capital to either increase lending or decrease it less than they would have otherwise, although the degree to which lending levels "improved" are not specified. Nearly half of the respondents also stated that they used their capital to increase loan-loss reserves or as a non-leveraged increase to total capital.[24] Treasury did not monitor lending at the individual TARP recipient level, however, nor require CPP recipients to report on their use of funds,[25] so these results can not be independently verified.

In July 2010, Treasury began allowing Community Development Financial Institutions (CDFIs) to exchange their CPP investments for equivalent securities under Treasury's Community Development Capital Initiative (CDCI); currently, 11 CDFIs have exchanged $110 million.[26] These transactions lower the dividend rate these institutions pay from 5 percent to 2

[23] Further, the report noted the disparity between these smaller institutions and the 17 large banks that participated in the CPP. Smaller banks operate without a "too big to fail" guarantee, limiting their flexibility relative to their larger competitors. Smaller banks are also disproportionately exposed to commercial real estate, where future losses are likely, and are often privately held or thinly traded, limiting their access to funding from the capital markets. Given the current distressed nature of the small bank sector, it is likely many of these smaller institutions will remain in the CPP for an extended period, while smaller banks that cannot generate sufficient earnings or raise capital to repay may become trapped, with no way either to escape the CPP or to pay their required dividends, forcing some otherwise well-run institutions to default on their obligations, consolidate, or collapse completely. The Panel also found that CPP institutions, despite being deemed "healthy" by their respective primary regulator, appeared to be no healthier than other small banks. In addition, the Panel found little evidence that the CPP helped improve credit access for small businesses or strengthened the small bank sector in general. *See* Congressional Oversight Panel, *July Oversight Report: Small Banks in the Capital Purchase Program* (July 14, 2010) (online at cop.senate.gov/documents/cop-071410-report.pdf) (hereinafter "July 2010 Oversight Report").

[24] U.S. Department of the Treasury, *Annual Use of Capital Survey, 2009 – Capital Purchase Program*, at 2 (July 13, 2010) (online at www.financialstability.gov/useofcapital/Annual%20Use%20of%20Capital%20Survey%20Results,%202009%20-%20Capital%20Purchase%20Program.pdf).

[25] Treasury did require the top 22 CPP recipient banks to submit lending data and released monthly summaries to the public. When banks repaid their CPP funds, however, Treasury did not require them to continue to submit lending data. Consequently, Treasury ceased publishing this report, as aggregate month to month changes no longer allowed for meaningful comparisons. The most recent report, issued on January 15, 2010, includes data through the end of November 2009, although Treasury continues to publish the individual bank submissions and compile that data into an abridged "snapshot." *See* U.S. Department of the Treasury, *Monthly Lending and Intermediation Snapshot* (updated Aug. 16, 2010) (online at www.financialstability.gov/impact/monthlyLendingandIntermediationSnapshot.htm).

[26] U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at www.financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf) (hereinafter "Sept. 3 TARP Transactions Report").

percent, and lengthens the period before they are required to pay a 9 percent dividend rate from five years to eight years.[27]

b. Small Business Lending

In its May 2010 report, the Panel examined the contraction in small business lending and noted that Treasury has launched several programs aimed, in whole or in part, to improve small business credit availability, but that these programs have not had a noticeable effect.[28] In focusing on measures to increase the supply of small business loans, the Panel's report noted, Treasury's actions may ultimately be ineffective if the demand for small business loans fails to keep pace.[29] The Panel also evaluated the proposed Small Business Lending Fund (SBLF), which the Administration sent to Congress shortly before publication of the report. On June 17, 2010 the House of Representatives passed a different version of the SBLF for banks with less

[27] Treasury made an additional investment of $10.2 million in one institution at the time of the exchange. U.S. Department of the Treasury, *Troubled Assets Relief Program Monthly 105(a) Report – July 2010* (Aug. 10, 2010) (online at www.financialstability.gov/docs/105CongressionalReports/July%202010%20105(a)%20Report_Final.pdf) (hereinafter "TARP Monthly 105(a) Report – July 2010").

[28] *See* May 2010 Oversight Report, *supra* note 6. The Panel's February 2010 report also raised concerns that a wave of commercial real estate loan losses over the next four years could jeopardize the stability of many banks, particularly smaller community banks, and trigger severe economic damage. The Panel noted that smaller banks, despite being disproportionately exposed to commercial real estate loans compared to their larger counterparts, did not undergo the same stress tests to assess institutional soundness as the 19 large bank holding companies. Because small banks play a critical role in financing small businesses the widespread failure of a number of small banks could disrupt local communities and undermine the economic recovery. The Panel highlighted the need for Treasury and bank supervisors to address quickly and transparently the threats facing the commercial real estate markets. *See* Congressional Oversight Panel, *February Oversight Report: Commercial Real Estate Losses and the Risk to Financial Stability* (Feb. 10, 2010) (online at cop.senate.gov/documents/cop-021110-report.pdf) (hereinafter "February 2010 Oversight Report"). While capital is returning to commercial real estate in liquid sectors like real estate investment trusts (REITs) and commercial mortgage-backed securities (CMBS), and Moody's Commercial Property Price Index indicates recovery in commercial real estate asset price levels, these indicators may be misleading due to the current lack of liquidity in commercial real estate markets. Transaction volume fell nearly 90 percent from 2007 to 2009, and vacancy rates in the first quarter of 2010 were almost 20 percent nationally. *See* PIMCO, *U.S. Commercial Real Estate Project*, at 2-4, 9 (June 2010) (online at www.pimco.com/Documents/PIMCO_Commercial_%20Real_Estate%20June2010_US.pdf). The largest commercial real estate loan losses are projected for 2011 and beyond, and losses at banks alone could range as high as $200 billion-$300 billion. *See* PIMCO, *U.S. Commercial Real Estate Project*, at 9 (June 2010) (online at www.pimco.com/Documents/PIMCO_Commercial_%20Real_Estate%20June2010_US.pdf). Representative Walt Minnick (D-Idaho), is proposing a temporary credit-guarantee program within Treasury for new loans under $10 million that finance commercial properties. The program would be overseen by a new board housed at Treasury made up of the Treasury Secretary, other federal regulators, and industry experts, who would set criteria for loans receiving the federal backing. Treasury would collect fees from banks in exchange for issuing the guarantees. *See* Commercial Real Estate Stabilization Act of 2010, H.R. 5816, 111th Congress.

[29] In the second quarter of 2010, respondents to the Federal Reserve Board's Survey of Senior Loan Officers were more likely to report weaker demand for small business loans than to report increased demand. *See* Board of Governors of the Federal Reserve System, *July 2010 Senior Loan Officer Opinion Survey on Bank Lending Practices* (Aug. 16, 2010) (online at www.federalreserve.gov/boarddocs/snloansurvey/201008/fullreport.pdf) (hereinafter " July 2010 Senior Loan Officer Opinion Survey"); May 2010 Oversight Report, *supra* note 6, at 74.

than $10 billion in assets.[30] The Senate's version of this legislation is pending as of September 14, 2010.

Since the publication of the May 2010 report, Treasury also revised its commitment to purchase SBA-guaranteed secondary market securities. After initially committing $15 billion to the program, Treasury's recently revised commitment significantly lowers its potential investment to $400 million.[31]

c. Auto Industry

The Panel's March 2010 report examined GMAC's unique treatment under the TARP and concluded that Treasury's early decisions in its rescue of GMAC resulted in missed opportunities to increase accountability and better protect taxpayers.[32] On May 10, 2010, GMAC changed its name to Ally Financial Inc.[33] and on May 26, 2010, Treasury appointed the first of two board members to Ally's board of directors.[34]

General Motors Co. proposed to acquire AmeriCredit Corp., a subprime auto-finance company, to give GM greater opportunity to make vehicle loans and leases.[35]

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[30] After two years, the dividend or interest rate for participating institutions under the program varies from as low as 1 percent to 7 percent depending on the institution's lending levels. CPP participants that have missed more than one dividend payment may not refinance their CPP investments to the terms of the SBLF. *See* Small Business Jobs Act of 2010, H.R. 5297, 111th Congress.

[31] *See* Section D, *infra*; U.S. Department of the Treasury, *Troubled Assets Relief Program Monthly 105(a) Report – June 2010* (July 12, 2010) (online at www.financialstability.gov/docs/105CongressionalReports/June%202010%20105(a)%20Report_Final.pdf) (hereinafter "TARP Monthly 105(a) Report – June 2010").

[32] *See* March 2010 Oversight Report, *supra* note 6. Treasury initially provided GMAC with $5 billion in emergency funding in December 2008. GMAC, which participated in the Federal Revere Board's stress tests, was the only stress-tested institution that could not raise sufficient capital to meet its requirement and received additional government capital. As of June 30, 2010, Treasury's investment in GMAC totaled $17.2 billion – 56.3 percent of Ally's (formerly GMAC's) common stock, $2.5 billion of trust-preferred securities, and $11.4 billion in mandatorily convertible preferred shares. Office of the Special Inspector General for the Troubled Asset Relief Program, *Quarterly Report to Congress*, at 116 (Apr. 20, 2010) (online at www.sigtarp.gov/reports/congress/2010/April2010_Quarterly_Report_to_Congress.pdf).

[33] GMAC, Inc., *Form 8-K for the Period Ended May 3, 2010* (May 3, 2010) (online at www.sec.gov/Archives/edgar/data/40729/000114420410025354/v183596_8-k.htm).

[34] U.S. Department of the Treasury, *Treasury Names Appointee to Ally Board of Directors* (May 26, 2010) (online at financialstability.gov/latest/pr_05262010.html).

[35] *See* Section C.3.a, *infra*. Both GM and Chrysler have steadily improved since emerging from bankruptcy. After reporting a net loss of $3.8 billion dollars for the six months after it emerged from bankruptcy, GM has reported profits of $865 million and $1.3 billion for the first two quarters of 2010, respectively. General Motors Co., *Form 10-K for the Fiscal Year Ended December 31, 2009*, at 122 (Apr. 7, 2010) (online at www.sec.gov/Archives/edgar/data/1467858/000119312510078119/d10k.htm); General Motors Co., *Form 10-Q for the Quarterly Period Ended March 31, 2010* (May 17, 2010) (online at www.sec.gov/Archives/edgar/data/1467858/000119312510121463/d10q.htm); General Motors Co., *Form 10-Q for*

On August 18, 2010, GM filed a Form S-1 with the Securities and Exchange Commission (SEC) for a proposed initial public offering. Treasury has agreed to be named as a selling shareholder of common stock in GM's registration statement. Treasury will retain the right, at all times, to decide whether and at what level to participate in the offering. Treasury owns 60.8 percent of the common stock of GM as well as $2.1 billion of Series A preferred stock. The proposed initial public offering will not include Treasury's Series A preferred stock.[36]

d. Foreclosure Relief

In assessing Treasury's continued foreclosure mitigation efforts, the Panel's April 2010 report acknowledged several positive developments, but it concluded that the size and scope of the crisis continued to outpace Treasury's efforts, the permanence of keeping families in their homes under these programs was doubtful, and that Treasury's goals remained opaque.[37]

Treasury has made progress on two initiatives that were announced, but not implemented, prior to the publication of the Panel's April 2010 report – the Hardest Hit Fund, which provides TARP money to particular states, and a joint program with the Federal Housing Administration

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the Quarterly Period Ended June 30, 2010 (Aug. 16, 2010) (online at www.sec.gov/Archives/edgar/data/1467858/000119312510189968/d10q.htm). Chrysler reported operating losses of $628 million in the quarter after it emerged from bankruptcy. In the three quarters since then, Chrysler had operating losses of $267 million, followed by operating profits of $143 million and $183 million. Chrysler Group, LLC, *Chrysler Group LLC Reports Audited Financial Results for the Period from June 10, 2009 to December 31, 2009* (Apr. 21, 2010) (online at www.chryslergroupllc.com/news/archive/2010/04/21/2009_q4_year_end_press_release); Chrysler Group, LLC, *Chrysler Group LLC Reports Financial Results for the Period Ended March 31, 2010* (Apr. 21, 2010) (online at www.chryslergroupllc.com/news/archive/2010/04/21/2010_q1_press_release); Chrysler Group, LLC, *Chrysler Group LLC Reports Financial Results for the Period Ended June 30, 2010* (Aug. 9, 2010) (online at www.chryslergroupllc.com/news/archive/2010/08/09/q2_press_release_financial_statement_08092010) (hereinafter "Chrysler 2Q10 Financial Results"). GM and Chrysler have lost considerable market share since 2000, although GM still holds the largest share of the total U.S. market. GM's market share decreased 0.9 percent from 19.5 percent in August 2009 to August 2010. Chrysler holds the lowest share of the top five, but its piece of the market has increased from 7.4 percent to 10 percent year-over-year since August 2009. Standard & Poor's, *August U.S. Sales Down Slightly from July, Down Sharply from August 2009; SAAR in Line with our Expectations for 2010* (Sept. 2, 2010) (online at www.standardandpoors.com/products-services/articles/en/us/?assetID=1245220642688).

[36] *See* U.S. Department of the Treasury, *Treasury Department Agrees to Be Named as a Selling Shareholder in General Motors' Registration Statement for Its Initial Public Offering* (Aug. 18, 2010) (online at www.financialstability.gov/latest/pr_08182010.html).

[37] Positive steps included: requiring loan servicers to give an explanation to homeowners being declined for a loan modification, launching a push to convert temporary modifications into long-term, five-year modifications (which Treasury refers to as permanent modifications), and taking steps to help unemployed and "underwater" borrowers regain equity through principal write-downs. The report noted, however, that despite Treasury's efforts, foreclosures were continuing at a rapid pace, imposing costs directly on borrowers and lenders, and indirectly on neighboring homeowners, cities and towns, and the broader economy. After evaluating Treasury's foreclosure programs, the Panel raised specific concerns about the timeliness of Treasury's response to the foreclosure crisis, the sustainability of its mortgage modifications, and the accountability of Treasury's foreclosure programs. *See* April 2010 Oversight Report, *supra* note 6.

(FHA) that uses TARP funds to support refinanced mortgages with reduced principals.[38] On June 23, as part of the Hardest Hit Fund, Treasury approved state proposals in Arizona, California, Florida, Michigan, and Nevada to use $1.5 billion of TARP funds to provide foreclosure relief to struggling homeowners. On August 3, 2010, Treasury approved Hardest Hit Fund proposals from North Carolina, Ohio, Oregon, Rhode Island, and South Carolina for $600 million in foreclosure prevention funding.[39] The Treasury/FHA Refinance Program has yet to launch, but Treasury has been developing its mechanics and preparing for its roll-out.[40]

To comply with provisions in the Dodd-Frank Act, Treasury reduced its TARP commitment for foreclosure mitigation programs to $46 billion, a reduction of $3 billion.[41]

e. Other TARP Program Updates

Over the last two years, Treasury has created a wide range of programs under the TARP to help stabilize the financial system. Since the Panel's December report, Treasury has closed some of these programs, including the Capital Purchase Program and the Targeted Investment Program (TIP), and will no longer make additional commitments under them. According to Treasury, these programs met their goals of stabilizing both the financial system and the participating institutions.[42] As noted in the Panel's July report, however, some CPP participant banks, particularly some of the smaller ones, continue to experience capital pressures and may have difficulty repaying Treasury's investment.[43]

The Public-Private Investment Program (PPIP), which provided funding for the purchase of troubled assets, and the Term Asset-Backed Securities Loan Facility, which provided support to securitization markets, are also now closed to new commitments. Treasury states that it and FRBNY closed these programs because of notable improvement in the securitization markets and

[38] The Treasury/FHA refinance program is distinct from other refinancing programs run by the Federal Housing Administration. *See* Section D, *infra*, for further discussion of the current state of Treasury's foreclosure programs.

[39] U.S. Department of the Treasury, *Making Home Affordable: Hardest Hit Fund* (Aug. 19, 2010) (online at www.financialstability.gov/roadtostability/hardesthitfund.html) (hereinafter "Making Home Affordable: Hardest Hit Fund").

[40] Treasury conversations with Panel staff (July 28, 2010).

[41] *See* TARP Monthly 105(a) Report – July 2010, *supra* note 27.

[42] *See* U.S. Government Accountability Office, *Continued Attention Needed to Ensure the Transparency and Accountability of Ongoing Programs*, at 6 (July 21, 2010) (GAO-10-933T) (online at www.gao.gov/new.items/d10933t.pdf) (hereinafter "GAO Testimony: Transparency and Accountability of Ongoing Programs").

[43] For a discussion of the largest, "too-big-to-fail" banks, *see* Section E.1, *infra*. For smaller institutions, the CPP may not have provided long-term stability, and banks that are unable to repay the investment and struggle to pay the increased dividend rate after five years have no clear options for repayment, making Treasury's timeline for the investment uncertain.

the stabilization of asset prices for certain legacy securities.[44] Commentators agree, however, that the PPIP has not been effective at removing legacy assets from banks' balance sheets on a significant scale.[45] While some commentators argue that the TALF did revitalize the securitization markets overall, others note that some asset classes, such as commercial mortgage-backed securities (CMBS), remain weak, and their securitizations markets remain fragile.[46]

2. Status of TARP Authorities in Light of Secretary's December Extension through October 3, 2010, and Changes Made in the Dodd-Frank Legislation

On December 9, 2009, Secretary Geithner notified Congress of his intention to extend the TARP to October 3, 2010 pursuant to Section 120(b) of the Emergency Economic Stabilization Act (EESA).[47] The TARP had been originally scheduled to expire on December 31, 2009, but the law provided for the possibility of such an extension. In his written certification to Congress, the Secretary justified the extension as necessary to maintain Treasury's "capacity to respond if financial conditions worsen and threaten our economy."[48] The Secretary further noted Treasury would limit new TARP commitments in 2010 to three areas: (1) mortgage foreclosure mitigation; (2) providing capital to small and community banks "to facilitate small business lending"; and (3) increasing Treasury's commitment to the TALF.

While the Secretary promised to limit new TARP commitments in 2010 to these areas, nothing in the statute at the time prevented him from doing more than that. By extending the TARP, the Secretary maintained his ability to use the full extent of the program's authority until its expiration on October 3, 2010. That authority changed, however, following the enactment of the Dodd-Frank Act on July 21, 2010.[49] The law included an amendment, inserted during the bill's conference proceedings, limiting the scope and nature of the TARP for the remainder of the

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[44] *See* GAO Testimony: Transparency and Accountability of Ongoing Programs, *supra* note 42, at 16. *See also* Section D.3, *infra*.

[45] *See* December 2009 Oversight Report, *supra* note 6. Professor Simon Johnson, in responses to questions asked by the Panel, also noted that PPIP did not raise bid prices high enough to induce banks to sell their assets. Written Responses to Panel Questions by Simon Johnson (Sept. 2010).

[46] *See* U.S. Government Accountability Office, *Troubled Asset Relief Program: Treasury Needs to Strengthen its Decision-Making Process on the Term Asset-Backed Securities Loan Facility*, at 36-37 (Feb. 2010) (GAO-10-25) (online at www.gao.gov/new.items/d1025.pdf).

[47] *Consumer Product Safety Improvement Act of 2008*, Pub. L. No. 110-314 (2008).

[48] *See* U.S. Department of the Treasury, *Treasury Department Releases Text of Letter from Secretary Geithner to Hill Leadership on Administration's Exit Strategy for TARP* (Dec. 9, 2009) (online at www.financialstability.gov/latest/pr_12092009.html) (hereinafter "Letter from Secretary Geithner to Hill Leadership").

[49] Section 1302 of the Dodd-Frank Act, entitled "Amendment to Reduce TARP Authorization" was inserted during the legislation's conference proceedings on June 29, 2010. According to the Congressional Budget Office, the amendment reduces the deficit by $11 billion in 2010 and by $3.2 billion over ten years. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, *supra* note 15.

program's duration. Specifically, the legislation lowered the TARP's spending authority from $700 billion to $475 billion and prohibited the Secretary from using TARP funds "to incur any obligation for a program or initiative that was not initiated prior to June 25, 2010."[50]

The Dodd-Frank Act's downward revision of Treasury's spending authority has forced Treasury to reassess its plans for allocating TARP funds. Prior to the law's enactment, the Panel estimated that Treasury had made a total of $535.5 billion in commitments under the TARP – $60.5 billion above the new $475 billion cap.[51] To meet the new cap, Treasury reduced the level of its commitments in several programs.[52] Treasury has reduced the amount of credit protection it provides the Term Asset-Backed Securities Loan Facility by $15.7 billion, from $20 billion to $4.3 billion. Treasury also reduced its TARP commitment for the Public Private Investment Program (PPIP) by $8 billion, from $30.4 billion to $22.4 billion, and its commitment to the Auto Supplier Support Program (ASSP) by $3.1 billion, from $3.5 billion to $400 million. Finally, Treasury reduced its commitment to foreclosure mitigation programs by $3.2 billion, from $48.8 billion to $45.6 billion. The revised total of $45.6 billion is comprised of $11 billion for the Treasury/FHA refinance program, $4.1 billion for the Hardest Hit Fund and $30.5 billion for the Home Affordable Modification Program (HAMP).

While the Dodd-Frank Act prohibits Treasury from creating any new programs under the TARP not initiated before June 25, 2010, it does not affect the TARP's forthcoming expiration as defined in EESA. EESA, which was signed into law on October 3, 2008, is clear that the Secretary cannot extend his authority under the TARP beyond October 3, 2010. Section 120(b) of EESA reads: "The Secretary, upon certification to Congress, may extend the authority under this Act to expire not later than 2 years from the date of enactment of this Act."[53] The phrase "the authority under this Act" would seem to capture all authority provided under EESA; however, the statute allows for one exception. Section 106(e) of EESA stipulates: "The authority of the Secretary to hold any troubled assets purchased under this Act before the termination date

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[50] The Dodd-Frank Act also strikes in Section 115(a)(3) of EESA the clause "outstanding at any one time" which pertains to the Treasury Secretary's ability to reuse TARP funds. In place of the clause, the Dodd-Frank Act adds the following: "For purposes of this subsection, the amount of authority considered to be exercised by the Secretary shall not be reduced by– (A) any amounts received by the Secretary before, on, or after the date of enactment of the Pay It Back Act from repayment of the principal of financial assistance by an entity that has received financial assistance under the TARP or any other program enacted by the Secretary under the authorities granted to the Secretary under this Act; (B) any amounts committed for any guarantees pursuant to the TARP that became or become uncommitted; or (C) any losses realized by the Secretary." *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, *supra* note 15.

[51] August 2010 Oversight Report, *supra* note 6, at 142.

[52] The Small Business Lending Fund (SBLF), a proposed $30 billion lending program, was earlier eliminated as a commitment under the TARP. Instead, the Administration had asked Congress to pursue the matter as a separate legislative initiative. TARP Monthly 105(a) Report – July 2010, *supra* note 27.

[53] *Consumer Product Safety Improvement Act of 2008*, Pub. L. No. 110-314 (2008).

in Section 120, or to purchase or fund the purchase of a troubled asset under a commitment entered into before the termination in Section 120, is not subject to the provisions of Section 120."[54]

Section 106(e) provides Treasury with two specific authorities. First, it allows Treasury to hold its investments made through the TARP after October 3, 2010. Second, it allows Treasury to continue to use the TARP to fund TARP commitments, provided Treasury had made those commitments prior to October 3. Treasury has committed TARP funding to a variety of programs that it has not yet fully funded to their allocated amounts.[55] Many of these programs will continue to receive TARP funding well beyond October 3, 2010. HAMP represents the largest commitment of TARP dollars yet to be expended.[56] Treasury considers its HAMP contracts to be "financial instruments" or "commitments to purchase troubled assets" and, therefore, captured under Section 106(e). According to Treasury, the modification payments "made to servicers are the purchase prices for the financial instruments" or troubled assets.[57] As a result, Treasury plans to continue to fund HAMP and make modification payments to mortgage servicers in the years ahead.

Treasury has noted to the Panel that it will lose some of its flexibility to alter operational aspects of HAMP after October 3. First, it will not be able to enlist new servicers to HAMP.[58] Treasury has explained to the Panel that in its view the authority under Section 106(e) "to purchase or fund the purchase of a troubled asset under a commitment entered into before the termination" of TARP requires Treasury to have entered into a HAMP contract with a mortgage servicer on or prior to October 3, 2010. Treasury has also explained to the Panel that it will lose its ability to use committed dollars under HAMP if a servicer were to drop from the program after TARP's expiration. To provide it with more flexibility and maximize HAMP committed dollars, Treasury has informed the Panel that it is exploring changes to the way in which purchase prices are calculated for HAMP contracts.

Currently, the purchase price in a HAMP contract is a set dollar amount. Under Treasury's proposed plan, purchase prices will instead be based on a formula. This change will

[54] *Consumer Product Safety Improvement Act of 2008*, Pub. L. No. 110-314 (2008).

[55] PPIP, SBA 7(a) Securities Purchase, HAMP, Hardest Hit Fund, FHA Refinance, and the Community Development Capital Initiative, and the AIG Investment Program. U.S. Department of the Treasury, *Troubled Assets Relief Program Monthly 105(a) Report – August 2010* (Sept. 10, 2010) (online at www.financialstability.gov/docs/105CongressionalReports/August%202010%20105(a)%20Report_final_9%2010%2010.pdf) (hereinafter "TARP Monthly 105(a) Report – August 2010").

[56] The Panel's April report on foreclosure mitigation discussed Treasury's view of the legality of HAMP in the context of its general authority under EESA. April 2010 Oversight Report, *supra* note 6, at 152.

[57] Letter from George Madison, general counsel, U.S. Department of the Treasury, to Paul Atkins, member, Congressional Oversight Panel (Jan. 12, 2010) (citing 12 U.S.C. § 5202(9)).

[58] Treasury conversations with Panel staff (Aug. 26 and Sept. 10, 2010).

enable Treasury to preserve HAMP funding after TARP's expiration date. According to Treasury, under the new arrangement, if a servicer were to discontinue participation in HAMP, the funds that had been committed to that servicer would not lapse, or become unavailable for further use, but instead would be spread among the remaining servicers. The change would be made by issuance of a supplemental directive. The Panel expects to explore these issues further in future oversight of foreclosure mitigation.

C. TARP's Financial Results

In addition to the goals of restoring liquidity and stability to the U.S. financial system, EESA directs Treasury to maximize overall returns and minimize overall costs to U.S. taxpayers[59] and to consider the impact on the national debt.[60] Section 202 of EESA requires the Office of Management and Budget (OMB) to submit semiannual reports estimating the cost of the TARP's transactions.[61] Within 45 days of each report, the Congressional Budget Office (CBO) is required to submit an assessment of OMB's analysis, including a discussion of the TARP's impact on the federal budget deficit and debt. To value the TARP investments, the budget agencies use procedures similar to those specified in the Federal Credit Reform Act of 1990[62] but adjust for market risk as directed by EESA.[63] Under that methodology, the agencies calculate the subsidy cost of the TARP as the difference between Treasury's investments and the estimated net present value of the transactions. The total estimated cost of the TARP is a combination of realized and prospective costs.

The most recent OMB and CBO projections of the total cost of the TARP constitute significant reductions from earlier estimates,[64] although taxpayers could still lose significant portions of their investments in several programs. In the FY 2011 Budget, OMB projected the TARP's total impact on the budget deficit to be $116.8 billion.[65] In May, Treasury released a

[59] *See* 12 U.S.C. § 5201; 12 U.S.C. § 5223.

[60] *See* 12 U.S.C. § 5213.

[61] *See* 12 U.S.C. § 5252.

[62] *See* 2 U.S.C. § 661 et seq.

[63] *See* 12 U.S.C. § 5232.

[64] In June 2009, CBO estimated that the TARP would cost a total of $159 billion. Congressional Budget Office, *The Troubled Asset Relief Program: Reports on Transactions Through June 17, 2009* (June 2009) (online at cbo.gov/ftpdocs/100xx/doc10056/MainText.4.1.shtml). In August 2009, as part of FY 2010 Mid-Session Review, OMB estimated that the TARP would cost a total of $341 billion. Office of Management and Budget, Mid-Session Review, *Budget of the U.S. Government – Fiscal Year 2010* (Aug. 25, 2009) (online at www.gpoaccess.gov/usbudget/fy10/pdf/10msr.pdf).

[65] OMB projected the total subsidy cost of TARP to be $126.7 billion, reflecting the estimated lifetime TARP obligations and costs through 2020. OMB adjusted the estimate to $116.8 billion by including downward interest on re-estimates of $9.9 billion. Office of Management and Budget, *Budget of the U.S. Government – Fiscal Year 2011, Analytical Perspectives*, at 40 (Feb. 1, 2010) (online at

revised estimate that lowered the projected deficit impact to $105.4 billion.[66] CBO estimated in March that the total cost of the TARP's transactions would be $109 billion.[67] That estimate was adjusted to $66 billion in August.[68] CBO attributes the majority of the difference between its March estimate and OMB's FY 2011 Budget estimate to four factors: (1) differing assumptions of homeowner participation in HAMP;[69] (2) differing assessments of the cost of assistance to AIG;[70] (3) differing estimates of the subsidy cost attributed to future commitments to new programs;[71] and (4) valuation disparity due to the dates the estimates were performed.[72]

The latest OMB and CBO estimates were released prior to enactment of the Dodd-Frank Act, and Treasury has since revised its planned investments as a result of the new $475 billion cap on TARP expenditures imposed by the bill.[73] A substantial portion ($163.2 billion) of the $223.7 billion in reductions required under the Dodd-Frank Act was achieved by forfeiting

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www.whitehouse.gov/omb/budget/fy2011/assets/econ_analyses.pdf) (estimate based on valuations through November 30, 2009).

[66] U.S. Department of the Treasury, *Summary Tables of Troubled Asset Relief Program (TARP) Investments as of March 31, 2010*, at 1 (May 21, 2010) (online at www.financialstability.gov/docs/TARP%20Cost%20Estimates%20-%20March%2031%202010.pdf) (hereinafter "Treasury Summary Tables of TARP Investments") (estimate based on valuations through March 31, 2010).

[67] Congressional Budget Office, *Report on the Troubled Asset Relief Program – March 2010*, at 1 (Mar. 2010) (online at www.cbo.gov/ftpdocs/112xx/doc11227/03-17-TARP.pdf) (hereinafter "CBO Report on the TARP – March 2010").

[68] Congressional Budget Office, *Budget and Economic Outlook: An Update* (Aug. 2010) (online at cbo.gov/ftpdocs/117xx/doc11705/08-18-Update.pdf) (hereinafter "CBO Budget and Economic Outlook"); Douglas Elmendorf, *CBO's Latest Projections for the TARP*, Congressional Budget Office Director's Blog (Aug. 20, 2010) (online at cboblog.cbo.gov/?p=1322) (hereinafter "CBO's Latest Projections for the TARP"). The CBO Director's Blog cites three factors for the reduction: further repurchases of preferred stock and sales of warrants from banks, a lower estimated cost for assistance to the automobile industry, and the elimination (due to the passage of time and provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203) of the opportunity to create new programs. CBO plans to publish a full update on the TARP sometime this fall.

[69] In the FY 2011 Budget, OMB estimated that $48.8 billion would be disbursed under HAMP; CBO estimated that only $22 billion would be spent. According to CBO, "[t]he difference between those two estimates stems primarily from disparate outlooks on the number of eligible households and the participation rate among those households." CBO Report on the TARP – March 2010, *supra* note 67, at 6.

[70] OMB's estimated subsidy cost of assistance to AIG was $49.9 billion versus $36 billion for CBO. The difference reflects differing assumptions used to value the subsidy provided to the company and the cash flows involved in those transactions. CBO Report on the TARP – March 2010, *supra* note 67, at 7.

[71] OMB projected that the TARP would disburse another $40 billion at a subsidy cost of $3 billion; CBO included a similar $45 billion placeholder with an estimated subsidy of $23 billion. CBO Report on the TARP – March 2010, *supra* note 67, at 7. The subsequent enactment of the Dodd-Frank Act on July 21, 2010, ensured that the Secretary of the Treasury would be prohibited from using TARP funds "to incur any obligation for a program or initiative that was not initiated prior to June 25, 2010." *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, *supra* note 15.

[72] Treasury Summary Tables of TARP Investments, *supra* note 66, at 1.

[73] TARP Monthly 105(a) Report – July 2010, *supra* note 27, at 4-5.

previously uncommitted funds.[74] As discussed above in Section B.2, Treasury offset the remaining $60.5 billion with reductions to the $535.5 billon committed as of June 30, 2010.[75] In prior reports, the Panel has classified TARP expenditures into four different categories: (1) capital programs and banking sector health; (2) credit for consumers and small businesses; (3) mortgage foreclosure relief; and (4) auto industry assistance.[76] Figure 1 shows the changes in funding commitments enacted as result of the passage of the Dodd-Frank Act and the projected final cost of each TARP subprogram according to estimates from CBO, OMB, and Treasury. These assessments of cost are a way for the government to project the ultimate losses or gains on its TARP investments for budgeting purposes, but there are ways in which their value may be limited. On the one hand, they may not completely capture the many variables that could still impair taxpayer repayment. For instance, the fact that approximately one-seventh, or 15 percent, of CPP recipients have already missed a dividend payment, and fewer than 10 percent of CPP-recipient banks have repaid taxpayers, suggests full repayment of CPP funds is not assured (see Figure 37).[77] Likewise, continued economic weakness could inhibit consumer demand for automobiles, impairing Treasury's ability to recoup its investments in GM, Chrysler, and Ally Financial. Therefore, the projected final costs in Figure 1 should not be taken to indicate maximum possible losses, as repayment is dependent upon a number of factors that may not have been incorporated in the models used by the three entities. In addition to the possibility that these measures may not capture all the variables that affect the likelihood that Treasury will be repaid, however, these assessments have an additional limitation. Although EESA, as described above, directs Treasury to take into account the taxpayers' overall returns, the pure return on investment from the TARP is not the only way to evaluate the effectiveness of the program. As discussed further in Section E.2 of this report, using returns as the only or primary measure of success may not adequately capture the possible consequences to which the taxpayers might have been subject through TARP.

[74] The ceiling prior to passage of the Dodd-Frank Act was $698.7 billion. The original ceiling of $700 billion was reduced $1.2 billion with the passage of the Helping Families Save Their Homes Act in 2009. *See* Helping Families Save Their Homes Act of 2009, *supra* note 2, § 40.

[75] TARP Monthly 105(a) Report – June 2010, *supra* note 31, at 5-6.

[76] *See* December 2009 Oversight Report, *supra* note 6, at 17-74.

[77] For a full discussion of outstanding CPP funds, particularly those invested in institutions with less than $500 million in assets, *see* July 2010 Oversight Report, *supra* note 23.

Figure 1: TARP Expenditures and Projected Gains and Losses *(billions of dollars)*

TARP Programs	Funding Allocated			Projected Final Cost				
				CBO		OMB		Treasury
	As of June 30, 2010[i]	Dodd-Frank Act Changes [ii]	As of August 31, 2010[iii]	March 2010 TARP Report (as of 2/17/10)[iv]	August 2010 Budget and Economic Outlook (as of 8/20/10)[v]	FY 2011 Budget, Deficit Impact (as of 11/30/09) [vi]	FY 2011 Budget, Subsidy Cost (as of 11/30/09) [vii]	TARP Summary Tables (as of 3/31/10) [viii]
Capital Programs and Banking Sector Health								
CPP	204.9	0	204.9	(2.0)	NA	(3.7)	1.4	(9.8)
TIP	40.0	0	40.0	(3.0)	NA	(4.1)	(3.7)	(3.8)
AIGIP	69.8	0	69.8	36.0	NA	48.1	49.9	45.2
PPIP	30.4	(8.0)	22.4	1.0	NA	0.3	0.3	0.5
AGP	5.0	0	5.0	(3.0)	NA	(3.0)	(3.0)	(3.1)
Subtotal	350.1	(8.0)	342.1	29.0	NA	37.6	44.9	29.0
Credit for Consumers and Small Businesses								
TALF	20.0	(15.7)	4.3	1.0	NA	(0.5)	(0.5)	NA
SBLF[ix]	30.0	(30.0)	0	NA	NA	NA	NA	NA
Unlocking SBA Lending[x]	1.0	(0.6)	0.4	NA	NA	NA	NA	NA
CDCI[xi]	[xii]0.8	0	0.8	0.2	NA	NA	NA	NA
Subtotal	51.8	(46.3)	5.5	1.2	NA	(0.5)	(0.5)	[xiii]3.0
Mortgage Foreclosure Relief								
HAMP	[xiv]46.7	(16.1)	30.5	22.0	NA	48.8	48.8	48.8
HHF[xv]	2.1	2.0	4.1	NA	NA	NA	NA	NA
FHA Refinance Program[xvi]	NA	11.0	11	NA	NA	NA	NA	NA
Subtotal	48.8	(3.1)	45.6	22.0	NA	48.8	48.8	48.8
Auto Industry Assistance								
AIFP[xvii]	81.3	0	81.3	34.0	NA	28.2	30.8	24.6
ASSP[xviii]	3.5	(3.1)	0.4	NA	NA	NA	NA	NA
Subtotal	84.8	(3.1)	81.8	34.0	NA	28.2	30.8	24.6

Estimates for Uncommitted Funds	NA	NA	NA	23	0	2.7	2.7	NA
Total Committed	**535.5**	**(60.5)**	**475**					
Total Uncommitted	**163.2**	**(163.2)**	**0**	**Total Projected Cost**				
Statutory Spending Limit	[xix]**698.7**	**(223.7)**	**475**	**109.2**	[xx]**66**	**116.8**	**126.7**	**105.4**

[i] U.S. Department of the Treasury, *Troubled Asset Relief Report, Monthly 105(a) Report – June 2010* (July 12, 2010) (online at www.financialstability.gov/docs/105CongressionalReports/June%202010%20105(a)%20Report_Final.pdf).

[ii] U.S. Department of the Treasury, *Troubled Asset Relief Report, Monthly 105(a) Report – July 2010* (Aug. 10, 2010) (online at www.financialstability.gov/docs/105CongressionalReports/July%202010%20105(a)%20Report_Final.pdf); Treasury conversations with Panel staff (July 21, 2010) (HAMP de-obligations).

[iii] U.S. Department of the Treasury, *Troubled Asset Relief Report, Monthly 105(a) Report – August 2010* (Sept. 10, 2010) (online at www.financialstability.gov/docs/105CongressionalReports/August%202010%20105(a)%20Report_final_9%2010%2010.pdf).

[iv] Congressional Budget Office, *Report on the Troubled Asset Relief Program* (Mar. 2010) (online at www.cbo.gov/ftpdocs/112xx/doc11227/03-17-TARP.pdf).

[v] Congressional Budget Office, *Budget and Economic Outlook: An Update* (Aug. 2010) (online at cbo.gov/ftpdocs/117xx/doc11705/08-18-Update.pdf).

[vi] Office of Management and Budget, *Budget of the U.S. Government – Fiscal Year 2011* (Feb. 1, 2010) (online at www.whitehouse.gov/omb/budget/fy2011/assets/econ_analyses.pdf). The FY 2011 Budget total deficit impact includes downward interest on re-estimates of $9.9 billion.

[vii] Office of Management and Budget, *Analytical Perspectives: Budget of the U.S. Government – Fiscal Year 2011* (Feb. 1, 2010) (online at www.whitehouse.gov/sites/default/files/omb/budget/fy2011/assets/econ_analyses.pdf).

[viii] U.S. Department of the Treasury, *Summary Tables of Troubled Asset Relief Program (TARP) Investments as of March 31, 2010* (May 21, 2010) (online at www.financialstability.gov/docs/TARP%20Cost%20Estimates%20-%20March%2031%202010.pdf).

[ix] Prior to passage of the Dodd-Frank Act, Treasury kept a $30 billion placeholder for the SBLF, but the program was never initiated under the TARP. CBO, OMB, and Treasury did not assign a subsidy rate or estimated cost to the SBLF.

[x] CBO, OMB, and Treasury have not assigned a subsidy rate or estimated cost to the program to purchase securities backed by loans from SBA's 7(a) Program.

[xi] OMB and Treasury have not assigned a subsidy rate or estimated cost to the CDCI.

[xii] In response to a Panel request, Treasury stated that it projects the CDCI program to utilize $780 million.

[xiii] Treasury assigned one subsidy rate and estimated cost to all programs falling under the Consumer and Business Lending Initiative, which includes the four subprograms listed here under "Credit for Consumers and Small Businesses."

[xiv] The original funding amount allotted for HAMP was $50 billion. In May 2009, the $1.2 billion reduction in TARP due to the passage of the *Helping Families Save Their Homes Act of 2009*, Pub. L. No. 111-22 § 402(f) (2009) was officially allocated to HAMP.

[xv] CBO, OMB, and Treasury have not assigned a subsidy rate or estimated cost to the HHF.

[xvi] CBO, OMB, and Treasury have not assigned a subsidy rate or estimated cost to the FHA Refinance Program.

[xvii] In total, $81.3 billion was initially invested in the AIFP: $50.7 billion to GM; $16.3 billon to GMAC; $12.8 billion to Chrysler; and $1.5 billion to Chrysler FinCo. *See* U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 8, 2010*, at 18-19 (Sept.10, 2010) (online at www.financialstability.gov/docs/transaction-reports/9-10-10%20Transactions%20Report%20as%20of%209-8-10.pdf). CBO, OMB , and Treasury have not assigned individual subsidy rates to each individual company receiving TARP funds under the AIFP.

[xviii] CBO, OMB, and Treasury have not assigned an individual subsidy rate or estimated cost to the ASSP. For budget projection purposes, the program is considered part of the AIFP.

[xix] The ceiling prior to passage of the Dodd-Frank Act was $698.7 billion. The original ceiling of $700 billion was reduced by $1.3 billion with the passage of the *Helping Families Save Their Homes Act of 2009*, Pub. L. No. 111-22 §402(f) (2009).

[xx] Douglas Elmendorf, *CBO's Latest Projections for the TARP*, Congressional Budget Office Director's Blog (Aug. 20, 2010) (online at cboblog.cbo.gov/?p=1322) ("In the baseline budget projections that CBO released yesterday, the lifetime cost of the program has been reduced to $66 billion. Three factors account for the reduction: further repurchases of preferred stock and sales of warrants from banks, a lower estimated cost for assistance to the automobile industry, and the elimination (due to the passage of time and provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203) of the opportunity to create new programs.").

The TARP's current balance sheet shows that Treasury has disbursed $394.6 billion under the $475 billion ceiling and $204.1 billion in TARP funds have been repaid. There have also been $3.9 billion in losses, leaving $184.8 billion in TARP funds currently outstanding.[78] The majority of the funds currently outstanding are concentrated in four programs: (1) CPP ($55.1 billion); (2) PPIP ($12.7 billion); (3) AIGIP ($49.1 billion); and (4) AIFP ($67.1 billion). As shown above in Figure 1, CPP is expected to be a net gain for Treasury, and PPIP is expected to lose no more than $500 million. Conversely, while less than $5 billion has been disbursed on housing programs, Treasury could disburse as much as $45.6 billion in funds that are not intended to be recovered by the federal government in HAMP, the Hardest Hit Fund, and the FHA Refinance Program.[79] Therefore, the bulk of Treasury's likely net costs are expected to come from three sources: (1) losses on investments in AIG; (2) losses on investments in Chrysler, GM, and Ally Financial; and (3) expenditures on foreclosure relief. The discussion below provides more detail on the current estimates of gain or loss on outstanding TARP funds.

1. Capital Programs and Banking Sector Health

As of September 1, 2010, 614 banks still held their CPP funds, with a total of $55.1 billion outstanding. As a result, it is not yet possible to calculate precisely the amount of money that the CPP will earn or lose, although any losses can be capped at $57.4 billion.[80] The direct financial cost to the federal government, however, will probably be a fraction of that exposure, and the program may even produce a net gain.

For CPP investments in financial institutions that have been fully repaid, including warrants repurchased or sold, the overall annual rate of return currently stands at 9.9 percent. [81]

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[78] *See* Sept. 3 TARP Transactions Report, *supra* note 26.

[79] Treasury could have chosen to include equity sharing provisions in the TARP foreclosure relief programs. Equity sharing is a financing method by which a nonresident investor provides capital and receives a portion of any equity in the home. Had Treasury chosen to include equity sharing, the subsidy rate for the foreclosure relief programs would likely have been less than 100 percent. The Department of Housing and Urban Development's (HUD) HOPE for Homeowners program, 12 U.S.C. § 1715z-23, included equity sharing provisions but suffered from a very low participation rate. For a discussion of HOPE for Homeowners, *see* October 2009 Oversight Report, *supra* note 6, at 79-82.

[80] Treasury closed the CPP on December 29, 2009, having disbursed $204.9 billion to 707 financial institutions. As of September 1, 2010, a total of 91 institutions had completely repurchased their CPP preferred shares and nine had made partial repayments. In total, CPP banks have repurchased $147.5 billion in preferred stock and $55.1 billion remains outstanding. Losses can be capped by adding the total amount outstanding ($55.1 billion) to the amount allocated to CIT Group ($2.3 billion), which declared bankruptcy, and Pacific National Bancorp ($4.1 million), which was taken into receivership by the FDIC. Three additional CPP-recipient banks are likely to result in losses: UCBH Holdings received $299 million and is currently in bankruptcy proceedings; Midwest Banc Holdings, Inc. and Sonoma Valley Bancorp, which received $89.4 million and $8.7 million, respectively, are in receivership.

[81] The calculation of the overall annual rate of return is based on Treasury's most recent transactions report. *See* Sept. 3 TARP Transactions Report, *supra* note 26; data provided by Bloomberg, and the Panel's own methodology for valuing warrants; Congressional Oversight Panel, *July Oversight Report: TARP Repayments*,

It is important to note, however, that this rate of return reflects returns from CPP banks that have been able to repay their TARP funds to date or have been able to pay their dividends. As noted above, one in seven banks in the CPP has missed a dividend payment, and the prospects for full recovery remain uncertain. As the Panel discussed in its July report, banks that have strong capital positions face pressure to exit the program as quickly as possible.[82] By contrast, banks that have not repaid their TARP funds may be under or could come under greater stress. Some banks that remain in the CPP may find it difficult or impossible to raise the capital necessary to meet their obligations to the taxpayers, and Treasury's rate of return may therefore decline over the life of the program. Taking into account both losses and gains, CBO's most recent published estimate is that the government will ultimately earn a net $2 billion from the CPP.[83] Treasury expects a gain of $9.8 billion.[84]

TARP funds also remain outstanding under the PPIP and the TALF. In order to remove troubled assets from bank balance sheets, Treasury initially allocated $30 billion to the PPIP. Following the enactment of the Dodd-Frank Act, Treasury reduced the amount committed to the PPIP by nearly $8 billion to a ceiling of $22.4 billion in TARP funds. Treasury's current exposure consists of $7.4 billion of equity capital and $14.7 billion of debt capital.[85] In the FY 2011 budget, Treasury placed the cost of the PPIP at $300 million based on a 1 percent subsidy rate. In March 2010, Treasury and OMB released a revised cost estimate based on a 2 percent subsidy, placing the cost of the PPIP at less than $500 million in TARP funds over the life of the program.[86] On June 30, 2010, Treasury reported that the rate of return among the eight investment funds ranged from 9 to 26 percent since each fund made its initial capital draw.[87] Performance among the investment funds over the life of the program will be largely dependent on market conditions. Because the PPIP investment funds are in the early stages of their three-year investment periods, it is not possible to assess the long-term performance of the program based on current rates of return.

Including the Repurchase of TARP Warrants, at 46-53 (July 10, 2009) (online at cop.senate.gov/documents/cop-071009-report.pdf).

[82] *See* July 2010 Oversight Report, *supra* note 23, at 30.

[83] *See* CBO Report on the TARP – March 2010, *supra* note 67.

[84] Treasury Summary Tables of TARP Investments, *supra* note 66.

[85] TARP Monthly 105(a) Report – July 2010, *supra* note 27, at 6.

[86] Treasury Summary Tables of TARP Investments, *supra* note 66, at 1.

[87] These returns were calculated based on monthly performance reports submitted by PPIF managers and include a deduction for management fees and expenses attributable to Treasury. U.S. Department of the Treasury, *Legacy Securities Public-Private Investment Program, at 7* (July 19, 2010) (online at www.financialstability.gov/docs/111.pdf).

Treasury committed up to $20 billion in TARP funds to restart securitization markets through a loan to TALF LLC, a special purpose vehicle created by the Federal Reserve Bank of New York (FRBNY). On July 19, 2010, Treasury amended its credit agreement with FRBNY and TALF LLC to reduce the maximum loan amount to $4.3 billion.[88] Although the TALF has closed, meaning that the program will not fund the creation of any new securities, Treasury will continue to provide credit protection to FRBNY until the full $4.3 billion commitment has been funded or the loan commitment term expires.[89] The latest CBO report estimated the subsidy rate for Treasury protection for the TALF to be 6 percent, resulting in a $1 billion loss in TARP funds over the life of the program.[90]

2. AIG Investment Program (Formerly the Systemically Significant Failing Institutions Program)

Most observers expect that the AIG Investment Program will generate significant losses to U.S. taxpayers.[91] The latest estimates by CBO, OMB, and Treasury project losses in the amount of $36 billion,[92] $50 billion,[93] and $45 billion,[94] respectively, although the estimated losses have steadily decreased since the inception of the credit facility. Whether Treasury will be able to exit its investments in AIG without substantial losses turns on AIG's ability to produce strong operating results and demonstrate that it is capable of functioning as a standalone investment-grade company without government support. While Treasury and AIG officials have expressed confidence that AIG is making great strides towards achieving such financial independence,[95] AIG still relies largely on government funding for capital and liquidity, although

[88] TARP Monthly 105(a) Report – July 2010, *supra* note 27, at 5.

[89] Federal Reserve Bank of New York, *Term Asset-Backed Securities Loan Facility: Terms and Conditions* (July 21, 2010) (online at www.newyorkfed.org/markets/talf_terms.html) (hereinafter "TALF Terms and Conditions"). *See* Section D.3, *infra*, for further discussion of TALF.

[90] CBO Report on the TARP – March 2010, *supra* note 67.

[91] The panel has written extensively on the government investment in AIG and its prospects. *See* June 2010 Oversight Report, *supra* note 21.

[92] CBO Report on the TARP – March 2010, *supra* note 67, at 3.

[93] Office of Management and Budget, *The President's Budget for Fiscal Year 2011, Analytical Perspectives, Economic and Budget Analyses*, at 40 (Feb. 1, 2010) (online at www.whitehouse.gov/sites/default/files/omb/budget/fy2011/assets/econ_analyses.pdf) (hereinafter "The President's Budget for Fiscal Year 2011").

[94] Treasury Summary Tables of TARP Investments, *supra* note 66, at 2.

[95] *See* Congressional Oversight Panel, Written Testimony of Robert Benmosche, president and chief executive officer, American International Group, Inc., *COP Hearing on TARP and Other Assistance to AIG*, at 8 (May 26, 2010) (online at cop.senate.gov/documents/testimony-052610-benmosche.pdf) (e.g. "AIG is now on a clear path to repaying taxpayers. In recent months, we have become less reliant on government aid and have been able to tap instead the capital markets. We are working hard to complete the sales of AIA and ALICO by the end of the year, to increase profits at our remaining businesses and to improve operating returns. Then we can begin to

there are recent indications that AIG is planning to issue bonds.[96] Treasury's ability to recoup its investment depends on the value of AIG's common stock at the time Treasury sells its interests.[97] Therefore, the value of Treasury's substantial investment in AIG and the size of any gain or loss are dependent on many external variables, and the protracted investment in AIG continues to create significant risks to taxpayers.

Treasury has invested approximately $47.5 billion in TARP funds in AIG. This investment is comprised of non-cumulative preferred stock in the amount of $40 billion and an equity capital facility under which AIG has drawn down $7.5 billion.[98] Including the $1.6 billion in unpaid dividends, AIG's outstanding TARP assistance equals $49.1 billion.[99] In addition, AIG must repay $79.1 billion in outstanding debt to FRBNY.[100] Figure 2 shows a breakdown of AIG's outstanding obligations to the government.

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examine the alternatives we have to address the Treasury's TARP investment and equity holdings."). The current status of the AIA and ALICO sales are discussed in footnote 108, *infra*. *See also* Congressional Oversight Panel, Testimony of Jim Millstein, chief restructuring officer, U.S. Department of the Treasury, *Transcript: COP Hearing on TARP and Other Assistance to AIG* (May 26, 2010) (publication forthcoming) (online at cop.senate.gov/hearings/library/hearing-052610-aig.cfm) (hereinafter "Jim Millstein AIG Testimony" (stating that Mr. Benmosche is an "experienced insurance executive…h[e] is confiden[t] that he can get Chartis and SunAmerica Financial to an $8 billion dollar net after tax earnings. If he can do that, we're going to be paid in full").

[96] American International Group, Inc., *Form 10-Q for the Quarterly Period Ended June 30, 2010*, at 12 (Aug. 6, 2010) (online at www.sec.gov/Archives/edgar/data/5272/000104746910007097/a2199624z10-q.htm) (hereinafter "AIG Form 10-Q for the Second Quarter 2010"). AIG amended its existing SEC registration on August 9, 2010 to permit the sale of debt instruments. American International Group, Inc., *Form S-3* (Aug. 9, 2010) (online at services.corporate-ir.net/SEC.Enhanced/SecCapsule.aspx?c=76115&fid=7076507). The AIG aircraft leasing subsidiary ILFC was recently able to raise approximately $4 billion in the capital markets, which AIG has used to reduce the balance on the FRBNY revolving credit facility. American International Group, Inc., *AIG Reduces Principal Balance on Federal Reserve Bank of New York Revolving Credit Facility by Nearly $4 Billion* (Aug. 23, 2010) (online at ir.aigcorporate.com/External.File?t=2&item=g7rqBLVLuv81UAmrh20Mp2D/jbuMQX0JWf4oGazjlIxeJq2b5l2D3jdQlccQVaAZCaOmzP8Hukewe3TB4pawgQ==) (hereinafter "AIG Press Release").

[97] *See* Jim Millstein AIG Testimony, *supra* note 95 ("Whether Treasury ultimately recovers all of its investment or makes a profit, will in large part depend on the company's operating performance and market multiples for insurance companies at the time the government sells its interest").

[98] U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 9, 2010*, at 21 (Sept. 13, 2010) (online at www.financialstability.gov/docs/transaction-reports/9-13-10%20Transactions%20Report%20as%20of%209-9-10.pdf) (hereinafter "Treasury Transactions Report"); TARP Monthly 105(a) Report – August 2010, *supra* note 55. *See also* June 2010 Oversight Report, *supra* note 21, at 15. Under the equity capital facility, AIG may draw up to $29.8 billion.

[99] Because AIG failed to pay dividends on AIG Series E Preferred Stock (par value $5.00 per share) and AIG Series F Preferred Stock for four quarters, on April 1, 2010 Treasury exercised its right to appoint two directors to the Board of Directors of AIG. American International Group, Inc., *Form 10-Q for the Quarterly Period Ended March 31, 2010*, at 73 (May 7, 2010) (online at www.sec.gov/Archives/edgar/data/5272/000104746910004918/a2198531z10-q.htm).

[100] Board of Governors of the Federal Reserve System, *Factors Affecting Reserve Balances (H.4.1)* (Aug. 12, 2010) (online at www.federalreserve.gov/releases/h41/Current/) (hereinafter "Factors Affecting Reserve Balances (H.4.1)"). *See also* June 2010 Oversight Report, *supra* note 21, at 15.

Figure 2: Government Assistance to AIG as of September 1, 2010 *(millions of dollars)*

	Amount Allocated	Assistance Amount Outstanding as of 9/1/2010
FRBNY[101]		
Revolving Credit Facility[102]	$30,000	$20,057
Maiden Lane II: Outstanding principal amount of loan from FRBNY	22,500	13,873
Accrued interest payable to FRBNY	–	387
Maiden Lane III: Outstanding principal amount of loan from FRBNY	30,000	15,107
Accrued interest payable to FRBNY	–	477
Preferred interest in AIA Aurora LLC	16,000	16,469
Accrued dividends on preferred interests in AIA Aurora LLC		111
Preferred interest in ALICO SPV	9,000	9,264
Accrued dividends on preferred interests in ALICO Holdings LLC[103]		62
Total FRBNY	**107,500**	**75,807**
TARP		
Series E Non-cumulative Preferred stock	40,000	40,000
Unpaid dividends on Series D Preferred stock[104]		1,605
Series F Non-cumulative Preferred stock[105]	29,835	7,544
Total TARP	**69,835**	**49,149**
Total FRBNY + TARP		
Net borrowings	181,035	122,314
Accrued interest payable and unpaid dividends		2,642
Total Balance Outstanding on All Government Investments	**$177,335**	**$127,598**

[101] *Id*.

[102] *Id*. *See also* AIG Press Release, *supra* note 96.

[103] Factors Affecting Reserve Balances (H.4.1), *supra* note 100 ("Dividends accrue as a percentage of FRBNY's preferred interests in AIA Aurora LLC and ALICO Holdings LLC. On a quarterly basis, the accrued dividends are capitalized and added to FRBNY's preferred interests in AIA Aurora LLC and ALICO Holdings LLC."). FRBNY also reports the Net Portfolio Holdings for Maiden Lane II and III (ML II and ML III, respectively). These figures represent fair market value estimates of the assets of the two Maiden Lane SPVs. The current Net Portfolio Holdings values are $15,967 for ML II and $23,324 for ML III (in millions of dollars). These can theoretically be compared to FRBNY's investments and accrued interest to determine an approximate paper gain or loss. For ML II and ML III, this would represent gains of $2,094 and $8,217, respectively.

[104] U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending August 20, 2010*, at 21 (Aug. 20, 2010) (online at www.financialstability.gov/docs/transaction-reports/8-24-10%20Transactions%20Report%20as%20of%208-20-10.pdf).

[105] AIG Form 10-Q for the Second Quarter 2010, *supra* note 96, at 107.

The timing of Treasury's exit is complicated by the fact that AIG is not permitted to repay Treasury until it has fully repaid FRBNY. Treasury, the Federal Reserve, and AIG have stated that they are confident that AIG will fully repay FRBNY in the near future without jeopardizing its financial viability.[106] In addition, over recent months Treasury and AIG have stated that they are increasingly optimistic that AIG will fully repay Treasury; however, neither AIG nor Treasury has provided a timeline or articulated a firm exit strategy.[107] Furthermore, AIG must overcome several barriers before it can repay its FRBNY debt, let alone its Treasury debt. Notably, problems have arisen in the planned sales of certain subsidiaries.[108] In addition, at this time AIG cannot afford to divert the cash it is generating through its insurance operations towards repaying FRBNY because it is still quite weak financially.[109] Both the timing of the government's exit from its involvement with AIG, and the ultimate return on its investment, are difficult to predict with confidence.

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[106] Board of Governors of the Federal Reserve System, *Federal Reserve System Monthly Report on Credit and Liquidity Programs and the Balance Sheet*, at 27 (July 2010) (online at www.federalreserve.gov/monetarypolicy/files/monthlyclbsreport201007.pdf) ("[T]he Federal Reserve anticipates that the loans provided by the Federal Reserve under the Revolving Credit Facility, including interest and commitment fees under the modified terms of the facility, will be fully repaid and the face value of the preferred interests in the AIA and ALICO SPVs, plus accrued dividends, will be received. Accordingly, the Federal Reserve anticipates that the facility will not result in any net loss to the Federal Reserve or taxpayers."); Congressional Oversight Panel, Testimony of Robert Benmosche, president and chief executive officer, American International Group, Inc., *Transcript: COP Hearing on TARP and Other Assistance to AIG* (May 26, 2010) (publication forthcoming) (online at cop.senate.gov/hearings/library/hearing-052610-aig.cfm) ("I believe that we will pay back all that we owe the U.S. Government. And I believe at the end of the day, the U.S. Government will make an appropriate profit."); Jim Millstein AIG Testimony, *supra* note 95 ("[T]he New York Fed, which has about $83 billion dollars outstanding today, is very likely to be paid in full."). *See also* June 2010 Oversight Report, *supra* note 21, at 196.

[107] *See* June 2010 Oversight Report, *supra* note 21, at 196-197, 200.

[108] AIG's primary strategy for repaying FRBNY debt has faltered in recent months. AIG had planned to repay FRBNY with the proceeds from the sale of its Asian insurance subsidiaries, AIA and ALICO. On June 2, 2010, the AIA sale to Prudential for $35.5 billion was cancelled due to disagreements over the sale price. AIG is now contemplating an alternative strategy to sell AIA through an IPO on the Hong Kong Stock Exchange. On March 8, 2010, AIG agreed to sell ALICO to MetLife for $15.5 billion, but the sale has not yet closed. AIG's ability to repay FRBNY in the near future is uncertain as it does not appear that AIG has a viable alternative to repaying FRBNY other than through an IPO or sale of AIA and ALICO. Other assets AIG has slated for sale will not generate sufficient proceeds to repay FRBNY. *See* American International Group, Inc., *AIG to Sell ALICO to MetLife for Approximately $15.5 Billion* (Mar. 8, 2010) (online at phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MzU0MTl8Q2hpbGRJRD0tMXxUeXBlPTM=&t=1).

Despite the challenges outlined above, AIG has made measured progress in the disposition of certain assets. On August 11, 2010, AIG announced the sale of 80 percent of its ownership stake in American General Finance Inc. to Fortress Investment Group LLC. American International Group, *Fortress Funds to Purchase American General Finance* (Aug. 11, 2010) (online at www.aigcorporate.com/newsroom/index.html).

[109] *See generally*, AIG Form 10-Q for the Second Quarter 2010, *supra* note 96, at 12. AIG had a net loss of $2.7 billion in the second quarter of 2010, which the company attributed to restructuring-related charges.

3. Automotive Industry Financing Program[110]

There are currently $67.1 billion in TARP funds outstanding under the Automotive Industry Financing Program (AIFP).[111] The passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act ensures that there will be no further commitments or expenditures under the AIFP, and the $67.1 billion currently outstanding under the program is the maximum amount that will be at risk going forward.[112]

CBO, OMB, and Treasury are projecting losses in the amount of $34 billion,[113] $28.2 billion,[114] and $24.6 billion,[115] respectively, from the assistance provided under the AIFP, although the estimated losses have steadily decreased since the early stages of government assistance. Whether Treasury will incur losses from its investment in the AIFP depends on the ability of GM and Chrysler to achieve strong operating results and establish themselves as competitive auto manufacturers, and the ability of GMAC, now Ally Financial, to rebuild itself as a healthy standalone company.

a. General Motors

Treasury initially invested a total of $49.9 billion in GM. Approximately $30.1 billion was provided in the form of debtor-in-possession (DIP) financing to support GM's Chapter 11 restructuring.[116] Through bankruptcy, the initial investment was converted to $2.1 billion in preferred stock, 60.8 percent in common equity, and $6.7 billion in debt.[117] Proceeds in the amount of $16.4 billion from the DIP facility were deposited in escrow to be distributed to GM at its request, subject to certain conditions.[118] In April 2010, GM repaid its outstanding $6.7

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[110] *See* Annex I, *infra*.

[111] Treasury Transactions Report, *supra* note 98, at 18.

[112] TARP Monthly 105(a) Report – July 2010, *supra* note 27, at 4.

[113] CBO Report on the TARP – March 2010, *supra* note 67, at 3.

[114] The President's Budget for Fiscal Year 2011, *supra* note 93, at 40. The subsidy cost represents the lifetime net present value cost of TARP obligations from the date TARP obligations originate. CBO, OMB, and Treasury do not disaggregate subsidy estimates by each institution (GM, Chrysler, and GMAC), and instead use overall subsidy rates for AIFP recipients. The OMB estimate ($28.2 billion) includes an interest adjustment on its previously published estimate; without this adjustment, the OMB estimate is $30.8 billion.

[115] Treasury Summary Tables of TARP Investments, *supra* note 66, at 2.

[116] TARP Monthly 105(a) Report – July 2010, *supra* note 27, at Appendix 1 – Page 8.

[117] This figure does not include $361 million in loans repaid by GM immediately following its emergence from bankruptcy on July 10, 2009. Treasury Transactions Report, *supra* note 98, at 18.

[118] GM was required to meet the following conditions in order to access the funds in the escrow account: "(1) the representations and warranties GM made in the loan documents are true and correct in all material respects on the date of the request; (2) GM is not in default on the date of the request taking into consideration the amount of the withdrawal request; and (3) the United States Department of the Treasury (UST), in its sole discretion, approves the amount and intended use of the requested disbursement." General Motors Co., *Form 8-K for the Period Ended*

billion debt to Treasury using the funds in the escrow account. Despite this debt repayment, Treasury maintains a significant equity stake in the company.[119]

On July 22, 2010, GM announced its acquisition of AmeriCredit, an auto finance company specializing in non-prime lending, for $3.5 billion.[120] GM has had limited access to non-prime car buyers because Ally Financial (formerly GMAC), GM's long-time financing partner, had withdrawn from the subprime lending market as a result of the financial crisis.[121] GM has stated that it is expecting the AmeriCredit acquisition to allow it to offer more financing options and to increase sales in the non-prime market.[122] In August, GM announced that it recorded its second straight quarter of profitability, earning $1.3 billion in the second quarter of 2010.[123]

On August 18, 2010, GM filed a form S-1 registration statement with the Securities and Exchange Commission which announced the planned sale of common shares to the public.[124] Treasury has been named as a selling shareholder in this IPO, although the complete details of the sale, including the portion of Treasury's stake to be sold, have not yet been disclosed. Assuming Treasury does not dispose of all its shares in an IPO, it will then need to sell its shares in the open market to recoup its investment in GM. As a major shareholder of GM stock, Treasury will need to dispose of its shares over a protracted period to avoid a trading imbalance due to significant selling volume. Such an extended exit strategy leaves Treasury vulnerable to

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September 2, 2009 (Nov. 2, 2009) (online at www.sec.gov/Archives/edgar/data/1467858/000119312509220534/d8k.htm).

[119] GM repaid $1 billion on December 18, 2009, $35 million on January 21, 2010, $1 billion on March 31, 2010, and the remaining $4.7 billion on April 20, 2010, for a total of $6.7 billion. With Treasury's permission, GM made each payment using the funds in the escrow account. U.S. Department of the Treasury, *Troubled Assets Relief Program (TARP): Monthly 105(a) Report – April 2010*, at 11 (May 10, 2010) (online at www.financialstability.gov/docs/105CongressionalReports/April%202010%20105(a)%20report_final.pdf).

[120] General Motors Co., *GM to Acquire AmeriCredit* (July 22, 2010) (online at media.gm.com/content/media/us/en/news/news_detail.brand_gm.html/content/Pages/news/us/en/2010/July/0722_americredit) (hereinafter "GM to Acquire AmeriCredit").

[121] GMAC LLC, *Form 10-K for Fiscal Year Ended December 31, 2008*, at 28 (Feb. 27, 2009) (online at www.sec.gov/Archives/edgar/data/40729/000119312509039567/d10k.htm). *See also* March 2010 Oversight Report, *supra* note 6, at 72. In the second quarter of 2010, only 13 percent of Ally's loans were non-prime. Ally Financial, Inc., *2Q10 Earnings Review*, at 6 (Aug. 3, 2010) (online at phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MzI0MjM1M3xDaGlsZElEPTM5MTY3NXxUeXBlPTI=&t=1) (hereinafter "GMAC 2Q10 Earnings Review").

[122] GM to Acquire AmeriCredit, *supra* note 120.

[123] GM reported net profits in the second quarter of 2010 of $1.3 billion on revenues of $33.2 billion. In the first quarter of 2010, GM reported net profits of $865 million on revenues of $31.5 billion. General Motors Co., *Press Release: GM Announces 2010 Second Quarter Results* (Aug. 12, 2010) (online at phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NTc2NDV8Q2hpbGRJRD0tMXxUeXBlPTM=&t=1).

[124] General Motors Co., *Form S-1* (Aug. 18, 2010) (online at www.sec.gov/Archives/edgar/data/1467858/000119312510192195/ds1.htm).

several risks in recouping its investment, including market fluctuations and the performance of GM's stock price. Meanwhile, General Motors also announced in August that Edward E. Whitacre would step down as CEO on September 1, 2010, and as chairman of the board by the end of the year.[125] He was replaced by Daniel F. Akerson, a GM director and a managing director of the Carlyle Group, a private equity firm.[126] Mr. Akerson was appointed to GM's board by the Obama Administration in July 2009. He is GM's fourth CEO in less than two years.

b. Chrysler

As of August 2010, Treasury has incurred a total of $1.6 billion in losses from its $12.5 billion investment in Chrysler. In April 2010, Treasury extinguished a $1.9 billion DIP loan and transferred the remaining assets of Old Chrysler to a liquidation account.[127] Although Treasury has the right to recover the proceeds from the sale of certain assets in the liquidation account, Treasury stated that it did "not expect a significant recovery from the liquidation proceeds."[128] As of August 18, 2010, Treasury had recovered $31 million from the sale of collateral associated with this loan.[129] In addition to the $1.9 billion loss from the DIP loan, on May 14, 2010 Treasury accepted a payment of $1.9 billion from CGI Holding (formerly Chrysler Holding LLC) to settle and terminate one of Chrysler's AIFP loans totaling $3.5 billion. Treasury stated that it accepted the repayment, which represents a loss of $1.6 billion to taxpayers, because $1.9 billion was "significantly more than Treasury had previously estimated to recover" on the loan.[130] Treasury currently holds $7.1 billion in debt and 9.9 percent equity ownership in New Chrysler.

On August 9, 2010, Chrysler Group LLC reported its financial results for the second quarter 2010. The company reported an operating profit of $183 million and reaffirmed its 2010 guidance that it will not lose money in the fiscal year and is likely to revise these estimates

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[125] General Motors Co., *Press Release: GM Announces CEO Succession Process* (Aug. 12, 2010) (online at media.gm.com/content/media/us/en/news/news_detail.globalnews.html/content/Pages/news/global/en/2010/0812_transition).

[126] *Id*.

[127] Following the bankruptcy proceedings for Old Chrysler, the $1.9 billion DIP loan was deducted from Treasury's AIFP investment amount. It is accounted for here as a loss until the point in time when all assets sales are completed. TARP Monthly 105(a) Report – August 2010, *supra* note 55; Treasury conversations with Panel staff (Aug. 19, 2010).

[128] U.S. Department of the Treasury, *Troubled Assets Relief Program (TARP): Monthly 105(a) Report – May 2010*, at 13 (June 10, 2010) (online at www.financialstability.gov/docs/105CongressionalReports/May%202010%20105(a)%20Report_final.pdf) (hereinafter "TARP Monthly 105(a) Report – May 2010").

[129] Treasury Transactions Report, *supra* note 98, at 18.

[130] TARP Monthly 105(a) Report – May 2010, *supra* note 128, at 3, 13.

upward.[131] Chrysler also announced a target of $40 billion to $45 billion in net revenues during 2010.

c. Ally Financial (formerly GMAC)[132]

Treasury's investment in Ally Financial (Ally) includes 56.3 percent of Ally's common stock, $2.5 billion in trust-preferred securities, and $11.4 billion in mandatorily convertible preferred (MCP) shares.[133] As a result of Treasury's increase in equity ownership from 35 percent to 56.3 percent in December 2009, Treasury has the right to appoint four out of the nine directors to Ally's Board of Directors. As of August 2010, Treasury had only appointed one director.[134]

In the Panel's March 2010 report on GMAC, the Panel noted that Ally's relationship with GM remains critical to Ally's success. The report suggested that consideration be given to merging Ally back into GM.[135] However, as mentioned above, GM recently acquired AmeriCredit, another provider of automobile financing. Ally CEO Michael Carpenter told investors that AmeriCredit's role would be largely confined to subprime financing and leasing, while Ally would remain the preferred vendor of floorplan financing for GM dealers.[136] Although AmeriCredit is small compared to Ally, the purchase raised questions from some industry analysts regarding the future of GM's relationship with Ally.[137]

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[131] Chrysler 2Q10 Financial Results, *supra* note 35.

[132] GMAC Financial formally changed its name on May 10, 2010 to Ally Financial Inc. Ally Financial, Inc., *Ally Financial Statement on New Corporate Brand* (May 10, 2010) (online at media.ally.com/index.php?s=43&item=401).

[133] TARP Monthly 105(a) Report – August 2010, *supra* note 55, at Appendix I – page 12.

[134] TARP Monthly 105(a) Report – May 2010, *supra* note 128, at Appendix I – page 13. On May 26, 2010, Treasury announced the appointment of Marjorie Magner to the Ally Financial Inc. Board of Directors.

[135] March 2010 Oversight Report, *supra* note 6, at 121.

[136] *See* Ally Financial, *Q2 2010 Ally Financial Inc. Earnings Conference Call Webcast* (Aug. 3, 2010) (online at web.servicebureau.net/conf/meta?i=1113186441&c=2343&m=was&u=/w_ccbn.xsl&date_ticker=**GMAC) (hereinafter "Ally Financial Earnings Conference Call Webcast"); Ally Financial, Inc., *Transcript of Ally Financial Inc.'s Q2 2010 Earnings Call*, at 4 (Aug. 3, 2010) (online at ofchq.snl.com/Cache/753E92A12B9915308.pdf) (hereinafter "Transcript of Ally Financial Earnings Call"). Ally increased its penetration of GM and Chrysler wholesale financing from 42 percent in the first half of 2009 to 84 percent in the first half of 2010.

[137] *See* the Panel's March Report for a detailed discussion of the relationship between Ally and GM, and the potential consequences for Ally arising from GM's acquisition of a financing company. March 2010 Oversight Report, *supra* note 6, at 108-109. *See also* David Mildenberg, *Ally "Loves" GM Deal That Values Firm at $30 Billion*, Bloomberg Businessweek (Aug. 3, 2010) (online at www.businessweek.com/news/2010-08-03/ally-loves-gm-deal-that-values-firm-at-30-billion.html) ("The one question Ally cannot answer right now is, 'Why does it make sense for GM to continue doing business with them now that they have created a new captive lender?'[managing director of Institutional Risk Analytics Chris] Whalen said in a telephone interview. 'I want to hear about how they're going to fill out the rest of the business model.'").

In its second quarter 2010 earnings review, Ally reported a quarterly profit of $565 million, compared with a loss in the same quarter of last year of $3.9 billion.[138] Despite these positive results, Ally's greatest liability remains its mortgage businesses, which it has been attempting to downsize. In April, Ally's troubled real estate finance subsidiary, Residential Capital (ResCap), agreed to sell European mortgage assets and businesses to affiliates of hedge fund and private equity firm Fortress Investment Group. After adjusting for the pending sale of the European assets, ResCap still has a balance sheet of $17.7 billion, including $4.7 billion in what it calls "value sensitive exposures."[139] Ally has stated that it is considering a number of strategic alternatives with respect to ResCap, including one or more sales, spin-offs, or other potential transactions.[140]

4. Mortgage Foreclosure Relief Programs

Unlike programs assisting financial institutions and the auto industry, Treasury's mortgage modification efforts were not designed to recover losses through repayment to the federal government. The programs are intended to offset systemic and societal harm through a reduced foreclosure rate. As part of the 2011 federal budget, OMB projected the total cost of Treasury's foreclosure mitigation programs at $48.8 billion.[141] Treasury currently estimates that its foreclosure mitigation programs will total $45.6 billion. The revised program total is comprised of $11 billion for the FHA, $4.1 billion for the Hardest Hit Fund, and $30.5 billion for the remaining programs under HAMP.[142]

Under the current program guidelines for HAMP, servicers will continue to offer modifications through December 31, 2012, and conversions to permanent status through May 1, 2013. The program offers cost-sharing for the reduced payments, as well as incentive payments for servicers, lenders, and borrowers. These payments occur in installments for a period of up to five years. Because the program is in its first year of a multi-year program, and due to the staggered payments, only a fraction of the funds committed have been paid out to date. Of the $30.5 billion currently committed to HAMP, approximately $395 million has been disbursed.[143]

The latest CBO report from March 2010 offers its projection for spending under Treasury's mortgage foreclosure mitigation program. Since, as noted above, the program was

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[138] GMAC 2Q10 Earnings Review, *supra* note 121.

[139] *See* Ally Financial Earnings Conference Call Webcast, *supra* note 136; Transcript of Ally Financial Earnings Call, *supra* note 136, at 4.

[140] Ally Financial, Inc., *Form 10-Q for the Quarterly Period Ended June 30, 2010*, at 10 (Aug. 6, 2010) (online at www.sec.gov/Archives/edgar/data/40729/000119312510181437/d10q.htm).

[141] The President's Budget for Fiscal Year 2011, *supra* note 93, at 40.

[142] TARP Monthly 105(a) Report – July 2010, *supra* note 27, at 6.

[143] Data provided by Treasury to Panel staff (Sept. 14, 2010).

not designed to recover amounts spent, this number represents the amount that will be "lost" under the program. CBO estimates that Treasury will disburse $1.5 billion for the Hardest Hit Fund and $20 billion to servicers for permanent loan modifications.[144] CBO attributed the $27.3 billion difference between its estimate and OMB's estimate to differing assumptions of homeowner eligibility and participation in HAMP and the subsidy cost of future commitments to new programs.[145] On August 19, 2010, CBO noted that disbursements under HAMP were slower than expected, although it did not change its estimate that the total cost of the program would be approximately $22 billion.[146] Barring a dramatic increase in homeowners admitted to the program and the rate converting to permanent modifications, it is unlikely that Treasury will have a high enough participation rate to expend all of the funds currently committed to HAMP.[147]

D. How Has Treasury Used its Extended TARP Authority?

In the December 2009 letter to Congressional leadership in which Secretary Geithner extended the TARP, he set out three discrete areas to which Treasury would limit new TARP funding commitments, "unless necessary to respond to an immediate and substantial threat to the economy stemming from financial instability."[148] The letter stated:

- "We will continue to mitigate foreclosure for responsible American homeowners as we take the steps necessary to stabilize our housing market."
- "We recently launched initiatives to provide capital to small and community banks, which are important sources of credit for small businesses. We are also reserving funds for additional efforts to facilitate small business lending."
- "Finally, we may increase our commitment to the Term Asset-Backed Securities Loan Facility (TALF), which is improving securitization markets that facilitate consumer and small business loans, as well as commercial mortgage loans. We expect that increasing our commitment to TALF would not result in additional cost to taxpayers."[149]

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[144] Although Treasury uses the term "permanent modification," after five years the interest rate and payments on the modified loan can rise. Therefore, the modification is not truly "permanent." However, for clarity and consistency with Treasury's terms, this report uses the term "permanent modification."

[145] CBO Report on the TARP – March 2010, *supra* note 67, at 6.

[146] CBO Budget and Economic Outlook, *supra* note 68, at 70.

[147] For further discussion of the status of HAMP and Treasury's other foreclosure mitigation programs, *see* Section D.1, *infra*.

[148] Letter from Secretary Geithner to Hill Leadership, *supra* note 48.

[149] Letter from Secretary Geithner to Hill Leadership, *supra* note 48.

Treasury did not promise that it would commit additional funds for foreclosure mitigation, small business lending, and the TALF, but rather preserved its discretion to do so. Treasury's focus on those three areas, however, did come in response to its assessment of particular weaknesses in the financial system. Secretary Geithner's letter noted, for example, that "[t]oo many American families, homeowners, and small businesses still face severe financial pressure." It also stated that "foreclosures are increasing" and that "many small businesses face very difficult credit conditions." The Secretary also noted that extending the TARP will "enable us to continue to implement programs that address housing markets and the needs of small businesses."[150]

The discussion below focuses on the actions that Treasury has taken in each of the three areas Secretary Geithner cited when he notified Congress of his decision to extend the TARP.

1. Foreclosure Mitigation

Prior to the TARP's extension, Treasury had established and begun operating its signature foreclosure mitigation program, HAMP. HAMP is part of a broader umbrella of Administration housing programs known as Making Home Affordable (MHA), which was announced in February 2009, and aims to stabilize the housing market and help homeowners avoid foreclosure.[151] HAMP provides a combination of incentives and cost-sharing to mortgage servicers, investors, and borrowers in order to encourage loan modifications that reduce homeowners' monthly mortgage payments to 31 percent of their monthly income.[152] Borrowers may enter temporary modifications, and after three months of payments, they become eligible for conversion into permanent modifications. The program is mandatory for servicers of loans owned or guaranteed by Fannie Mae and Freddie Mac, and voluntary for servicers of other loans.[153]

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[150] Letter from Secretary Geithner to Hill Leadership, *supra* note 48 ("Too many American families, homeowners, and small businesses still face severe financial pressure. Although the economy is recovering, foreclosures are increasing, and unemployment is unacceptably high. Businesses are still cautious in the face of uncertainty about the strength of the recovery, and many small businesses face very difficult credit conditions. Although bank lending standards are starting to ease, many categories of bank lending continue to contract. This contraction has hit small businesses very hard because they rely heavily on such lending, and do not have the ability to substitute credit from securities issuance. Commercial real estate losses also weigh heavily on many small banks, impairing their ability to extend new loans.").

[151] The other major component of MHA is the Home Affordable Refinancing Program (HARP), which allows homeowners with loans owned or guaranteed by Fannie Mae or Freddie Mac the opportunity to refinance into a more sustainable mortgage. HARP does not use any TARP funds.

[152] For a more detailed discussion of HAMP and MHA, see the Panel's October 2009 and April 2010 reports. October 2009 Oversight Report, *supra* note 6; April 2010 Oversight Report, *supra* note 6.

[153] In 2009, Treasury also established subprograms of HAMP to deal with second liens that might otherwise prevent the successful HAMP modification of a mortgage, to encourage short sales (home sales for less than the amount owed by the homeowner) or deeds-in-lieu of foreclosure (agreements by defaulted homeowners to vacate

When the Administration announced HAMP, it designated $50 billion in TARP funds for the program.[154] By December 2009, when Treasury extended the TARP until October 3, 2010, a total of $27.4 billion of that $50 billion had been committed; in other words, $27.4 billion represented the maximum amount that Treasury would have to pay under agreements it had signed with servicers.[155]

Since the extension of the TARP on December 9, 2009, Treasury has made a number of changes with regard to MHA. First, it established the Hardest Hit Fund, which provides TARP assistance to certain states that have suffered from the economic and housing downturn, and has since committed $4.1 billion to the Fund. Second, it established a program with the Federal Housing Administration (FHA) to allow certain homeowners who owe more on their mortgages than their homes are worth to refinance into FHA loans with lower principals, and has since committed up to $11 billion to the program. Third, it entered into new contracts with loan servicers to modify primary mortgages and second liens as part of HAMP. Treasury states that none of these new programs and new contracts would have been authorized absent the extension of the TARP.[156] Treasury also made various changes to the structure of HAMP, such as increasing certain incentive payments, providing temporary assistance to unemployed homeowners, and adding an option for servicers to write down mortgage principal. These changes may have been allowable, according to Treasury, even if the TARP had not been extended.[157]

Since the extension of the TARP, Treasury has not allocated any additional money to foreclosure mitigation beyond the initial $50 billion. In fact, as part of its actions to adjust its programs under the new $475 billion cap imposed by the Dodd-Frank Act, the allocation was

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their homes, often in exchange for some cash from the lender) in situations where they are only feasible alternatives to foreclosure, and to provide additional incentives for mortgage investors to modify loans in regions where home prices have experienced a steep decline. U.S. Department of the Treasury, *Supplemental Directive 09-05 Revised: Update to the Second Lien Modification Program (2MP)* (Mar. 26, 2010) (online at www.hmpadmin.com/portal/docs/second_lien/sd0905r.pdf); U.S. Department of the Treasury, *Supplemental Directive 09-09 Revised: Home Affordable Foreclosure Alternatives – Short Sale and Deed-in-Lieu of Foreclosure Update* (Mar. 26, 2010) (online at www.hmpadmin.com/portal/docs/hafa/sd0909r.pdf); U.S. Department of the Treasury, *Supplemental Directive 09-04: Home Affordable Modification Program – Home Price Decline Protection Incentives* (July 31, 2009) (online at www.financialstability.gov/docs/press/SupplementalDirective7-31-09.pdf).

[154] U.S. Department of the Treasury, *Section 105(a) Troubled Assets Relief Program Report to Congress for the Period February 1, 2009 to February 28, 2009*, at 1 (Mar. 6, 2009) (online at financialstability.gov/docs/105CongressionalReports/105aReport_03062009.pdf).

[155] U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending December 3, 2009*, at 20-23 (Dec. 7, 2009) (online at financialstability.gov/docs/transaction-reports/12-7-09 Transactions Report as of 12-3-09.pdf). Servicers under HAMP are responsible for passing along the government's contributions to homeowners and investors.

[156] Treasury conversations with Panel staff (Aug. 26, 2010).

[157] Treasury conversations with Panel staff (Aug. 26, 2010).

reduced to $45.6 billion, and the allocations for the Hardest Hit Fund and the FHA program were carved out of that total. Figure 3 shows how that money was allocated at the time Treasury extended the TARP, and how it is split today.

Figure 3: Treasury's TARP Allocations for Housing Programs *(billions of dollars)*

Program	Prior Allocation	Current Allocation
HAMP	$50	$30.5
Hardest Hit Fund	–	4.1
Treasury/FHA refinance program	–	11.0
Total	**$50**	**$45.6**

This section summarizes the actions Treasury has taken since the TARP's extension with regard to foreclosure mitigation. In the coming months, the Panel plans to engage in further oversight of Treasury's foreclosure mitigation efforts.[158]

a. Hardest Hit Fund

The Hardest Hit Fund was established in February 2010.[159] In three separate rounds of funding, Treasury has committed $4.1 billion in TARP funds to 18 states and the District of Columbia for a variety of foreclosure mitigation and other housing assistance programs.[160] Eligibility criteria have differed for each of the three rounds of funding. The first round, $1.5 billion, was committed to five states – Arizona, California, Florida, Michigan, and Nevada – which had experienced home price declines of at least 20 percent from their peaks. Treasury has since approved all five states' plans for their use of the money.[161] These plans call primarily for some combination of the following types of initiatives: reducing mortgage principal to assist

[158] *See* March 2009 Oversight Report, *supra* note 6; October 2009 Oversight Report, *supra* note 6; April 2010 Oversight Report, *supra* note 6.

[159] The White House, *President Obama Announces Help for Hardest Hit Housing Markets* (Feb. 19, 2010) (online at www.whitehouse.gov/the-press-office/president-obama-announces-help-hardest-hit-housing-markets).

[160] U.S. Department of the Treasury, *Obama Administration Approves States' Plans for Use of $1.5 Billion in 'Hardest Hit Fund' Foreclosure-Prevention Funding* (June 23, 2010) (online at financialstability.gov/latest/pr_06232010.html) (hereinafter "Obama Administration Approves States' Plans for Use of $1.5 Billion in 'Hardest Hit Fund' Foreclosure-Prevention Funding"); U.S. Department of the Treasury, *Obama Administration Approves State Plans for $600 Million of 'Hardest Hit Fund' Foreclosure Prevention Assistance* (Aug. 3, 2010) (online at financialstability.gov/latest/pr_08042010.html) (hereinafter "Administration Approves State Plans for Hardest Hit Fund"); U.S. Department of the Treasury, *Obama Administration Announces Additional Support for Targeted Foreclosure-Prevention Programs to Help Homeowners Struggling with Unemployment* (Aug. 11, 2010) (online at financialstability.gov/latest/pr_08112010.html) (hereinafter "Administration Announces Additional Support for Targeted Foreclosure-Prevention").

[161] Details of the Arizona, California, Florida, Michigan, and Nevada plans are available online. *See* Making Home Affordable: Hardest Hit Fund, *supra* note 39.

homeowners who owe more than their homes are worth; assisting unemployed and under-employed homeowners with their mortgage payments; assisting homeowners who have fallen behind on their mortgage payments; facilitating short sales and deeds-in-lieu of foreclosure; and encouraging the removal of second liens as an obstacle to mortgage modifications.[162]

The second round of funding, $600 million, was split between North Carolina, Ohio, Oregon, Rhode Island, and South Carolina. These five states qualified for funding based on a formula that excluded the first-round recipients and measured the percentage of the state population that lived in counties with an unemployment rate over 12 percent in 2009. Treasury has approved the second-round recipients' plans for their use of the money. Like the first-round plans, these plans contain a mix of foreclosure mitigation initiatives, including efforts to assist unemployed homeowners, to encourage short sales and deeds-in-lieu of foreclosure in certain situations, and to reduce mortgage principal for some homeowners.[163] Figure 4 provides additional detail on the plans of the 10 states approved by Treasury. Altogether, the 10 states are expected to assist an estimated 127,420 borrowers. Some of the states note in their plans that they only expect to help a small fraction of the borrowers who are expected to face foreclosure in the coming years.[164]

[162] U.S. Department of the Treasury, *Troubled Asset Relief Program (TARP) Monthly 105(a) Report – July 2010*, at Appendix I – page 20 (Aug. 10, 2010) (online at www.financialstability.gov/docs/105CongressionalReports/July%202010%20105%28a%29%20Report_Final.pdf) (hereinafter "TARP Monthly 105(a) Report – July 2010").

[163] Details of the North Carolina, Ohio, Oregon, Rhode Island, and South Carolina plans are available online. *See* Making Home Affordable: Hardest Hit Fund, *supra* note 39.

[164] Data provided in North Carolina's proposal indicates that the state expects to help 7,190 homeowners over a period of three years, preventing just over 5 percent of the 135,544 foreclosures expected in the state over the same time period. *See* North Carolina Housing Finance Agency, *Hardest Hit Fund Proposal*, at 3-4 (July 23, 2010) (online at www.financialstability.gov/roadtostability/NC.PDF). Ohio's proposal notes that with available funding the state would be able to provide assistance for just 5 to 7 percent of the potentially eligible households in the state. *See* Ohio Housing Finance Agency, *Ohio Hardest-Hit Fund: Final Submission to the U.S. Department of the Treasury*, at 12 (July 23, 2010) (online at www.financialstability.gov/roadtostability/OH.PDF). Arizona is most direct in making this point, stating that "[g]iven the number of households significantly underwater with their mortgages and an unemployment rate hovering at 10 percent, $125.1 million is not nearly enough money to stabilize the Arizona housing market. At best, these funds will assist just over 4,000 households or over 11,000 individuals to remain in their homes. To put this in perspective, in March 2010, 5,556 homes were foreclosed on in the Phoenix area alone. Arizona is expecting as many as 50,000 foreclosures in 2010." Arizona Foreclosure Prevention Funding Corporation, *Proposal for Use of HFA Hardest-Hit Fund*, at 4 (July 23, 2010) (online at www.financialstability.gov/roadtostability/AZ.pdf).

Figure 4: State-by-State Summary of Hardest Hit Fund Plans

State	Allocation[165]	Estimated Number of Borrowers to be Assisted	Types of Assistance[166]	Dollars per Borrower to be Assisted
Arizona	$125.1 million	4,348	MD, 2L, UE	$28,772
California	$699.6 million	[167]38,239	UE, AR, PR, SD	18,295
Florida	$418.0 million	[168]10,000	UE, PR, 2L	41,800
Michigan	$154.5 million	17,224	UE, AR, PR	8,970
Nevada	$102.8 million	7,313	PR, 2L, SS, FC	14,057
North Carolina	$159.0 million	7,190	UE, 2L, MD	21,114
Ohio	$172.0 million	18,502	AR, UE, MD, SD	9,296
Oregon	$88.0 million	7,400	MA, UE, AR, SD, FC	11,892
Rhode Island	$43.0 million	5,000	MA, UE, SD, FC	8,600
South Carolina	$138.0 million	12,204	UE, AR, MA, 2L, SD	11,308
Total	**$2.1 billion**	**127,420**	–	[169]**$16,481**

The Hardest Hit Fund's third round of funding, $2 billion, was announced on August 11, 2010. States qualified if their unemployment rate during the previous 12 months exceeded the national average. Unlike in the second round, states that had previously been approved for funding were eligible. All of the earlier recipients qualified again, except for Arizona, along with eight other states and the District of Columbia.[170] Treasury's rules for how states spend the third-round funds are more restrictive than they were in the two previous rounds; recipient states are required to use the money to establish a bridge loan program for unemployed or underemployed homeowners that will cover a portion of their mortgages while they look for work. Seventeen states and the District of Columbia submitted their term sheets and plans for

[165] These figures do not include third-round allocations to most of the same states, since the states have not yet submitted their plans for spending their third-round allocations.

[166] AR = program to assist homeowners with arrearages; FC = foreclosure counseling; MA = assistance aimed at encouraging successful modifications in other programs; MD = modification program; PR = principal reduction program; SD = short sale/deed-in-lieu program; SS = short sale program; UE = program for unemployed, underemployed homeowners; 2L = second lien program. These are broad categorizations of the programs, and in some cases there is overlap between them. For example, modification programs may include a principal-reduction element.

[167] California estimates that 7,854 of these borrowers will participate in two or more of its programs.

[168] Florida estimates that 7,500-12,500 borrowers will be assisted. The Panel's estimate of 10,000 is based on the average of Florida's high-end and low-end estimates.

[169] This figure is a weighted average, calculated by dividing the 10 states' allocation of $2.1 billion by the total estimated number of borrowers assisted, 127,420.

[170] Administration Announces Additional Support for Targeted Foreclosure-Prevention, *supra* note 160.

this round of funding by the September 1, 2010 deadline. These plans are currently under review.[171]

Figure 5 shows the total state-by-state funding from all three rounds of Hardest Hit Fund allocations. The top two recipients are California, which will receive 29 percent of the funds, and Florida, which will receive 16 percent.

Figure 5: Total Hardest Hit Fund Allocations[172]

State	Total Allocation
Alabama	$60,672,471
Arizona	125,100,000
California	1,175,857,070
District of Columbia	7,726,678
Georgia	126,650,987
Florida	656,864,755
Illinois	166,352,726
Indiana	82,762,859
Kentucky	55,588,050
Michigan	282,961,559
Mississippi	38,036,950
Nevada	136,856,581
New Jersey	112,200,638
North Carolina	279,874,221
Ohio	320,728,864
Oregon	137,294,215
Rhode Island	56,570,770
South Carolina	196,772,347
Tennessee	81,128,260
Total	**$4,100,000,000**

Treasury is encouraging, but not requiring, states that participate in the Hardest Hit Fund to leverage their TARP funds with matching contributions from affected financial institutions.[173] For example, Arizona, which is using the federal dollars to fund a principal reduction program, has stated that it expects the lender or servicer of loans to match the principal reduction provided

[171] U.S. Department of the Treasury, *Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets: Guidelines for HFA Proposal Submission for Unemployment Programs*, at 1-2, 5 (Aug. 2010) (online at www.financialstability.gov/docs/HHF%20Unemployment%20Program%20Guidelines.pdf). Treasury conversations with Panel staff (Sept. 10, 2010).

[172] Obama Administration Approves States' Plans for Use of $1.5 Billion in 'Hardest Hit Fund' Foreclosure-Prevention Funding, *supra* note 160; Administration Approves State Plans for Hardest Hit Fund, *supra* note 160; Administration Announces Additional Support for Targeted Foreclosure-Prevention, *supra* note 160.

[173] Treasury conversations with Panel staff (Sept. 2, 2010).

by TARP funds on a dollar-for-dollar basis.[174] In cases where states obtain a dollar-for-dollar match for TARP funds, the payments by the states are in effect grants, so there is no possibility that the funds will be repaid to the state.[175] If the state is unable to obtain a dollar-for-dollar match, though, their payments must be structured as forgivable loans, according to Treasury.[176] Forgivable loans are loans that do not require repayment as long as certain conditions are met. (Treasury has not made public any information about the criteria that must be met in order to qualify for loan forgiveness.) If the states receive funds from repaid loans, they may recycle those dollars to provide assistance to additional homeowners. This is true until December 31, 2017, at which point the participating states must return any remaining program funds to Treasury.[177]

As of September 10, 2010, Treasury had paid out a total of $41.9 million from the Hardest Hit Fund to Arizona, California, Florida, Nevada, and Michigan, or about 3 percent of the funds those states are scheduled to receive in first-round payments. No other states have received funding to date.[178] Once the recipient states begin spending TARP funds, Treasury, through an agent, Bank of New York Mellon, plans to collect program data from the states on a quarterly basis.[179] No such data have been collected yet. On July 20, 2010, Treasury awarded four blanket purchase agreements that will cover HHF compliance activities and monitoring.[180] At Treasury's request, participating states are in the process of building their own compliance programs.[181]

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[174] U.S. Department of the Treasury, *Commitment to Purchase Financial Instrument and HFA Participation Agreement Between Treasury and the Arizona Department of Housing*, at 33 (June 23, 2010) (online at www.financialstability.gov/docs/Redacted Arizona HPA.pdf) (hereinafter "Agreement Between Treasury and the Arizona Department of Housing").

[175] Treasury conversations with Panel staff (Sept. 2, 2010).

[176] Treasury conversations with Panel staff (Sept. 2, 2010).

[177] *See, e.g.,* Agreement Between Treasury and the Arizona Department of Housing, *supra* note 174, at 22. Other Hardest Hit Fund contracts between Treasury and state housing finance agencies are available online as well. *See* U.S. Department of the Treasury, *OFS Contracts List* (online at www.financialstability.gov/impact/contracts_list.htm) (accessed Aug. 30, 2010).

[178] Treasury conversations with Panel staff (Sept. 10, 2010).

[179] Treasury conversations with Panel staff (Aug. 18, 2010). Treasury is collecting various data on borrowers who participate in the Hardest Hit Fund programs, including income, geographic breakdown, delinquency status, reason for hardship, and loan-to-value ratio. Treasury is also collecting data on each state initiative, including the number of applicants approved and denied, characteristics of the loans before and after assistance, median length of time from initial request to assistance granted, and homeownership retention after six and 12 months.

[180] Among the issues that will be monitored are the internal controls of the state housing finance agencies (HFAs) that receive the funds, the HFAs' processes for dealing with money and expenses, and their monitoring of any third parties that are part of the programs. Treasury conversations with Panel staff (Sept. 10, 2010).

[181] Treasury conversations with Panel staff (Sept. 10, 2010).

b. Treasury/FHA Refinance Program

Treasury announced its joint mortgage refinance program with FHA in March 2010. The program will use up to $11 billion in TARP funds to allow borrowers who are current on their mortgage payments and owe more than their homes are worth to refinance, following a principal write-down, into mortgages insured by FHA.[182] The idea is that by shifting most of the mortgage investor's risk of loss to a government program that is designed to handle such losses, the program will encourage investors to write down principal on certain loans whose value exceeds that of the property. For a homeowner to qualify, the first-lien mortgage holder must write down at least 10 percent of the loan's principal. The loan-to-value ratio (the ratio between the outstanding value of the first-lien mortgage and the current value of the property) can be no higher than 97.75 percent after the refinancing. In addition, the combined loan-to-value ratio on the refinanced mortgage (the ratio between the outstanding value of all mortgages and the current value of the property) can be no greater than 115 percent.[183] As with other FHA-insured loans, the mortgage holder will have the benefit of insurance on up to 97.75 percent of the property's value. Participation in the program is voluntary for lenders and servicers, and they can decide whether to participate on a loan-by-loan basis.

The $11 billion TARP contribution to this program includes approximately $3 billion to be used toward incentive payments to re-subordinate and to pay for the write-down and extinguishment of second liens, which often serve as a barrier to the modification or refinancing of first liens. In order to overcome that impediment, Treasury will have to persuade servicers of second liens to sign participation agreements under which they agree to write down loans in exchange for incentive payments from Treasury. After Treasury issues formal guidance through a Supplemental Directive in mid September, servicers will be able to sign up for the program.[184]

Both in the joint program with Treasury and outside of it, FHA charges lenders a fee in exchange for a government guarantee in the event of a default. Under the joint Treasury/FHA program, in an acknowledgement that the risk of loss is higher than it normally is for FHA, Treasury is agreeing to use up to $8 billion in TARP funds to share losses with FHA. In the event of default under the program, Treasury will be in a first-loss position, and it expects to be responsible for losses equal to around 12.75 percent of the property's value, meaning that FHA will be responsible for the remaining losses, up to, but not exceeding, a total of 97.75 percent.[185]

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[182] TARP Monthly 105(a) Report – July 2010, *supra* note 162, at 6. Loans that have been modified under HAMP and other loan-modification programs may be eligible for this program. *See* U.S. Department of Housing and Urban Development, *FHA Refinance of Borrowers in Negative Equity Positions*, Mortgagee Letter 2010-23, at 3 (Aug. 6, 2010) (online at www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/10-23ml.pdf) (hereinafter "FHA Refinance of Borrowers in Negative Equity Positions").

[183] FHA Refinance of Borrowers in Negative Equity Positions, *supra* note 182, at 2.

[184] Treasury conversations with Panel staff (Sept. 10, 2010).

[185] Treasury conversations with Panel staff (July 28, 2010).

For example, if a lender lost $50,000 on a mortgage on a $200,000 property, Treasury would be responsible for the first $25,500 in losses, and FHA would cover the remaining $24,500. To be eligible for the program, refinanced loans must close by December 31, 2012.[186] Treasury's participation in the loss-sharing will continue until August 2020, at which point FHA will be responsible for any additional losses.[187]

Treasury launched this program on September 7, 2010, although there are a number of other steps to be taken before the program is fully implemented, including the procurement of claims processing and financial administration contractors. The second lien portion of the program is scheduled to be effective on September 30, 2010. As a brand new program, there are no performance data to evaluate at this point.[188] A recent analysis by the U.S. Department of Housing and Urban Development (HUD) anticipates that the program will have 1 million participants. The study also found that this program would result in $23.5 billion in net benefits to society, $20.4 billion of which would take the form of benefits to owners of first and second liens. According to HUD estimates, each refinancing under the program would cost Treasury an average of $4,083, which would mean that Treasury would end up losing about $4 billion of the $8 billion in TARP funds it is setting aside for loss-sharing.[189]

In its April 2010 report, the Panel questioned whether this program would be able to make significant headway against the problem of "underwater" borrowers, who owe more than their homes are worth.[190] The Panel has the same concerns today. Although the program shifts most of a loan's risk from the lender to the government, it is unclear whether this will be sufficient incentive to persuade a large number of lenders to participate, in light of the significant principal write-downs participating lenders must offer to borrowers.[191] And if lenders do participate on a widespread basis, this raises another concern: that private lenders are shifting the risk of loss on their worst loans to the government. Such cherry-picking, if it materializes, would increase the federal government's sizable exposure to the struggling U.S. housing market.

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[186] FHA Refinance of Borrowers in Negative Equity Positions, *supra* note 182, at 1.

[187] Treasury conversations with Panel staff (July 28, 2010).

[188] Treasury conversations with Panel staff (Sept. 10, 2010).

[189] U.S. Department of Housing and Urban Development, *Economic Impact Analysis of the FHA Refinance Program for Borrowers in Negative Equity Positions* (July 16, 2010) (online at www.hud.gov/offices/adm/hudclips/ia/ia-refinancenegativeequity.pdf). The $23.5 billion is a net figure that includes the $4 billion estimated cost to Treasury.

[190] April 2010 Oversight Report, *supra* note 6, at 21-22.

[191] Amherst Securities Group LP explores this question in an August 10, 2010 research report. The report concludes that loans in private-label servicing and loans guaranteed by Fannie Mae and Freddie Mac are unlikely to take advantage of the program, and notes that loans already guaranteed by the FHA are ineligible. Amherst states that it expects the program to be used primarily by banks holding loans on their balance sheet and special servicers that are working out loans. Amherst Securities Group LP, *Amherst Mortgage Insight: HAMP: A Progress Report,* at 6-7 (Aug. 10, 2010).

The Panel is also concerned about the precedent set by a government program that pays holders of second liens while asking first-lien holders to take a loss. As long as the homeowner is underwater, the second lien only has value inasmuch as it can prevent the first lien from being modified or refinanced. Making payments to the second-lien holders under these circumstances overturns the fundamental notion that second liens are subordinate to first liens, and thereby introduces a moral hazard, providing an incentive for lenders to take imprudent risks on second liens in the future. On the other hand, if there is good reason to believe that the property's value will recover such that the homeowner regains equity, then the second lien does have value.

Finally, the Panel is concerned that in many instances, the financial institutions that own second liens also service first liens on the same homes, which presents a conflict of interest and gives the second-lien holder the ability to allocate losses to the first-lien holder.[192] The nation's four largest commercial banks – Bank of America, Citigroup, JPMorgan Chase, and Wells Fargo – hold 43 percent of second liens.[193] Those same four banks are also the four largest servicers of residential mortgages.[194] Unlike second liens, first liens are usually securitized, and are more broadly distributed among investors. It is possible that this program may benefit the large banks that hold second liens at the expense of first lien investors.

c. HAMP

HAMP remains the cornerstone of Treasury's foreclosure mitigation efforts. Since the TARP's extension in December 2009, Treasury has introduced various changes to the program. These changes, which are discussed in greater detail in the Panel's April 2010 report, include a principal-reduction option for servicers, higher incentive payments in some instances, and the addition of temporary assistance for unemployed homeowners.[195]

The portion of the program that provides temporary assistance for unemployed homeowners became effective on August 1, 2010.[196] Treasury states that it has not developed

[192] *See id*. at 6-7 ("One issue with the FHA short refi program is that it leaves room for the 2nd lien investor to game the 1st lien investor. The 1st mortgage need not be for 97.75%; it can be for less and there is no minimum. The servicer that owns the 2nd lien could choose to allocate the entire subordinate lien to the 2nd, give the borrower a small 1st mortgage, and leave the entire 2nd mortgage intact and in a much stronger position. Can't 1st lien investors sue if servicers act in obvious self interest? No – as per Supplemental Directive 10-05, released on June 3, 2010, the FHA short refi program is now under HAMP, and servicers are protected by the servicer safe harbor.").

[193] Amherst Securities Group LP data provided to Panel staff (Sept. 2, 2010). The distribution of second liens in discussed further in Section E.1.d.

[194] In the first quarter of 2010, the top mortgage servicers were Bank of America (19.9 percent market share); Wells Fargo (16.9 percent market share); Chase (12.6 percent market share); and Citi (6.3 percent market share). Inside Mortgage Finance, *Top Mortgage Servicers in 2010* (June 30, 2010).

[195] April 2010 Oversight Report, *supra* note 6, at 18-20, 22-27.

[196] Congressional Oversight Panel, *Questions for the Record from the Hearing on June 22, 2010 for the Honorable Timothy F. Geithner, Secretary of the Treasury*, at 2 (online at cop.senate.gov/documents/testimony-062210-geithner-qfr.pdf).

metrics that would inform a judgment on this program's effectiveness. Treasury expects the principal-reduction option to be effective by October 3, 2010.[197]

In February 2009, Treasury stated that HAMP would help three to four million homeowners stay in their homes.[198] More recently, Treasury has stated that this goal refers to the number of trial modifications offered to borrowers,[199] rather than permanent modifications, or even trial modifications entered. During Secretary Geithner's June 22, 2010 testimony before the Panel, he described Treasury's goals for HAMP as limited. He acknowledged that HAMP is "subject to so much criticism from people who had hoped that the program would be designed to keep a much larger fraction of Americans in their homes." He added: "Our program was designed … to make sure for those Americans – and there are many – who have a realistic prospect … of staying in their home, who can afford to stay in their home in that context, have the option and the chance to do that."[200]

The Panel believes that the most important measure of HAMP's effectiveness is the number of sustainable permanent modifications, and that HAMP should also be evaluated in the context of the number of American families that are losing their homes in foreclosures.

Between September 2009, when the first homeowners received permanent HAMP modifications, and July 2010, 434,716 homeowners had entered permanent modifications under the program. Of those, 12,912 homeowners, or about 3 percent, had either re-defaulted on their mortgages or left the program for another reason. Subtracting out the homeowners who had left the program, 421,804 homeowners were in permanent modifications at the end of July 2010.[201] During the same 11-month period, there were around 1 million foreclosure sales nationwide.[202]

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[197] A few servicers began offering the principal-reduction alternative in HAMP prior to the program's official launch; they will be eligible for retroactive incentive payments. Treasury conversations with Panel staff (Aug. 26, 2010 and Sept. 10, 2010).

[198] U.S. Department of the Treasury, *Homeowner Affordability and Stability Plan Executive Summary* (Feb. 18, 2009) (online at www.financialstability.gov/latest/tg33.html).

[199] U.S. Department of the Treasury, *Making Home Affordable Program: Servicer Performance Report Through May 2010*, at 7 (June 21, 2010) (online at financialstability.gov/docs/May MHA Public 062110.pdf) ("In 2009, Treasury set a goal of offering help to 3-4 million borrowers through the end of 2012, as measured by trial plan offers extended to borrowers.").

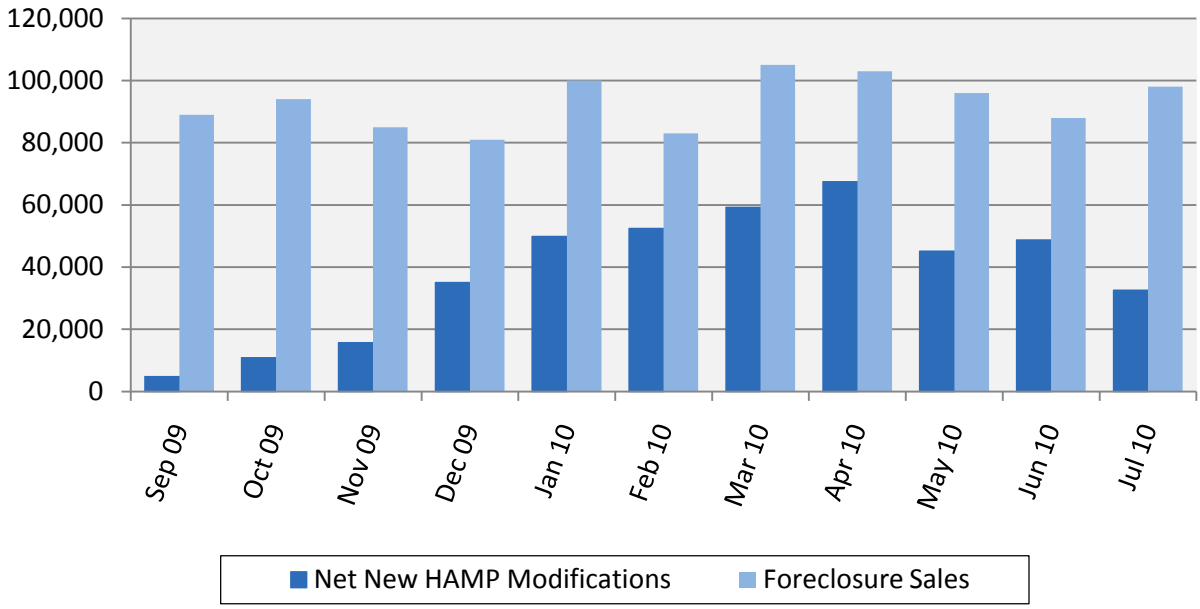
[200] Congressional Oversight Panel, Testimony of Timothy F. Geithner, secretary, U.S. Department of the Treasury, *Transcript: COP Hearing with Treasury Secretary Timothy Geithner* (June 22, 2010) (publication forthcoming) (online at cop.senate.gov/hearings/library/hearing-062210-geithner.cfm) (hereinafter "Transcript: COP Hearing with Secretary Geithner").

[201] Treasury data provided to the Panel (Aug. 23, 2010).

[202] HOPE NOW, *Appendix – Mortgage Loss Mitigation Statistics: Industry Extrapolations (Monthly for Dec. 2008 to Nov. 2009)*, at 2 (online at www.hopenow.com/industry-data/HOPE%20NOW%20National%20Data%20July07%20to%20Nov09%20v2%20(2).pdf) (accessed Sept. 14, 2010); HOPE NOW, *Appendix – Mortgage Loss Mitigation Statistics: Industry Extrapolations (Monthly for Dec. 2009 to Jan. 2010)*, at 8 (online at www.hopenow.com/industry-

Figure 6 shows the trend in the permanent modifications added each month against the backdrop of monthly foreclosure sales.

Figure 6: Foreclosure Sales and Net New HAMP Permanent Modifications [203]



The pace of new permanent modifications is also being outstripped each month by the number of failed trial modifications. Between June 2009 and July 2010, a total of 616,839 trial modifications have failed.[204] Figure 7 shows the number of trial modifications that failed each month in comparison to new permanent modifications added and foreclosure sales each month.

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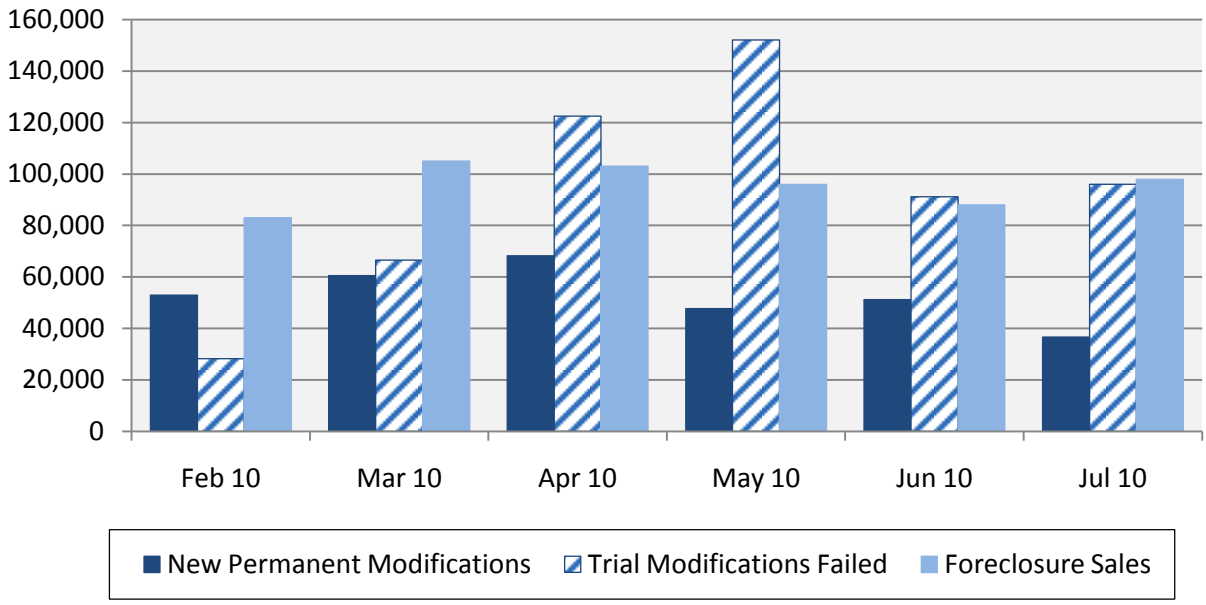
data/HOPE%20NOW%20Data%20Report%20(May)%2006-21-2010.pdf) (accessed Sept. 14, 2010); HOPE NOW, *Appendix – Mortgage Loss Mitigation Statistics: Industry Extrapolations (Monthly for Feb. 2010 to July 2010)*, at 8 (online at www.hopenow.com/industry-data/HOPE%20NOW%20Data%20Report%20(July)%2009-01-2010.pdf) (hereinafter "HOPE NOW Statistics (Dec. 2008 to July 2010)") (accessed Sept. 14, 2010).

[203] The net number of permanent modifications by month is calculated by subtracting the number of permanent modifications that fail each month from the number of new permanent modifications started each month. Treasury data provided to the Panel (Aug. 23, 2010). Foreclosure sales is a conservative measure of the foreclosure problem. HOPE NOW also tracks foreclosure starts, which totaled 2.3 million between September 2009 and July 2010. HOPE NOW Statistics (Dec. 2008 to July 2010), *supra* note 202, at 2, 8. RealtyTrac tracks all foreclosure actions, which totaled 3.6 million during the same period. RealtyTrac, *Press Releases* (online at www.realtytrac.com/content/press-releases) (accessed Sept. 14, 2010).

[204] U.S. Department of the Treasury, *Making Home Affordable Program Servicer Performance Report Through July 2010*, at 2 (Aug. 20, 2010) (online at financialstability.gov/docs/JulyMHAPublic2010.pdf). *See* Figure 8, *infra*, for the reasons that servicers have given for why trial modifications have failed.

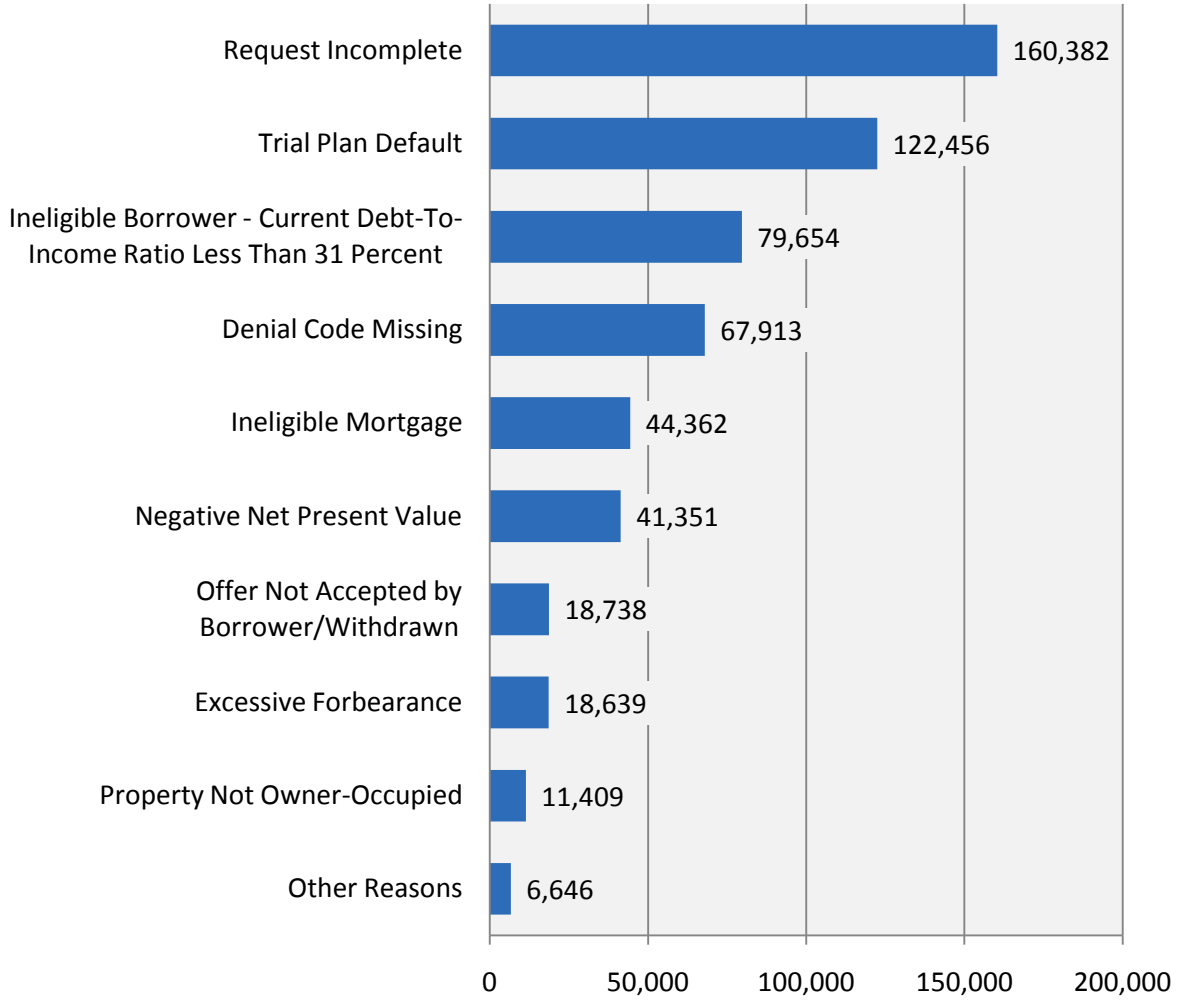
Figure 7: Failed Trial Modifications Outpace New Permanent Modifications[205]



HAMP also requires that borrowers be provided with a reason when their modifications fail to convert from trial to permanent status. Figure 8 shows the breakdown of reasons that servicers have provided, which Treasury refers to as "denial codes."

[205] Treasury data provided to the Panel (Aug. 23, 2010); HOPE NOW Statistics (Dec. 2008 to July 2010), *supra* note 202, at 8.

Figure 8: Total Number of Modifications Failing to Convert from Trial to Permanent, by Denial Code[206]



Unfortunately, despite Treasury's efforts to collect meaningful data in this area, there remain important questions about why such a large number of trial modifications have failed to convert to permanent modifications. As Figure 8 shows, the most common reason given is "Request Incomplete," which means that the servicer reported that it did not have all of the paperwork necessary to approve the modification. This could be for one of two reasons, though: either because the homeowner failed to provide the necessary documentation, or because the servicer lost it. Homeowners applying to the program have consistently told stories of servicers

[206] Denial codes classified as "Other Reasons" are: bankruptcy court declined modification; previous HAMP modification; investor guarantor not participating; default not imminent; loan paid off or reinstated; and other ineligible property, such as a property larger than four units. Treasury data provided to Panel (Aug. 23, 2010).

losing their documentation.[207] In addition, the fourth most common denial code is "Missing," which means that the servicer did not provide a denial code. The data in Figure 8 do shed some light on the causes of failed trial modifications, though. For example, the data show that 21 percent of the trial modifications that failed did so because borrowers defaulted on their modified mortgages. The data also indicate that Treasury's initial decision to allow servicers to enroll homeowners into trial modifications without written documentation has contributed to the failure rate – several of the most frequently used denial codes involve violations of basic HAMP eligibility requirements.[208]

2. Small Business Lending and Small Banks

Treasury has announced or implemented three TARP-related programs with the stated goal of supporting the small business lending market: the SBA 7(a) Securities Purchase Program, the Small Business Lending Fund, and the Community Development Capital Initiative.[209] Although all of the programs were announced, in some fashion, before the December 9, 2009 extension of the TARP, none were launched prior to that date.[210] On February 3, 2010, the Administration outlined its intent to create the SBLF outside of the TARP.[211]

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[207] *See, e.g.*, National Community Reinvestment Coalition, *HAMP Mortgage Modification Survey 2010* at 11 (online at www.ncrc.org/images/stories/mediaCenter_reports/hamp_report_2010.pdf) (stating that 70.6 percent of 160 respondents in a survey of HAMP applicants reported being asked to re-submit documents). *See also* Office of the Special Inspector General for the Troubled Asset Relief Program, *Factors Affecting Implementation of the Home Affordable Modification Program* (Mar. 25, 2010) (online at www.sigtarp.gov/reports/audit/2010/Factors_Affecting_Implementation_of_the_Home_Affordable_Modification_Program.pdf) (finding that changing documentation requirements, repeated changes and clarifications in net present value models, a lack of clear guidance from Treasury, and servicer capacity and training issues all posed challenges to the implementation of HAMP).

[208] For example, borrowers with debt-to-income ratios below 31 percent are not eligible for HAMP, properties must be owner-occupied to be eligible, and mortgages that exceed $729,750 are ineligible. U.S. Department of the Treasury, *Borrower Frequently Asked Questions* (June 8, 2010) (online at makinghomeaffordable.gov/borrower-faqs.html). Treasury now requires servicers to collect written documentation prior to enrollment in a trial modification.

[209] See the Panel's May 2010 report for a discussion of the small business credit crunch. The report explores the extent to which the credit crunch is the result of a lack of demand for small business loans, or the result of a lack of supply of such loans as a result of bank instability. It concludes that both factors have contributed to the problem. May 2010 Oversight Report, *supra* note 6.

[210] The White House, *President Obama Announces New Efforts to Improve Access to Credit for Small Businesses* (Oct. 21, 2009) (online at www.whitehouse.gov/assets/documents/small_business_final.pdf) (hereinafter "President Announces New Efforts to Improve Access to Credit for Small Businesses"). *See also* The White House, *Remarks by the President on Small Business Initiatives* (Oct. 21, 2009) (online at www.whitehouse.gov/the-press-office/remarks-president-small-business-initiatives-landover-md).

[211] The White House, *President Obama Outlines New Small Business Lending Fund* (Feb. 2, 2009) (online at www.whitehouse.gov/the-press-office/president-obama-outlines-new-small-business-lending-fund) (hereinafter "President Outlines New Small Business Lending Fund").

Treasury's Unlocking Credit for Small Businesses initiative involves the purchase of securities backed by Small Business Administration (SBA) loans.[212] Treasury's goal with these purchases was to provide liquidity to the SBA securitization market.[213] When the program was announced on March 16, 2009,[214] Treasury allocated $15 billion in TARP funds for the purchases. Since then, the program's scale has sharply decreased. In April 2010, Treasury revised its planned investment down to just $1 billion.[215] Then, as part of its implementation of the Dodd-Frank Act, the amount allocated for purchases was again reduced to $400 million.[216]

Treasury did not make its first purchases under the program until March 2010, one year after the program was announced. The same month, the government's involvement in the SBA 7(a) loan market through the Term Asset-Backed Securities Lending Facility (TALF) ended.[217] Treasury indicated that it decided to begin to make purchases, and thus support the SBA market, in March 2010 in response to the expiration of the TALF and other factors Treasury believed would negatively impact the SBA-backed lending market.[218] (Treasury states that it could not have made any purchases under the program in 2010 if the TARP had not been extended, since

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[212] The initiative also included, among other things, increased guarantees for SBA loans, and removing certain fees on SBA loans. These programs were not, however, funded with TARP money. *See* U.S. Department of the Treasury, *Fact Sheet: Unlocking Credit for Small Businesses* (Apr. 26, 2010) (online at www.financialstability.gov/roadtostability/unlockingCreditforSmallBusinesses.html) (hereinafter "Fact Sheet: Unlocking Credit for Small Businesses").

[213] Traditionally, SBA lending has been supported by an active secondary market, as community banks and other lenders sell the government-guaranteed portion of their loans, providing them with new capital to make additional loans. But in the fall of 2008, this secondary market – which has historically supported over 40 percent of SBA's 7(a) lending program – froze up. As a result, both lenders, including community banks and credit unions, and the "pool assemblers" that securitize their loans were left with government-guaranteed SBA loans and securities on their books. This prevented them from making or buying new loans. *See* May 2009 Oversight Report, *supra* note 6, at 50-53. *See also* May 2010 Oversight Report, *supra* note 6, at 33-34.

[214] The White House, *President Obama and Secretary Geithner Announce Plans to Unlock Credit for Small Businesses* (Mar. 16, 2009) (online at www.sba.gov/idc/groups/public/documents/sba_homepage/white_house_factsheet_031609.pdf).

[215] U.S. Department of the Treasury, *Troubled Assets Relief Program (TARP) Monthly 105(a) Report – March 2010*, at 7 fn 6 (Apr. 12, 2010) (online at www.financialstability.gov/docs/105CongressionalReports/March%202010%20105%28a%29%20monthly%20report_final.pdf).

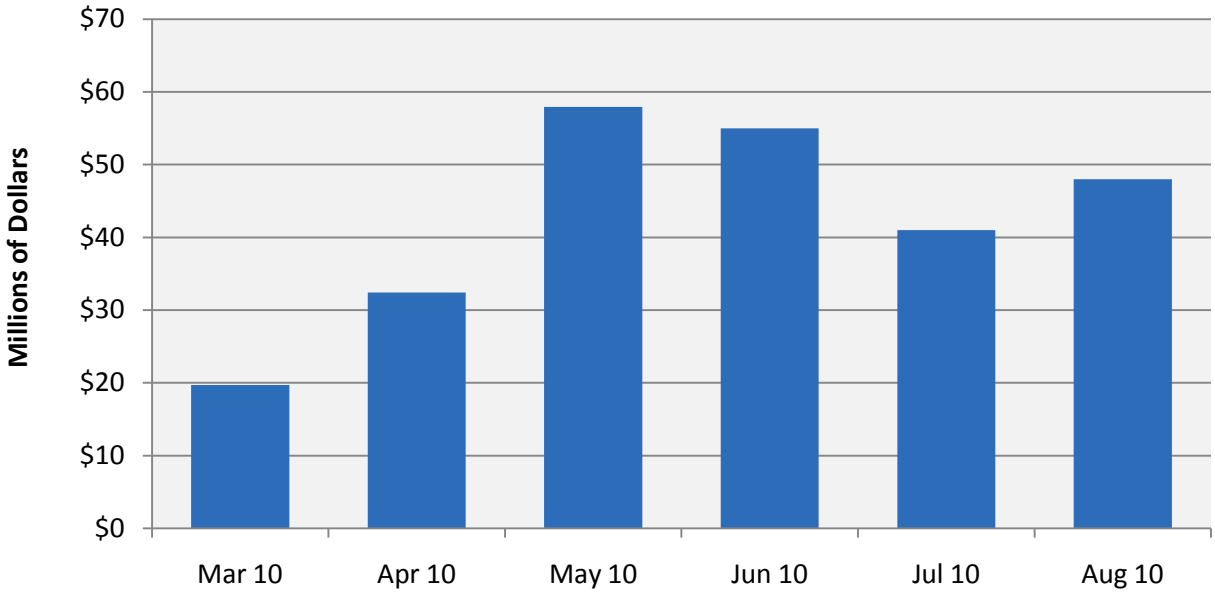
[216] TARP Monthly 105(a) Report – July 2010, *supra* note 162, at 6.

[217] U.S. Department of the Treasury, *Unlocking Credit for Small Businesses Fact Sheet* (Mar. 2, 2009) (online at www.financialstability.gov/latest/tg58.html) (hereinafter "Unlocking Credit for Small Businesses Fact Sheet"). For a full discussion of the SBA loan securities purchase program, *see* May 2010 Oversight Report, *supra* note 6, at 40-42.

[218] In particular, Treasury cited uncertainty at the time about whether or not the expanded guarantees and reduced fees on SBA-backed loans provided by the American Recovery and Reinvestment Act of 2009 would be extended. These incentives were viewed as providing support for the market, and their expiration could be expected to curtail SBA lending significantly. *See* May 2010 Oversight Report, *supra* note 6, at 41.

as of December 2009 it had not yet committed funds to the program.)[219] As of August 17, 2010, a total of $261.7 million had been spent under this program,[220] an amount equal to about 3 percent of the volume of SBA loans approved in the same period, and even a far smaller percentage of the overall small-business lending market.[221] Figure 9 shows the volume of securities Treasury has purchased by month.

Figure 9: Monthly Volume of SBA Securities Purchases (as of September 1, 2010)[222]



The second program, which was supposed to provide capital to banks in order to increase lending to small businesses, was first announced on October 21, 2009.[223] In its original form, the

[219] Treasury conversations with Panel staff (Aug. 26, 2010).

[220] U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending August 31, 2010*, at 40 (Aug. 31, 2010) (online at www.financialstability.gov/docs/transaction-reports/8-31-10%20Transactions%20Report%20as%20of%208-27-10.pdf) (hereinafter "Treasury Transactions Report").

[221] In fiscal year 2009, the SBA approved a total of $15.2 billion in loans across all of its loan programs, or roughly $7.6 billion over six months – the same amount of time in which Treasury spent $253.2 million on its SBA Securities Purchase Program. This equates to approximately 3.3 percent of SBA lending over the same period. U.S. Small Business Administration, *Table 2 – Gross Approval Amount by Program* (online at www.sba.gov/idc/groups/public/documents/sba_homepage/serv_bud_lperf_grossapproval.pdf) (accessed Sept. 7, 2010). The Government Accountability Office has calculated that, in recent years, only about four percent of the total value of outstanding small business loans is guaranteed through the 7(a) program. *See* U.S. Government Accountability Office, *Small Business Administration: Additional Measures Needed to Assess 7(a) Loan Program's Performance*, at 7 (July 2007) (GAO-07-769) (online at www.gao.gov/new.items/d07769.pdf). Treasury purchases of SBA loans therefore account for only approximately 0.13 percent of all small business lending.

[222] Treasury Transactions Report, *supra* note 220, at 40.

program would have used TARP funds to provide capital to small and community banks in such a way that provided them an incentive to increase their lending.[224] But following the TARP's extension, and after hearing from bankers who did not want to participate in the program as long as it was a part of the TARP, due to the stigma associated with the TARP,[225] the Administration decided to seek congressional authorization to establish the program outside the TARP. The Administration would create a separate $30 billion program now known as the Small Business Lending Fund.[226] This proposal passed the House of Representatives on June 17, 2010, as part of the Small Business Jobs and Credit Act of 2010. The Senate is scheduled to vote on this bill during the week of this report's publication.

Finally, on February 3, 2010, Treasury announced the Community Development Capital Initiative. This program was initially conceived in 2009 as part of the Administration's aforementioned small business lending proposals.[227] The CDCI provides low-cost capital to Community Development Financial Institutions (CDFIs), which lend to small businesses in underserved communities. Under the program, CDCIs pay a 2 percent dividend rate on the capital they receive. This means that participating CDFIs receive funding on more favorable terms than do CPP-recipient banks, which pay a 5 percent dividend rate.[228]

Treasury initially allocated $1 billion in TARP funds to the CDCI. That allocation has since been decreased to $780 million.[229] This program made its first investments on July 30,

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[223] President Announces New Efforts to Improve Access to Credit for Small Businesses, *supra* note 210.

[224] The proposal has gone through a number of iterations since it was initially announced. See the Panel's May 2010 and July 2010 reports for more thorough discussions. *See* May 2010 Oversight Report, *supra* note 6; July 2010 Oversight Report, *supra* note 23, at 42 fn 152.

[225] *See* Congressional Oversight Panel, Testimony of Timothy F. Geithner, secretary, U.S. Department of the Treasury, *Transcript: COP Hearing with Treasury Secretary Timothy Geithner*, at 41 (Dec. 10, 2009) (online at cop.senate.gov/documents/transcript-121009-geithner.pdf) (hereinafter "Transcript: COP Hearing with Secretary Geithner") ("So, if we're going to be effective in dealing with this, we have to find some way to mitigate both the stigma of coming and the fear of changes in the future rules of the game that are going to apply to them. It is something we cannot do on our own. It's going to require some help from Congress, to help deal with those basic concerns.").

[226] President Outlines New Small Business Lending Fund, *supra* note 211.

[227] President Announces New Efforts to Improve Access to Credit for Small Businesses, *supra* note 210.

[228] U.S. Department of the Treasury, *Obama Administration Announces Enhancements For TARP Initiative For Community Development Financial Institutions* (Feb. 3, 2010) (online at www.financialstability.gov/latest/pr_02032010.html).

[229] TARP Monthly 105(a) Report – July 2010, *supra* note 162, at 6. Banks and credit unions that are CDFIs hold a total of about $35.3 billion in assets, so this program would provide capital equal to about 2 percent of their total assets. CDFIs hold 1.9 percent of all assets held by credit unions, and 0.14 percent of assets held by banks. For a list of CDFI-certified institutions, *see* Community Development Financial Initiative Fund, *Certified Community Development Financial Institutions – By Organization Type* (online at www.cdfifund.gov/docs/certification/cdfi/CDFIList-ByType-7-31-10.pdf) (accessed Sept. 14, 2010). Data on bank holding company, commercial bank, and savings institution assets compiled using the Federal Deposit

2010. As of September 1, 2010, 11 CDFIs have received a total of $143.2 million under the program.[230] Treasury states that if the TARP had not been extended, it could not have established the CDCI.[231]

3. Support for Securitization Markets Through the TALF

The final area where Secretary Geithner reserved the authority to use his extended TARP authority was in supporting securitization markets through the TALF. The Federal Reserve Bank of New York (FRBNY) created the TALF in November 2008 in response to frozen securitization markets.[232] Its goal was to encourage the issuance of various classes of asset-backed securities (ABS), including auto loans, credit card loans, and student loans, and commercial mortgage-backed securities (CMBS).[233] Borrowers applied for a TALF loan, which was usually issued at below market rates.[234] In return for the loan, the borrower posted collateral in the form of an

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Insurance Corporation Institution Directory (online at www2.fdic.gov/idasp/main.asp) and Statistics on Depository Institutions (www2.fdic.gov/sdi/). For data on credit union assets, *see* National Credit Union Administration, *Call Report Data Facts/Summary* (June 2010) (online at www.ncua.gov/DataServices/FOIA/2010/June/June10PACAFacts.xlsx). For total assets of individual credit unions, *see* National Credit Union Administration, *Credit Union Online* (online at cuonline.ncua.gov/CreditUnionOnline/CU/FindCreditUnions.aspx) (accessed Sept. 14, 2010).

[230] Sept. 3 TARP Transactions Report, *supra* note 26.

[231] Treasury conversations with Panel staff (Aug. 26, 2010).

[232] The securitization market has accounted for approximately $2 trillion in loans to consumers, students, and businesses over the past decade. Securitization of assets involves diversifying risk by pooling assets and then issuing new securities backed by those assets and their cash flows. Investors purchase the securities and acquire the rights to the associated cash flows as well as the risk of default. Financial institutions acquire the proceeds from the sale, transfer ownership of the assets to investors, and simultaneously free up capital for further lending. As long as there are originators and investors in the market, securitization results in increased lending capacity. When buyers abandon the market, however, originators cannot move securitized assets off their books and their lending capacities can become constrained. *See generally* Brian P. Sack, executive vice president, Federal Reserve Bank of New York, Remarks at the New York Association for Business, *Reflections on the TALF and the Federal Reserve's Role as Liquidity Provider* (June 9, 2010) (online at www.newyorkfed.org/newsevents/speeches/2010/sac100609.html) (hereinafter "Brian Sack Remarks at the New York Association for Business").

[233] U.S. Department of the Treasury, *TALF Frequently Asked Questions*, at 1 (Mar. 2009) (online at www.federalreserve.gov/newsevents/press/monetary/monetary20090303a2.pdf) (hereinafter "TALF Frequently Asked Questions"). To be eligible under the TALF, ABS had to be newly issued AAA-rated securities. In addition to auto loans, credit card loans, and private and government-guaranteed student loans, loans guaranteed by the Small Business Administration were also eligible. Board of Governors of the Federal Reserve System, *Press Release* (Nov. 25, 2008) (online at www.federalreserve.gov/newsevents/press/monetary/20081125a.htm). FRBNY expanded TALF to include newly issued CMBS in June 2009 and legacy (i.e., previously issued) CMBS in July 2009. Office of the Special Inspector General for the Troubled Asset Relief Program, *Quarterly Report to Congress*, at 91 (July 21, 2010) (online at www.sigtarp.gov/reports/congress/2010/July2010_Quarterly_Report_to_Congress.pdf) (hereinafter "SIGTARP Quarterly Report to Congress – July 2010").

[234] TALF Frequently Asked Questions, *supra* note 233, at 6; SIGTARP Quarterly Report to Congress – July 2010, *supra* note 233, at 94.

ABS or a CMBS, paid an administrative fee, and took a "haircut," meaning that its posted collateral had a market value greater than the loan the borrower was receiving.[235]

As part of the program, FRBNY created a special purpose vehicle, TALF LLC, to buy from FRBNY collateral seized in the event that a TALF loan was not repaid. In exchange for a fee, TALF LLC agreed to buy the seized collateral for a price equal to the outstanding amount of the TALF loan plus any unpaid interest payments.[236] Treasury initially agreed to loan TALF LLC up to $20 billion in TARP funds, although this amount was later reduced to $4.3 billion.[237] FRBNY has also committed to loaning up to $180 billion to TALF LLC, but Treasury was in a position to absorb the first losses.[238]

The TALF closed on June 30, 2010.[239] As securitization markets improved in 2009 and early 2010, borrowers were able to borrow from third parties at rates lower than they were from the TALF. Consequently, the TALF became less appealing relative to other sources of borrowing.[240] Figure 10 shows how use of the TALF by market participants generally declined over the life of the program.

[235] TALF loans have durations of either three or five years and are non-recourse. Federal Reserve Bank of New York, *2009 Annual Report*, at 35-36 (June 2010) (online at www.newyorkfed.org/aboutthefed/annual/annual09/annual.pdf) (hereinafter "FRBNY 2009 Annual Report").

[236] FRBNY 2009 Annual Report, *supra* note 235, at 36. Another way of phrasing this is to say that in the event of a loss, TALF LLC agreed to buy the collateral in satisfaction of the put contract even if its value was much less than the TALF loan outstanding. Consequentially, TALF LLC rather than FRBNY absorbs losses resulting from the TALF loans. *Cf.* Brian Sack Remarks at the New York Association for Business, *supra* note 232.

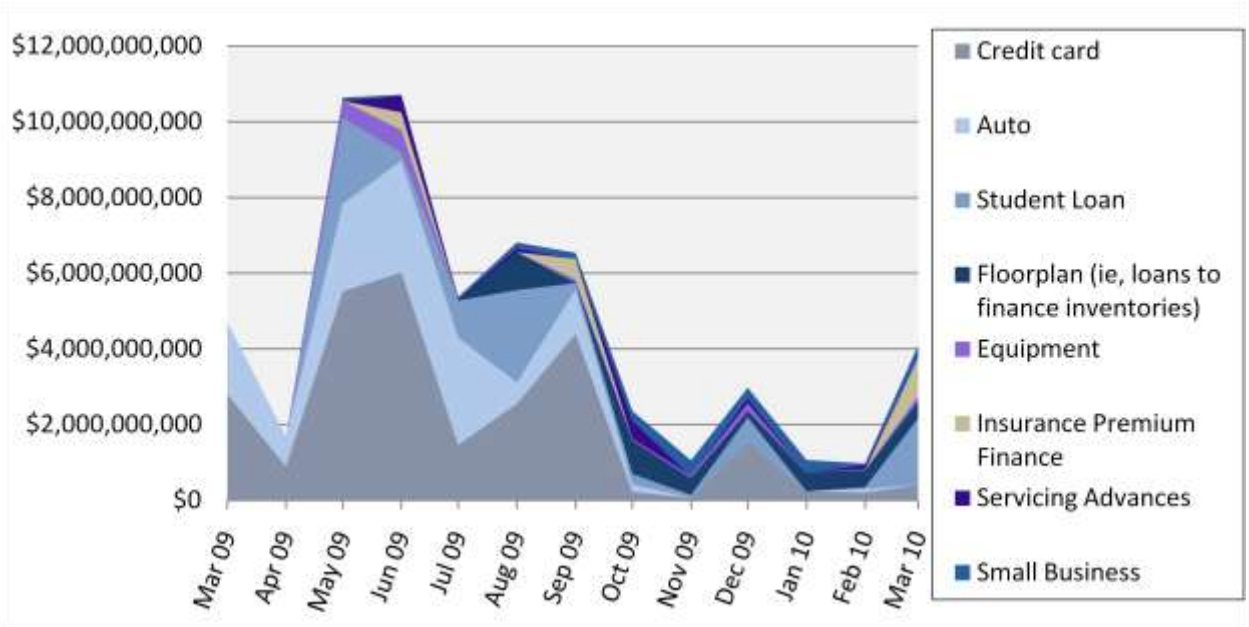
[237] SIGTARP Quarterly Report to Congress – July 2010, *supra* note 233, at 95; TALF Terms and Conditions, *supra* note 89. Under the original financing agreement, Treasury's $20 billion loan would have had to have been exhausted before FRBNY disbursed its loan to TALF LLC. Brian Sack Remarks at the New York Association for Business, *supra* note 232.

[238] FRBNY retained control of TALF LLC and would be the first to receive funds resulting from the eventual sale of the collateral that TALF LLC had previously purchased. FRBNY 2009 Annual Report, *supra* note 235, at 36-37.

[239] TALF Terms and Conditions, *supra* note 89. The TALF held its final subscription on June 18, 2010. SIGTARP Quarterly Report to Congress – July 2010, *supra* note 233, at 41.

[240] Brian Sack Remarks at the New York Association for Business, *supra* note 232.

Figure 10: Monthly Issuance of TALF Loans Collateralized by ABS Securities



As of September 10, 2010, no collateral had yet been seized or purchased by TALF LLC.[241] Still, it is very early to judge the performance of TALF loans, given their three- to five-year duration.[242]

Over the life of the program, $71 billion in TALF loans were settled, about 35 percent of the $200 billion initially set aside under the facility. ABS TALF loans totaled $59 billion, and CMBS loans totaled $12 billion. From January 2010 through June 2010, $9.45 billion in TALF loans were issued; ABS TALF loans totaled $6.14 billion, and CMBS loans totaled $3.32 billion.[243] Overall, while the TALF was in existence, it made up about 25 percent of the ABS

[241] Treasury conversations with Panel staff (Sept. 10, 2010).

[242] Although it has not yet purchased any loans, TALF LLC has cost $1 million in administrative fees from its creation through June 30, 2010. Of Treasury's $100 million initial loan to TALF LLC, $15.8 million was allocated to cover administrative expenses. SIGTARP Quarterly Report to Congress – July 2010, *supra* note 233, at 95-96.

[243] Federal Reserve Bank of New York, *Term Asset-Backed Securities Loan Facility: non-CMBS* (online at www.newyorkfed.org/markets/talf_operations.html) (hereinafter "Term Asset-Backed Securities Loan Facility: non-CMBS") (accessed Sept. 14, 2010); Federal Reserve Bank of New York, *Term Asset-Backed Securities Loan Facility: non-CMBS* (online at www.newyorkfed.org/markets/TALF_recent_operations.html) (accessed Sept. 14, 2010); Federal Reserve Bank of New York, *Term Asset-Backed Securities Loan Facility: CMBS* (online at www.newyorkfed.org/markets/cmbs_operations.html) (accessed Sept. 14, 2010); Federal Reserve Bank of New York, *Term Asset-Backed Securities Loan Facility: CMBS* (online at www.newyorkfed.org/markets/CMBS_recent_operations.html) (hereinafter "Term Asset-Backed Securities Loan Facility: CMBS") (accessed Sept. 14, 2010). Altogether, approximately $70 billion of TALF loans were issued but,

market, and about 71 percent of the CMBS market, reflecting that market's considerable slowdown during the financial crisis.[244]

In December 2009, when Treasury extended the TARP, it believed that demand under the TALF for CMBS might increase in 2010, which might require a greater commitment of TARP funds to the program. Instead, all new issuances of CMBS after March 2010 happened outside of the TALF.[245] As a result, despite Secretary Geithner's statement in December 2009 that Treasury might use its extended TARP authority to increase its support for the TALF, it did not.[246]

4. Summary of Treasury's Use of TARP Authority Since December 2009

Since December 2009, Treasury has used its extended TARP authority in an extremely limited way. In testimony before the Panel on June 22, 2010, more than three months before the program's expiration, Secretary Geithner spoke about Treasury's reluctance to use its extended authority. "This hearing should be a eulogy for TARP," he said. "As I said many times, we are working very hard to put this program to rest, put it out of its misery. It is not going to solve all the problems facing the country. It was not designed to. We are not going to use it that way. We use it very carefully, but it has done the essential thing it was designed to do and therefore our expectation is it will be allowed to expire…."[247]

Overall, as of December 2009, Treasury had committed a total of $474.7 billion in TARP funds; that number tracks almost exactly with a $475 billion cap on TARP expenditures imposed in July 2010 by the Dodd-Frank Act.[248] Thus, although there were new TARP programs established in 2010 that cost up to $15.9 billion, Treasury funded those programs by reallocating

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because some loans were being repaid at the same time that others were being issued, there was never more than about $50 billion of TALF loans outstanding. Brian Sack Remarks at the New York Association for Business, *supra* note 232.

[244] Term Asset-Backed Securities Loan Facility: CMBS, *supra* note 243; Securities Industry and Financial Markets Association, *SIFMA Research and Statistics – US ABS Issuance* (online at www.sifma.org/uploadedFiles/Research/Statistics/SIFMA_USABSIssuance.xls) (accessed Sept. 14, 2010); CRE Finance Council, *Compendium of Statistics* (Sept. 3, 2010) (online at www.crefc.org/uploadedFiles/CMSA_Site_Home/Industry_Resources/Research/Industry_Statistics/CMSA_Compendium.pdf) (hereinafter "CRE Finance Council Compendium of Statistics").

[245] Term Asset-Backed Securities Loan Facility: CMBS, *supra* note 243; CRE Finance Council Compendium of Statistics, *supra* note 244; Treasury conversations with Panel staff (Aug. 26, 2010).

[246] When the TALF was closed on June 30, 2010, there were $43 billion in loans outstanding. Accordingly, on July 21, 2010, the Treasury reduced the credit protection provided for the TALF from $20 billion to $4.3 billion, constituting 10 percent of the total outstanding TALF loans. TALF Terms and Conditions, *supra* note 89.

[247] Transcript: COP Hearing with Secretary Geithner, *supra* note 200.

[248] *See* December 2009 Oversight Report, *supra* note 6, at 75-76 (showing that Treasury had committed $474.7 billion in TARP funds as of November 30, 2009); Dodd-Frank Wall Street Reform and Consumer Protection Act, *supra* note 15, § 130 (stating that the amount available under TARP is reduced to $475 billion).

TARP dollars that had already been allocated for specific uses, not by dipping into unallocated TARP funds.

With respect to the TALF, Treasury did not use its extended TARP authority, and its commitment to the program never came close to the $20 billion in credit protection it originally pledged. With respect to small business lending, not only did Treasury abandon its plans to use the TARP for its proposed Small Business Lending Fund, Treasury also never approached expending the amount of its initial commitment of $15 billion in the Unlocking SBA Lending program.[249] To date, Treasury has only expended a total of $261.7 million under the program and has reduced its commitment from $15 billion to $400 million.[250] Treasury did establish the CDCI, but that program can only spend up to $780 million.

Treasury's most significant use of its extended TARP authority involved foreclosures. But even in this area, Treasury used its authority in a narrow way. Both new TARP foreclosure mitigation programs were carved out of funding that was initially reserved for HAMP. Moreover, it is not clear how much of the $15.1 billion that Treasury has committed to the three new programs will actually be spent. As of September 10, 2010, Treasury had spent just $41.9 million on these programs, or well under 1 percent of the total amount committed to them.[251] The amount of money that is eventually spent will depend largely on how many people and financial institutions participate in the programs.

E. How is the American Economy Performing in the Wake of the TARP, Particularly those Sectors – Financial Markets, Housing, Autos – that have been the Specific Target of TARP Assistance?

1. Indicators of the TARP's Impact

Assessing the TARP in the context of both the broad U.S. economy and specific economic sectors is a difficult but important task.[252] The purposes of the law that established the

[249] When Treasury first announced the Unlocking SBA Lending program in March 2009, it planned to purchase $15 billion in 7(a) securities to "jumpstart credit markets for small businesses." Unlocking Credit for Small Businesses Fact Sheet, *supra* note 217. Treasury made its first purchases of these securities on March 19, 2010 (one year later) and at the time reaffirmed its intent to use the full $15 billion. Treasury Transactions Report, *supra* note 220, at 40 ; Fact Sheet: Unlocking Credit for Small Businesses, *supra* note 212.

[250] Treasury Transactions Report, *supra* note 220, at 40. As described in greater detail in Section D.3, TALF is broadly credited with jump-starting the securitization markets again. TALF expired as expected and additional support might not have been necessary.

[251] Treasury data provided to Panel staff (Aug. 18, 2010).

[252] The GAO noted the difficulty of measuring TARP's impact on the economy while identifying key metrics that may be suggestive of TARP's economic impact in a previous report that stated, "TARP's activities could improve market confidence in banks that choose to participate and have beneficial effects on credit markets, but several factors will complicate efforts to measure any impact. If TARP is having its intended effect, a number of developments might be observed in credit and other markets over time, such as reduced risk spreads, declining

TARP include ensuring that the law's authorities are used in a matter that "promotes jobs and economic growth," "preserves homeownership," and "protects home values, college funds, retirement accounts, and life savings…."[253] Thus, while its primary goal was financial stability, the TARP was also intended to have a positive effect on the economy more generally. The passage of the American Recovery and Reinvestment Act of 2009 (ARRA) and the actions of the Federal Reserve at the time of the financial crisis were also designed to spur economic recovery.[254]

It is impossible to attribute changes in the economic climate solely to the TARP without data that isolate the TARP's effect. Changes in key economic and industry-specific metrics over time show only potential correlation, not causation. Further, any present assessment is necessarily limited to currently available data, and more time and analysis will be necessary before more definitive determinations of the TARP's effect can be made. It has, however, been two years since the acute crisis, and an assessment of the broader economy is therefore a useful standpoint from which to review the TARP. Analysis of these metrics provides insight into economic conditions at the height of the financial crisis and since the implementation of the TARP.

a. Macroeconomic Indicators

Real GDP is the total value of goods and services produced within the United States and is considered to be a comprehensive measure of the performance of the U.S. economy.[255]

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borrowing costs, and increased lending. However, several factors will make isolating and measuring the impact of TARP challenging, including simultaneous changes in economic conditions, changes in monetary and fiscal policy, and other programs introduced by the Treasury, the Federal Reserve, FDIC, and FHFA to support banks, credit markets, and other struggling institutions. As a result, any improvement in capital markets cannot be attributed solely to TARP nor will a slow recovery necessarily reflect its failure because of the effects of market forces and economic conditions outside of the control of TARP. Nevertheless, we have preliminarily identified some indicators that may be suggestive of TARP's impact over time. These indicators include measures of the perception of risk in interbank lending, consumer lending, corporate debt markets, and the overall economy. We have also identified a number of other indicators that we are also monitoring and may include in future reports." U.S. Government Accountability Office, *Troubled Asset Relief Program: Additional Actions Needed to Better Integrity, Accountability, and Transparency*, at 46 (Dec. 2008) (GAO-09-161) (online at www.gao.gov/new.items/d09161.pdf).

[253] 12 U.S.C. § 5201.

[254] Recovery.gov, *About: The Recovery Act* (online at www.recovery.gov/About/Pages/The_Act.aspx) (accessed Sept. 14, 2010); Board of Governors of the Federal Reserve System, *Monetary Policy Report to the Congress*, at 2 (Feb. 24, 2009) (online at www.federalreserve.gov/monetarypolicy/files/20090224_mprfullreport.pdf).

[255] Bureau of Economic Analysis, *Concepts and Methods of the U.S. National Income and Product Accounts, at 2-13* (Oct. 2009) (online at www.bea.gov/national/pdf/NIPAhandbookch1-4.pdf) (accessed Sept. 14, 2010).

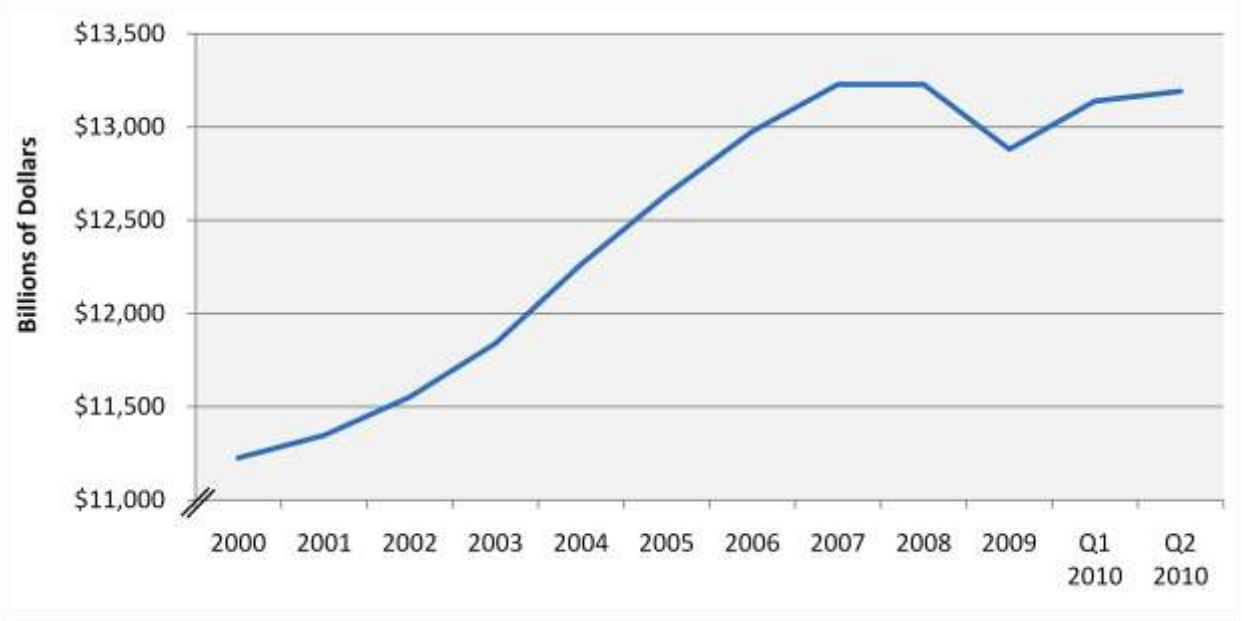
As shown in Figure 11 below, real GDP increased steadily from 1991 to 2007, remained flat year-over-year from 2007 to 2008, and decreased in 2009.[256] Personal consumption expenditures drove year-over-year increases in GDP from 2000 to 2007. During the height of the economic crisis in 2008 and 2009, however, decreasing gross private domestic investments (specifically, lower fixed investment and private inventories), resulted in a reduction in real GDP.[257] This trend has reversed in recent quarters, as increases in gross private domestic investments have driven the three percent increase in real GDP from the second quarter of 2009 to the second quarter of 2010.[258]

[256] Bureau of Economic Analysis, *Table 1.1.6.: Real Gross Domestic Product, Chained Dollars* (online at www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=6&Freq=Qtr&FirstYear=2008&LastYear=2010) (hereinafter "Bureau of Economic Analysis, Table 1.1.6.") (accessed Sept. 8, 2010). Until the year-over-year decrease from 2007 to 2008, nominal GDP had not decreased on an annual basis since 1949. Bureau of Economic Analysis, *Table 1.1.5.: Gross Domestic Product* (online at www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=5&Freq=Qtr&FirstYear=2008&LastYear=2010) (accessed Aug. 18, 2010).

[257] "Personal consumption expenditures" include the purchases of services and both durable and nondurable goods. "Gross private domestic investment" includes nonresidential structures and equipment and software, residential investment, and changes in private inventories. Bureau of Economic Analysis, *Table 1.1.2.: Contributions to Percent Change in Real Gross Domestic Product* (online at www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=2&FirstYear=2009&LastYear=2010&Freq=Qtr) (accessed Aug. 18, 2010); Bureau of Economic Analysis, *Table 1.1.1.: Percent Change From Preceding Period in Real Gross Domestic Product* (online at www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=1&ViewSeries=NO&Java=no&Request3Place=N&3Place=N&FromView=YES&Freq=Qtr&FirstYear=2010&LastYear=2010&3Place=N&Update=Update&JavaBox=no) (hereinafter "Bureau of Economic Analysis, Table 1.1.1.") (accessed Aug. 18, 2010).

[258] Bureau of Economic Analysis, *Table 1.1.2.: Contributions to Percent Change in Real Gross Domestic Product* (online at www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=2&ViewSeries=NO&Java=no&Request3Place=N&3Place=N&FromView=YES&Freq=Qtr&FirstYear=2008&LastYear=2010&3Place=N&Update=Update&JavaBox=no) (accessed Sept. 7, 2010); Bureau of Economic Analysis, *Table 1.1.6.: Real Gross Domestic Product, Chained Dollars* (online at www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=6&ViewSeries=NO&Java=no&Request3Place=N&3Place=N&FromView=YES&Freq=Qtr&FirstYear=2000&LastYear=2010&3Place=N&Update=Update&JavaBox=no) (accessed Sept. 7, 2010).

Figure 11: Real GDP[259]



The rate of real GDP growth quarter-over-quarter peaked at five percent in the fourth quarter of 2009 and has decreased during 2010. Real GDP increased at rates of 3.7 and 1.6 percent in the first and second quarters of 2010, respectively.[260] These growth rates were also impacted by the 2010 U.S. Census. The Economics and Statistics Administration within the U.S. Department of Commerce estimated that the spending associated with the 2010 Census would peak in the second quarter of 2010 and could boost annualized nominal and real GDP growth by 0.1 percentage point in the first quarter of 2010 and 0.2 percentage point in the second quarter of 2010.[261] As the boost from the Census is a one-time occurrence, continuing increases in private investment and personal consumption expenditures as well as in exports will be needed to sustain the resumption of growth that has occurred in the U.S. economy over the past year.

The unemployment rate has reached levels not seen since the recession of the early 1980s. As seen in Figure 12 below, the unemployment rate has increased since 2007 to a height of 10 percent in the fourth quarter of 2009 and is currently 9.5 percent. The combined rate of unemployment plus underemployment has exhibited a similar trend, jumping from 8.8 percent at the end of 2007 to the July 2010 rate of 16.5 percent, implying an increasing number of part-time

[259] Bureau of Economic Analysis, Table 1.1.6., *supra* note 256.

[260] Bureau of Economic Analysis, Table 1.1.1., *supra* note 257.

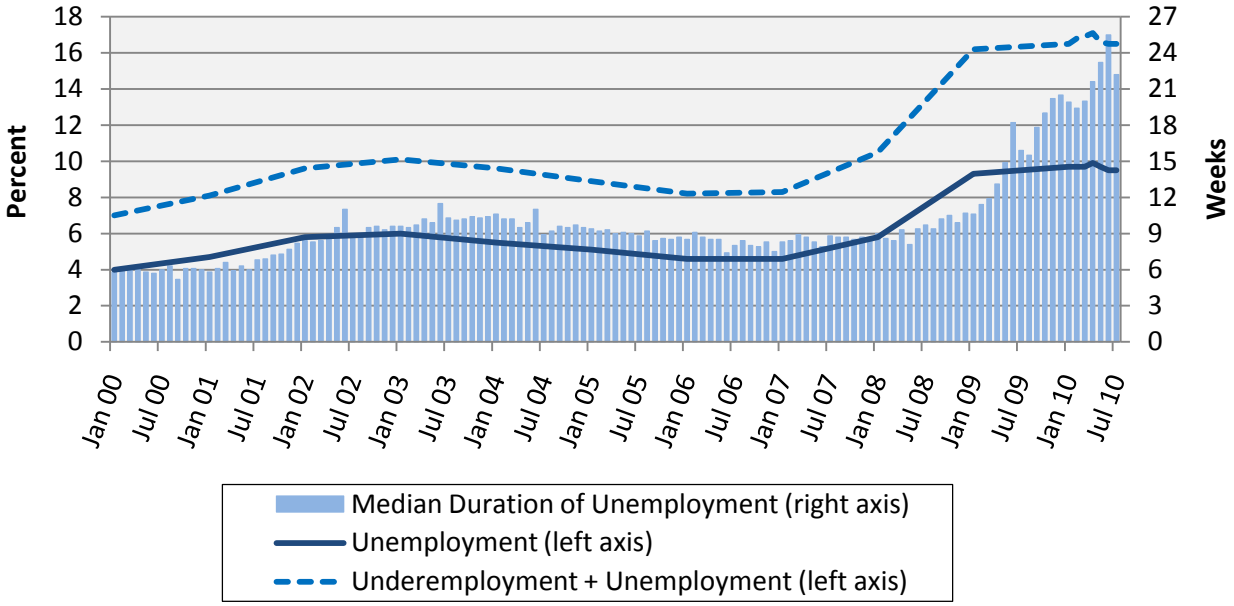
[261] Economics and Statistics Administration, U.S. Department of Commerce, *The Impact of the 2010 Census Operations on Jobs and Economic Growth,* at 8 (online at www.esa.doc.gov/02182010.pdf).

workers who could be working full-time.[262] It is important to note that the rate of unemployment plus underemployment does not include people who have stopped actively looking for work altogether. The median duration of unemployment has increased from six weeks in early 2000 to the current median duration of 20 weeks, the highest level since tracking began on this data, and much of that increase occurred during 2009.[263]

[262] A person is classified as unemployed if he/she does not have a job, has actively looked for work in the prior four weeks, and is currently available for work. People are considered employed if they did any work for pay or profit during the employment survey week. Bureau of Labor Statistics, *How the Government Measures Unemployment* (online at www.bls.gov/cps/cps_htgm.htm#unemployed) (accessed Aug. 19, 2010). Underemployment includes part-time workers and is defined based on two types: time-related underemployment and inadequate employment situations. Time-related underemployed individuals are those who are both willing and available to work additional hours and have worked fewer hours than a threshold of "sufficient" hours (with the number of hours deemed "sufficient" set by public policy). The other type of underemployment involves individuals in inadequate employment situations, meaning they were willing to change their current employment situation and wanted to do so due to inadequate use of their skill set, inadequate income, or excessive work hours. International Labour Organization, *Underemployment: Current Guidelines* (online at www.ilo.org/global/What_we_do/Statistics/topics/Underemployment/guidelines/lang--en/index.htm) (accessed Aug. 19, 2010).

[263] Bureau of Labor Statistics, *Databases, Tables & Calculators by Subject:* (online at data.bls.gov/PDQ/servlet/SurveyOutputServlet) (accessed Sept. 7, 2010).

Figure 12: Unemployment, Underemployment, and Median Duration of Unemployment (January 2000-July 2010)[264]

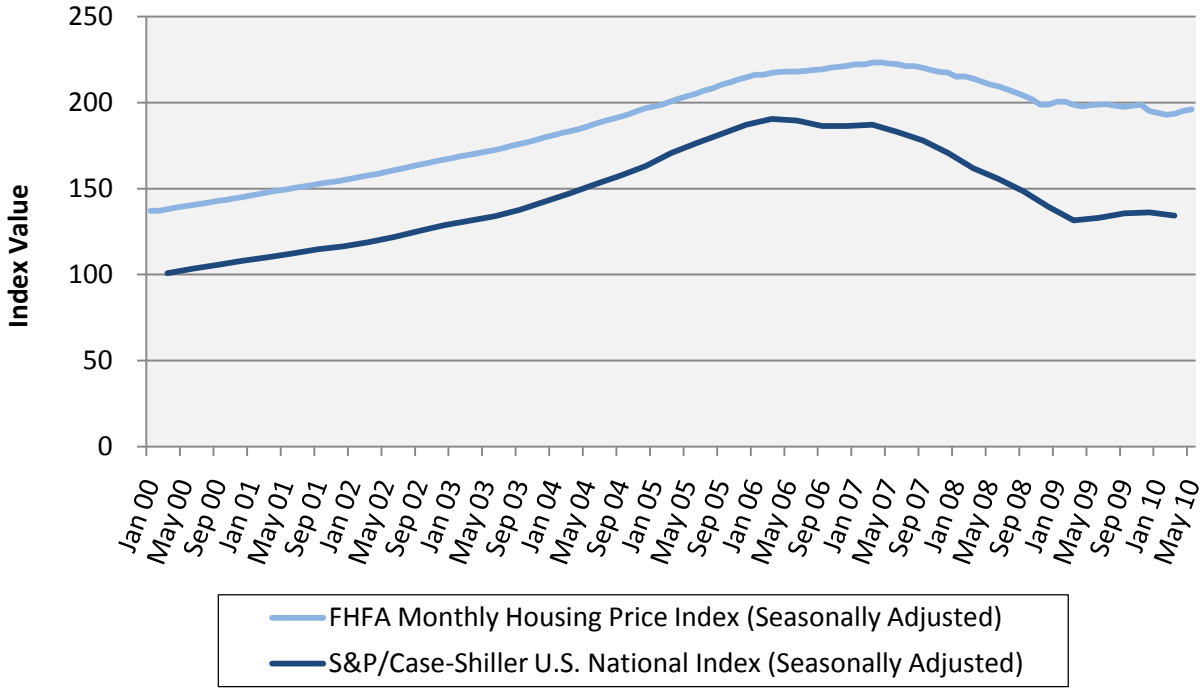


b. Housing Real Estate Sector Performance Metrics

The Case-Shiller composite index (Case-Shiller) and Federal Housing Finance Agency's House Price Index (HPI) are important measures of home price trends.

[264] While the Bureau of Labor Statistics (BLS) does not have a distinct metric for "underemployment," the U-6 category of Table A-15 "Alternative Measures of Labor Underutilization" is used here as a proxy. BLS defines this measure as: "Total unemployed, plus all persons marginally attached to the labor force, plus total employed part time for economic reasons, as a percent of the civilian labor force plus all persons marginally attached to the labor force." United States Department of Labor, *International Comparisons of Annual Labor Force Statistics* (online at www.bls.gov/webapps/legacy/cpsatab15.htm) (accessed Sept. 13, 2010).

Figure 13: Case-Shiller National Index and FHFA HPI (January 2000-May 2010)[265]



As shown in Figure 13 above, Case-Shiller displayed a sharper increase and subsequent drop in housing prices compared to that seen in the HPI. Case-Shiller increased 105 percent from January 2000 to April 2006, then fell 32 percent to its trough of May 2009. HPI increased 63 percent from January 2000 to April 2007 and then fell only 14 percent to February 2010. HPI includes only conventional mortgages, and thus excludes the subprime and other problem loans that ignited the housing crisis, and it therefore did not show the same degree of appreciation and depreciation seen in Case-Shiller. Case-Shiller also appears to have picked up on the bursting of the bubble more quickly.[266]

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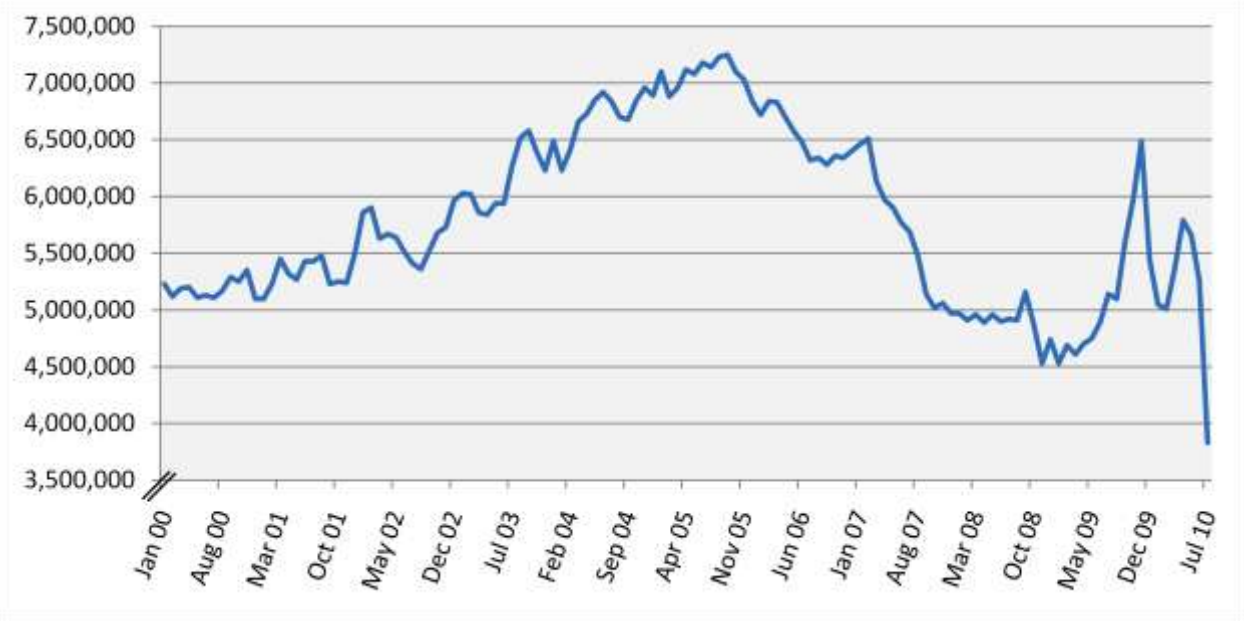
[265] Federal Housing Finance Agency, *Purchase Only Indexes: U.S. and Census Division (Seasonally Adjusted and Unadjusted): January 1991-Latest Month* (online at www.fhfa.gov/Default.aspx?Page=87) (accessed Aug. 30, 2010); Standard & Poor's, *S&P/Case-Shiller Home Price Indices: U.S. National Values* (online at www.standardandpoors.com/indices/sp-case-shiller-home-price-indices/en/us/?indexId=spusa-cashpidff--p-us----) (accessed Aug. 30, 2010). Case-Shiller was normalized at 100 in January 2000, as the U.S. Census count of single-family housing units for metro areas in 2000 was used as a base for weights and aggregate values. This creates the initial gap at the January 2000 starting point for the two indexes in the figure.

[266] Several additional differences exist between Case-Shiller and HPI. Both utilize repeat sales of homes (both exclude first time sales, therefore first-time constructions/new homes are excluded), but HPI includes refinancing valuations. HPI includes only conforming, conventional mortgages (FRE/FNMA), while Case-Shiller includes all mortgages (including foreclosures). Case-Shiller uses arithmetic weighting, so it is similar to an average price, and thus, higher valued homes have greater influence on the average. HPI uses geometric weighting, so it is more similar to a median price. Case-Shiller excludes 13 states, whereas the national HPI includes all states.

Figure 14: Existing-Home Sales (Jan. 2000-July 2010)[267]



As noted in Figure 14 above, existing-home sales declined 37 percent from September 2005 to November 2008, spiked significantly during 2009, and dropped to their lowest point in more than a decade in July 2010. The tax credits for first-time home buyers and repeat home buyers, beginning in January 2009 and November 2009, respectively, correlate with sales spikes seen during those periods. As both tax credits were extinguished on April 30, 2010, existing-home sales have dropped to 3.8 million, the lowest level since the total existing-home sales series launched in 1999. Lower sales have increased the glut of housing inventory. As of July 2010, the total housing inventory represents a 12.5 month supply at the current sales pace, an increase from the 8.9 month supply as of June 2010.[268]

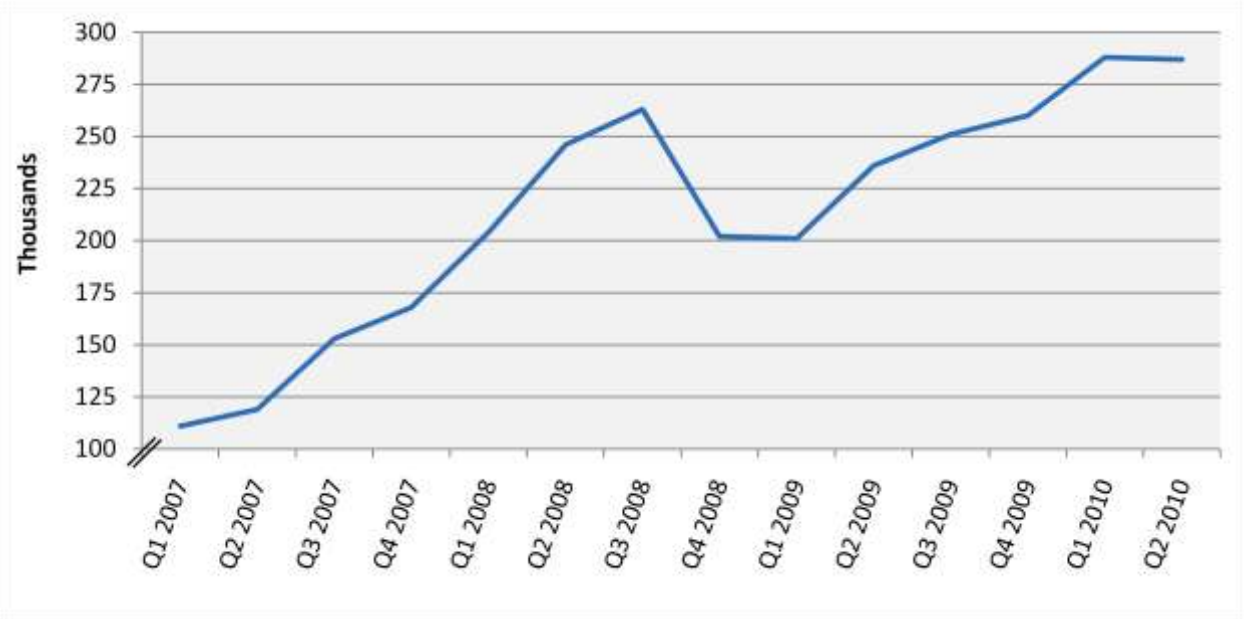
Standard & Poor's, *S&P/Case-Shiller Home Price Indices: Real Estate Indices* (online at www.standardandpoors.com/servlet/BlobServer?blobheadername3=MDT-Type&blobcol=urldata&blobtable=MungoBlobs&blobheadervalue2=inline%3B+filename%3DFactsheet_SP_Case-Shiller_Home_Price_Indices.pdf&blobheadername2=Content-Disposition&blobheadervalue1=application%2Fpdf&blobkey=id&blobheadername1=content-type&blobwhere=1243728978235&blobheadervalue3=UTF-8) (accessed Sept. 14, 2010); Federal Housing Finance Agency, *About HPI* (online at www.fhfa.gov/Default.aspx?Page=81) (accessed Aug. 25, 2010).

[267] Existing-home sales are completed transactions that include single-family, townhomes, condominiums, and co-ops. Data obtained from National Association of Realtors.

[268] National Association of Realtors, *July Existing-Home Sales Fall as Expected but Prices Rise* (Aug. 24, 2010) (online at www.realtor.org/press_room/news_releases/2010/08/ehs_fall).

Housing sales are sensitive to interest rates, as borrowing costs directly impact the cost of home ownership. Generally, lower long-term interest rates generate higher value in house prices, and lower mortgage rates encourage more home purchases and refinancings. Long-term interest rates, specifically 30- and 10-year Treasury yields, increased significantly from the late 1970s to early 1980s and have gradually decreased since then. Similarly, fixed-rate, 30-year conventional mortgage rates peaked at 18.45 percent in October 1981 and have subsequently trended downward, with rates at an all-time low of 4.43 percent as of August 2010.[269]

Figure 15: Foreclosure Completions (2007-Q2 2010)[270]



Monthly foreclosure completions have increased from approximately 111,000 in the first quarter of 2007 to approximately 287,000 in the second quarter of 2010. Foreclosure completions in the second quarter of 2010 decreased by only 1,000 following four quarters of increasing foreclosures.[271]

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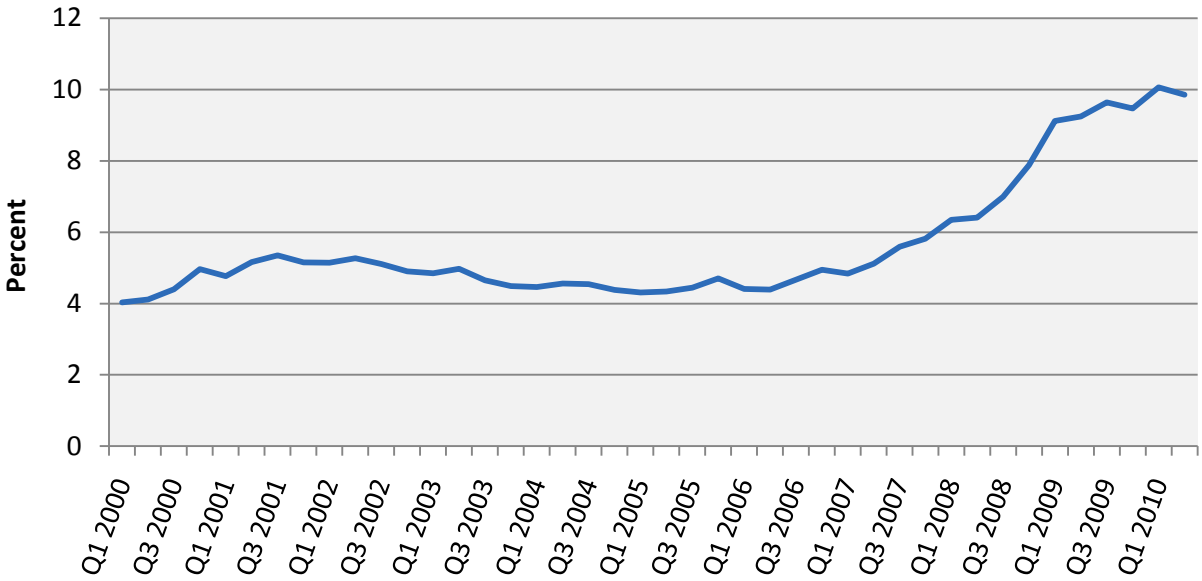
[269] Board of Governors of the Federal Reserve System, *Data Download Program: Selected Interest Rates (H.15)* (online at www.federalreserve.gov/datadownload/) (hereinafter "Federal Reserve Selected Interest Rates (H.15)") (accessed Sept. 8, 2010).

[270] HOPE NOW, *Mortgage Loss and Mitigation Statistics, Industry Extrapolations (Quarterly from Q1-2007 to Q1-2009)* (online at www.hopenow.com/industry-data/HOPE%20NOW%20National%20Data%20July07%20to%20April09.pdf) (hereinafter "HOPE NOW Statistics (July 2007 to Apr. 2009)") (accessed Sept. 14, 2010); HOPE NOW Statistics (Dec. 2008 to July 2010), *supra* note 202.

[271] HOPE NOW Statistics (July 2007 to Apr. 2009), *supra* note 270; HOPE NOW Statistics (Dec. 2008 to July 2010), *supra* note 202.

Figure 16: Delinquency Rates for Single Family Residential Mortgages (2000-Second Quarter 2010)[272]



As seen in Figure 16, despite three million foreclosures since the first quarter of 2007,[273] single family real estate delinquencies have continued to increase. Housing prices will continue to be influenced by the supply of homes on the market, which in turn is a function of the overall foreclosure and default rates.

In its February 2010 report, the Panel highlighted the struggling commercial real estate (CRE) market, which has continued to experience decreased demand. Between 2010 and 2014, approximately $1.4 trillion in CRE loans will reach maturity. Losses on these loans for commercial banks alone could total $200 billion to $300 billion for 2011 and beyond.[274]

As illustrated by Figure 17, the burden of these losses will fall disproportionately on small and mid-size banks that do almost half of the nation's small business lending.[275] In recent months, however, small banks have been attempting to remove CRE loans from their balance

[272] Delinquency rate is seasonally-adjusted and includes the total number of loans that are 30, 60, and 90 days past due. It does not include loans that are in foreclosure. Bloomberg Data Service (accessed Aug. 26, 2010).

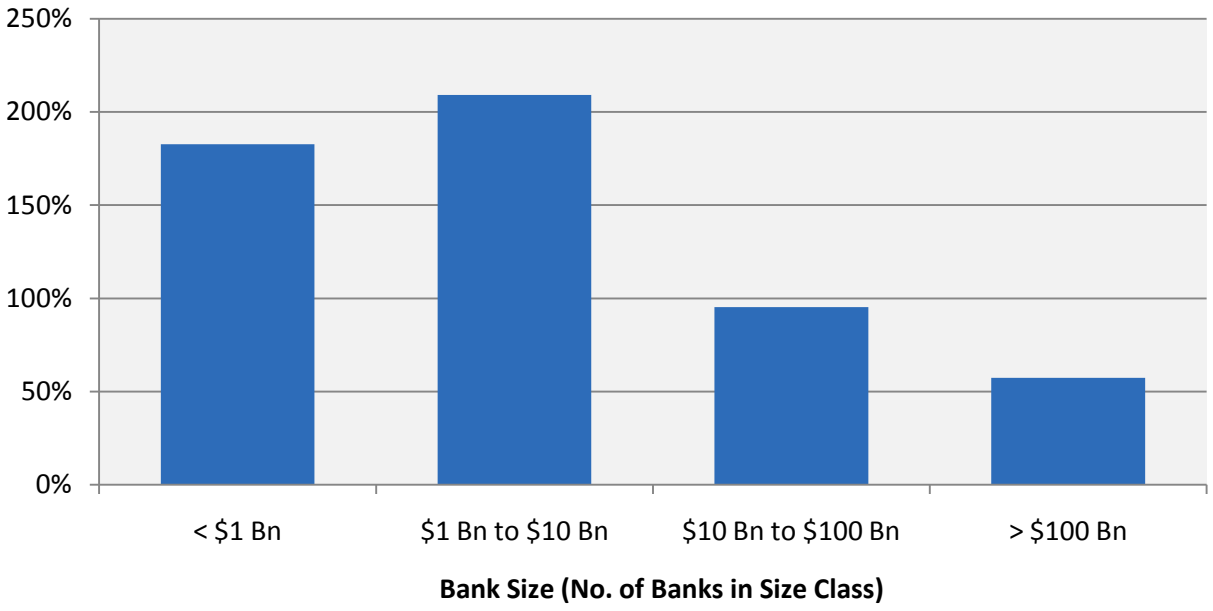
[273] HOPE NOW Statistics (July 2007 to Apr. 2009), *supra* note 270; HOPE NOW Statistics (Dec. 2008 to July 2010), *supra* note 202.

[274] February 2010 Oversight Report, *supra* note 28, at 2, 38, 102.

[275] February 2010 Oversight Report, *supra* note 28, at 42.

sheet. For example, in the second quarter of 2010 alone, small banks cut their outstanding balance of construction and land loans, one type of CRE loan, by 10 percent.[276]

Figure 17: Commercial Real Estate Exposure as a Percentage of Total Risk-based Capital[277]



Since the Panel's February report, the amount of outstanding CRE loans at commercial banks has decreased slightly. Their holdings decreased by $26 billion, or 2 percent in the fourth quarter of 2009,[278] and by $19 billion, or 1.3 percent, in the first quarter of 2010, due in part to repayments and write-offs from foreclosures.[279] Commercial banks' total holdings, however, still remain at almost $1.5 trillion.[280]

[276] Foresight Analytics data provided to Panel staff (Aug. 24, 2010).

[277] Data from Foresight Analytics, LLC. This data does not include owner-occupied properties.

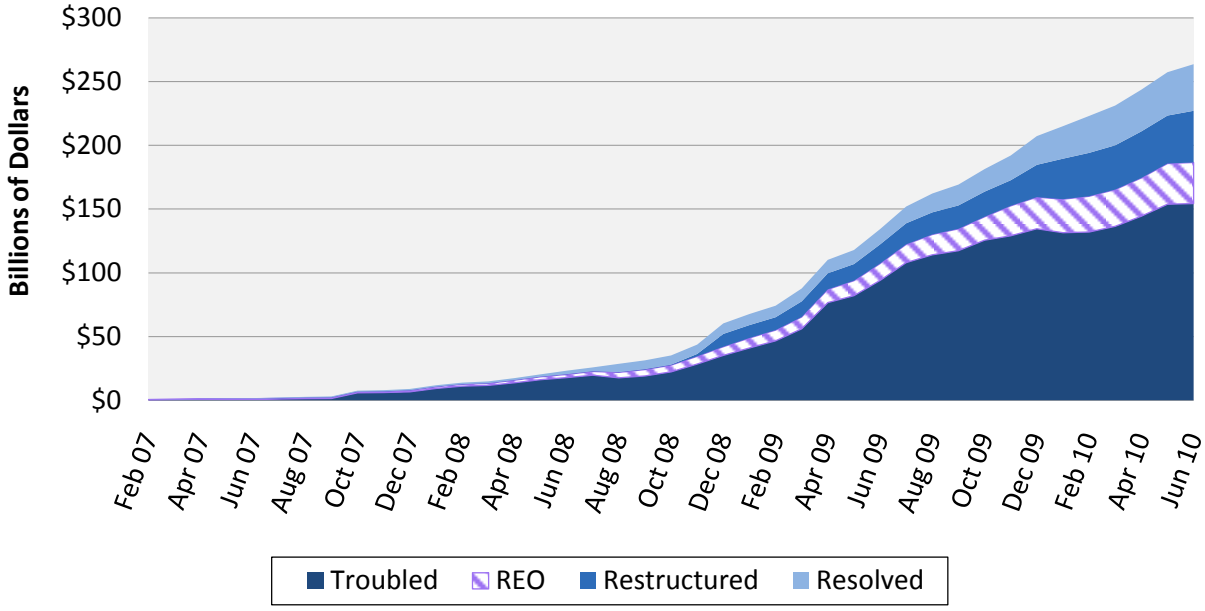
[278] Mortgage Bankers Association, *Commercial Real Estate/Multifamily Finance Quarterly Data Book: Q4 2009*, at 51 (Mar. 2010) (online at www.mbaa.org/files/Research/DataBooks/4Q09QuarterlyDataBook.pdf).

[279] Mortgage Bankers Association, *Commercial Real Estate/Multifamily Finance Quarterly Data Book:Q1 2010*, at 48 (May 2010) (online at www.mbaa.org/files/Research/DataBooks/1Q10QuarterlyDataBook.pdf) (hereinafter "CRE/Multifamily Finance Quarterly Data Book: Q1 2010").

[280] *Id*. at 48.

The number of distressed CRE properties has continued to grow.[281] The total value of troubled properties has increased to $154 billion, and another $32 billion worth of CRE has been repossessed by the lender through foreclosure.[282]

Figure 18: Total Outstanding Distressed CRE[283]



Recently, however, the rate at which properties are becoming distressed has slowed. In June 2010, only $6.3 billion worth of CRE fell into distress, the smallest one-month increase since October 2008. In the first half of 2010, an additional $56.8 billion of CRE loans became distressed, down 24 percent from the same period last year. At the same time, the rate and total value of restructurings and resolutions of CRE loans has increased. In the first half of 2010, $15.2 billion worth of CRE loans were restructured, up 205 percent from the same period last

[281] Distressed properties are those that are either troubled or REO. For definitions of these terms, *see* footnote 283, *infra*.

[282] Real Capital Analytics, *Fresh Evidence of Lenders Moving to Resolve Trouble* (July 29, 2010) (hereinafter "Fresh Evidence of Lenders Moving to Resolve Trouble").

[283] Data from Real Capital Analytics. Troubled properties are those where there is a default, bankruptcy, or foreclosure pending, or some kind of lender forbearance or other restructuring. REO stands for Real Estate Owned properties. REO properties are those that have been repossessed by the lender via foreclosure. Restructured properties are those where ownership or debt terms have changed but no long term solution to the cause of distress has been reached. Resolved properties are those that have moved out of distress. Real Capital Analytics, *Troubled Assets Radar: Methodology*, at 1 (Apr. 5, 2010) (online at www.rcanalytics.com/troubled-assets-methodology.pdf).

year. The $14 billion of CRE loans resolved in the first half of 2010 is 272 percent higher than the same period last year.[284]

Returns on CRE properties have recently begun to rebound.[285] Vacancy rates remain high, however, meaning that many properties continue to produce no revenue and have little value even if foreclosed.[286] Although the rate of properties becoming distressed has slowed, a glut of such properties remains in the market.

c. Financial Sector Performance Metrics

The crisis that peaked in the fall of 2008 was centered in the financial sector. Numerous metrics, including credit spreads, loan delinquency rates, measures of financial market activity, and bank failures, shed light on the sector's health.

Credit spreads, which measure the differences in bond yields, serve as a good proxy for market perceptions of risk. The LIBOR-OIS spread provides insight into market participants' confidence in their counterparties' abilities to repay their obligations; as the spread increases, market participants are more concerned about potential default risk.[287] Former Federal Reserve Chairman Alan Greenspan has noted, for example, that the LIBOR-OIS spread served as a "barometer of fears of bank insolvency."[288] The TED spread, the difference between LIBOR and short-term Treasury bill interest rates, is another indicator of perceived credit risk, with a higher spread indicating that market participants are unwilling to hold investments other than safe Treasury bills. LIBOR is an average of interbank borrowing rates at large banks, and its movement was closely correlated to the disbursement of TARP funds to the largest U.S. banks in October 2008.[289]

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[284] Fresh Evidence of Lenders Moving to Resolve Trouble, *supra* note 282.

[285] CRE Finance Council Compendium of Statistics, *supra* note 244, at 25.

[286] PIMCO, *PIMCO U.S. Commercial Real Estate Project* (July 2010) (online at www.pimco.com/Pages/USCommercialRealEstateProjectJune2010.aspx); CRE/Multifamily Finance Quarterly Data Book: Q1 2010, *supra* note 279, at 27; CRE Finance Council Compendium of Statistics, *supra* note 244, at 24.

[287] The LIBOR-OIS spread shows the difference between the London Interbank Offering Rate (LIBOR), which is the rate at which banks are willing to lend to one another for a specified loan term, and the Overnight Indexed Swaps rate (OIS), which is the rate on a derivative contract on the overnight rate, measuring the cost of extremely short-term borrowing by financial institutions. Federal Reserve Bank of St. Louis, *What the Libor-OIS Spread Says* (May 11, 2009) (online at research.stlouisfed.org/publications/es/09/ES0924.pdf).

[288] *Id*.

[289] LIBOR is calculated from the interbank borrowing rates of 16 contributor panel banks, with the top four and bottom four of the rates discarded. The middle eight rates are then used to calculate an average, which becomes the day's LIBOR rate. The contributor panel banks are selected by the Foreign Exchange and Money Markets committee on the basis of scale of activity in the London market and perceived expertise in the currency concerned. British Bankers' Association, *Understanding BBA LIBOR: a briefing by the British Bankers' Association,* at 1 (May 27, 2010) (online at www.bbalibor.com/news-releases/understanding-bba-libor) (accessed Sept. 14, 2010); British

Figure 19: 3-Month LIBOR-OIS Spread[290]

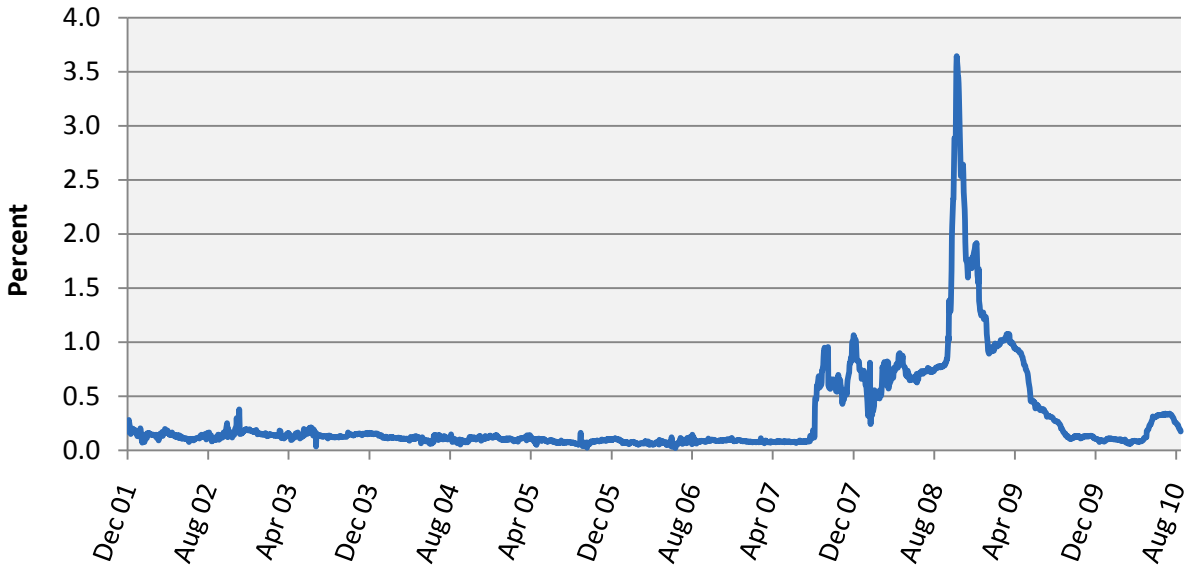
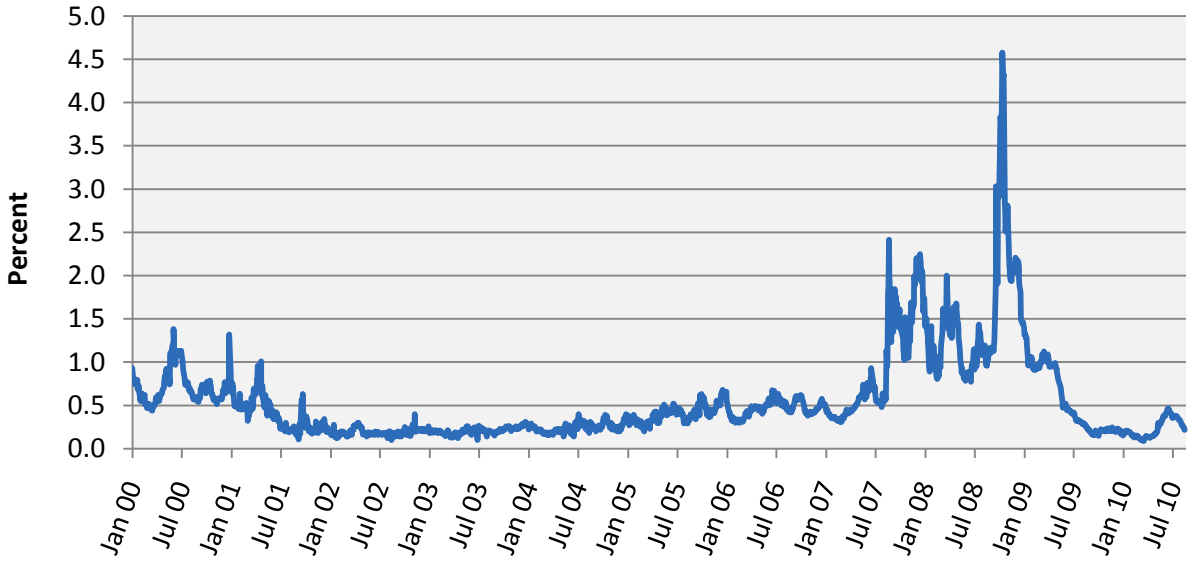


Figure 20: TED Spread between 3-Month LIBOR and 3-Month Treasury Bill Yields[291]



Bankers' Association, *BBA LIBOR Panels* (June 10, 2010) (online at www.bbalibor.com/news-releases/bba-libor-panels1).

[290] Bloomberg Financial.

[291] Bloomberg Financial.

Both spreads declined significantly from October 2008 to early 2009 and have generally leveled off and returned to rates maintained throughout the first half of the decade. The leveling trends imply increased confidence in the credit risk of counterparties that is correlated with, but not necessarily a consequence of, the government's assistance.[292] The slight uptick seen in both the 3-Month LIBOR-OIS and TED spreads in 2010 mirrors the market uncertainty regarding the European financial crisis.

Delinquency rates are currently at a ten-year high across all loan types. For loans secured by real estate, both single-family residential and commercial, delinquency rates have increased the most dramatically since 2006, despite three million foreclosures since 2007.[293] While commercial real estate loan delinquencies have leveled off a bit in recent quarters, those for single-family real estate loans continue trending upward. Conversely, delinquency rates on consumer[294] and credit card loans have decreased 0.67 and 1.74 percentage points, respectively, from the second quarter of 2009 to the second quarter of 2010.

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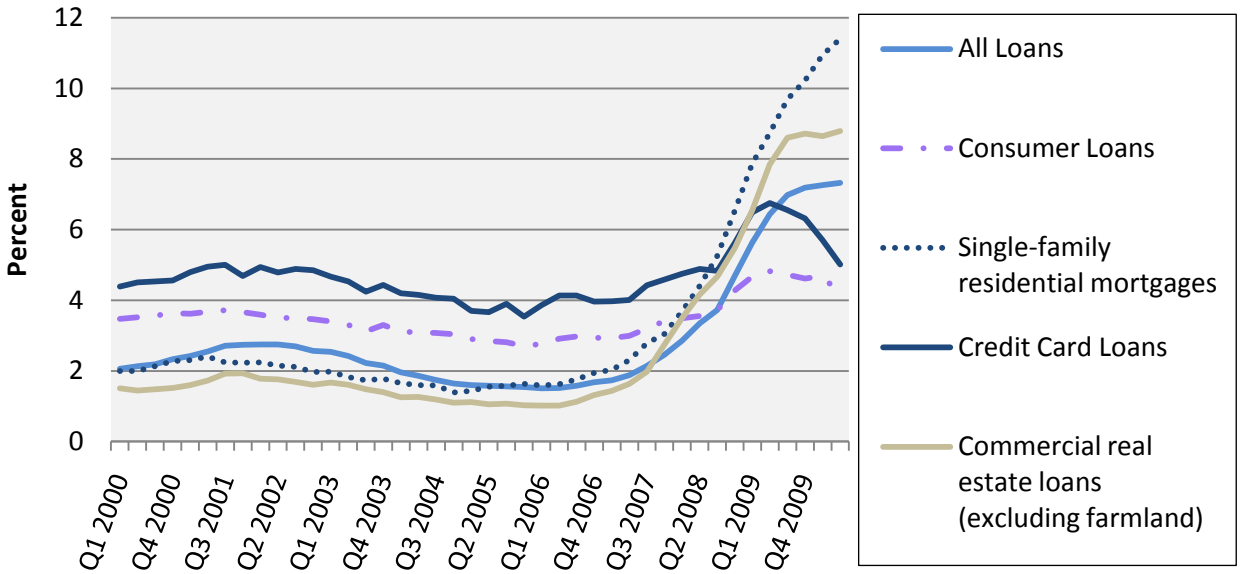
[292] The Federal Reserve introduced the Term Auction Facility (TAF) as a means for banks to borrow from the Federal Reserve without using the discount window, with the specific purpose of providing liquidity directly to financial institutions to improve money market functioning and drive down the spread on term lending relative to overnight loans. Various studies have been performed to determine TAF's effect on credit spreads, with differing outcomes. In their analysis of the Federal Reserve's policy responses to the jump in interest rate spreads, John Taylor and John Williams found that increased counterparty risk contributed to the increase in interest rate spreads but that the government's policy responses, specifically the TAF, did not have a significant impact on spread reduction. Taylor and Williams used a no-arbitrage model of the term structure of interest rates, building in expectations of future short-term rates and risk factors drawn from derivative securities markets before and after the financial crisis, to test the hypothesis that the spread should be related to expectations of future overnight rates and to counterparty risk with no impact from liquidity demands. Their results showed this hypothesis to be true, although it also highlighted the need for formal treatment of liquidity effects in future research, and has implications on future policy decisions in times of widening interest rate spreads. *See* John B. Taylor and John C. Williams, *A Black Swan in the Money Market*, American Economic Journal: Macroeconomics, Vol. 1, No. 1 (Jan. 2009) (hereinafter "A Black Swan in the Money Market"). On the other hand, Jens Christensen, Jose Lopez, and Glenn Rudebusch used a six-factor arbitrage free model of U.S. Treasury yields, financial corporate bond yields, and term interbank rates to assess the effect of central bank liquidity facilities on LIBOR. Their model allowed them to account for fluctuations in the term structure of credit and liquidity risk. They found that the TAF and other liquidity facilities did impact interbank lending rates and that, through their testing of a counterfactual scenario with no central bank liquidity facilities, without the liquidity facilities, the three-month LIBOR rate (and thus, credit spreads) would have been higher. *See* Jens Christensen, Jose Lopez, and Glenn Rudebusch, *Do Central Bank Liquidity Facilities Affect Interbank Lending Rates?*, Federal Reserve Bank of San Francisco Working Paper, No. 2009-13 (June 2009) (online at www.frbsf.org/publications/economics/papers/2009/wp09-13bk.pdf). Other academic researchers have also looked into the effect of TAF on LIBOR using similar methods to Taylor-Williams with slight variations and have also found that TAF had a significant impact. *See* James McAndrews, Asani Sarkar, and Zhenyu Wang, *The Effect of the Term Auction Facility on the London Inter-bank Offered Rate*, Federal Reserve Bank of New York Staff Report, No. 335 (July 2008) (online at www.newyorkfed.org/research/staff_reports/sr335.pdf).

[293] HOPE NOW Statistics (July 2007 to Apr. 2009), *supra* note 270; HOPE NOW Statistics (Dec. 2008 to July 2010), *supra* note 202.

[294] Consumer loans includes most short- and intermediate-term loans extended to individuals, excluding loans secured by real estate. Loans for automobiles, mobile homes, education, boats, trailers, and vacations are included in this category, although for the purposes of Figure 21, the Federal Reserve's category of "other consumer

Figure 21: Delinquency Rates by Loan Type (2000-Second Quarter of 2010)[295]



These data suggest that loans secured by real estate continue to comprise the bulk of problem loans at financial institutions. The overall increase in delinquency rates highlights the continuing strain that financial institutions face through losses and write-offs on their loan portfolios.[296] As noted in the Panel's August 2009 report, valuing the exact amount of troubled assets remaining is very difficult due to the lack of an agreed-upon definition of "troubled asset," the need to rely upon future projections of losses, and the fact that it is difficult to assemble the information required for valuation from publically-available data. The inability to value these troubled assets, in turn, makes it difficult to assess fully the health of the financial sector.[297]

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loans" is excluded. Board of Governors of the Federal Reserve System, *Federal Reserve Statistical Release: G19 Consumer Credit* (Aug. 6, 2010) (online at www.federalreserve.gov/releases/g19/Current/) (accessed Sept. 2, 2010).

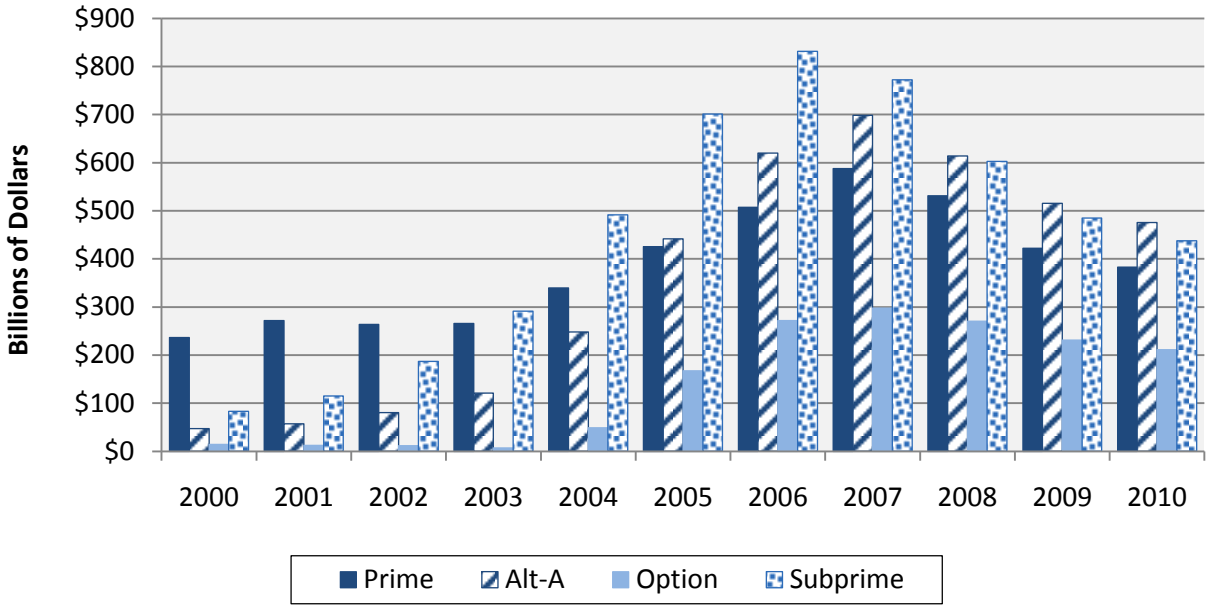
[295] For the purposes of this graph and related text, delinquent loans and leases are those past due 30 days or more and still accruing interest as well as those in nonaccrual status. Board of Governors of the Federal Reserve System, *Data Download Program: Delinquency Rates/All Banks* (online at www.federalreserve.gov/datadownload/Choose.aspx?rel=CHGDEL) (accessed Aug. 20, 2010).

[296] According to the most recent senior loan officer survey conducted by Federal Reserve, a fraction of respondents from large banks noted their lending standards and terms have eased on prime residential mortgage loans and consumer loans (other than credit card). As standards ease and credit becomes more available, changes in delinquency rates will continue to be an important metric. July 2010 Senior Loan Officer Opinion Survey, *supra* note 29, at 3-4.

[297] August 2009 Oversight Report, *supra* note 6.

Mortgage-backed securities have been the source of significant losses to financial institutions. As shown in Figure 22, non-agency mortgage-backed securities, meaning those not secured by one of the government sponsored enterprises (GSEs), reached a height of $2.4 trillion outstanding in 2007, and then fell 36 percent to $1.5 trillion outstanding in 2010. This reflects both lower demand, as the appetite for these securities has fallen dramatically, and lower supply, as fewer non-agency loans are being underwritten and securitized. Figure 22 also suggests that the volume of troubled real-estate assets held by financial institutions has correspondingly decreased.

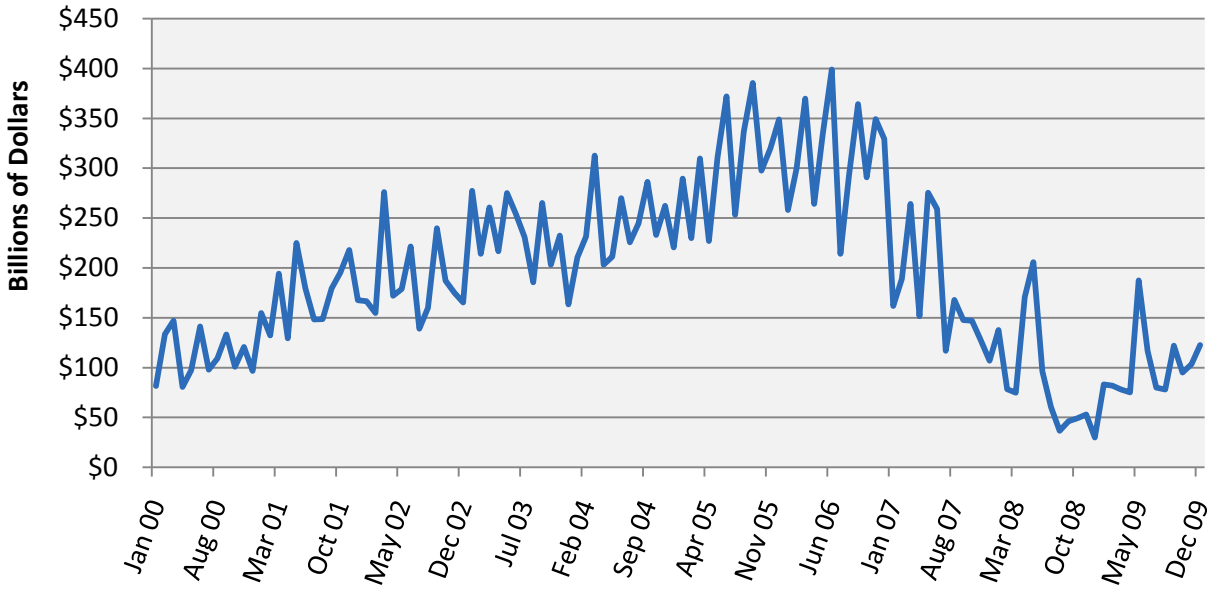
Figure 22: Mortgage-Backed Securities Outstanding, by Sector[298]



Total underwritings per month, as shown in Figure 23 below, reflect both the debt and equity raised by corporations in the public markets. While extremely volatile, underwritings have generally been on an upward swing since 2008. Notably, initial public offerings have increased from a low of 11 deals in 2008 to 26 in 2009, which suggests an increasing appetite for risk in the public markets. The successful completion of these deals represents increased demand in public markets for new issues of debt and equity, thereby reflecting a more efficient allocation of funds from investor to borrower in the capital markets.

[298] JPMorgan, MBS Strategy.

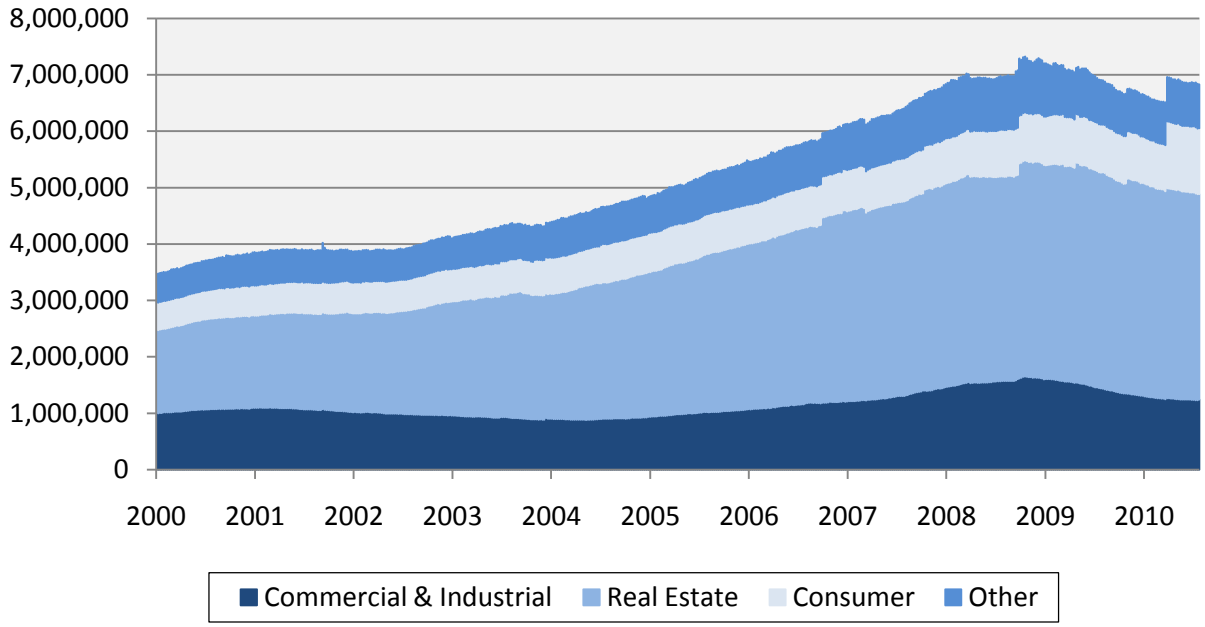
Figure 23: Total Underwritings per Month (Debt and Equity)[299]



Total loans at commercial banks increased from $3.5 trillion in January 2000 to a height of $7.3 trillion in October 2008, an increase of 111 percent. While outstanding loans decreased during the financial crisis, they jumped to nearly $7.0 billion in March, and the current trend suggests that they have begun to level off. Real estate loans drove the sharp increase in total loans from 2000 to 2008, although they have decreased slightly in recent years. Consumer loans also increased to a lesser magnitude and, despite a slight dip in late 2009, have grown to their highest level of the decade. Commercial and industrial (C&I) loans dropped by 25 percent since 2006 and have since not returned to earlier levels. As the data include both new and previously issued loans, they do not provide much detail to improve our understanding of bank lending activity.

[299] Securities Industry and Financial Markets Association, *U.S. Key Stats* (Instrument: U.S. Corporate Issuance, "Total Underwritings") (online at www.sifma.org/uploadedFiles/Research/Statistics/SIFMA_USKeyStats.xls) (accessed Sept. 14, 2010). Monthly data prior to January 2009 was provided by SIFMA staff in response to Panel request.

Figure 24: Total Commercial Bank Loans, by Type, Seasonally Adjusted[300]

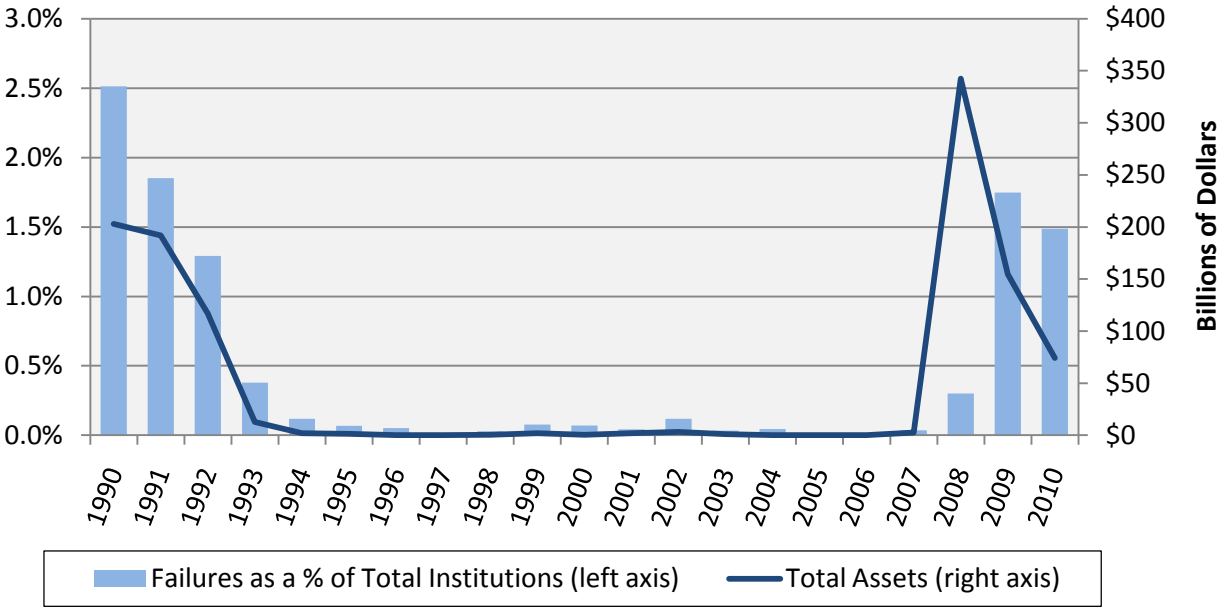


Since 2007, bank failures have increased dramatically after almost two decades at very low failure rates. It is helpful to view annual bank failures as a percentage of total banks in order to understand the relative impact of the failures on the financial sector. As noted in Figure 25 below, bank failures as a percentage of total banks have not reached the levels seen in the early 1990s, but they have dramatically increased from the 16-year span prior to 2009, when there were a negligible number of failures. The number of failures from January-July 2010 has nearly reached the level for all of 2009.[301]

[300] Board of Governors of the Federal Reserve System, *Data Download Program:H.8 Assets and Liabilities of Commercial Banks in the United States: All Commercial Banks, SA* (online at www.federalreserve.gov/datadownload/Choose.aspx?rel=H.8) (accessed Aug. 30, 2010).

[301] July 2010 Oversight Report, *supra* note 23, at 91-93.

Figure 25: Bank Failures as a Percentage of Total Banks and Bank Failures by Total Assets (1990-2010)[302]



As noted in Figure 25 above, in recent years, the number of failed banks has increased, while the total assets of failed banks have decreased. The disparity between the number of and total assets of failed banks in 2008 is driven primarily by the failure of Washington Mutual Bank, which held $307 billion in assets. The composition of failing institutions in 2009 and 2010, however, is small and medium-sized banks; while they are failing in high numbers, their aggregate total assets are relatively modest. In fact, although the number of failed banks in 2010 as of August 20, 2010, is 84 percent of that in all of 2009, the total assets of failed banks as of the same date are only 48 percent of the total assets of failed banks in 2009. This suggests that the average size of failed banks has decreased.

As was discussed in the Panel's July 2010 report, these small and medium-sized banks have greater exposures to commercial real estate loans, especially those of lower credit quality, due to larger banks' ability to often provide better loan terms and attract borrowers with greater credit quality. In an economic cycle in which retail businesses face slumping sales and

[302] The 2010 year-to-date percentage of bank failures includes failures through July. The total number of FDIC-insured institutions as of March 31, 2010 is 7,932 commercial banks and savings institutions. As of August 20, 2010, there have been 118 failed institutions. Federal Deposit Insurance Corporation, *Failures and Assistance Transactions* (online at www2.fdic.gov/hsob/SelectRpt.asp?EntryTyp=30) (accessed Aug. 25, 2010). Asset totals adjusted for deflation into 2005 dollars using the GDP implicit price deflator. The quarterly values were averaged into a yearly value. U.S. Department of Commerce, Bureau of Economic Analysis, *Gross Domestic Product: Implicit Price Deflator* (online at research.stlouisfed.org/fred2/data/GDPDEF.txt) (accessed Sept. 14, 2010).

construction projects are put on hold, smaller institutions have suffered from higher commercial real estate delinquencies.

d. "Too-Big-To-Fail" Banks

Upon enactment of EESA in October 2008, Treasury used the TARP to make capital injections of $115 billion in the eight largest banks in the country. An important aspect of assessing the impact of the TARP is to analyze the financial condition of those same institutions today, almost two years later. In addition to reviewing financial data, the Panel has also solicited the views of several research analysts who follow large capital banks.

In May 2009, the Federal Reserve published the results of a one-time analysis of the balance sheets of the 19 largest U.S. financial institutions, including all of the initial eight TARP recipients, which it undertook in the preceding weeks in an exercise called the Supervisory Capital Assessment Program, or "stress tests." This exercise assessed banks' strength in the face of certain adverse economic scenarios. Under the more adverse scenario, the results suggested that the stress-tested banks would lose nearly $600 billion during 2009 and 2010.[303]

As Figure 26 below shows, while losses by the stress-tested banks were considerable during the height of the crisis, their net income has since improved significantly. From the first quarter of 2009 to the second quarter of 2010, the 18 stress-tested banks that received TARP funds have earned $77.3 billion.[304] Since the end of 2008, the stress-tested banks have dramatically outperformed all other commercial banks. During the fourth quarter of 2008, the stress-tested firms had total net income of $10 billion, as did the balance of all non-stress tested banks. By comparison, during the second quarter of 2010, the stress-tested firms earned $17 billion in net income while all other banks earned only $3 billion.

The government took a number of steps to assure market participants that the stress-tested institutions would be secure. Beyond the TARP investments in 18 of the 19 stress-tested banks, the Capital Assistance Program (CAP) was created as a mechanism to provide additional assistance to the stress-tested institutions. While the CAP was never used and no funds were disbursed, the stress tests signaled an implicit government guarantee of these institutions.

This market perception is evidenced by the long-term credit ratings of the stress-tested banks, which experienced an average downgrade of only two notches from the beginning of 2007 to the second quarter of 2010. More specifically, Standard & Poor's, in a report issued in

[303] Board of Governors of the Federal Reserve System, *The Supervisory Capital Assessment Program: Overview of Results*, at 3 (May 7, 2009) (online at www.federalreserve.gov/newsevents/press/bcreg/bcreg20090507a1.pdf).

[304] This figure excludes MetLife, which was part of the SCAP but did not receive TARP funds, and includes GMAC, which received TARP funds under the AIFP. The other 17 stress-tested banks received funds through the CPP and, in two cases, the TIP.

May 2010, outlined the ratings impact of government support on four of the largest stress-tested institutions. The report stated that the credit ratings of Bank of America, Citigroup, and Morgan Stanley were three notches higher than they would have been without government support and Goldman Sachs was two notches higher. These four institutions, the report noted, were the only ones that S&P believes "have the potential for government support above and beyond system-wide programs."[305]

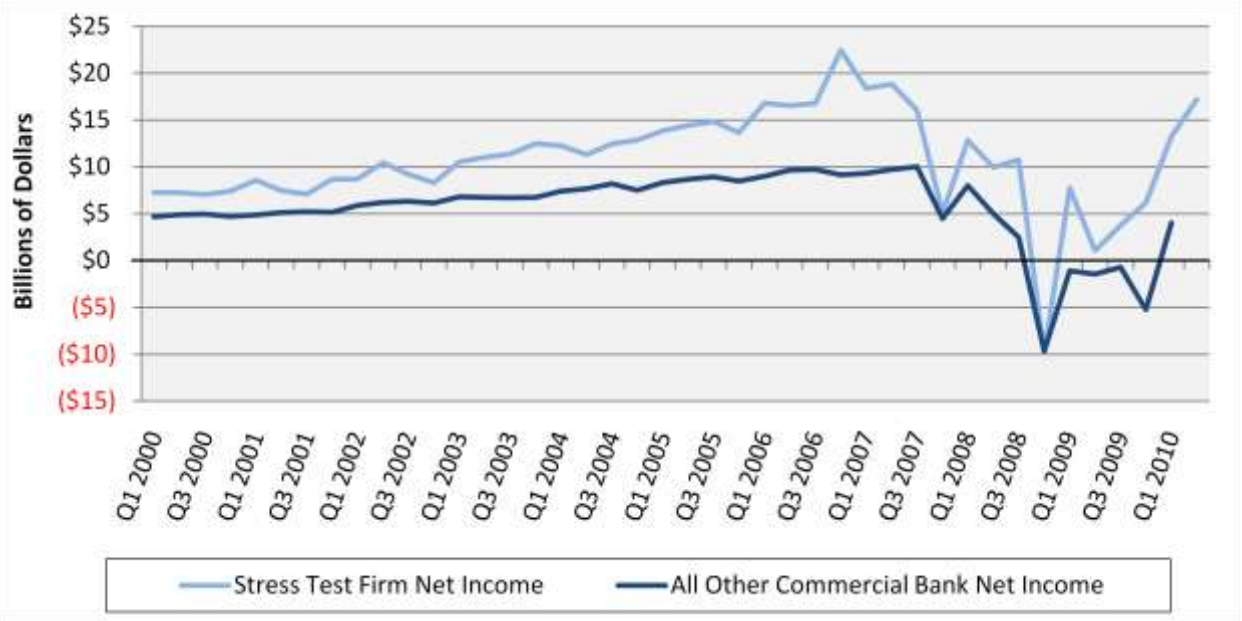
Figure 26: Standard & Poor's Long-Term Credit Rating of Stress-Tested Banks[306]

	Q1 2007	Q3 2008	Q2 2010
American Express Company	A+	A	BBB+
American International Group, Inc.	AA	A–	A–
Bank of America Corporation	AA	A+	A
Bank of New York Mellon Corporation	A+	AA–	AA–
BB&T Corporation	A+	A+	A
Capital One Financial Corporation	BBB+	BBB+	BBB
Citigroup Inc.	AA	A	A
GMAC/Ally	BB+	B–	B
Goldman Sachs Group, Inc.	AA–	AA–	A
JPMorgan Chase & Co.	AA–	A+	A+
KeyCorp	A–	A–	BBB+
MetLife, Inc.	A	A	A–
Morgan Stanley	A+	A	A
PNC Financial Services Group, Inc.	A	A+	A
Regions Financial Corporation	A	A	BBB–
State Street Corporation	AA–	AA–	A+
SunTrust Banks, Inc.	A+	A+	BBB
U.S. Bancorp	AA	AA	A+
Wells Fargo & Company	AA+	AA	AA–

[305] Standard & Poor's, *Evaluating The Impact of Far-Reaching U.S. Financial Regulatory Reform Legislation on U.S. Bank Ratings* (May 25, 2010); Panel staff conversation with S&P staff on September 15, 2010.

[306] The Standard & Poor's rating system is composed of the following hierarchy of grades: "AAA","AA","A", "BBB", "BB", "B", "CCC", "CC", "C", "D." Furthermore, the system utilizes plus (+) and minus (-) signs to reflect relative strength within each category. Standard & Poor's, *Credit Ratings Definitions & FAQs* (online at www.standardandpoors.com/ratings/definitions-and-faqs/en/us) (accessed Sept. 14, 2010). SNL Financial. Standard & Poor's long-term issuer credit rating for the company. S&P Ratings Copyright 2006, Standard & Poor's, a division of The McGraw-Hill Companies, Inc.

Figure 27: Net Income of Stress-Tested Banks as Compared to All Commercial Banks[307]



Furthermore, the investment analysts whom the Panel consulted emphasized the historically high level of capital reserves being maintained by the largest institutions.[308] Tier 1 capital ratios, which are calculated by dividing core capital by risk-adjusted assets, are a measure of banks' strength.[309] As illustrated in Figure 27 above, the average Tier 1 capital ratio of the 18 stress-tested banks that took TARP funds has increased dramatically. Since the third quarter of 2008, the average Tier 1 capital ratio of these companies has increased from 8.6 percent to 12 percent during the second quarter of 2010.[310]

[307] SNL Financial. Stress-tested banks exclude MetLife, which was part of the SCAP, but did not receive TARP funds.

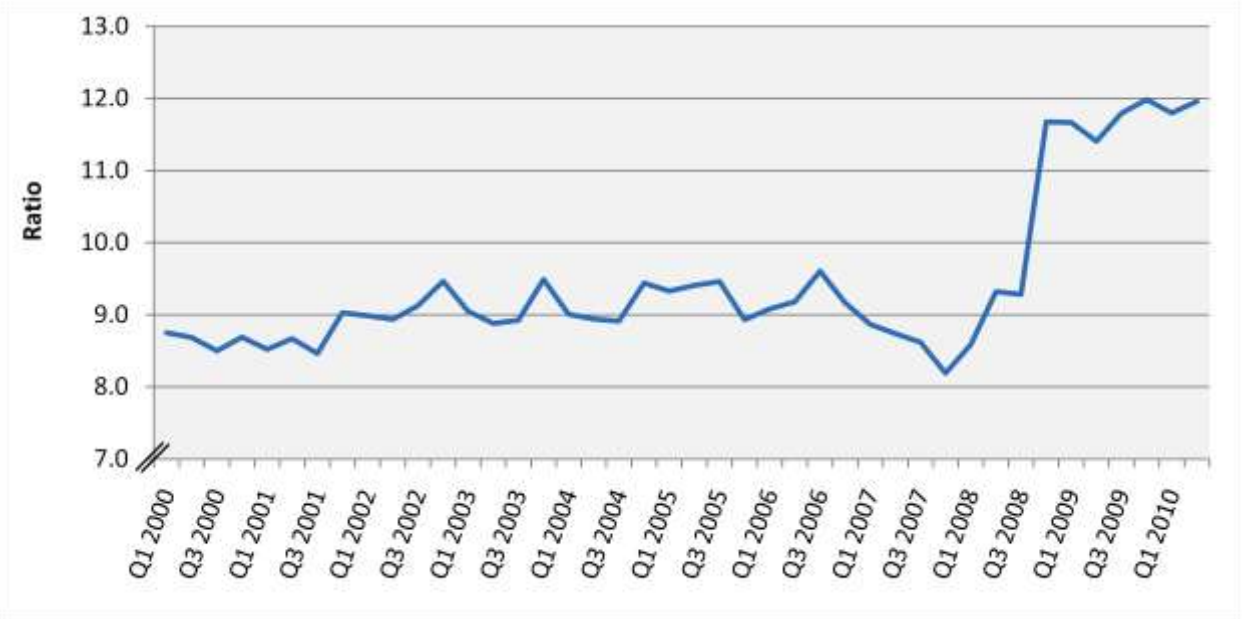
[308] As of Q2 2010, reserves as a percentage of loans in the U.S. banking industry are at their second highest level (3.4 percent) since this data was first measured in 1948. Barclays Capital, *FDIC Banking Industry Charts: 1934- 1H10* (Sept. 9, 2010).

[309] Core capital is a regulatory measure of a bank's health that is primarily comprised of the company's common stock and disclosed reserves. The value of risk-adjusted assets is derived from assigning a percentage risk value to an asset in order to better asses an institution's actual risk profile.

[310] SNL Financial.

Another measure of the increasing capital is loan loss reserves.[311] Since the first quarter of 2007, the average loan loss reserve ratio for the stress-tested banks has increased from 1.08 percent to 3.19 percent.

Figure 28: Tier 1 Capital Ratio of the Stress-Tested Banks[312]



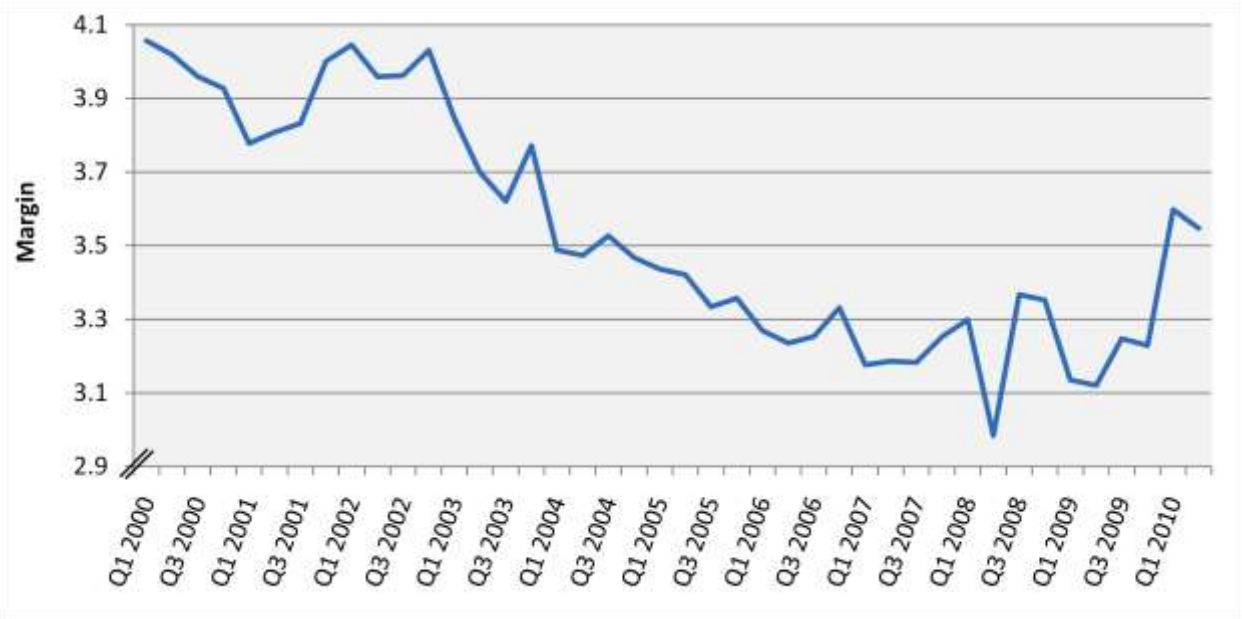
For the same 18 banks, the net interest margin, an indicator of a bank's operating performance, has also increased since the height of the crisis, though it remains below its levels from 2000-2005.[313] The investment analysts whom the Panel consulted noted that the current low interest rate environment has placed pressure on bank spreads – the difference between the rate at which the institution borrows and the rate at which it then lends – and has effectively squeezed the firms' profits. As shown in Figure 28 below, the measure has increased 11 percent since its trough in the second quarter of 2009.

[311] SNL Financial. This indicator is defined as: Total Loan Loss and Allocated Transfer Risk Reserves/Total Loans & Leases (Net of Unearned Income & Gross of Reserves).

[312] SNL Financial. This ratio is defined as: Core capital/ risk-adjusted assets (tier 1 ratio).

[313] SNL Financial. Net interest margin is defined as a bank's net interest income as a percentage of its average earning assets.

Figure 29: Net Interest Margin of Stress-Tested Banks[314]

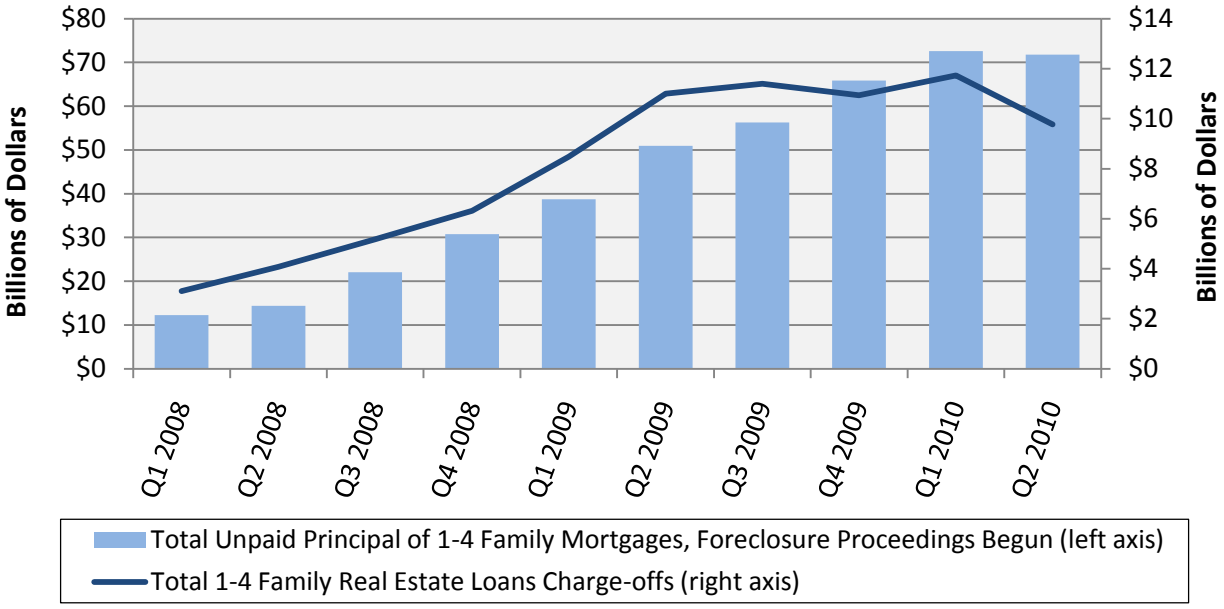


Not all indicators of the strength of the nation's largest banks are positive. The nation's largest banks have 32 percent of their loan books exposed to the residential real estate market.[315] Uncertainty in the real estate market remains a serious concern for these banks. Figure 30 below shows the dollar value of the unpaid balances of residential loans in bankruptcy proceedings at the stress-tested banks at the end of each quarter as compared to the charge-offs. While the amount of unpaid principal balance on homes in foreclosure has recently leveled off at $70 billion, the amount of charge-offs taken by the large banks on residential mortgages in the second quarter of 2010 decreased by 17 percent from the first quarter of 2010. As Figure 30 highlights, however, nearly $97 billion in residential loans are at least 90 days past due as of the second quarter of 2010.

[314] SNL Financial. This metric is defined as: Net interest income (fully taxable equivalent, if available) as a percentage of average earning assets. (Annualized).

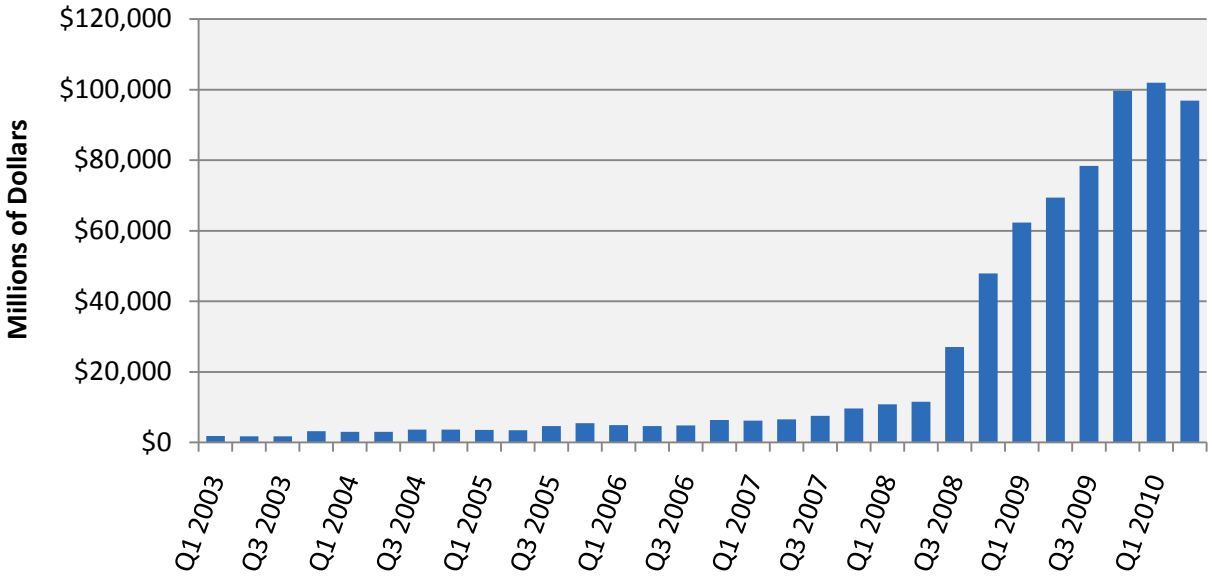
[315] Jason Goldberg, *Asset Quality Update*, Barclays Capital (Aug. 26, 2010).

Figure 30: Total Unpaid Principal of 1-4 Family Mortgages in Foreclosure Proceedings at Stress Test Banks Compared to Charge-offs on 1-4 Family Mortgages[316]



[316] SNL Financial. The unpaid principal figure is comprised of total unpaid principal balance of loans secured by 1-4 family residential properties (in domestic offices) for which formal foreclosure proceedings to seize the real estate collateral have started and are ongoing as of quarter-end, regardless of the date the foreclosure procedure was initiated. (Call Report Line Item:RCONF577/RCONF577). The charge-off figure is comprised of the revolving and permanent loans secured by real estate as evidenced by mortgages (FHA, FmHA, VA, or conventional) or other liens secured by 1-4 family residential property charged off, for domestic offices only. It includes liens on: nonfarm property containing 1-4 dwelling units or more than 4 dwelling units if each is separated from other units by dividing walls that extend from ground to roof, mobile homes where: (a) state laws define the purchase or holding of a mobile home as the purchase of real property and where (b) the loan to purchase the mobile home is secured by that mobile home as evidenced by a mortgage or other instrument on real property, individual condominium dwelling units and loans secured by an interest in individual cooperative housing units, even if in a building with 5 or more dwelling units, vacant lots in established single-family residential sections or areas set aside primarily for 1-4 family homes, housekeeping dwellings with commercial units combined where use is primarily residential and where only 1-4 family dwelling units are involved charged off.

Figure 31: Total Real Estate Loans 90+ Days Past Due at Stress-Tested Banks[317]

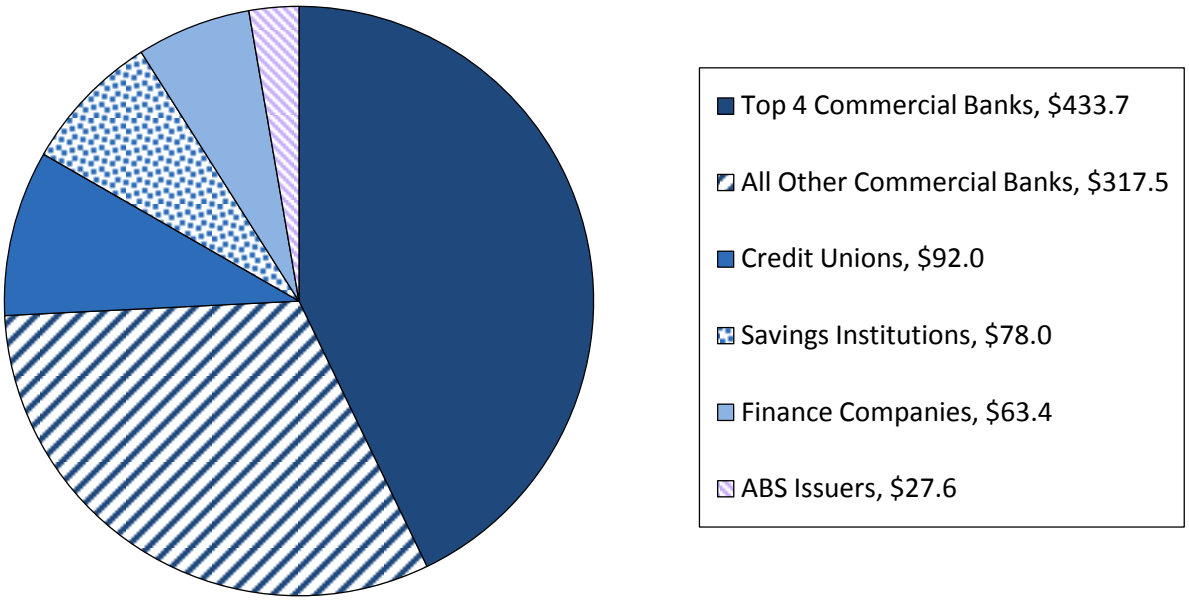


Furthermore, second liens remain a concern and are a particularly acute problem at the nation's largest banks. As Figure 32 shows, 42 percent of second liens are held by the nation's four largest banks: Bank of America, Wells Fargo, JPMorgan Chase, and Citigroup.[318] There is still a significant amount of risk associated with these potentially under collateralized home equity loans.

[317] SNL Financial.

[318] Second lien mortgages are carried as loans held for investment. This means that the carrying value of these loans consist of the outstanding principal balance net of unearned fees and unamortized deferred fees. These loans are not accounted for under mark-to-market accounting. Furthermore, while the four largest banks (Bank of America, JPMorgan Chase, Citigroup, Wells Fargo) hold 42 percent of second liens, these loans represent a small proportion of the residential loans these banks hold on their loan books. As of the second quarter 2010, the average percentage of second liens that comprise the 1-4 family servicing book of these banks was 7.5 percent. Amherst Securities; Board of Governors of the Federal Reserve System, *Flow of Funds Accounts of the United States* (June 10, 2010) (online at www.federalreserve.gov/releases/z1/current/z1.pdf) (hereinafter "Flow of Funds Accounts of the United States").

Figure 32: Total Second Liens by Holder *(billions of dollars)*[319]



Whether the largest recipients of TARP assistance are indeed sound depends in substantial measure on their future earnings prospects. The overall outlook remains uncertain as large firms attempt to navigate an unfavorable economic environment. In June and July, trading volume and activity were low, and economic data continued to decline.

Looking forward, one analyst consulted by the Panel observed that significant growth in revenue will be difficult due to changes in the regulatory environment, declines in medium- and long-term interest rates, and weakening capital markets. Another analyst saw volatility in earnings prospects as loan balances and loan loss provisions decline.[320] In the view of these analysts, and as illustrated in Figure 33 below, the large banks are still profitable, but profits are not at the levels they once were. There are, however, opportunities for large banks to grow outside the United States. These analysts believe that large U.S. banks that are well-positioned in emerging Asia and Europe will be able to realize high-single-digit to low-double-digit growth through international capital markets, whereas traditional banks can expect to see low single digit growth at best.[321]

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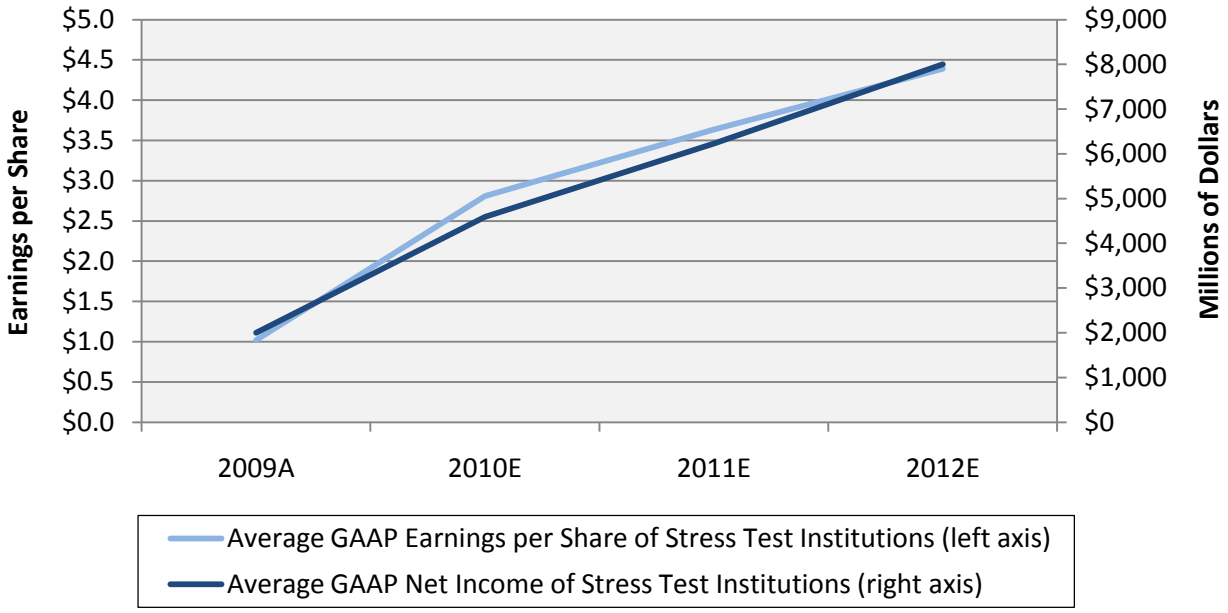
[319] Flow of Funds Accounts of the United States, *supra* note 318. The "Top 4 Commercial Banks" bucket is comprised of Bank of America, Wells Fargo, JPMorgan Chase, and Citigroup.

[320] Information provided in industry analyst conversations with Panel staff between August 26 and August 30, 2010.

[321] Information provided in industry analyst conversations with Panel staff between August 26 and August 30, 2010.

While there is widespread agreement among analysts that recent regulatory changes and ongoing market weaknesses will adversely affect certain segments of the stress-tested institutions' profitability, analyst consensus estimates illustrate a belief that the health of these firms will continue to improve in the coming years. Estimates of earnings per share (EPS), GAAP net income, and returns on equity/assets from Wall Street research firms show a dramatic increase in these measures from 2009 to 2012.[322]

Figure 33: Earnings per Share and Net Income of Stress Tested Banks 2009-2012[323]



The Panel's assessment of the current condition and future prospects of the large banks that were the initial beneficiaries of TARP assistance must ultimately be qualified by the many lingering questions concerning the accuracy and completeness of the financial data upon which we and analysts must rely. The TARP has never fully addressed the issue of valuation of troubled loans remaining on the balance sheets of these institutions. Many of the assets of these large banks continue to be recorded at values that are not necessarily consistent across banks, due to differences in mark-to-model valuations, or are not open to public verification, due to the

[322] Figure 33 reflects composites of investment analysts' estimates for specific company metrics. Each data point is comprised of between seven and nineteen analyst estimates, thereby providing a wider array of thoughts and opinions rather than relying on only one analyst.

[323] Bloomberg. The 2009 figures were the actual amounts (reflected by "A" following the year) and the 2010-2012 figures are composite estimates (reflected by "E" following the year). This analysis excludes GMAC (Ally Financial) which is a private company and, as such, analysts do not publish earnings estimates.

limitations of data contained in public financial disclosure documents.[324] Consequently, the Panel is unable to say whether the American taxpayer can rest assured that over the long term these institutions have been fully restored to a financially sound condition in the aftermath of their TARP capital injections and repayment.

e. Automotive Sector Performance Metrics

Though the financial and housing sectors faced the most obvious challenges posed by the financial crisis, the U.S. automotive industry faced a similar credit crunch and loss of sales. Treasury viewed a major disruption to the automotive industry as a systemic risk to financial market stability and as liable to have a negative impact on the economy.[325] As such, Treasury established the AIFP to provide relief to Chrysler, General Motors, Chrysler Financial, and GMAC.[326]

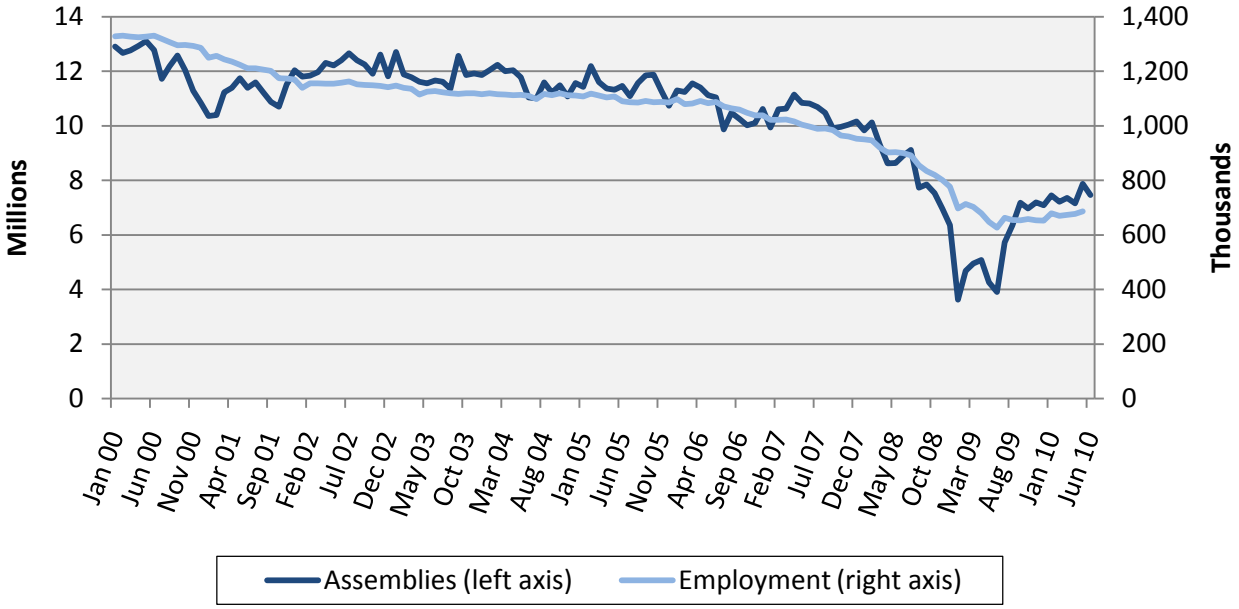
Since the AIFP was implemented, the automotive industry has begun to recover. Following a steep decline at the end of 2008, both global sales and industrial production of automobiles have rebounded and stabilized. Total automotive and parts manufacturing employment has stopped declining.

[324] *See* August 2009 Oversight Report, *supra* note 6, at 27 ("the usefulness of public financial records is limited, though, by a lack of uniformity in reporting and formatting and a lack of granularity.").

[325] September 2009 Oversight Report, *supra* note 6, at 8.

[326] U.S. Department of the Treasury, *Automotive Industry Financing Program* (Aug. 26, 2010) (online at www.financialstability.gov/roadtostability/autoprogram.html).

Figure 34: U.S. Auto and Light Truck Assemblies (millions) and Motor Vehicle and Parts Employment (thousands)[327]



It is important to note, however, that the automotive sector has also benefited from many other factors besides the government's investments, most notably, the Cash for Clunkers program and the bankruptcies of GM and Chrysler.[328]

2. The TARP's Effect on the Financial System

As described in section E.1, *supra*, there are metrics that can provide a certain assessment of various sectors of the economy before and after the implementation of the TARP. While these yield useful information, some of the challenges for oversight and evaluation lie in teasing out the results that can be directly attributed to the implementation of a single program from other factors, and comparing what actually occurred with what might have occurred under a

[327] Board of Governors of the Federal Reserve System, *Data Download: G.17 Industrial Production and Capacity Utilization, Motor Vehicle Assembles* (online at www.federalreserve.gov/datadownload/Choose.aspx?rel=G.17) (accessed Sept. 14, 2010); Bureau of Labor Statistics, *Current Employment Statistics Databases: Employment, Hours, and Earnings-National: All Employees: Durable Goods: Motor Vehicles and Parts* (online at www.bls.gov/ces/data.htm) (accessed Sept. 14, 2010).

[328] Bankruptcy is considered a benefit because it allows a company to discharge its unsecured debt and deal with certain pension obligations. For a more complete timeline of AIFP assistance, as well as the GM and Chrysler bankruptcies, *see* September 2009 Oversight Report, *supra* note 6. The Cash for Clunkers program was signed into law on June 24, 2009 and began on July 27, 2009. National Highway Traffic Safety Administration, *Transportation Secretary Ray LaHood Kicks-Off CARS Program, Encourages Consumers to Buy More Fuel Efficient Cars and Trucks* (July 27, 2009) (online at www.cars.gov/files/official-information/July27PR.pdf).

counterfactual scenario. In addressing these questions, the Panel consulted with Professors Alan Blinder, Simon Johnson, Anil Kashyap, and Kenneth Rogoff to elicit their views on the TARP, particularly in the context of the Panel's current evaluation. The Panel asked these economists to provide broad guidance on, among other things: the effectiveness of the TARP (as they believed "effectiveness" should be measured), particularly in comparison to other government programs during the crisis; alternatives to the TARP and ways in which the TARP could have been better implemented or designed; negative effects from the TARP; and implications of the TARP for the future. While differing on numerous points, the economists generally agreed that the TARP was both necessary to stabilize the financial system and that its implementation had been flawed in some significant ways and could pose significant costs far into the future.

a. Isolating the TARP

A predicate to determining the effectiveness of the TARP is isolating the effects of the TARP alone from other influences on the economy. The economists differed on whether the effect of the TARP could ever be isolated. Both Professors Kashyap and Rogoff stated that they did not believe that it is possible to determine the effectiveness of the TARP, by itself, on the health of the entire U.S. economy.[329] Professor Kashyap noted that "figuring out the contribution of TARP in isolation is not really possible" because "TARP by itself would not have been sufficient [to] stave off a disaster[.]"[330] Professors Blinder and Johnson, however, expressed a belief that it is possible to isolate at least certain effects of the TARP. Professor Blinder suggested that the fact that risk spreads rose sharply before the TARP was enacted and fell sharply afterward is "highly suggestive that the TARP spread a security blanket across the financial markets."[331] Professor Johnson suggested that the TARP be viewed in light of three main goals for a government facing a major financial crisis: (1) stabilizing the banking system; (2) preventing the overall level of spending from collapsing; and (3) laying the groundwork for a sustainable recovery.[332]

To the extent that Treasury itself has articulated a metric by which to measure TARP's success, that metric has generally been the response to the question: will the taxpayers get their money back.[333] While it is true that EESA mandates that any program undertaken by Treasury

[329] Anil Kashyap, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010); Kenneth Rogoff, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[330] Anil Kashyap, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[331] Alan Blinder, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[332] Simon Johnson, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[333] In an opinion piece for *The New York Times* titled "Welcome to the Recovery," Secretary Geithner wrote that "[t]he government's investment in banks has already earned more than $20 billion in profits for taxpayers, and the TARP program will be out of business earlier than expected – and costing nearly a quarter of a trillion dollars less than projected last year." Timothy F. Geithner, *Welcome to the Recovery*, New York Times

under the Act "maximize[ ] overall returns to the taxpayers of the United States"[334] repayment does not provide a complete picture of either the success of TARP or its cost. Professor Rogoff has noted that a proper cost benefit analysis "needs to price the risk the taxpayer took on during financial crisis. Ex post accounting (how much did the government actually earn or lose after the fact) can yield an extremely misguided measure of the true cost of the bailout, especially as a guide to future policy responses."[335] Therefore the simple question of whether the program ends with a negative or positive balance does not provide a complete answer to whether the program was necessary, or properly designed and implemented.

b. Necessity for and Effectiveness of the TARP

Despite the difficulty some of them found in ascribing particular effects to the TARP, the Panel's experts were consistent in their view that even if mismanaged in many ways, TARP was the right thing to do. Professor Kashyap noted that the Federal Reserve did not have enough options to handle the crisis without the tools provided by the TARP, while Professor Johnson similarly stated that the TARP was the right thing to do. Professor Blinder observed that "laissez faire would have been catastrophic,"[336] while Professor Rogoff stated that the bailout policy must be given credit for averting the second great depression that might otherwise have occurred.[337] While expressing some concerns, Professor Kashyap said, considering all of the policies aimed at preventing a complete collapse of the financial system, "the package worked."[338] Professor Blinder has said that "regarding stabilizing institutions like AIG, one has to count TARP as a huge success."[339]

The TARP was enacted amidst enormous market turmoil. After Lehman Brothers' failure, major Wall Street players Goldman Sachs and Morgan Stanley saw their stock prices fall 30 percent and nearly 42 percent, respectively, in the week following the announcement. In the

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(Aug. 2, 2010) (online at www.nytimes.com/2010/08/03/opinion/03geithner.html?_r=2&dbk). *See also* U.S. Department of the Treasury, *Treasury Department Announces TARP Milestone: Repayments to Taxpayers Surpass TARP Funds Outstanding* (June 11, 2010) (online at financialstability.gov/latest/pr_06112010.html) (quoting Assistant Secretary Herbert Allison as saying that "TARP repayments have continued to exceed expectations, substantially reducing the projected cost of this program to taxpayers ... This milestone is further evidence that TARP is achieving its intended objectives: stabilizing our financial system and laying the groundwork for economic recovery.").

[334] 12 U.S.C. § 5201(2)(C).

[335] Kenneth Rogoff, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[336] Alan Blinder, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[337] Kenneth Rogoff, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[338] Anil Kashyap, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[339] Alan Blinder, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

week immediately following the passage of TARP, the S&P500 index fell by more than 18 percent. The TED Spread spiked 177 points, rising from about 136 points on September 12, 2008, to 313 points by September 18, 2008.

The rapid collapse or disappearance of Lehman Brothers, AIG, Merrill Lynch, Fannie Mae and Freddie Mac over a period of days fed an environment where both firms and investors lost confidence in the solvency of financial institutions broadly. There was clearly a significant threat of a freeze in global credit markets, with banks refusing to lend to each other or demanding high premiums, as measured by the rising TED spreads.

Following the initial CPP investments and the implicit government guarantee associated with those investments, interbank credit markets became more liquid and markets began to differentiate more clearly among stronger and weaker institutions. Citigroup and Bank of America received additional assistance through the TIP, and Citigroup also received a government guarantee through participation in the AGP.

Ultimately, TARP's provision of government liquidity and implicit guarantees, together with actions by the Federal Reserve and the other bank regulators both stopped the broader market panic in early October 2008, and kept almost all of the nation's major financial institutions as of the date of the passage of the EESA from bankruptcy. The only major post-EESA financial bankruptcy was that of the CIT Group.[340] In February 2009, Treasury unveiled the Administration's financial stability plan, which included plans to perform an assessment or "stress test" of the nation's largest financial institutions with an underlying promise to provide adequate capital to ensure that none of the tested banks would fail.[341] By summer 2009, there was a consensus that the acute financial crisis had passed. Economic recovery, however, including financial sector recovery, is far from complete, and many Americans are still struggling as they face long term unemployment, mortgage foreclosures, and other fall-out from the late 2008 crash.[342]

[340] CIT announced that it would file a pre-packaged bankruptcy plan on November 1, 2009. CIT Group, *CIT Board of Directors Approves Proceeding with Prepackaged Plan of Reorganization with Overwhelming Support of Debtholders* (Nov. 1, 2009) (online at cit.com/media-room/press-releases/corporate-news/index.htm).

[341] Congressional Oversight Panel, *June Oversight Report: Stress-Testing and Shoring Up Bank Capital* (June 9, 2009) (online at cop.senate.gov/documents/cop-060909-report.pdf).

[342] *See, e.g.,* Board of Governors of the Federal Reserve System, *Summary of Commentary on Current Economic Conditions By Federal Reserve District*, at 4 (Aug. 2009) (online at www.federalreserve.gov/FOMC/Beigebook/2009/20090909/fullreport20090909.pdf) (noting that all districts reported "that economic activity continued to stabilize in July and August").

3. Costs of the TARP: Moral Hazard and Stigma

Even while saying that TARP "worked", the economists that the Panel consulted did not state that all exercises of the TARP were positive. The unquantifiable and immeasurable effects are not a one-way ratchet in favor government intervention. The TARP distorted the market at the same time as it stabilized it, and many of the costs of this distortion will likely occur in the future. Although it is difficult to determine what the long-term consequences of the TARP will be, it is clear that the TARP has introduced some effects that might have been averted had the TARP either not been created or been implemented differently. Many of these effects will not be quantifiable until many years down the road.

a. Poor Implementation and Stigma

Some of the decisions Treasury made in designing and implementing the TARP have increased the stigma that currently dogs the program. Professor Johnson and Professor Kashyap both said that the October 2008 change in TARP strategy from asset purchases to capital injections, followed by the 2009 rollout of numerous seemingly unconnected programs, combined with largely ineffective communication of the reasoning behind these actions, spread confusion in the public and undermined trust in the TARP.[343] Professor Kashyap described the difficulties with Treasury's reversal of direction from its original September 2008 plan to purchase troubled assets to, one month later, capital injections, and argued that "buying toxic assets never made sense and the fact that the government could not explain how this was going to help with the crisis was a tell-tale sign that this idea was flawed."[344] While Professor Blinder argued that Treasury could have proceeded with its original plan of purchasing troubled assets from the banks rather than, or in addition to, providing those banks with capital infusions,[345] he also said that Treasury made numerous tactical errors in implementing the TARP. These include "forcing capital on banks that did not want it," giving terms to TARP recipients that were too generous, and not requiring that recipient institutions forgo paying dividends but increase lending as a quid pro quo for receiving government assistance. Additionally, Professor Johnson has expressed significant concern with the inequity of various TARP actions, suggesting that some actions were motivated by favoritism towards politically connected groups,[346] and that the program has rewarded failure, and provided a certain amount of artificial support to the financial

[343] Anil Kashyap, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010); Simon Johnson, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[344] Anil Kashyap, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[345] Alan Blinder, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010). *See also* August 2009 Oversight Report, *supra* note 6, at 9 (discussing differences between capital infusions and purchases of troubled assets).

[346] Simon Johnson, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

system. Concerns such as these may have stoked hostility towards the program. Even though Main Street generally benefits from a well-functioning financial system, the hostility towards the program is potentially exacerbated by the TARP's comparatively languid approach to addressing issues that have a greater direct effect on Main Street, such as small business lending and foreclosures.

The TARP's image has been further damaged by its prominence. The TARP was only the most visible portion of a number of government policy responses to the financial crisis, most notably the far larger Federal Reserve liquidity operations and guarantees. As Professor Rogoff observed, "[t]hese subsidies, however, were less transparent, and of course TARP funds covered some of the ugliest and most painful parts of the bailout, including, for example, AIG."[347] Considering the myriad sources of resentment towards the TARP and the intensity of the stigma that has developed, it is not surprising that many observers believe as Professor Blinder does, that "in the near term, the extreme unpopularity of TARP will make it hard to do anything even remotely like it again, should the need arise."[348] Some of these effects are already apparent. Treasury hoped, for example, that the CPP would attract 2,000 to 3,000 participant banks: the result was a comparatively disappointing 707, and some of the unpopularity of the program has been attributed to the stigma that became attached to the TARP.[349] Similarly, the pending SBLF legislation was deliberately created outside of the TARP because the stigma associated with the TARP led Treasury to be concerned that participation in another TARP program would be too low.[350] Professor Johnson stated that one result is that the current recovery strategy has produced a stalemate between the Administration's reluctance to dictate terms to the banks (out of a concern that such an approach will be viewed as an attempt at nationalization) and "bailout fatigue," among the public and Congress, which "has made it impossible for the administration to propose a solution that is too generous to banks, or that requires new money from Congress."[351]

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[347] Kenneth Rogoff, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[348] Alan Blinder, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[349] Financial Crisis Inquiry Commission, Testimony of Henry M. Paulson, Jr., former secretary, U.S. Department of the Treasury, *The Shadow Banking System*, at 70 (Mar. 6, 2010) (online at www.fcic.gov/hearings/pdfs/2010-0506-Transcript.pdf) (Then-Secretary Paulson testifying that the CPP was designed to have "two or three thousand banks" hold the CPP for "three to five years"); Transcript: COP Hearing with Secretary Geithner, *supra* note 225, at 40; May 2010 Oversight Report, *supra* note 6, at 68-72; House Financial Services, Subcommittee on Financial Institutions and Consumer Credit, Written Testimony of David N. Miller, acting chief investment officer, Office of Financial Stability, U.S. Department of the Treasury, *The Condition of Financial Institutions: Examining the Failure and Seizure of an American Bank*, at 1 (Jan. 21, 2010) (online at www.house.gov/apps/list/hearing/financialsvcs_dem/miller_house_testimony_final_1-21-10_5pm.pdf).

[350] Transcript: COP Hearing with Secretary Geithner, *supra* note 200, at 84.

[351] Simon Johnson, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

b. Moral Hazard

Commentators on the TARP, including the Panel's experts, are almost universally concerned with the costs of the interventions, particularly the moral hazard it created in the financial system. After all, the government had alternatives for the form of its intervention. For example, as an alternative to subsidizing large, distressed banks, it had the option of putting them into liquidation or receivership, removing failed managers, and wiping out existing shareholders.[352] Such a strategy has been used successfully in past banking crises, as noted by Professor Johnson, such as the South Korean crisis of 1997, or in the U.S. Savings and Loan Crisis of the early 1990s. The failure to follow this more aggressive course was criticized by Professor Johnson, who argued that unlimited government support must be accompanied by orderly resolution for troubled large institutions and rigorous governance reform to ensure that short-term stability does not come at the cost of sustainable recovery.[353] Professor Blinder also argued that tougher conditions on banks receiving assistance, such as lending targets or banning dividends would have made TARP more effective and given it more political legitimacy.[354] Professor Rogoff noted that the TARP nationalized the liabilities of the banks while protecting equity holders and even junior bond holders.[355] Similarly, the structure of the AIG rescue – in which counterparties received full payment while taxpayers continue to face a significant loss – has shaken public confidence and created a substantial moral hazard.[356]

One of the most significant arenas in which commentators, including the Panel's experts, debate moral hazard is in the discussion of those entities that are "too big to fail" and the effect of such entities on the financial system generally. Those banks considered to be "too big to fail" enjoy an implicit guarantee backed by the U.S. government, giving them an advantage in attracting business and financing, and potentially making them even larger and more interconnected than ever.[357] In his written testimony before the House Financial Services Subcommittee on Oversight and Investigations, Thomas Hoenig, the president and chief executive officer of the Federal Reserve Bank of Kansas City, recently warned of just this effect. "Because the market perceived the largest banks as being too big to fail," he noted, "they have had the advantage of running their business with a much greater level of leverage and a

[352] Congressional Oversight Panel, *April Oversight Report: Assessing Treasury's Strategy: Six Months of TARP*, at 78-79 (Apr. 7, 2009) (online at cop.senate.gov/documents/cop-040709-report.pdf) (hereinafter "April 2009 Oversight Report").

[353] Simon Johnson, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[354] Alan Blinder, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[355] Kenneth Rogoff, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[356] June 2010 Oversight Report, *supra* note 21, at 10.

[357] See Figure 26, *supra*.

consistently lower cost of capital and debt." He also described the challenges small banks will face going forward, including higher regulatory compliance costs, as well as higher costs of capital and of deposits, as long as some banks are perceived to be too big to fail.[358] Professor Rogoff echoed this in noting to the Panel that the smaller banks, which are not considered to be "too big to fail," and those which followed more conservative lending policies, are now at a huge disadvantage in raising funding compared to their more risk-tolerant but larger competitors.[359] The TARP has therefore created a "perverse incentive" for large banks to disregard risk, since when it comes to their all-important cost of capital, the markets will no longer penalize them for recklessness or shortsightedness in lending, nor will they reward responsibility or prudence. Professor Johnson made a similar observation, stating that FDIC-type liquidation procedures were applied to small and medium banks, but not to large banks, sending confusing messages, while providing those large banks with an incentive to take excessive risk.[360] Additionally, the 2009 bank stress tests have been interpreted by multiple economists the Panel has spoken with as reinforcing the implicit guarantees of "too-big-to-fail" banks.[361] Even the structure of the CPP reinforced this disparity, as noted by Professor Kashyap when he criticized Treasury's willingness to inject capital into banks without first gaining a clear idea of their solvency.[362] This trend is reflected in the data presented in section E.1, *supra*, which shows that the largest 19 banks appear to be on a swifter path toward recovery than their competitors. The economists contacted by the Panel generally agree, however, that some of the moral hazard costs of the TARP were largely unavoidable.

Professors Blinder and Kashyap have suggested that the solution may lie in stronger "resolution authority," whereby the government could close down systemically significant, insolvent financial institutions in an orderly manner that minimizes impacts on markets or the financial system, instead of bailing them out.[363] The degree to which any resolution authority reduces perverse incentives and thus moral hazard will depend on how seriously market participants take the threat that the authority will be used, and insolvent "too-big-to-fail" banks

[358] House Financial Services, Subcommittee on Oversight and Investigations, Written Testimony of Thomas M. Hoenig, president and chief executive officer, Federal Reserve Bank of Kansas City, *Too Big Has Failed: Learning from Midwest Banks and Credit Unions*, at 4 (Aug. 23, 2010) (online at www.kansascityfed.org/speechbio/hoenigpdf/hearing-testimony-8-23-10.pdf).

[359] Kenneth Rogoff, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[360] Simon Johnson, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[361] Simon Johnson, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010); Anil Kashyap, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[362] Anil Kashyap, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[363] Alan Blinder, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010); Anil Kashyap, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

will be liquidated. Since the TARP has set a precedent for bailouts, and was justified using arguments that would likely apply in future crises, Professor Blinder has noted that resolution authority will likely have to be used in a prominent example before it is taken seriously enough for bankers and investors to change their behavior.[364] Professor Kashyap and others have suggested that absent such credible resolution authority, the TARP's legacy may actually be to make similar financial crises more likely in the future.[365]

Some additional costs lie in distorted pricing: the government paid more than par value for some of its rescue efforts,[366] and as Professor Blinder noted, the government gave the banks better terms than Warren Buffett did. As discussed above, Professor Rogoff finds that the cost of the bailout has been improperly analyzed.[367] He holds that a "proper cost-benefit analysis … needs to price the risk the taxpayer took on during financial crisis." In his view, if there had been a major geo-political crisis while the banking system was fragile and underpinned by the government, the cost to the taxpayer of the various implicit and explicit guarantees could have been enormous.

4. Other Potential Near and Long-Term Costs of the TARP

Beyond the costs described above, however, are several that remain unknown and may ultimately prove unknowable. While it will never be possible to say definitively what would have happened absent the TARP, and it is too soon to say what the TARP's long-term ramifications will be, it may be possible to highlight a few potential effects, although even such an endeavor is largely speculative. Moreover, there have not been thus far comprehensive, statistical analyses of the impact of the TARP on the U.S. economy or on how, if at all, the TARP contributed to ending the financial crisis.[368]

While there has been no active TARP program dedicated to the purchase of troubled assets,[369] a major initiative of the Federal Reserve appears to have facilitated the reduction in

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[364] Alan Blinder, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[365] Anil Kashyap, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[366] Congressional Oversight Panel, *February Oversight Report: Valuing Treasury's Acquisitions*, at 4 (Feb. 6, 2009) (online at cop.senate.gov/documents/cop-020609-report.pdf).

[367] Kenneth Rogoff, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010).

[368] John Taylor and John Williams' January 2009 paper, for example, examining the Federal Reserve's Term Auction Facility (TAF) illustrates the kind of analysis needed to assess the government's response to the crisis. A Black Swan in the Money Market, *supra* note 292. This article, however, examines only one small program and is now more than a year and a half old. If more researchers elected to perform such detailed analysis of the TARP, it would become much easier to evaluate the efficacy of the program.

[369] When it was announced, the PPIP was slated to include a sub-program dedicated to just such purchases. This program was, however, deferred indefinitely on June 3, 2009. Federal Deposit Insurance Corporation, *FDIC*

mortgage assets held by large TARP-assisted institutions. During the period December 2008 through March 2010, the Federal Reserve purchased over $1.2 trillion face value of mortgage-backed securities (MBS)[370] guaranteed by Fannie Mae, Freddie Mac (the government sponsored enterprises, or GSEs), and Ginnie Mae, and purchased nearly $175 billion face value of federal agency debt securities.[371] While the Federal Reserve used investment managers to obtain the best possible competitive bids on the specified amounts of mortgage-backed securities they were offering to buy, there can be no doubt that this massive intervention in the marketplace served to drive up prices and reduce yields on MBS – indeed that was their deliberate intention. Consequently, at least for the period during which the Federal Reserve was active in the MBS market, all holders of MBS – including TARP-assisted banks – received higher prices for these securities than would otherwise have been the case.

TARP-assisted institutions were also among the many beneficiaries of the federal government's rescue of the GSEs themselves. Given the large holding of GSE securities at the largest TARP-assisted institutions, the federal government's rescue of Fannie Mae and Freddie Mac effectively served to prevent major losses at these institutions. As a result of the federal government's intervention to place Fannie Mae and Freddie Mac in conservatorship in September 2008, their mortgage-backed securities and debt issues now enjoy the effective guarantee of the federal government.[372]

Statement on the Status of the Legacy Loans Program (June 3, 2009) (online at www.fdic.gov/news/news/press/2009/pr09084.html).

[370] Federal Reserve Bank of New York, *FAQs: MBS Purchase Program* (online at www.ny.frb.org/markets/mbs_FAQ.HTML) (accessed Sept. 14, 2010).

[371] Federal Reserve Bank of New York, *FAQs: Purchasing Direct Obligations of Housing-Related GSEs* (online at www.newyorkfed.org/markets/gses_faq.html) (accessed Sept. 14, 2010). *See also* Federal Reserve Bank of New York, *Permanent Open Market Operations: Historical Search* (online at www.newyorkfed.org/markets/pomo/display/index.cfm?fuseaction=showSearchForm).

[372] Under the conservatorship, Treasury makes equity purchases in the GSEs as needed to prevent them from becoming insolvent. On December 24, 2009, Treasury announced that it would allow the cap on the line of credit that had previously been established to support the GSEs, to "increase as necessary to accommodate any cumulative reduction in net worth over the next three years." Absent that support, the GSEs would have been unable to honor their MBS guarantees and therefore the value of these MBS securities would have plummeted. U.S. Department of the Treasury, *Treasury Issues Update on Status of Support for Housing Programs* (Dec. 24, 2009) (online at www.financialstability.gov/latest/pr_1052010b.html) (hereinafter "Treasury HERA Update").

The Congressional Budget Office has estimated that as of August 2009, using the same kind of methodology that Congress required to be used to measure the cost of the TARP, the value of the federal government support for the GSEs stood at $389 billion. Unlike CBO, the Office of Management and Budget does not reflect the cost of the federal rescue of the GSEs on a fair value of the subsidy basis. Instead, it uses only traditional cash outlays to reflect budget costs. On that basis, the latest OMB estimate shows case disbursements of $188 billion for Treasury support of the GSEs, although OMB also projects offsetting recoveries and dividend payments totaling $94 billion through 2010.

By first making explicit the federal support for these GSE securities and subsequently buying up to $1.25 trillion of the same securities, Treasury and the Federal Reserve have effectively provided substantial economic benefit to the TARP-assisted banks that goes well beyond the amounts reflected in the accounting for the TARP itself. They may also, in a sense, have partially implemented the original TARP plan, i.e., the purchase of illiquid assets at government-supported prices, relieving the selling entities of the burden of either carrying the assets on their books, or selling them at deep discounts.

It is also impossible to determine the opportunity cost of using several hundred billion dollars for the TARP instead of using that money for some other purpose, or of never borrowing the money in the first place. Ultimately, the decision to implement the TARP was a decision in favor of short-term stability over the potential long-term harm of market distortions and other unknown effects. Moreover, there are many harms that the TARP was not able to address. Unemployment remains high, and job growth is sluggish. The housing sector remains weak. Small business lending is still slow, despite the large sums that have been invested in the banking sector. As discussed in the Panel's May 2010 report, most financial institutions saw their small business loan portfolios fall substantially between 2008 and 2009.[373] Nor is lending generally strong. The latest Senior Loan Officer Loan Survey by the Federal Reserve Board of Governors reports no noticeable increase in lending over the last quarter, which may be due either to a lack of demand for such loans, or a lack of the banks' willingness or ability to lend.[374] It is not clear that the largest financial institutions or the way they interact with the global economy have changed enough – or at all – in a way that would forestall another crisis. Nor have these banks or the government addressed how to value the illiquid assets, nicknamed early in the crisis "troubled assets," whose weight on bank balance sheets was a primary concern when EESA was first enacted.[375] While the acute crisis that wracked the financial sector in late 2008 appears to have passed, the economy continues to struggle.

Other TARP-related programs pose similar challenges. For example, it is difficult to determine what the full impact would have been had GM, GMAC, and Chrysler been permitted to fail without any government support. Although these companies declared bankruptcy, the process through which they passed was far from the bankruptcy they likely would have faced without the government and the government's contribution to ease the process. The U.S. Treasury has committed $85 billion in assistance to the automotive industry through two TARP initiatives. The primary program, the Automotive Industry Financing Program (AIFP) provided

[373] May 2010 Oversight Report, *supra* note 6, at 3.

[374] July 2010 Senior Loan Officer Opinion Survey, *supra* note 29. *See also* May 2010 Oversight Report, *supra* note 6, at 47-58.

[375] For additional analysis of these assets and the difficulties in valuing them, see the Panel's April 2009 report. April 2009 Oversight Report, *supra* note 352.

$81.3 billion in assistance to GM, Chrysler, GMAC, and Chrysler Financial Company ($49.9, $12.8, $17.2, and $1.5 billion in assistance respectively).[376] The second program, the Automotive Supplier Support Program (ASSP), provided up to $3.5 billion to two special purpose vehicles created to help support the automotive suppliers.[377] The likelihood that these companies would have otherwise been able to secure such large sums in private financing in the middle of a global credit crisis appears unlikely. It is more likely that the companies would have proceeded to liquidation bankruptcies, a far more disruptive option than the pre-pack bankruptcy re-organizations through which the companies actually proceeded.

GM and Chrysler, as of the end of 2007, employed almost 325,000 people combined.[378] The majority of the companies' manufacturing operations are in Michigan, a state that suffers the second-highest unemployment rate in the country.[379] At the time that the Bush Administration announced its plan to assist the automotive industry, it estimated that 1.1 million jobs would have been lost absent the government's support.[380] It is not enough to say simply that a certain number of jobs may have been lost; these jobs would have been tightly concentrated in a region that was already struggling when the crisis began.[381] It is impossible to determine what ripple

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[376] U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending August 12, 2010* (Aug. 17, 2010) (online at www.financialstability.gov/docs/transaction-reports/8-17-10%20Transactions%20Report%20as%20of%208-13-10.pdf).

[377] This program was originally allocated $5 billion in assistance with $3.5 billion being directed to the GM Supplier Receivables LLC and $1.5 billion directed to the Chrysler Receivables LLC. On July 8, 2009, the aggregate amount available was reduced to $3.5 ($2.5 billion for GM Supplier Receivables LLC and $1 billion for Chrysler Receivables LLC). *Id*.

[378] General Motors Corp., *Form 10-Q for the Quarterly Period Ended June 30, 2008*, at 92 (July 31, 2008) (online at sec.gov/Archives/edgar/data/40730/000095013708010396/k34157e10vq.htm). At the end of 2007, Fortune magazine listed Chrysler as the fourth largest private company in the U.S. with $49 billion in annual revenue and 72,000 employees. Fortune, *The 35 Largest U.S. Private Companies* (online at money.cnn.com/galleries/2008/fortune/0805/gallery.private_companies.fortune/4.html) (accessed Aug. 3, 2010).

[379] General Motors Co., *U.S. Facilities List* (online at www.gmdynamic.com/company/gmability/environment/plants/facility_db/facilities/list) (accessed Sept. 14, 2010). At the Panel's Detroit field hearing held on July 27, 2009, Representative Carolyn C. Kilpatrick (D-MI) noted: "Here in Michigan, we are the epicenter of the manufacturing that is kind of eroding itself in America." Congressional Oversight Panel, Testimony of Rep. Carolyn C. Kilpatrick, *COP Field Hearing on the Auto Industry*, at 7 (July 27, 2009) (online at cop.senate.gov/documents/transcript-072709-detroithearing.pdf). Bureau of Labor Statistics, *Unemployment Rates for States Monthly Rankings, Seasonally Adjusted July 2010* (online at www.bls.gov/web/laus/laumstrk.htm) (accessed Sept. 10, 2010). *See also* Howard Wial, *How a Metro Nation Would Feel the Loss of the Detroit Three Automakers*, Brookings Institution Metropolitan Policy Program Paper (Dec. 12, 2008) (online at www.brookings.edu/~/media/Files/rc/papers/2008/1212_automakers_wial/automakers_wial.pdf) (showing the concentration of automotive-related jobs in the Great Lakes region).

[380] White House Office of the Press Secretary, *Fact Sheet: Financing Assistance to Facilitate the Restructuring of Auto Manufacturers to Attain Financial Viability* (Dec. 19, 2008) (online at georgewbush-whitehouse.archives.gov/news/releases/2008/12/20081219-6.html).

[381] President Obama noted the wide-ranging effect of the automotive industry's struggles during remarks in early 2009, while also highlighting the historic rise in unemployment in the Midwest. The White House, *Remarks*

effects might have occurred. Local businesses may have lost large numbers of customers as unemployed workers pulled back on spending. The housing market may have suffered as borrowers defaulted on mortgages, pushing down the value of homes throughout the region. Beyond the effect on the upper Midwest, the complete failure of GM and Chrysler would likely have had wide-ranging effects on parts suppliers, dealerships, and other related businesses. According to a recent report by the Special Inspector General for TARP, Chrysler closed 789 dealerships by June 2009 and GM has plans to close 1,454 by October 2010.[382] While it is impossible to determine exactly how our current economy may have been different had the government failed to support GM, Chrysler, or GMAC, there are certain harmful outcomes that have not occurred.[383]

Of course, the government's support for these companies raises similar issues to those raised by the TARP as a whole. Has the government's intervention skewed the market, permitting faltering companies to limp along instead of clearing the way for more robust enterprises? Are companies' incentives different now that there is precedent for the government stepping in to rescue large corporations and, even if they ended up in bankruptcy, streamlining some of the processes? Will these companies ultimately recover, or have the negative outcomes simply been deferred? Did the government signal to the markets that in addition to banks, certain industrial companies are too big to fail as well?[384] Moreover, the assistance to the automotive sector raises certain questions unique to those programs. The government's approach to this industry differed from its approach to assisting the financial sector. While the capital injections provided to financial institutions were offered largely without restrictions attached, the financing to the automotive industry was conditioned on the companies' provision of certain information to the government, and the government has had, overall, a greater role in the rebuilding of these companies. These differences have raised questions about whether the

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by the President on the American Automotive Industry (Mar. 30, 2009) (online at www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-the-American-Automotive-Industry-3/30/09/).

[382] Office of the Special Inspector General for the Troubled Asset Relief Program, *Factors Affecting the Decisions of General Motors and Chrysler to Reduce Their Dealership Networks*¸ at 2 (July 19, 2010) (online at www.sigtarp.gov/reports/audit/2010/Factors%20Affecting%20the%20Decisions%20of%20General%20Motors%20and%20Chrysler%20to%20Reduce%20Their%20Dealership%20Networks%207_19_2010.pdf).

[383] For a thorough analysis of the government support of the automotive industry and its effects, see the Panel's September 2009 report. September 2009 Oversight Report, *supra* note 6.

[384] The Panel's September 2009 report also discussed the ongoing debate about whether the bankruptcy proceedings properly followed the U.S. Bankruptcy Code, or whether certain rules were bent to accommodate the swift implementation of a very particular bankruptcy plan for each company, imperiling the fair adjudication of these and future bankruptcies, especially those in which the government has a hand. September 2009 Oversight Report, *supra* note 6.

government inappropriately blurred the line between its role as a policy-maker and its role as an investor.[385]

The economists consulted by the Panel were looking at TARP as a whole, and not merely TARP since its extension. But in light of their observations, the specific question of what effect extending the TARP from December 31, 2009 to October 3, 2010 has had may be easier to evaluate if only because, as discussed above, so little was actually done with that extension. In his letter to Congressional leadership, while stating that the administration's policies were working, Secretary Geithner also listed the significant challenges facing the economy. As he stated, his decision to extend TARP authority was, among other things, "necessary to assist American families and stabilize financial markets because it will, among other things, enable us to continue to implement programs that address housing markets and the needs of small businesses.…" He listed the challenges facing the economy as problems of unemployment, increasing foreclosures, contraction in bank lending leading to lack of access to credit for small businesses that had little access to alternate sources of credit, commercial real estate losses weighing upon bank balance sheets, and uncertainty about future economic conditions.[386] And as noted above in Section E.1, the problems that Treasury identified as requiring further assistance were three significant areas – unemployment, foreclosures, and struggling small businesses – that continue to struggle.

Despite Treasury's stated justification for extending the TARP – i.e., a need to improve the unemployment and foreclosure rates, and provide better support for small businesses, as discussed in Section D, *supra* – Treasury did not use the extension to add funding beyond the amounts already allocated. To the extent that Treasury has articulated goals for the mortgage foreclosure programs, these goals have not been met;[387] small business lending assistance is being addressed outside the TARP; and the TALF expired according to its terms. Nor has there been the kind of marked improvement in any of these sectors that might obviate attempts to ameliorate their condition.

In his letter, however, Secretary Geithner also cited the possibility of "near-term shocks to [the financial system] that could undermine the economic recovery we have seen to date."[388] As Secretary Geithner stated, the TARP's extension provided Treasury with the capacity in responding to any "near-term shocks" to the economy. While describing the degree of stability that had returned to the markets by the fall of 2009, Secretary Geithner noted that there was still

[385] *See* September 2009 Oversight Report, *supra* note 6, at 40-53.

[386] Letter from Secretary Geithner to Hill Leadership, *supra* note 48.

[387] See the Panel's April 2010 report for a full discussion of the disconnect between Treasury's stated goals for the programs and data documenting actual results. April 2010 Oversight Report, *supra* note 6, at 62-65.

[388] Letter from Secretary Geithner to Hill Leadership, *supra* note 48.

uncertainty regarding its permanence, and further stated that many of the programs created during the crisis were shortly to end. Secretary Geithner therefore emphasized the value of maintaining the capacity to intervene if financial markets staggered again. Such a backstop to the economy may, of course, have simply extended the sense that Treasury was providing an implicit guarantee to the financial sector, with its attendant moral hazard and other negative effects. But in Treasury's view, maintaining the ability to intervene would bolster confidence, with positive effects on financial stability, and thus, despite relative inaction in particular programs during 2010, Treasury believed the extension was important for market stability.

F. Conclusion

In December 2009, as the first full year of the TARP's existence drew to a close, the Panel issued a report that attempted to gauge the program's overall effectiveness as of that date. The Panel wrote:

> There is broad consensus that the TARP was an important part of a broader government strategy that stabilized the U.S. financial system by renewing the flow of credit and averting a more acute crisis. Although the government's response to the crisis was at first haphazard and uncertain, it eventually proved decisive enough to stop the panic and restore market confidence. Despite significant improvement in the financial markets, however, the broader economy is only beginning to recover from a deep recession, and the TARP's impact on the underlying weaknesses in the financial system that led to last fall's crisis is less clear.[389]

Events since last December have largely underscored the Panel's analysis, yet the last 10 months have also provided new data and allowed time for new analysis. The Panel can now expand upon its earlier conclusions. These inquiries are critical to evaluating the TARP, not only in order to gain perspective on the events of the last two years but also to provide guidance to policymakers in the future.

Any evaluation must recognize its own limitations. This report is necessarily an interim evaluation, because the effects of the TARP and of the financial crisis are still unfolding. Experts and observers can use theoretical models and data available to provide estimates and expectations, but a complete perspective comes only with time and significant, objective data, neither of which is fully available at this date. Further, the specific effect of the TARP will always be difficult to isolate. The TARP was but one of an unprecedented number of government responses, which included significant liquidity programs by the Federal Reserve,

[389] December 2009 Oversight Report, *supra* note 6, at 4.

increased deposit insurance by the FDIC, and the government absorption of Fannie Mae and Freddie Mac.

Both now and in the future, however, any evaluation must begin with an understanding of what the TARP was intended to do. Congress authorized Treasury to use the TARP in a manner that "protects home values, college funds, retirement accounts, and life savings; preserves homeownership and promotes jobs and economic growth; [and] maximizes overall returns to the taxpayers of the United States."[390] But weaknesses persist. Since EESA was signed into law in October 2008, home values nationwide have fallen. More than seven million homeowners have received foreclosure notices. Many Americans' most significant investments for college and retirement have yet to recover their value. At the peak of the crisis, in its most significant acts and consistent with its mandate in EESA, the TARP provided critical support at a time in which confidence in the financial system was in freefall. The acute crisis was quelled. But as the Panel has discussed in the past, and as the continued economic weakness shows, the TARP's effectiveness at pursuing its broader statutory goals was far more limited.

1. The TARP's Extension Served Primarily to Extend the Implicit Guarantee of the Financial System

When Secretary Geithner exercised his statutory authority to extend the TARP until October 3, 2010, he laid out three areas for new commitments of TARP resources: (1) mortgage foreclosure relief; (2) providing capital to small and community banks; and (3) increasing support for securitization markets through TALF. Despite this stated justification, and despite the creation of additional programs – albeit using existing funds – designed to address the foreclosure crisis, Treasury did not add any new funding to programs intended to address these economic problems during the period of the extension.

The extension did, however, serve another purpose, which Secretary Geithner referred to as the capacity to respond to an immediate and substantial threat to the economy.[391] In Treasury's view, the extension provided Treasury with the continued authority to intervene swiftly if another systemically significant financial institution approached collapse or if the financial markets showed signs of another meltdown. Citing continued market instability and the need to preserve confidence, Treasury also extended its authority to preserve its ability to deal with a new crisis.[392] Treasury therefore used the TARP's extension more to extend the government's implicit guarantee of the financial system than to address the specific economic problems that the Secretary cited as justification for the extension.

[390] 12 U.S.C. § 5201(2).

[391] Letter from Secretary Geithner to Hill Leadership, *supra* note 48.

[392] Letter from Secretary Geithner to Hill Leadership, *supra* note 48.

2. TARP "Stigma" Has Grown and May Prove an Obstacle to Future Stability Efforts

The TARP has inspired many varied and evolving responses among the markets and the public. At the time of the initial Capital Purchase Plan investments in the large banks, market participants reacted with relief. The LIBOR-OIS and TED spreads fell dramatically shortly after those investments.

But the reaction of the general public has been far more skeptical. Now the TARP is widely perceived as bailing out Wall Street banks and domestic auto manufacturers while doing little for the millions of Americans who are unemployed, underwater on their mortgages, or otherwise struggling to make ends meet. Treasury acknowledges that, as a result of this perception, the TARP and its programs are now burdened by a public "stigma."

Some of this stigma has arisen due to valid concerns with Treasury's implementation of TARP programs and with its transparency and communications. For example, Treasury initially insisted that only healthy banks would be eligible for capital infusions under the CPP. When it became clear that some of these banks were in fact on the brink of failure, all participating banks – even those in comparatively strong condition – became tainted in the public eye. Treasury's initial statements about the health of the financial system diminished its credibility later in the crisis and have contributed to the fragility of the financial system. Questions regarding the health of financial institutions linger, even two years after the initial crisis.

Stigma may also arise due to deep public frustration that, whatever the TARP's successes, it has not rescued many Americans from suffering enormous economic pain. Treasury claims that the pain would have been far worse if the TARP had never existed, but this hypothetical scenario is difficult to evaluate – in part due to regrettable omissions in data collection on Treasury's part. For example, since the Panel's second report in January of 2009, it has called for Treasury to make banks accountable for their use of the funds they received. It has also urged Treasury to be transparent with the public, in particular with respect to the health of the banks receiving the funds. The lack of this data makes it more difficult to measure the TARP's success and thus contributes to the TARP's stigmatization.

Another factor contributing to the TARP's stigma is that the program created significant moral hazard. The TARP's terms were, by comparison to prior government interventions such as through the RTC and the RFC, quite generous; financial institutions were able to receive TARP funds with relatively few costs to their management, shareholders, or creditors. In light of this experience, financial institutions may rationally decide to take inflated risks in the future out of a conviction that, if their gamble fails, taxpayers will bear the price. To the extent that this implicit guarantee continues to distort markets, it is a real and ongoing cost of the TARP.

It is possible that rigorous economic evaluations of the TARP, based on new data and the additional perspective that comes with time, will reverse or soften the stigma currently associated with the program. It is equally possible, however, that future studies will instead support and elaborate upon the negative assessments of the program. Whatever the result, policy-makers can only benefit from detailed data-based analysis.

The TARP program is today so widely unpopular that Treasury has expressed concern that banks avoided participating in the CPP program due to stigma, and the legislation proposing the Small Business Lending Fund, a program outside the TARP, specifically provided an assurance that it was not a TARP program. Popular anger against taxpayer dollars going to the largest banks, especially when the economy continues to struggle, remains high. The program's unpopularity may mean that unless it can be convincingly demonstrated that the TARP was effective, the government will not authorize similar policy responses in the future. Thus, the greatest consequence of the TARP may be that the government has lost some of its ability to respond to financial crises in the future.

Annex I: Automotive Industry Financing Program Funds Committed *(millions of dollars)*[xxi]

Original Investment Date(s)	Original Investment Amount	Original Investment Type	Exchange/ Restructure Date(s)	Exchange/ Restructure Investment Amount	Exchange/ Restructure Investment Type	Amount Repaid	Losses	Amount Outstanding as of 9/8/10
General Motors								
12/29/08-6/3/09	$50,745	Debt obligation with additional note	5/29/2009	$884	Exchange for equity interest in GMAC			[xxii]$0
			7/10/2009	$7,072	Debt obligation	[xxiii]($7,072)		–
			7/10/2009	$2,100	Preferred stock			$2,100
			7/10/2009	$986	Debt left at Old GM			$986
			7/10/2009	60.8%	Common stock			60.8%
Chrysler								
1/2/09	$4,000	Debt obligation with additional note	6/10/2009	[xxiv]$3,500	Debt obligation with additional note	[xxv]($1,900)	[xxvi]($1,600)	$0
5/1/09	$1,888		5/1/2009	$1,888	Debt obligation with additional note	[xxvii]($31)		$1,858
5/27/09	$280		4/29/2009	$280	Debt obligation with additional note	($280)		$0
4/29/09	$6,642		6/10/2009	[xxviii]$7,142	Debt obligation with additional note			$7,142
			6/10/2009	9.9%	Common equity			

GMAC/Ally								
12/29/08	$5,000	Preferred stock with exercised warrants	12/30/2009	[xxix]$5,250	Convertible Preferred stock			$5,250
5/21/09	$7,500	Convertible Preferred stock with exercised warrants	12/30/2009	[xxx]$4,875	Convertible Preferred stock			$4,875
				56.3%	Common equity			[xxxi]56.3%
12/30/09	$2,540	Trust Preferred securities with exercised warrants	–	–	–			$2,540
12/30/09	$1,250	Convertible Preferred stock with exercised warrants	–	–	–			$1,250
Chrysler Financial Co.								
1/16/09	$1,500	Debt obli-gation with additional note	–	–	–	$1,500		$0

[xxi] For a more complete tracking of the development of the TARP's investment in the automotive industry, please see U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 8, 2010*, at 18-19 (Sept.10, 2010) (online at www.financialstability.gov/docs/transaction-reports/9-10-10%20Transactions%20Report%20as%20of%209-8-10.pdf).

[xxii] For a more complete tracking of the development of the TARP's investment in the automotive industry, please see U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 8, 2010*, at 18-19 (Sept.10, 2010) (online at www.financialstability.gov/docs/transaction-reports/9-10-10%20Transactions%20Report%20as%20of%209-8-10.pdf).

[xxiii] These repayments were made in installments from July 10, 2009 to April 20, 2010. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 8, 2010*, at 18-19 (Sept.10, 2010) (online at www.financialstability.gov/docs/transaction-reports/9-10-10%20Transactions%20Report%20as%20of%209-8-10.pdf).

[xxiv] On June 10, 2009, $500 million of debt was transferred to New Chrysler. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 8, 2010*, at 18-19 (Sept.10, 2010) (online at www.financialstability.gov/docs/transaction-reports/9-10-10%20Transactions%20Report%20as%20of%209-8-10.pdf).

[xxv] Pursuant to a termination agreement dated May 14, 2010, Treasury agreed to accept a settlement payment of $1.9 billion as satisfaction in full of the $3.5 billion loan (including additional notes and accrued and unpaid interest) of Chrysler Holding, and upon receipt of such payment to terminate all such obligations. U.S.

Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 8, 2010*, at 18-19 (Sept.10, 2010) (online at www.financialstability.gov/docs/transaction-reports/9-10-10%20Transactions%20Report%20as%20of%209-8-10.pdf).

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[xxvii] As part of the Chrysler bankruptcy proceedings, all assets of Old Chrysler were transferred to a liquidation trust. Treasury retained the right to recover the proceeds from the liquidation from time to time of the specified collateral security attached to such loan. As of September 8, $31 million in funds have been recovered from the sale of these assets. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 8, 2010*, at 18-19 (Sept.10, 2010) (online at www.financialstability.gov/docs/transaction-reports/9-10-10%20Transactions%20Report%20as%20of%209-8-10.pdf).

[xxviii] This $500 million increase in the amount of principal outstanding is due to New Chrysler's assumption of $500 million in loans originally given to Chrysler Holding. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 8, 2010*, at 18-19 (Sept.10, 2010) (online at www.financialstability.gov/docs/transaction-reports/9-10-10%20Transactions%20Report%20as%20of%209-8-10.pdf).

[xxix] This figure reflects the exercised warrants associated with the restructuring of Treasury's investment in GMAC. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 8, 2010*, at 18-19 (Sept.10, 2010) (online at www.financialstability.gov/docs/transaction-reports/9-10-10%20Transactions%20Report%20as%20of%209-8-10.pdf).

[xxx] This figure reflects the exercised warrants associated with the restructuring of Treasury's investment in GMAC. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 8, 2010*, at 18-19 (Sept.10, 2010) (online at www.financialstability.gov/docs/transaction-reports/9-10-10%20Transactions%20Report%20as%20of%209-8-10.pdf).

[xxxi] Prior to December 30, 2009, Treasury owned 35.4 percent of GMAC common equity as part of its exchange of an $884 million loan to Old GM. Following the conversion of $3 billion of convertible preferred stock for common equity on December 30, 2009, Treasury owned 56.3 percent of GMAC's common equity. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 8, 2010*, at 18-19 (Sept. 10, 2010) (online at www.financialstability.gov/docs/transaction-reports/9-10-10%20Transactions%20Report%20as%20of%209-8-10.pdf).

Annex II: Views of Academic Experts

A. Alan Blinder, Gordon S. Rentschler Memorial Professor of Economics and Public Affairs at Princeton University

1. How would you measure the effectiveness of the TARP? What are the appropriate measures to assess its effectiveness?

TARP is, of course, one of several measures taken to end the financial panic. Viewed as a whole, they clearly worked well; but it's hard to parse TARP's specific contribution. That said, risk spreads rose sharply before TARP passed and then fell sharply when it did, which is highly suggestive that TARP spread a security blanket across the financial markets. Those falling risk spreads – and, of course, the rising bank capital – may be the best metrics for appraising TARP's effectiveness. Both make TARP look good.

That said, the part of TARP that was supposed to buy toxic assets never really happened to any great extent; and the part that was designed to stem the wave of foreclosures was not very effective (and, I would say, rather half-hearted).

Finally, the wisdom of the GM bailout will probably be debated forever. (But it appears to have worked well.)

2. Please use these or other measures to evaluate the relative effectiveness of (1) TARP's efforts to stabilize financial institutions, such as AIG and the large stress-tested banks; (2) TARP's efforts to restore confidence to broad financial markets by restarting the securitization markets and buying troubled assets; and (3) TARP's efforts to address the foreclosure crisis. What programs or initiatives were the most effective and successful parts of the TARP? What programs or initiatives were TARP's biggest failures?

I have answered this in part already. Regarding stabilizing institutions like AIG, one has to count TARP as a huge success. It and other initiatives (like SCAP) successfully threw the above-mentioned security blanket around every large entity. This is not something you'd want to do under normal circumstances, but was appropriate at the time. And the net cost to the taxpayers for this part of the program will, in the end, be very small. In that sense, TARP looks like a bargain.

As to restarting securitizations, I don't think TARP was close to enough – or, as noted, even tried hard. The Fed's MBS purchase program did much more. (Outside of Fannie/Freddie mortgages, securitization has not snapped back much.)

3. Were there alternative uses of the TARP funds or specific changes in actual TARP programs that might have been superior either in terms of protecting the government's interest as an investor or in terms of addressing the economic and financial crisis, or both? If so, what would they have been and why do you believe those uses might have been superior to some of the programs Treasury designed?

I was in the small minority who thought TARP should have been used to buy toxic assets, though not all $700 billion of it. I still think that. While I understand the arguments for recapitalizing banks, I wish it had been done "in addition to" buying toxic assets, not "instead of." I never believed the argument that was made at the time that each $1 of bank capital would (via normal leverage) lead to $10 in lending.

Regarding the CPP, I thought then and think now that the Paulson Treasury made a number of terrible tactical decisions, such as: forcing capital on banks that didn't want it; giving better terms than Warren Buffett got from Goldman; not insisting on *quid pro quos* such as not paying dividends and increasing lending. Where public support is offered and taken, there should be public-purpose strings attached. (That is one reason why I was against forcing capital on unwilling banks.)

To repeat, I also think it was a shame that more was not done to mitigate foreclosures.

4. Could TARP have been implemented in a way that would have reduced its negative impact, particularly with regard to institutions that are now "too big to fail"? Or are these negative effects intrinsic to any financial rescue program?

To start, banning dividends and insisting on a lending *quid pro quo* in the CPP would have made it more effective and given it greater political legitimacy.

But I interpret the question as asking mainly about moral hazard costs. I don't think they were avoidable under the extreme circumstances of the fall of 2008; laissez faire would have been catastrophic, as Lehman illustrated. But the fact that the government stepped in to save SIFIs in 2008 certainly feeds the presumption that it will do so again, if necessary. That's the moral hazard cost, but I think it was unavoidable. It remains to be seen how effective the resolution procedures in Dodd-Frank will be in dispelling the belief in TBTF.

5. How significant was TARP relative to the efforts of the Federal Reserve and the Treasury Department that did not rely on EESA? Was TARP necessary or were the pre-EESA powers of the Federal Reserve, the Treasury Department and the bank regulators adequate for managing the crisis?

As I said at the outset, this parsing is difficult. One example: TARP allowed the Treasury to step into the Fed's shoes and take over some of its risk exposures. I think that was very

appropriate, but it's another "interaction term" that makes it hard to answer the question. Another example: The monies left in TARP were instrumental in the success of the SCAP. One thing that made the whole stress-test exercise highly credible was the government's pledge to provide any capital (in return for partial ownership) whose need was identified by the SCAP but which the banks could not raise on their own. Without EESA, neither of these things (and others) would have been possible.

6. What is likely to be the legacy of the TARP in terms of the ability of government officials and policymakers to respond to financial crises in the future?

I find this hard to answer. In the near term, the extreme unpopularity of TARP will make it hard to do anything remotely like it again, should the need arise. However, if what happened in 2008-09 was really a "100-year-flood," it will be a long time (though probably not 100 years!) before we need anything like TARP again.

Also, as noted above, the moral hazard/bailout precedent has been set, and it will not go away easily. The Dodd-Frank cure will have to be tried (successfully) before it is believed.

B. Simon Johnson, Ronald A. Kurtz (1954) Professor of Entrepreneurship at MIT Sloan School of Management

1. How would you measure the effectiveness of the TARP? What are the appropriate measures to assess its effectiveness?

In the immediate policy response to any major financial crisis – involving a generalized loss of confidence in major lending institutions – there are three main goals:

a. To stabilize the core banking system,

b. To prevent the overall level of spending from collapsing,

c. To lay the groundwork for a sustainable recovery.

International Monetary Fund programs are routinely designed with these criteria in mind and are evaluated (internally and externally) on the basis of: the depth of the recession and speed of the recovery, relative to the initial shock; the side-effects of the macroeconomic policy response, including inflation; and whether the underlying problems that created the vulnerability to panic are addressed over a 12-24 month horizon.

This same analytical framework can be applied to the United States since the inception of the Troubled Asset Relief Program (TARP). While there were unique features to the US experience (as is the case in all countries), the broad pattern of financial and economic collapse, followed by a struggle to recover, is quite familiar.

2. Please use these or other measures to evaluate the relative effectiveness of (1) TARP's efforts to stabilize financial institutions, such as AIG and the large stress-tested banks; (2) TARP's efforts to restore confidence to broad financial markets by restarting the securitization markets and buying troubled assets; and (3) TARP's efforts to address the foreclosure crisis. What programs or initiatives were the most effective and successful parts of the TARP? What programs or initiatives were TARP's biggest failures?

The overall US policy response did well in terms of preventing spending from collapsing. Monetary policy responded quickly and appropriately. After some initial and unfortunate hesitation on the fiscal front, the stimulus of early 2009 helped to keep domestic spending relatively buoyant, despite the contraction in credit and large increase in unemployment. This was in the face of a massive global financial shock – arguably the largest the world has ever seen – and the consequences, in terms of persistently high unemployment, remain severe. But it could have been much worse.

In terms of more detailed approaches within the TARP framework, these can be divided into three phases.

Phase I. In September 2008, Henry Paulson asked for $700 billion to buy toxic assets from banks, as well as unconditional authority and freedom from judicial review. Many economists and commentators suspected that the purpose was to overpay for those assets and thereby take the problem off the banks' hands – indeed, that is the only way that buying toxic assets would have helped anything. Perhaps because there was no way to make such a blatant subsidy politically acceptable, that plan was shelved.

After the "Paulson Plan" was passed on October 3, 2008, it was quickly overtaken by events. First the UK announced a bank recapitalization program; then, on October 13, it was joined by every major European country, most of which also announced loan guarantees for their banks. On October 14, the US followed suit with a bank recapitalization program, unlimited deposit insurance (for non-interest-bearing accounts), and guarantees of new senior debt. Only then was enough financial force applied for the crisis in the credit markets to begin to ease, with LIBOR finally falling and Treasury yields rising, although they remained a long way from historical levels.

The money used to recapitalize (buy shares in) banks was provided on terms that were excessively favorable to the banks. For example, Warren Buffett put new capital into Goldman Sachs just weeks before the Treasury Department invested in nine major banks. Buffett got a higher interest rate on his investment and a much better deal on his options to buy Goldman shares in the future.

Phase II. As the crisis deepened and financial institutions needed more assistance, the government got more and more creative in figuring out ways to provide subsidies that were too complex for the general public to understand. The first AIG bailout, which was on relatively good terms for the taxpayer, was renegotiated to make it even more friendly to AIG. The second Citigroup and Bank of America bailouts included complex asset guarantees that essentially provided nontransparent insurance to those banks at well below-market rates. The third Citigroup bailout, in late February 2009, converted preferred stock to common stock at a conversion price that was significantly *higher* than the market price – a subsidy that probably even most *Wall Street Journal* readers would miss on first reading. And the convertible preferred shares provided under the new Financial Stability Plan gave the conversion option to the bank in question, not the government – basically giving the bank a valuable option for free.

Note that this strategy is not internally illogical: if you believe that asset prices will recover by themselves (or by providing sufficient liquidity), then it makes sense to continue propping up weak banks with injections of capital. However, our main concern is that it underestimates the magnitude of the problem and could lead to years of partial measures, none of which creates a healthy banking system.

Phase III. The main components of the Obama administration's bank rescue plan included:

- Stress tests, conducted by regulators, to determine whether major banks could withstand a severe recession, followed by recapitalization (if necessary) in the form of convertible preferred shares[393]

- The Public-Private Investment Program (PPIP) to stimulate purchases of toxic assets, thereby removing them from bank balance sheets

The administration as much as said that the major banks will all pass the stress tests, making it appear that the results were foreordained. Essentially, this was used to signal that the government stood behind the 19 banks in the stress test and would not allow any of them to fail. Effectively, the government signaled which banks were Too Big To Fail.

The PPIP did not meet its stated objective of starting a market for toxic assets (both whole loans and mortgage-backed securities) and thereby moving them off of bank balance sheets. In essence, the PPIP attempted to achieve this goal by subsidizing private sector buyers (via non-recourse loans or loan guarantees) to increase their bid

[393] James Kwak, *No, Wait! You Got It Backwards!* (Feb. 26, 2009) (online at baselinescenario.com/2009/02/26/convertible-preferred-stock-capital-assistance-program).

prices for toxic assets. Besides the subsidy from the public to the private sector that this involves, the plan as outlined did not raise buyers' bid prices high enough to induce banks to sell their assets. From the banks' perspective, selling assets at prices below their current book values would force them to take write-downs, hurting profitability and reducing their capital cushion.

As long as the government's strategy is to prevent banks from failing at all costs, banks have an incentive to sit the PPIP or similar program out (or even participate as *buyers*) and wait for a more generous plan. Again, the key question is how the loss currently built into banks' toxic assets will be distributed between bank shareholders, bank creditors, and taxpayers. By leaving banks in their current form and relying on market-type incentives to encourage them to clean themselves up, the administration gave the banks an effective veto over financial sector policy.

Ultimately, the stalemate in the financial sector is the product of political constraints. On the one hand, the administration has consistently foresworn dictating a solution to the financial sector, either out of deep-rooted antipathy to nationalization, or out of fear of being accused of nationalization. On the other hand, bailout fatigue among the public and in Congress, aggravated by the clumsy handling of the AIG bonus scandal,[394] has made it impossible for the administration to propose a solution that is too generous to banks, or that requires new money from Congress.

3. Were there alternative uses of the TARP funds or specific changes in actual TARP programs that might have been superior either in terms of protecting the government's interest as an investor or in terms of addressing the economic and financial crisis, or both? If so, what would they have been and why do you believe those uses might have been superior to some of the programs Treasury designed?

Best practice, vis-à-vis saving the banking system in the face of a generalized panic, involves three closely connected pieces:

a. Preventing banks from collapsing in an uncontrolled manner. This often involves at least temporary blanket guarantees for bank liabilities, backed by credible fiscal resources. The government's balance sheet stands behind the financial system. In the canonical emerging market crises of the 1990s – Korea, Indonesia, and Thailand – where the panic was centered on the private sector and its financing arrangements, this commitment of government resources was necessary (but not sufficient) to stop the panic and begin a recovery.

[394] James Kwak, *The Tipping Point?* (Mar. 18, 2009) (online at baselinescenario.com/2009/03/18/the-tipping-point).

b. Taking over and implementing orderly resolution for banks that are insolvent. In major system crises, this typically involves government interventions that include revoking banking licenses, firing top management, bringing in new teams to handle orderly unwinding, and – importantly – downsizing banks and other failing corporate entities that have become too big to manage. In Korea after the 1997 crisis, nearly half of the top 30 pre-crisis chaebol were broken up through various versions of an insolvency process (including Daewoo, one of the biggest groups). In Indonesia during the same time frame, leading banks were stripped from the industrial groups that owned them and substantially restructured. In Thailand, not only were more than 50 secondary banks ("Finance Houses") closed, but around 1/3 of the leading banks were also put through a tough clean-up and downsizing process managed by the government.

c. Addressing immediately underlying weaknesses in corporate governance that created potential vulnerability to crisis. In Korea, the central issue was the governance of nonfinancial chaebol and their relationship to the state-owned banks; in Indonesia, it was the functioning of family-owned groups, which owned banks directly; and in Thailand it was the close connections between firms, banks, and politicians. Of the three, Korea made the most progress and was rewarded with the fastest economic recovery.

If any country pursued (a) unlimited government financial support, while not implementing (b) orderly resolution for troubled large institutions, and refusing to take on (c) serious governance reform, it would be castigated by the United States and come under pressure from the IMF. At the heart of every crisis is a political problem – powerful people, and the firms they control, have gotten out of hand. Unless this is dealt with as part of the stabilization program, all the government has done is provide an unconditional bailout. That may be consistent with a short-term recovery, but it creates major problems for the sustainability of the recovery and for the medium-term. Serious countries do not do this.

Seen in this context, TARP has been badly mismanaged. In its initial implementation, the signals were mixed – particularly as the Bush administration sought to provide support to essentially insolvent banks without taking them over. Standard FDIC-type procedures, which are best practice internationally, were applied to small- and medium-sized banks, but studiously avoided for large banks. As a result, there was a great deal of confusion in financial markets about what exactly was the Bush/Paulson policy that lay behind various ad hoc deals.

The Obama administration, after some initial hesitation, used "stress tests" to signal unconditional support for the largest financial institutions. By determining officially that these firms did not lack capital – on a forward looking basis – the administration effectively communicated that it was pursuing a strategy of "regulatory forbearance" (much as the US did after the Latin American debt crisis of 1982). The existence of TARP, in that context,

made the approach credible – but the availability of unconditional loans from the Federal Reserve remains the bedrock of the strategy.

The downside scenario in the stress tests was overly optimistic relative to standard practice and reasonable expectations, with regard to credit losses in real estate (residential and commercial), credit cards, auto loans, and in terms of the assumed time path for unemployment. As a result, our largest banks remain undercapitalized, given the likely trajectory of the U.S. and global economy. This is a serious impediment to a sustained rebound in the real economy – already reflected in continued tight credit for small- and medium-sized business.

Even more problematic is the underlying incentive to take excessive risk in the financial sector. With downside limited by government guarantees of various kinds, a senior financial stability official at the Bank of England (Andrew Haldane) bluntly characterizes our repeated boom-bailout-bust cycle as a "doom loop."[395]

Exacerbating this issue, TARP funds supported not only troubled banks, but also the executives who ran those institutions into the ground. The banking system had to be saved, but specific banks could have wound down and leading bankers could and should have lost their jobs. Keeping these people and their management systems in place could be serious trouble for the future.

The implementation of TARP exacerbated the perception (and the reality) that some financial institutions are "Too Big to Fail." This lowers their funding costs, enabling them to borrow more and to take more risk – leading presumably to future crises.

4. Could TARP have been implemented in a way that would have reduced its negative impact, particularly with regard to institutions that are now "too big to fail"? Or are these negative effects intrinsic to any financial rescue program?

TARP allowed the US Treasury to make it clear that some individuals are "Too Connected to Fail". Financial executives with strong connections to the current and previous leadership of the New York Fed (e.g., through network connections of various kinds) have great power and enormous political access in this situation. Such issues are a concern in any financial rescue package but were definitely allowed to get out of hand in 2008-09 in the United States.

[395] Piergiorgio Alessandri and Andrew G. Haldane, *Banking on the State* (Nov. 2009) (online at www.bankofengland.co.uk/publications/speeches/2009/speech409.pdf).

5. How significant was TARP relative to the efforts of the Federal Reserve and the Treasury Department that did not rely on EESA? Was TARP necessary or were the pre-EESA powers of the Federal Reserve, the Treasury Department and the bank regulators adequate for managing the crisis?

There is no question that passing the TARP was the right thing to do. In some countries, the government has the authority to provide fiscal resources directly to the banking system on a huge scale, but in the United States this requires congressional approval. In other countries, foreign loans can be used to bridge any shortfall in domestic financing for the banking system, but the U.S. is too large to ever contemplate borrowing from the IMF or anyone else.

6. What is likely to be the legacy of the TARP in terms of the ability of government officials and policymakers to respond to financial crises in the future?

The U.S. recovery strategy hinges on continued low interest rates (and a continuation of quantitative easing). This creates risks of a new global asset bubble, funded in dollars and driven by exuberance about prospects in emerging markets. The Fed has already signaled clearly that it will not raise interest rates for a long while and big banks are increasingly building their capacity to take risks in emerging markets.

Unless bank regulators limit the direct and indirect risk exposure of US financial institutions to this new supposedly low risk "carry trade" (from US dollar funding to emerging market exposure, in dollars or local currency), we face the very real prospect of another, even larger crisis. There is no sign yet that regulators understand or are even willing to talk about this issue.

The power of the financial sector goes far beyond a single set of people, a single administration, or a single political party. It is based not on a few personal connections, but on an ideology according to which the interests of Big Finance and the interests of the American people are naturally aligned – an ideology that assumes the private sector is always best, simply because it is the private sector, and hence the government should never tell the private sector what to do, but should only ask nicely, and provide handouts to keep the private (financial) sector alive. This is a recipe for financial and fiscal disaster.

To those who live outside the Treasury-Wall Street corridor, this ideology is increasingly not only at odds with reality, but actually dangerous to the US economy.

C. Anil Kashyap, Edward Eagle Brown Professor of Economics and Finance and Richard N. Rosett Faculty Fellow at the University of Chicago Booth School of Business

1. How would you measure the effectiveness of the TARP? What are the appropriate measures to assess its effectiveness?

TARP was part of a set of measures designed to head off a complete collapse of the financial system. So the package should be judged by whether it achieved that goal. The package worked. But figuring out the contribution of TARP, in isolation is not really possible. The problem is that TARP by itself would not have been sufficient to stave off a disaster; for instance, if the Federal Reserve had been unwilling to act, there still would have been many problems.

Because of restrictions that the Federal Reserve faced on its options, TARP was an integral piece of the rescue efforts. Without TARP, it would have been illegal to take some of the steps that were needed. So TARP was a necessary part of the solution but was not sufficient to guarantee success.

2. Please use these or other measures to evaluate the relative effectiveness of (1) TARP's efforts to stabilize financial institutions, such as AIG and the large stress-tested banks; (2) TARP's efforts to restore confidence to broad financial markets by restarting the securitization markets and buying troubled assets; and (3) TARP's efforts to address the foreclosure crisis. What programs or initiatives were the most effective and successful parts of the TARP? What programs or initiatives were TARP's biggest failures?

The biggest failure associated with TARP was the confusion over its purpose and the misleading way in which Treasury Secretary Paulson marketed it. The claim that it would be used for toxic asset purchases followed by the reversal of direction so that it was in fact used for capital injections left the public totally confused about TARP's mission. Buying toxic assets never made sense and the fact that the government could not explain how this was going to help with the crisis was a tell-tale sign that this idea was flawed. Banks were undercapitalized and badly needed more equity, so using TARP to boost equity was appropriate. But, the confusion over the government's intent led to the narrative that TARP was a total bailout for the banks.

It was unfortunate that the first capital injections were done without any clear assessments of bank solvency. It is an open question whether Citigroup was insolvent when it was given its first injection, yet it got the funding on the same terms as institutions that were clearly in much, much better shape. The equality of the terms on which capital was handed out later meant that the government was hesitant to impose many restrictions on the stronger

institutions that took the money. The subsequent lack of restrictions on dividends and compensation for some of the TARP banks further fueled public outrage.

The public's frustration has led to a general rise in populist political rhetoric and has polluted the policy discussion in many other areas. Perhaps the clearest example, though, is the way that the debate over resolution reform played out. Instead of having an intelligent debate about the technical issues associated with winding down a large, internationally active financial institution, the discussion morphed into blame shifting about the crisis. Consequently there are important short-comings in the rules for failing these large institutions.

I think TARP had little effect on the foreclosure crisis. Indeed, I would say none of the federal programs have made much of a difference regarding foreclosures.

The turning point in the crisis was the announcement of the stress test results. We are still not certain why they were so successful in boosting confidence. My conjecture is that financial market participants concluded that they showed that nationalization of some of the large banks was no longer going to be necessary. Instead the tests were construed to show that the government had the resources to prop weak institutions up, even if private financing were not forthcoming. TARP provided the financial resources that made this promise credible. So, I think the possibility of using TARP to provide additional backstop equity was its most important contribution. Fortunately, private sector funding for recapitalization proved possible so we never had to use the money this way.

3. Were there alternative uses of the TARP funds or specific changes in actual TARP programs that might have been superior either in terms of protecting the government's interest as an investor or in terms of addressing the economic and financial crisis, or both? If so, what would they have been and why do you believe those uses might have been superior to some of the programs Treasury designed?

All the attention and effort that went into trying to design asset purchase programs was a waste of time; these programs have been a side show and yet they absorbed a lot of attention. This was predictable in real time (lots of people pointed out why they were not critical). But in fact most of the money spent on equity assistance, except perhaps for Citigroup, has worked out well. So, the actions were largely successful, even if the perceptions were not as positive.

4. Could TARP have been implemented in a way that would have reduced its negative impact, particularly with regard to institutions that are now "too big to fail"? Or are these negative effects intrinsic to any financial rescue program?

The best way to have dealt with too big to fail would have been to come up with a better resolution regime. Dodd-Frank still falls short in this dimension. So, a threat to close down a large internationally active bank is not very credible. Without a better resolution regime, too big to fail will persist.

5. How significant was TARP relative to the efforts of the Federal Reserve and the Treasury Department that did not rely on EESA? Was TARP necessary or were the pre-EESA powers of the Federal Reserve, the Treasury Department and the bank regulators adequate for managing the crisis?

Neither the Fed nor the Treasury could have done what was needed in the fall of 2008 without TARP. TARP was necessary.

6. What is likely to be the legacy of the TARP in terms of the ability of government officials and policymakers to respond to financial crises in the future?

The legacy of TARP cannot be judged without knowing how Dodd-Frank will be implemented. If, as I fear, systemic regulation remains weak and resolution options are poor, then the odds of a crisis that requires bailouts reoccurring will be high. In this case, the memory of the early, unconditional TARP assistance will linger.

If Dodd-Frank proves more effective, or if it is amended to plug its holes, then TARP will not have much of a legacy.

D. Kenneth Rogoff, Thomas D. Cabot Professor of Public Policy and Professor of Economics at Harvard University

It is impossible to assess TARP outside a broader evaluation of the government's generalized response to the financial crisis, including explicit and implicit loan guarantees to banks, as well as massive and diverse policy interventions by the Federal Reserve. In many ways, TARP was simply the most transparent and straightforward component of the financial bailout. The value of the loan guarantees and Federal Reserve support was likely much larger in the sense that taxpayers stood to lose hundreds of billions if not trillions of dollars in the event of a deepening of the financial crisis, a real risk even with government bailouts. Yet, despite effectively nationalizing the liabilities of the major financial institutions, the government did not wipe out the equity holders or even the junior bondholders in most cases. A proper cost-benefit analysis thus needs to price the risk the taxpayer took on during the financial crisis. *Ex post* accounting (how much did the government actually earn or lose after the fact) can yield an extremely misguided measure of the true cost of the bailout, especially as a guide to future policy responses. For example,

had a major geopolitical crisis broken out while the banking system remained so fragile, the government guarantees might well have been called in on a large scale.

Stepping back from technical issues surrounding measuring how the bailout was conducted, a broader question is whether "it worked." Would Americans have been worse off if TARP had never happened, if the government had waited to reconstitute financial institutions only after accelerated bankruptcies, if more efforts had been made to write down mortgages? There are no simple answers to these questions. One imagines that economic historians will debate the efficacy of the various bailout policies for decades to come. Most economists believe that there was a palpable risk of a second great depression, had the government not acted forcefully to stave off panic and stabilize the financial system. It is very difficult to disentangle the effects on short-term confidence of the various policies.

Given all the huge efforts of the government, including TARP, it is sobering to note that in the aftermath of the crisis, the U.S. economy has by and large been driving down the tracks of previous deep postwar financial crises. If one uses the benchmarks for housing prices, equity prices, unemployment, government debt, and length of recession given in Reinhart and Rogoff (2009),[396] the United States has so far been performing remarkably typically. Unfortunately, recessions marked by deep financial crises are generally followed by slow protracted recoveries in which unemployment remains elevated for many years, and housing prices remain depressed even longer. The continuing slow recovery in the United States is the norm.

One difference between the United States' recent financial crisis and many other deep financial crises is that the government retained its borrowing capacity even at the peak of the crisis. This allowed the Treasury to cushion the economy against the crisis in the short run, but by avoiding a rash of bankruptcies, the response also failed to deflate the excess leverage from the system. The excess leverage, particularly in the consumer sector, implies a long period of low consumption as consumers attempt to repair their balance sheets, especially in light of the lower value of their houses. Those firms and individuals that do want to borrow face much tighter credit conditions, with the exception of very large firms with access to capital markets. Thus, the U.S. faces a heightened risk of a Japan-type scenario with a prolonged period of sub-par growth. The principle of TARP, of course, was to facilitate price discovery and adjustment, but in practice that seems to have been a very secondary consideration.

There are many further issues that one could take up. For example, the bailout with its huge generosity to the large "too big to fail" financial institutions has greatly exacerbated moral

[396] Carmen M. Reinhart and Kenneth S. Rogoff, *This Time Is Different: Eight Centuries of Financial Folly* (Oct. 2009).

hazard problems. The Dodd-Frank financial regulation bill goes some ways to mitigating the problem, as does the recent Basel accord, but it is not at all clear that these go far enough. Obviously, the "too big to fail" policy has put small banks at a huge disadvantage in raising funding, even banks that followed conservative policies in the run up to the crisis.

In sum, TARP was the most visible of a multipronged approach to subsidizing the financial sector to avoid a meltdown, but it was by no means the only one, with Federal Reserve policy and loan guarantees constituting arguably far larger and more important subsidies, especially if one uses as a benchmark underlying risk-adjusted interest rates. These subsidies, however, were less transparent, and of course TARP funds covered some of the ugliest and most painful parts of the bailout, including, for example, AIG. Overall, the government's bailout policy has to be given credit for averting the second great depression that might have happened in its absence. It has not, however, succeeded so far in giving a measurably better trajectory for the economy than has been typical after other postwar deep financial crises.

Section Two: Additional Views

A. J. Mark McWatters and Professor Kenneth R. Troske

We concur with the issuance of the September report and offer the additional observations below. We appreciate the efforts the Panel and staff made incorporating our suggestions offered during the drafting of the report.

In these Additional Views we make the following five points:

- Repayment by TARP recipients of advances received under the program is a misleading measure of the effectiveness of the TARP and therefore should not serve as *the* standard by which the TARP is judged.
- The unlimited bailout of Fannie Mae and Freddie Mac by Treasury and the purchase of $1.25 trillion of GSE-guaranteed MBS in the secondary market by the Federal Reserve benefitted TARP recipients and other financial institutions.
- According to the Congressional Budget Office, the bailout of Fannie Mae and Freddie Mac is projected to cost more than *five times* the projected cost of the TARP, including the Capital Purchase Program employed by Treasury to bail out over 700 financial institutions. TARP recipients and other holders of GSE-guaranteed MBS who benefitted from the bailout of the two GSEs are not required, however, to share any of the costs incurred in the bailout.
- The bailout of Fannie Mae and Freddie Mac permitted TARP recipients to monetize their GSE-guaranteed MBS at prices above what they would have received without the GSE guarantee and use the proceeds to repay their obligations outstanding under the TARP, thereby arguably shifting a greater portion of the cost of the TARP from the TARP recipients themselves to the taxpayers. Costs such as this should be included when evaluating the TARP.
- The TARP created significant moral hazard risks and all but enshrined the concept that some financial institutions and other business enterprises are too big or too interconnected to fail.

1. Treasury Advocates an Inappropriate Metric for Assessing TARP

As is indicated in the report, among the general public the TARP remains one of the most vilified programs enacted by the federal government, viewed largely as an effort by former Wall Street executives to bail out current Wall Street executives at the expense of American taxpayers,

with no measurable benefits accruing to the taxpayers.[397] In contrast, both current and former Treasury officials state over and over that the TARP was a success because it helped avoid a much more severe financial crisis that would have caused taxpayers to suffer even greater harm. In our view, Treasury is struggling to convince the American public of the TARP's success by advocating the acceptance of a metric – whether or not the TARP money has been repaid – that is simply not a credible measure of success. Professor Kenneth Rogoff addressed this issue in his written submission to the Panel where he states:

> A proper cost benefit analysis thus needs to price the risk the taxpayer took on during the financial crisis. Ex post accounting (how much did the government actually earn or lose after the fact) can yield an extremely misguided measure of the true cost of the bailout, especially as a guide to future policy responses.[398]

2. The Bailout of the GSEs and its Consequences to TARP Recipients

One of the important ways this metric can be misleading is if other government programs that are not part of the TARP either directly or indirectly enhanced TARP recipients' ability to repay the government. One program that has potentially played a key role, but has received relatively less attention, is Treasury's bailout of Fannie Mae and Freddie Mac.[399] Had Fannie Mae and Freddie Mac been allowed to fail, TARP recipients and other financial institutions holding MBS guaranteed by the two GSEs most likely would have had little choice but to retain some of the MBS on their books. The eventual write-down in the value of these securities quite possibly would have resulted in many of these institutions suffering significant financial losses.[400] This in turn would have impaired their ability to pay back their TARP funding and may have required them to obtain additional advances from the TARP. As it was, Treasury

[397] In our view, the TARP – acting as the financial equivalent of a hospital ER – was helpful in returning financial stability to the markets during the last quarter of 2008 when properly considered along with the substantial and aggressive interventions of the Federal Reserve, Treasury, and the FDIC as well as the actions of the markets themselves. We nevertheless wonder if the Federal Reserve, Treasury, and the FDIC could not have effectively assisted the markets in achieving financial stability without additional governmental intervention. The TARP, however, has failed as a broader public policy initiative by: (1) permitting Treasury (and not the markets) to pick winners and losers (that is, which companies are bailed out and on what terms); (2) injecting substantial moral hazard risk into the markets; and (3) all but enshrining the doctrine that some financial institutions and other business enterprises are simply too big or too interconnected to fail.

[398] Kenneth Rogoff, Written Answers to Questions Posed by the Congressional Oversight Panel (Aug. 2010). In contrast to a simple "TARP has been repaid" standard, OMB and CBO measure the cost of TARP (as required by Section 123 of EESA) using discounted present value of the cash flows involved ("credit reform" methodology) where the discounted rate is explicitly adjusted "for market risk."

[399] *See* Treasury HERA Update, *supra* note 372.

[400] Even if holders of the GSE-guaranteed MBS were able to avoid the recognition of their built-in losses under the revised mark-to-market accounting rules, the holders would have been required to recognize such losses upon the disposition of the securities.

stepped in and provided unlimited support for all outstanding MBS guaranteed by Fannie Mae and Freddie Mac.

In addition, the Federal Reserve has recently purchased $1.25 trillion of GSE-guaranteed MBS in the secondary market from TARP recipients, other financial institutions and other investors and issuers.[401] Although the Federal Reserve purchased the MBS at fair market value at the time of the transaction, it is significant to note that the pricing reflected the value of the guarantee provided by Treasury through its unlimited bailout of Fannie Mae and Freddie Mac.[402] By returning the GSE-guaranteed MBS to Fannie Mae and Freddie Mac, or by selling them to the Federal Reserve or third-party investors, TARP recipient holders of the MBS were able to remove the securities from their balance sheets at prices above what they would have received without the GSE-guarantee and use the sales proceeds to "pay back" their outstanding obligations under the TARP.[403] The bailout of the two GSEs by Treasury thus had the potential to shift losses suffered under the TARP to losses suffered by another Treasury program that has not been subject to the same oversight or public scrutiny.[404] As this example illustrates, any evaluation of the success of the TARP has to take into account the interaction among all government programs designed to prop up the financial system and how costs may have been shifted among these programs.

[401] Board of Governors of the Federal Reserve System, *Federal Reserve System Monthly Report on Credit and Liquidity Programs and the Balance Sheet*, at 1 (Aug. 2010) (online at www.federalreserve.gov/monetarypolicy/files/monthlyclbsreport201008.pdf).

[402] Without viable GSE guarantees, the MBS most likely would have traded at fair market value prices of well below par (due to the impairment of the underlying mortgage collateral securing the MBS), but with viable GSE guarantees, the MBS most likely would have traded at or near par. For example, if Fannie Mae and Freddie Mac were insolvent, a $100 face value GSE-guaranteed MBS might have traded for $40, but if Fannie Mae and Freddie Mac were solvent and hence able to perform in full under their guarantees, the same MBS might have traded at or near par, that is, $100. By bailing out Fannie Mae and Freddie Mac, Treasury in effect transferred $60 from the taxpayers to the holders of the GSE-guaranteed MBS. In addition, if TARP recipients and other financial institution sellers had previously written down their MBS, a sale to the Federal Reserve or another investor at or near par might have permitted the institutions to book an accounting gain.

[403] Some of the funds employed to bail out the two GSEs most likely followed a round-trip from Treasury to Fannie Mae/Freddie Mac to TARP recipient sellers of GSE-guaranteed MBS and back to Treasury as the repayment of TARP advances. Since money is fungible, it is possible that the proceeds received from the sale of GSE-guaranteed MBS freed up other funds – including proceeds received from the sale of equity and debt securities – that were actually used to repay amounts outstanding under the TARP.

[404] The bailout of Fannie Mae and Freddie Mac by Treasury arguably permitted TARP recipients to extinguish part of their outstanding TARP obligations with the proceeds received from the disposition of their GSE-guaranteed MBS at prices subsidized by the bailout of the two GSEs. Without the bailout, TARP recipients quite possibly would have been stuck with their illiquid, severely depressed GSE-guaranteed MBS as well as with a greater portion of their outstanding TARP obligations.

3. Analysis of CBO Subsidy Cost of the TARP and Bailout of the GSEs

The Congressional Budget Office (CBO) estimates that Treasury's bailout of Fannie Mae and Freddie Mac will cost the taxpayers approximately $291 billion through fiscal year 2009 and $389 billion through fiscal year 2019.[405] If only 25 percent[406] of the CBO cost of the bailouts ultimately inures to the benefit of TARP recipients and other financial institutions, Treasury will have provided a subsidy to these institutions of approximately $100 billion.[407] This non-TARP government sponsored support – unlike obligations incurred under the TARP itself[408] – remains cost-free to the recipients. That is, holders of GSE-guaranteed MBS are not required to share any of the cost incurred by the taxpayers arising from Treasury's bailout of Fannie Mae and Freddie Mac.[409]

The cost to the taxpayers of the bailout of the two GSEs is all the more remarkable when compared to the most recent CBO cost estimate for the *entire* TARP program of "only" $66 billion.[410] The CBO also estimates that the financial institution bailout component of TARP – the Capital Purchase Program (CPP) – will return a *profit* of approximately $2 billion.[411] While TARP has been vigorously debated throughout the country over the past two years and has served as a lightning rod for those who question government-sanctioned bailout programs, it is indeed ironic that the relatively obscure bailout of Fannie Mae and Freddie Mac is projected to carry a cost to the taxpayers of more than *five times* the projected cost of the much maligned TARP.[412] It is also ironic that the original plan proposed by Secretary Paulson under the TARP to purchase distressed GSE-guaranteed MBS and other "toxic assets" was at least partially

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[405] Congressional Budget Office, *Budgetary Treatment of Fannie Mae and Freddie Mac*, at 8 (Jan. 2010) (online at www.cbo.gov/ftpdocs/108xx/doc10878/01-13-FannieFreddie.pdf).

[406] Since the CBO estimates that the bailout of Fannie Mae and Freddie Mac will cost the taxpayers approximately $400 billion, Treasury should disclose the amount of the subsidy cost that will inure to the benefit of TARP recipients and other financial institutions.

[407] $389 billion CBO subsidy cost estimate for the bailout of Fannie Mae and Freddie Mac multiplied by 25 percent, equals $97.25 billion.

[408] Participants in the Capital Purchase Program (the financial institution bailout program included in the TARP) are required to repay all funds advanced thereunder, together with interest or dividends (as applicable) thereon, and to grant Treasury warrants to purchase equity interests in the recipients.

[409] Presumably, Treasury could have underwritten, for example, only 50 percent of the unfunded guarantee obligations of Fannie Mae and Freddie Mac and required the holders of the GSE-guaranteed MBS to absorb the remaining loss.

[410] CBO Report on the TARP – March 2010, *supra* note 67, at 3 (noting a subsidy cost for the TARP of $109 billion as of March 2010). *See also* CBO's Latest Projections for the TARP, *supra* note 68 (noting a subsidy cost for the TARP of $66 billion as of August 20, 2010).

[411] *See* CBO Report on the TARP – March 2010, *supra* note 67, at 3. *See also* CBO Budget and Economic Outlook, *supra* note 68, at 70.

[412] $389 billion CBO projected subsidy cost for the bailout of Fannie Mae and Freddie Mac through 2019, divided by $66 billion CBO projected subsidy cost for the TARP, equals 5.89.

implemented outside of the TARP by the Federal Reserve through its quantitative easing program and by Treasury through its unlimited bailout of Fannie Mae and Freddie Mac, both at no cost to TARP recipients and other holders of GSE-guaranteed MBS but at significant long-term expense to the taxpayers.

4. Moral Hazard and Too-Big-To-Fail Risks Enhanced by the TARP

Other potential costs of the TARP that we feel deserve more attention are the future costs resulting from the use of TARP funds to bail out systemically important financial and other firms. By targeting much of the TARP funding towards large firms such as Citigroup, Bank of America, A.I.G., Chrysler, GM, and Ally Financial (formerly GMAC),[413] which solidified the market's belief in an implicit guarantee from the government for these firms, the TARP has exacerbated the "too big to fail" phenomenon.[414] This in turn provides these large firms with a substantial cost advantage over their smaller, less systemically important competitors, which will lead to a more concentrated financial sector and higher prices paid by customers of banks and other financial companies. In addition, creating larger, more systemically important financial firms increases the likelihood of future financial crises because these firms have an incentive to

[413] It is worth noting that while markets seemed to recognize the existence of the "too big to fail" guarantee for large financial firms, by using the TARP to bail out Chrysler and GM, Treasury appears to have extended Too-Big-To-Fail to large non-financial firms.

[414] The Additional Views issued by J. Mark McWatters and former Panel member Paul S. Atkins with respect to the Panel's January 2010 report on "Exiting TARP and Unwinding Its Impact on the Financial Markets" describes some of the challenges presented by the TARP:

> The January report analyzes the difficulties that may arise when the United States government directly or indirectly undertakes to prevent certain systemically significant institutions from failing. Although the government does not generally guarantee the assets and obligations of private entities, its actions and policies may nevertheless send a clear message to the market that some institutions are simply too big or too interconnected to fail. Once the government adopts such a policy it is difficult to know how and where to draw the line. With little public debate, automobile manufacturers were recently transformed into financial institutions so they could be bailed out with TARP funds and an array of arguably non-systemically significant institutions – such as GMAC – received many billions of dollars of taxpayer funded subsidies. In its haste to restructure favored institutions, the government may assume the role of king maker – as was surely the case in the Chrysler and GM bankruptcies – and dictate a reorganization structure that arguably contravenes years of well-established commercial and corporate law precedent. The unintended consequences of these actions linger in the financial markets and legal community long after the offending transactions have closed and adversely – yet subtly – affect subsequent transactions that carry any inherent risk of future governmental intervention. The uninitiated may question why two seemingly identical business transactions merit disparate risk-adjusted rates of return or why some transactions appear over-collateralized or inexplicably complicated. The costs of mitigating political risk in private sector business transactions are seldom quantified or even discussed outside the cadre of businesspersons and their advisors who structure, negotiate and close such transactions, yet such costs certainly exist and must be satisfied.

Congressional Oversight Panel, *Additional Views of J. Mark McWatters and Paul S. Atkins -- January Oversight Report: Exiting TARP and Unwinding Its Impact on the Financial Markets*, at 157-158 (Jan. 14, 2010) (online at cop.senate.gov/documents/cop-011410-report-atkinsmcwatters.pdf).

invest in riskier projects as a result of the guarantee provided by the government. The additional costs borne by consumers in the form of higher prices for financial services and the additional costs that result from additional financial crises need to be included in any accounting of the costs of the TARP.

Section Three: TARP Updates Since Last Report

A. Financial Update

Each month, the Panel summarizes the resources that the federal government has committed to economic stabilization. The following financial update provides: (1) an updated accounting of the TARP, including a tally of dividend income, repayments and warrant dispositions that the program has received as of July 31, 2010; and (2) an updated accounting of the full federal resource commitment as of September 1, 2010.

1. The TARP

a. Program Updates[415]

Since the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Treasury's commitments for TARP programs totaled $475 billion.[416] Of this amount, $394.8 billion had been spent under the $475 billion ceiling and $204.1 billion in TARP funds have been repaid. There have also been $5.8 billion in losses, leaving $185 billion in TARP funds currently outstanding.

During the month of August, Citizens & Northern Corporation and Columbia Banking System, Inc. fully repaid their CPP investments. Treasury received $26.4 million and $76.9 million, respectively, in repayments from these two institutions. To date, a total of 91 institutions have redeemed their CPP preferred shares.

Among those institutions that have repaid CPP funds, nine banks exchanged their CPP investments for an equivalent investment amount under the Community Development Capital Initiative (CDCI) in August. After qualifying banks complete the exchange, Treasury records its CPP investment in these banks as repaid. Since the first exchanges took place in July, 11 banks have exchanged $110.2 million in CPP investments. Of the $780 million Treasury committed to spend under the CDCI program, $143.2 million has been invested, which includes additional

[415] Sept. 3 TARP Transactions Report, *supra* note 26.

[416] The original $700 billion TARP ceiling was reduced by $1.3 billion as part of the Helping Families Save Their Homes Act of 2009. The authorized total commitment level was later reduced to $475 billion as part of the Frank-Dodd Financial Reform Bill that was signed into law on July 21, 2010. 12 U.S.C. § 5225(a)-(b); Helping Families Save Their Homes Act of 2009, *supra* note 2, § 40 (reducing by $1.26 billion the authority for the TARP originally set under EESA at $700 billion). On June 30, 2010, the House-Senate Conference Committee agreed to reduce the amount authorized under the TARP from $700 billion to $475 billion as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, *supra* note 15, § 335. On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law. The White House, *Remarks by the President at Signing of Dodd-Frank Wall Street Reform and Consumer Protection Act* (July 21, 2010) (online at www.whitehouse.gov/the-press-office/remarks-president-signing-dodd-frank-wall-street-reform-and-consumer-protection-act).

investments in University Financial Corp, Inc. ($10.2 million) and Southern Bancorp, Inc. ($22.8 million).

b. Income: Dividends, Interest, Repayments, and Warrant Sales

As of September 1, 2010, 41 institutions have repurchased their warrants for common shares that Treasury received in conjunction with its preferred stock investments; Treasury sold the warrants for common shares for 13 other institutions at auction. On September 1, 2010, Citizens & Northern Corporation and Columbia Banking System, Inc. repurchased their warrants for $400,000 and $3.3 million, respectively.

On September 7, 2010, Treasury announced its plans to sell its warrants for The Hartford Financial Services Group, Inc. and Lincoln National Corporation through public auctions. Details regarding the pricing of the warrants and dates of the offering have yet to be announced. Deutsche Bank Securities Inc. will act as the auction agent and sole bookrunning manager for both warrant auctions.[417]

Treasury also receives dividend payments on the preferred shares that it holds, usually five percent per annum for the first five years and nine percent per annum thereafter.[418] In total, Treasury has received approximately $23 billion in net income from warrant repurchases, dividends, interest payments and other considerations deriving from TARP investments.[419] For further information on TARP profit and loss, see Figure 35.

[417] U.S. Department of the Treasury, *Treasury Announces Intent To Sell Warrant Positions In Public Dutch Auctions* (Sept. 7, 2010) (online at financialstability.gov/latest/pr_09072010.html).

[418] U.S. Department of the Treasury, *Securities Purchase Agreement for Public Institutions* (online atwww.financialstability.gov/docs/CPP/spa.pdf) (accessed Sept. 14, 2010).

[419] U.S. Department of the Treasury, *Cumulative Dividends and Interest Report as of July 31, 2010* (Aug. 17, 2010) (online at www.financialstability.gov/docs/dividends-interest-reports/July%202010%20Dividends%20and%20Interest%20Report.pdf) (hereinafter "Cumulative Dividends and Interest Report"); Sept. 3 TARP Transactions Report, *supra* note 26. Treasury also received an additional $1.2 billion in participation fees from its Guarantee Program for Money Market Funds. U.S. Department of the Treasury, *Treasury Announces Expiration of Guarantee Program for Money Market Funds* (Sept. 18, 2009) (online at www.ustreas.gov/press/releases/tg293.htm).

c. TARP Accounting

Figure 35: TARP Accounting (as of September 1, 2010) *(billions of dollars)*[xxxii]

Program	Current Maximum Amount Available	Actual Funding	Total Repayments/ Reduced Exposure	Total Losses	Funding Currently Outstanding	Funding Available
Capital Purchase Program (CPP)	$204.9	$204.9	[xxxiii]($147.5)	[xxxiv]($2.3)	$55.1	$0
Targeted Investment Program (TIP)	40.0	40.0	(40.0)	0	0	0
Asset Guarantee Program (AGP)	5.0	5.0	[xxxv](5.0)	0	0	0
AIG Investment Program (AIGIP)	69.8	[xxxvi]49.1	0	0	49.1	20.7
Auto Industry Financing Program (AIFP)	81.3	81.3	(10.8)	[xxxvii](3.5)	[xxxviii]67.1	0
Auto Supplier Support Program (ASSP)[xxxix]	0.4	0.4	(0.4)	0	0	0
Term Asset-Backed Securities Loan Facility (TALF)	[xl]4.3	[xli]0.1	0	0	0.1	4.2
Public-Private Investment Program (PPIP)[xlii]	22.4	[xliii]13.1	[xliv](0.4)	0	12.7	9.3
SBA 7(a) Securities Purchase	0.4	[xlv]0.29	0	0	0.29	0.11
Home Affordable Modification Program (HAMP)	30.5	0.4	0	0	0.4	30.1
Hardest Hit Fund (HHF)	[xlvi]4.1	[xlvii]0.04	0	0	0.04	4.06
FHA Refinance Program	11.0	0	0	0	0	11
Community Development Capital Initiative (CDCI)	[xlviii]0.8	0.14	0	0	0.14	0.66
Total	**$475**	**394.77**	**(204.1)**	**(5.8)**	**184.97**	**80.13**

[xxxii] Figures affected by rounding. Unless otherwise noted, data in this table are from the following source: U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf).

[xxxiii] Total amount repaid under CPP includes $8.5 billion Treasury received as part of its sales of Citigroup common stock. As of September 1, 2010, Treasury has sold 2.6 billion Citigroup common shares for $10.5 billion in gross proceeds. In June 2009, Treasury exchanged $25 billion in Citigroup preferred stock for 7.7 billion shares of the company's common stock at $3.25 per share. Therefore, Treasury received $2 billion in net proceeds from the sale of Citigroup common stock. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf). Total CPP repayments also include amounts repaid by institutions that exchanged their CPP investments for investments under the CDCI. For more details on the companies who are now participating in the CDCI, *see* footnote 229, *supra*.

[xxxiv] On the Transactions Report, Treasury has classified the investments it made in two institutions, CIT Group ($2.3 billion) and Pacific Coast National Bancorp ($4.1 million), as losses. Therefore, Treasury's net current CPP investment is $55.1 billion due to the $2.3 billion in losses thus far. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf).

[xxxv] Although this $5 billion is no longer exposed as part of the AGP and is accounted for as available, Treasury did not receive a repayment in the same sense as with other investments. Treasury did receive other income as consideration for the guarantee, which is not a repayment and is accounted for in Figure 36.

[xxxvi] AIG has completely utilized the $40 billion made available on November 25, 2008. It has also drawn down $7.5 billion of the $29.8 billion made available on April 17, 2009. This figure also reflects $1.6 billion in accumulated but unpaid dividends owed by AIG to Treasury due to the restructuring of Treasury's investment from cumulative preferred shares to non-cumulative shares. American International Group, Inc., *Form 10-K for the Fiscal Year Ended December 31, 2009*, at 45 (Feb. 26, 2010) (online at www.sec.gov/Archives/edgar/data/5272/000104746910001465/a2196553z10-k.htm); U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for Period Ending July 30, 2010*, at 20 (Aug. 3, 2010) (online at www.financialstability.gov/docs/transaction-reports/8-3-10%20Transactions%20Report%20as%20of%207-30-10.pdf).

[xxxvii] On May 14, 2010, Treasury accepted a $1.9 billion settlement payment for its $3.5 billion loan to Chrysler Holding. The payment represented a $1.6 billion loss from the termination of the debt obligation. U.S. Department of the Treasury, *Chrysler Financial Parent Company Repays $1.9 Billion in Settlement of Original Chrysler Loan* (May 17, 2010) (online at www.financialstability.gov/latest/pr_05172010c.html). Also, following the bankruptcy proceedings for Old Chrysler, which extinguished the $1.9 billion debtor-in-possession (DIP) loan, Treasury retained the right to recover the proceeds from the liquidation of specified collateral. To date, Treasury has collected $30.5 million in proceeds from the sale of collateral, although it ultimately does not expect a significant recovery from the liquidation proceeds. Treasury includes these proceeds as part of the $10.8 billion repaid under the AIFP. U.S. Department of the Treasury, *Troubled Assets Relief Program Monthly 105(a) Report – August 2010* (Sept. 10, 2010) (online at financialstability.gov/docs/105CongressionalReports/August%202010%20105(a)%20Report_final_9%2010%2010.pdf); Treasury conversations with Panel staff (Aug. 19, 2010).

[xxxviii] The $1.9 billion Chrysler debtor-in-possession loan, which was extinguished April 30, 2010, was deducted from Treasury's AIFP investment amount; however, it is not regarded as a loss since there is an opportunity for Treasury to recover a portion of the loan from the sale of collateral. *See* Endnote xxxvii *supra*, for details on losses from Treasury's investment in Chrysler.

[xxxix] On April 5, 2010, Treasury terminated its commitment to lend to the GM SPV under the ASSP. On April 7, 2010, it terminated its commitment to lend to the Chrysler SPV. In total, Treasury received $413 million in repayments from loans provided by this program ($290 million from the GM SPV and $123 million from the Chrysler SPV). Further, Treasury received $101 million in proceeds from additional notes associated with this

program. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf).

[xl] For the TALF program, one dollar of TARP funds was committed for every $10 of funds obligated by the Federal Reserve. The program was originally intended to be a $200 billion initiative, and the TARP was responsible for the first $20 billion in loan-losses, if any were incurred. The loan is incrementally funded. As of September 1, a total of $43 billion in loans was outstanding under the TALF program, and TARP's commitments constituted $4.3 billion. The Federal Reserve Board of Governors agreed that it was appropriate for Treasury to reduce TALF credit protection to $4.3 billion. Board of Governors of the Federal Reserve System, *Federal Reserve Announces Agreement with the Treasury Department Regarding a Reduction of Credit Protection Provided for the Term Asset-Backed Securities Loan Facility (TALF)* (July 20, 2010) (online at www.federalreserve.gov/newsevents/press/monetary/20100720a.htm).

[xli] As of September 1, Treasury provided $105 million to TALF LLC. This total includes accrued payable interest. Federal Reserve Bank of New York, *Factors Affecting Reserve Balances (H.4.1)* (Sept. 2, 2010) (online at www.federalreserve.gov/releases/h41/20100902/).

[xlii] On July 19, 2010, Treasury released its third quarterly report on the Legacy Securities Public-Private Investment Partnership (PPIP). As of June 30, 2010, the total value of assets held by the PPIP managers was $16 billion. Non-agency Residential Mortgage-Backed Securities represented 85 percent of the total, CMBS represented the balance. U.S. Department of the Treasury, *Legacy Securities Public-Private Investment Program, Program Update – Quarter Ended June 30, 2010* (July 19, 2010) (online at www.financialstability.gov/docs/111.pdf).

[xliii] U.S. Department of the Treasury, *Troubled Assets Relief Program Monthly 105(a) Report – July 2010*, at 6 (Aug. 10, 2010) (online at www.financialstability.gov/docs/105CongressionalReports/July%202010%20105(a)%20Report_Final.pdf).

[xliv] As of September 1, 2010, Treasury has received $368 million in capital repayments from two PPIP fund managers. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf).

[xlv] In July, Treasury made $48 million in additional purchases under the SBA 7(a) Securities Purchase Program. As of September 1, 2010, Treasury's purchases totaled $261.7 million. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf).

[xlvi] As part of the Dodd-Frank Act, an additional $2 billion in TARP funds was committed to mortgage assistance for unemployed borrowers through the Hardest Hit Fund. U.S. Department of the Treasury, *Obama Administration Announces Additional Support for Targeted Foreclosure-Prevention Programs to Help Homeowners Struggling with Unemployment* (Aug. 11, 2010) (online at www.ustreas.gov/press/releases/tg823.htm).

[xlvii] This figure represents the total amount paid to date to state Housing Finance Agencies (HFAs). The Panel previously reported the actual funding amount for the Hardest Hit Fund as the total amount approved by the Administration. As of September 10, 2010, four state HFAs have drawn out funds from their total investment amount. Data provided by Treasury (Sept. 10, 2010).

[xlviii] During the month of August, nine institutions exchanged their CPP investments for an equivalent investment amount under the CDCI. On August 6, 2010, Treasury made an additional $22.8 million investment in Southern Bancorp, Inc. as part of the institution's exchange. As of September 1, 2010, Treasury's total current investment under the CDCI is $143.2 million. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf).

Figure 36: TARP Profit and Loss *(millions of dollars)*

TARP Initiative	Dividends[xlix] (as of 7/31/2010)	Interest[l] (as of 7/31/2010)	Warrant Disposition Proceeds[li] (as of 9/1/2010)	Other Proceeds (as of 7/31/2010)	Losses[lii] (as of 9/1/2010)	Total
Total	$15,906	$893	$7,217	$4,739	($5,792)	$22,963
CPP	9,431	39	5,946	[liii]2,026	(2,334)	15,108
TIP	3,004	–	1,256	–		4,260
AIFP	[liv]3,060	802	15	–	(3,458)	419
ASSP	–	15	–	[lv]101		116
AGP	411	–	0	[lvi]2,234		2,645
PPIP	–	38	–	[lvii]102		139
Bank of America Guarantee	–	–	–	[lviii]276		276

[xlix] U.S. Department of the Treasury, *Cumulative Dividends, Interest and Distributions Report as of July 31, 2010* (Aug. 17, 2010) (online at www.financialstability.gov/docs/dividends-interest-reports/July%202010%20Dividends%20and%20Interest%20Report.pdf).

[l] U.S. Department of the Treasury, *Cumulative Dividends, Interest and Distributions Report as of July 31, 2010* (Aug. 17, 2010) (online at www.financialstability.gov/docs/dividends-interest-reports/July%202010%20Dividends%20and%20Interest%20Report.pdf).

[li] U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf).

[lii] On the Transactions Report, Treasury classified the investments it made in two institutions, CIT Group ($2.3 billion) and Pacific Coast National Bancorp ($4.1 million), as losses. Two TARP recipients, UCBH Holdings, Inc. ($298.7 million) and a banking subsidiary of Midwest Banc Holdings, Inc. ($89.4 million), are currently in bankruptcy proceedings. Finally, Sonoma Valley Bancorp, which received $8.7 million in CPP funding, was placed into receivership on August 20, 2010. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf); Federal Deposit Insurance Corporation, *Westamerica Bank, San Rafael, California, Assumes All of the Deposits of Sonoma Valley Bank, Sonoma, California* (Aug. 20, 2010) (online at www.fdic.gov/news/news/press/2010/pr10196.html).

[liii] This figure represents net proceeds to Treasury from the sale of Citigroup common stock to date. The net proceeds account for Treasury's exchange in June 2009 of $25 billion in Citigroup preferred shares for 7.7 billion shares of the company's common stock at $3.25 per share. On May 26, 2010, Treasury completed the sale of 1.5 billion shares of Citigroup common stock at an average weighted price of $4.12 per share. On June 30, 2010, Treasury announced the sale of approximately 1.1 billion of additional shares of Citigroup stock at an average weighted price of $3.90 per share. Treasury opened a third selling period on July 23, 2010, with plans to sell another 1.5 billion shares by September 30, 2010. As of September 1, 2010, Treasury has received $10.5 billion in gross proceeds from these sales. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf).

[liv] This figure includes $815 million in dividends from GMAC preferred stock, trust preferred securities, and mandatory convertible preferred shares. The dividend total also includes a $748.6 million senior unsecured note from Treasury's investment in General Motors. Data provided by Treasury.

[lv] This represents the total proceeds from additional notes. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf).

[lvi] As a fee for taking a second-loss position of up to $5 billion on a $301 billion pool of ring-fenced Citigroup assets as part of the AGP, Treasury received $4.03 billion in Citigroup preferred stock and warrants. Treasury exchanged these preferred stocks for trust preferred securities in June 2009. Following the early termination of the guarantee, Treasury cancelled $1.8 billion of the trust preferred securities, leaving Treasury with a $2.2 billion investment in Citigroup trust preferred securities. At the end of Citigroup's participation in the FDIC's TLGP, the FDIC may transfer $800 million of $3.02 billion in Citigroup Trust Preferred Securities it received in consideration for its role in the AGP to Treasury. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010*, at 20 (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf); U.S. Department of the Treasury, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Citigroup Inc., *Termination Agreement*, at 1 (Dec. 23, 2009) (online at www.financialstability.gov/docs/Citi%20AGP%20Termination%20Agreement%20-%20Fully%20Executed%20Version.pdf); Federal Deposit Insurance Corporation, *2009 Annual Report*, at 87 (June 30, 2010) (online at www.fdic.gov/about/strategic/report/2009annualreport/AR09final.pdf).

[lvii] As of July 31, 2010, Treasury has earned $80.9 million in membership interest distributions from the PPIP. Additionally, Treasury has earned $20.6 million in total proceeds following the termination of the TCW fund. U.S. Department of the Treasury, *Cumulative Dividends, Interest and Distributions Report as of July 31, 2010* (Aug. 17, 2010) (online at financialstability.gov/docs/dividends-interest-reports/July%202010%20Dividends%20and%20Interest%20Report.pdf); U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf).

[lviii] Although Treasury, the Federal Reserve, and the FDIC negotiated with Bank of America regarding a similar guarantee, the parties never reached an agreement. In September 2009, Bank of America agreed to pay each of the prospective guarantors a fee as though the guarantee had been in place during the negotiations period. This agreement resulted in payments of $276 million to Treasury, $57 million to the Federal Reserve, and $92 million to the FDIC. U.S. Department of the Treasury, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Bank of America Corporation, *Termination Agreement*, at 1-2 (Sept. 21, 2009) (online at www.financialstability.gov/docs/AGP/BofA%20-%20Termination%20Agreement%20-%20executed.pdf).

d. CPP Unpaid Dividend and Interest Payments[420]

As of July 31, 2010, 97 institutions have missed at least one dividend payment on preferred stock issued under CPP.[421] Among these institutions, 72 are not current on cumulative dividends, which amount to $137.1 million in missed payments, while another 25 banks have not paid $6.3 million in non-cumulative dividends. Of the $55.1 billion currently outstanding in CPP funding, Treasury's investments in banks with non-current dividend payments total $3.6 billion. A majority of the banks that remain delinquent on dividend payments have under $1 billion in total assets on their balance sheets.

To date, there are 15 institutions that previously deferred dividend payments, but have repaid all delinquent dividends. One bank, thus far, has failed to make six dividend payments. Under the terms of CPP, after a bank fails to pay dividends for six periods, Treasury has the right to elect two individuals to the company's board of directors.[422] Figure 37 below details the number of institutions that have missed dividend payments.

In addition, 6 CPP participants have missed at least one interest payment, totaling $2.4 million in non-current interest payments. Treasury's investments in these institutions represent less than $1 billion in CPP funding.

Figure 37: CPP Missed Dividend Payments (as of July 31, 2010)[423]

Number of Missed Payments	1	2	3	4	5	6	Total
Cumulative Dividends							
Number of Banks, by asset size	20	18	16	14	4	0	72
Under $1B	15	12	9	7	1	0	44
$1B-$10B	5	4	7	6	3	0	25
Over $10B	0	2	0	1	0	0	3
Non-Cumulative Dividends							
Number of Banks, by asset size	6	5	4	5	4	1	25
Under $1B	5	4	4	5	4	1	18
$1B-$10B	1	1	0	0	0	0	1
Over $10B	0	0	0	0	0	0	0

[420] Cumulative Dividends and Interest Report, *supra* note 419.

[421] Does not include banks with missed dividend payments that have either repaid all delinquent dividends, exited TARP, gone into receivership, or filed for bankruptcy.

[422] U.S. Department of the Treasury, *Frequently Asked Questions Capital Purchase Program (CPP): Related to Missed Dividend (or Interest) Payments and Director Nomination* (online at www.financialstability.gov/docs/CPP/CPP%20Directors%20FAQs.pdf) (accessed Sept. 14, 2010).

[423] Cumulative Dividends and Interest Report, *supra* note 419. Data on total bank assets compiled using SNL Financial data service (accessed Sept. 8, 2010).

e. Rate of Return

As of September 2, 2010, the average internal rate of return for all public financial institutions that participated in the CPP and fully repaid the U.S. government (including preferred shares, dividends, and warrants) was 9.9 percent. The internal rate of return is the annualized effective compounded return rate that can be earned on invested capital.

Since the Panel's last report, Citizens & Northern Corporation and Columbia Banking System repurchased their warrants for common shares for $400,000 and $3.3 million, respectively. These represent 85- and 50-percent, respectively, of the Panel's best valuation estimate at the disposition date. To date, Treasury has received $7.2 billion in proceeds from CPP and TIP warrant dispositions.

f. Warrant Disposition

Figure 38: Warrant Repurchases/Auctions for Financial Institutions who have fully Repaid CPP Funds (as of September 2, 2010)

Institution	Investment Date	Warrant Repurchase Date	Warrant Repurchase/ Sale Amount	Panel's Best Valuation Estimate at Disposition Date	Price/ Estimate Ratio	IRR
Old National Bancorp	12/12/2008	5/8/2009	$1,200,000	$2,150,000	0.558	9.3%
Iberiabank Corporation	12/5/2008	5/20/2009	1,200,000	2,010,000	0.597	9.4%
Firstmerit Corporation	1/9/2009	5/27/2009	5,025,000	4,260,000	1.180	20.3%
Sun Bancorp, Inc	1/9/2009	5/27/2009	2,100,000	5,580,000	0.376	15.3%
Independent Bank Corp.	1/9/2009	5/27/2009	2,200,000	3,870,000	0.568	15.6%
Alliance Financial Corporation	12/19/2008	6/17/2009	900,000	1,580,000	0.570	13.8%
First Niagara Financial Group	11/21/2008	6/24/2009	2,700,000	3,050,000	0.885	8.0%
Berkshire Hills Bancorp, Inc.	12/19/2008	6/24/2009	1,040,000	1,620,000	0.642	11.3%
Somerset Hills Bancorp	1/16/2009	6/24/2009	275,000	580,000	0.474	16.6%
SCBT Financial Corporation	1/16/2009	6/24/2009	1,400,000	2,290,000	0.611	11.7%
HF Financial Corp	11/21/2008	6/30/2009	650,000	1,240,000	0.524	10.1%
State Street	10/28/2008	7/8/2009	60,000,000	54,200,000	1.107	9.9%
U.S. Bancorp	11/14/2008	7/15/2009	139,000,000	135,100,000	1.029	8.7%
The Goldman Sachs Group, Inc.	10/28/2008	7/22/2009	1,100,000,000	1,128,400,000	0.975	22.8%
BB&T Corp.	11/14/2008	7/22/2009	67,010,402	68,200,000	0.983	8.7%
American Express Company	1/9/2009	7/29/2009	340,000,000	391,200,000	0.869	29.5%
Bank of New York Mellon Corp	10/28/2008	8/5/2009	136,000,000	155,700,000	0.873	12.3%
Morgan Stanley	10/28/2008	8/12/2009	950,000,000	1,039,800,000	0.914	20.2%
Northern Trust Corporation	11/14/2008	8/26/2009	87,000,000	89,800,000	0.969	14.5%
Old Line Bancshares Inc.	12/5/2008	9/2/2009	225,000	500,000	0.450	10.4%
Bancorp Rhode Island, Inc.	12/19/2008	9/30/2009	1,400,000	1,400,000	1.000	12.6%
Centerstate Banks of Florida Inc.	11/21/2008	10/28/2009	212,000	220,000	0.964	5.9%

Manhattan Bancorp	12/5/2008	10/14/2009	63,364	140,000	0.453	9.8%
CVB Financial Corp	12/5/2008	10/28/2009	1,307,000	3,522,198	0.371	6.4%
Bank of the Ozarks	12/12/2008	11/24/2009	2,650,000	3,500,000	0.757	9.0%
Capital One Financial	11/14/2008	12/3/2009	148,731,030	232,000,000	0.641	12.0%
JPMorgan Chase & Co.	10/28/2008	12/10/2009	950,318,243	1,006,587,697	0.944	10.9%
TCF Financial Corp	1/16/2009	12/16/2009	9,599,964	11,825,830	0.812	11.0%
LSB Corporation	12/12/2008	12/16/2009	560,000	535,202	1.046	9.0%
Wainwright Bank & Trust Company	12/19/2008	12/16/2009	568,700	1,071,494	0.531	7.8%
Wesbanco Bank, Inc.	12/5/2008	12/23/2009	950,000	2,387,617	0.398	6.7%
Union First Market Bankshares Corporation (Union Bankshares Corporation)	12/19/2008	12/23/2009	450,000	1,130,418	0.398	5.8%
Trustmark Corporation	11/21/2008	12/30/2009	10,000,000	11,573,699	0.864	9.4%
Flushing Financial Corporation	12/19/2008	12/30/2009	900,000	2,861,919	0.314	6.5%
OceanFirst Finan-cial Corporation	1/16/2009	2/3/2010	430,797	279,359	1.542	6.2%
Monarch Financial Holdings, Inc.	12/19/2008	2/10/2010	260,000	623,434	0.417	6.7%
Bank of America	10/28/2008[424] 1/9/2009[425] 1/14/2009[426]	3/3/2010	1,566,210,714	1,006,416,684	1.533	6.5%
Washington Federal Inc./ Washington Federal Savings & Loan Association	11/14/2008	3/9/2010	15,623,222	10,166,404	1.537	18.6%
Signature Bank	12/12/2008	3/10/2010	11,320,751	11,458,577	0.988	32.4%
Texas Capital Bancshares, Inc.	1/16/2009	3/11/2010	6,709,061	8,316,604	0.807	30.1%
Umpqua Holdings Corp.	11/14/2008	3/31/2010	4,500,000	5,162,400	0.872	6.6%

[424] Investment date for Bank of America in CPP.

[425] Investment date for Merrill Lynch in CPP.

[426] Investment date for Bank of America in TIP.

City National Corporation	11/21/2008	4/7/2010	18,500,000	24,376,448	0.759	8.5%
First Litchfield Financial Corporation	12/12/2008	4/7/2010	1,488,046	1,863,158	0.799	15.9%
PNC Financial Services Group Inc.	12/31/2008	4/29/2010	324,195,686	346,800,388	0.935	8.7%
Comerica Inc.	11/14/2008	5/4/2010	183,673,472	276,426,071	0.664	10.8%
Valley National Bancorp	11/14/2008	5/18/2010	5,571,592	5,955,884	0.935	8.3%
Wells Fargo Bank	10/28/2008	5/20/2010	849,014,998	1,064,247,725	0.798	7.8%
First Financial Bancorp	12/23/2008	6/2/2010	3,116,284	3,051,431	1.021	8.2%
Sterling Bancshares, Inc./ Sterling Bank	12/12/2008	6/9/2010	3,007,891	5,287,665	0.569	10.8%
SVB Financial Group	12/12/2008	6/16/2010	6,820,000	7,884,633	0.865	7.7%
Discover Financial Services	3/13/2009	7/7/2010	172,000,000	166,182,652	1.035	17.1%
Bar Harbor Bancshares	1/16/2009	7/28/2010	250,000	518,511	0.482	6.2%
Citizens & Northern Corporation	1/16/2009	8/4/2010	400,000	468,164	0.854	5.9%
Columbia Banking System, Inc.	11/21/2008	8/11/2010	3,301,647	6,582,658	0.502	7.3%
Total			**$7,202,029,864**	**$7,314,904,102**	**0.985**	**9.9%**

Figure 39: Valuation of Current Holdings of Warrants (as of September 1, 2010)

Stress Test Financial Institutions with Warrants Outstanding	**Warrant Valuation** *(millions of dollars)*		
	Low Estimate	**High Estimate**	**Best Estimate**
Citigroup, Inc.	$13.20	$1,076.60	$125.49
SunTrust Banks, Inc.	9.79	320.18	123.84
Regions Financial Corporation	7.85	203.49	79.27
Fifth Third Bancorp	71.42	357.19	173.27
Hartford Financial Services Group, Inc.	347.70	702.95	472.22
KeyCorp	17.29	165.54	72.07
AIG	196.52	1687.29	772.09
All Other Banks	607.55	1,694.33	1,108.93
Total	**$1,271.31**	**$6,207.56**	**$2,927.19**

2. Federal Financial Stability Efforts

a. Federal Reserve and FDIC Programs

In addition to the direct expenditures Treasury has undertaken through the TARP, the federal government has engaged in a much broader program directed at stabilizing the U.S. financial system. Many of these initiatives explicitly augment funds allocated by Treasury under specific TARP initiatives, such as FDIC and Federal Reserve asset guarantees for Citigroup, or operate in tandem with Treasury programs, such as the interaction between PPIP and TALF. Other programs, like the Federal Reserve's extension of credit through its Section 13(3) facilities and SPVs and the FDIC's Temporary Liquidity Guarantee Program, operate independently of the TARP.

b. Total Financial Stability Resources

Beginning in its April 2009 report, the Panel broadly classified the resources that the federal government has devoted to stabilizing the economy through myriad new programs and initiatives as outlays, loans, or guarantees. With the reductions in funding for certain TARP programs, the Panel calculates the total value of these resources to be over $2.6 trillion. However, this would translate into the ultimate "cost" of the stabilization effort only if: (1) assets do not appreciate; (2) no dividends are received, no warrants are exercised, and no TARP funds are repaid; (3) all loans default and are written off; and (4) all guarantees are exercised and subsequently written off.

With respect to the FDIC and Federal Reserve programs, the risk of loss varies significantly across the programs considered here, as do the mechanisms providing protection for the taxpayer against such risk. As discussed in the Panel's November report, the FDIC assesses a premium of up to 100 basis points on TLGP debt guarantees.[427] In contrast, the Federal Reserve's liquidity programs are generally available only to borrowers with good credit, and the loans are over-collateralized and with recourse to other assets of the borrower. If the assets securing a Federal Reserve loan realize a decline in value greater than the "haircut," the Federal Reserve is able to demand more collateral from the borrower. Similarly, should a borrower default on a recourse loan, the Federal Reserve can turn to the borrower's other assets to make the Federal Reserve whole. In this way, the risk to the taxpayer on recourse loans only materializes if the borrower enters bankruptcy.

[427] November 2009 Oversight Report, *supra* note 6, at 13-27.

Figure 40: Federal Government Financial Stability Effort (as of September 1, 2010)[lix]

Program *(billions of dollars)*	**Treasury (TARP)**	**Federal Reserve**	**FDIC**	**Total**
Total	**$475**	**$1,445.4**	**$697.9**	**$2,618.3**
Outlays[lx]	231.2	1,285.4	188.4	1,705
Loans	24.2	160	0	184.2
Guarantees[lxi]	4.3	0	509.5	513.8
Repaid and Unavailable TARP Funds	215.3	0	0	215.3
AIG[lxii]	**69.8**	**84.7**	**0**	**154.5**
Outlays	[lxiii]69.8	[lxiv]25.7	0	95.5
Loans	0	[lxv]59	0	59
Guarantees	0	0	0	0
Citigroup	**16.5**	**0**	**0**	**16.5**
Outlays	[lxvi]16.5	0	0	16.5
Loans	0	0	0	0
Guarantees	0	0	0	0
Capital Purchase Program (Other)	**32.4**	**0**	**0**	**32.4**
Outlays	[lxvii]32.4	0	0	32.4
Loans	0	0	0	0
Guarantees	0	0	0	0
Capital Assistance Program	**N/A**	**0**	**0**	[lxviii]**N/A**
TALF	**4.3**	**38.7**	**0**	**43**
Outlays	0	0	0	0
Loans	0	[lxx]38.7	0	38.7
Guarantees	[lxix]4.3	0	0	4.3
PPIP (Loans)[lxxi]	**0**	**0**	**0**	**0**
Outlays	0	0	0	0
Loans	0	0	0	0
Guarantees	0	0	0	0
PPIP (Securities)	[lxxii]**22.4**	**0**	**0**	**22.4**
Outlays	7.5	0	0	7.5
Loans	14.9	0	0	14.9
Guarantees	0	0	0	0
Making Home Affordable Program/ Foreclosure Mitigation	**45.6**	**0**	**0**	**45.6**
Outlays	[lxxiii]45.6	0	0	45.6
Loans	0	0	0	0
Guarantees	0	0	0	0
Automotive Industry Financing Program	[lxxiv]**67.1**	**0**	**0**	**67.1**
Outlays	59.0	0	0	59.0
Loans	8.1	0	0	8.1
Guarantees	0	0	0	0
Auto Supplier Support Program	**0.4**	**0**	**0**	**0.4**
Outlays	0	0	0	0
Loans	[lxxv]0.4	0	0	0.4
Guarantees	0	0	0	0

SBA 7(a) Securities Purchase	[lxxvi]**0.4**	**0**	**0**	**0.4**
Outlays	0.4	0	0	0.4
Loans	0	0	0	0
Guarantees	0	0	0	0
Community Development Capital Initiative	[lxxvii]**0.78**	**0**	**0**	**0.78**
Outlays	0	0	0	0
Loans	0.78	0	0	0.78
Guarantees	0	0	0	0
Temporary Liquidity Guarantee Program	**0**	**0**	**509.5**	**509.5**
Outlays	0	0	0	0
Loans	0	0	0	0
Guarantees	0	0	[lxxviii]509.5	509.5
Deposit Insurance Fund	**0**	**0**	**188.4**	**188.4**
Outlays	0	0	[lxxix]188.4	188.4
Loans	0	0	0	0
Guarantees	0	0	0	0
Other Federal Reserve Credit Expansion	**0**	**1,322**	**0**	**1,322**
Outlays	0	[lxxx]1,259.7	0	1,259.7
Loans	0	[lxxxi]62.3	0	62.3
Guarantees	0	0	0	0
Repaid and Unavailable TARP Funds	[lxxxii]**215.3**	**0**	**0**	**215.3**

[lix] All data in this figure is as of September 1, 2010, except for information regarding the FDIC's Temporary Liquidity Guarantee Program (TLGP). That data is as of July 31, 2010.

[lx] The term "outlays" is used here to describe the use of Treasury funds under the TARP, which are broadly classifiable as purchases of debt or equity securities (e.g., debentures, preferred stock, exercised warrants, etc.). These values were calculated using (1) Treasury's actual reported expenditures, and (2) Treasury's anticipated funding levels as estimated by a variety of sources, including Treasury statements and GAO estimates. Anticipated funding levels are set at Treasury's discretion, have changed from initial announcements, and are subject to further change. Outlays used here represent investment and asset purchases – as well as commitments to make investments and asset purchases – and are not the same as budget outlays, which under section 123 of EESA are recorded on a "credit reform" basis.

[lxi] Although many of the guarantees may never be exercised or exercised only partially, the guarantee figures included here represent the federal government's greatest possible financial exposure.

[lxii] AIG received an $85 billion credit facility from the Federal Reserve Bank of New York (FRBNY) (reduced to $60 billion in November 2008, to $35 billion in December 2009, and then to $34 billion in May 2010). A Treasury trust received Series C preferred convertible stock in exchange for the facility and $0.5 million. The Series C shares amount to 79.9 percent ownership of common stock, minus the percentage common shares acquired through warrants. In November 2008, Treasury received a warrant to purchase shares amounting to 2 percent ownership of AIG common stock in connection with its Series D stock purchase (exchanged for Series E noncumulative preferred shares on 4/17/2009). Treasury also received a warrant to purchase 3,000 Series F common shares in May 2009. Warrants for Series D and Series F shares represent 2 percent equity ownership, and would convert Series C shares into 77.9 percent of common stock. However, in May 2009, AIG carried out a 20:1 reverse stock split, which allows warrants held by Treasury to become convertible into 0.1 percent common equity.

Therefore, the total benefit to the Treasury would be a 79.8 percent voting majority in AIG in connection with its ownership of Series C convertible shares. U.S. Government Accountability Office, *Troubled Asset Relief Program: Status of Government Assistance Provided to AIG* (Sept. 2009) (GAO-09-975) (online at www.gao.gov/new.items/d09975.pdf). Additional information was also provided by Treasury in response to Panel inquiry.

[lxiii] This number includes investments under the AIGIP/SSFI Program: a $40 billion investment made on November 25, 2008, and a $30 billion investment made on April 17, 2009 (less a reduction of $165 million representing bonuses paid to AIG Financial Products employees). As of August 31, 2010, AIG had utilized $47.5 billion of the available $69.8 billion under the AIGIP/SSFI. U.S. Department of the Treasury, *Troubled Assets Relief Program Monthly 105(a) Report – August 2010* (Sept. 10, 2010) (online at www.financialstability.gov/docs/105CongressionalReports/August%202010%20105(a)%20Report_final_9%2010%2010.pdf).

[lxiv] As part of the restructuring of the U.S. government's investment in AIG announced on March 2, 2009, the amount available to AIG through the Revolving Credit Facility was reduced by $25 billion in exchange for preferred equity interests in two special purpose vehicles, AIA Aurora LLC and ALICO Holdings LLC. These SPVs were established to hold the common stock of two AIG subsidiaries: American International Assurance Company Ltd. (AIA) and American Life Insurance Company (ALICO). As of September 1, 2010, the book value of the Federal Reserve Bank of New York's holdings in AIA Aurora LLC and ALICO Holdings LLC was $16.5 billion and $9.3 billion in preferred equity, respectively. Hence, the book value of these securities is $25.7 billion, which is reflected in the corresponding table. Federal Reserve Bank of New York, *Factors Affecting Reserve Balances (H.4.1)* (Sept. 1, 2010) (online at www.federalreserve.gov/releases/h41/).

[lxv] This number represents the full $30.0 billion that is available to AIG through its Revolving Credit Facility (RCF) with the FRBNY ($20.1 billion had been drawn down as of September 1, 2010) and the outstanding principal of the loans extended to the Maiden Lane II and III SPVs to buy AIG assets (as of September 1, 2010, $13.9 billion and $15.1 billion, respectively). The maximum amount available through the RCF decreased from $34 billion over the past two months, as a result of the sale of two AIG subsidiaries, as well as the company's sale of CME Group, Inc. common stock. The reduced ceiling also reflects a $3.95 billion repayment to the RCF from proceeds earned from a debt offering by the International Lease Finance Corporation (ILFC), an AIG subsidiary.

The amounts outstanding under the Maiden Lane II and III facilities do not reflect the accrued interest payable to FRBNY. Income from the purchased assets is used to pay down the loans to the SPVs, reducing the taxpayers' exposure to losses over time. Federal Reserve Bank of New York, *Factors Affecting Reserve Balances (H.4.1)* (Sept. 2, 2010) (online at www.federalreserve.gov/releases/h41/); Board of Governors of the Federal Reserve System, *Federal Reserve System Monthly Report on Credit and Liquidity Programs and the Balance Sheet*, at 15 (July 2010) (online at www.federalreserve.gov/monetarypolicy/files/monthlyclbsreport201007.pdf); Board of Governors of the Federal Reserve System, *Federal Reserve System Monthly Report on Credit and Liquidity Programs and the Balance Sheet*, at 16 (Aug. 2010) (online at www.federalreserve.gov/monetarypolicy/files/monthlyclbsreport201008.pdf); American International Group, Inc., *Press Release: AIG Reduces Principal Balance on Federal Reserve Bank of New York Revolving Credit Facility by Nearly $4 Billion* (Aug. 23, 2010) (online at ir.aigcorporate.com/External.File?t=2&item=g7rqBLVLuv81UAmrh20Mp2D/jbuMQX0JWf4oGazjlIxeJq2b5l2D3jdQlccQVaAZCaOmzP8Hukewe3TB4pawgQ==).

[lxvi] This figure represents Treasury's $25 billion investment in Citigroup, minus $8.5 billion applied as a repayment for CPP funding. The amount repaid comes from the $10.5 billion in gross proceeds Treasury received from the sale of 2.6 billion Citigroup common shares. Treasury is currently in the process of selling another 1.5 billion shares of Citigroup common equity. The selling period is expected to end on September 30, 2010. *See* Endnote lii, *supra* (discussing the details of the sales of Citigroup common stock to date). U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf).

[lxvii] This figure represents the $204.9 billion Treasury disbursed under the CPP, minus the $25 billion investment in Citigroup identified above, $147.5 billion in repayments that are in "repaid and unavailable" TARP funds, and losses under the program. This figure does not account for future repayments of CPP investments and dividend payments from CPP investments. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf).

[lxviii] On November 9, 2009, Treasury announced the closing of the CAP and that only one institution, GMAC, was in need of further capital from Treasury. GMAC, however, received further funding through the AIFP. Therefore, the Panel considers CAP unused and closed. U.S. Department of the Treasury, *Treasury Announcement Regarding the Capital Assistance Program* (Nov. 9, 2009) (online at www.financialstability.gov/latest/tg_11092009.html).

[lxix] This figure represents the $4.3 billion adjusted allocation to the TALF SPV. However, as of July 28, 2010, TALF LLC had drawn only $105 million of the available $4.3 billion. Board of Governors of the Federal Reserve System, *Factors Affecting Reserve Balances (H.4.1)* (Sept. 2, 2010) (online at www.federalreserve.gov/releases/h41/); U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf). On June 30, 2010, the Federal Reserve ceased issuing loans collateralized by newly issued CMBS. As of this date, investors had requested a total of $73.3 billion in TALF loans ($13.2 billion in CMBS and $60.1 billion in non-CMBS) and $71 billion in TALF loans had been settled ($12 billion in CMBS and $59 billion in non-CMBS). Earlier, it ended its issues of loans collateralized by other TALF-eligible newly issued and legacy ABS on March 31, 2010. Federal Reserve Bank of New York, *Term Asset-Backed Securities Loan Facility: Terms and Conditions* (online at www.newyorkfed.org/markets/talf_terms.html) (accessed Aug. 10, 2010); *Term Asset-Backed Securities Loan Facility: CMBS* (online at www.newyorkfed.org/markets/cmbs_operations.html) (accessed Aug. 10, 2010); Federal Reserve Bank of New York, *Term Asset-Backed Securities Loan Facility: non-CMBS* (online at www.newyorkfed.org/markets/talf_operations.html) (accessed Aug. 10, 2010).

[lxx] This number is derived from the unofficial 1:10 ratio of the value of Treasury loan guarantees to the value of Federal Reserve loans under the TALF. U.S. Department of the Treasury, *Fact Sheet: Financial Stability Plan* (Feb.10, 2009) (online at www.financialstability.gov/docs/fact-sheet.pdf) (describing the initial $20 billion Treasury contribution tied to $200 billion in Federal Reserve loans and announcing potential expansion to a $100 billion Treasury contribution tied to $1 trillion in Federal Reserve loans). Since there was only $43 billion in TALF loans outstanding when the program closed, Treasury is currently responsible for reimbursing the Federal Reserve Board up to $4.3 billion in losses from these loans. Thus, the Federal Reserve's maximum potential exposure under the TALF is $38.7 billion.

[lxxi] It is unlikely that resources will be expended under the PPIP Legacy Loans Program in its original design as a joint Treasury-FDIC program to purchase troubled assets from solvent banks. *See also* Federal Deposit Insurance Corporation, *FDIC Statement on the Status of the Legacy Loans Program* (June 3, 2009) (online at www.fdic.gov/news/news/press/2009/pr09084.html); Federal Deposit Insurance Corporation, *Legacy Loans Program – Test of Funding Mechanism* (July 31, 2009) (online at www.fdic.gov/news/news/press/2009/pr09131.html). The sales described in these statements do not involve any Treasury participation, and FDIC activity is accounted for here as a component of the FDIC's Deposit Insurance Fund outlays.

[lxxii] This figure represents Treasury's final adjusted investment amount in PPIP. As of September 1, 2010, Treasury reported commitments of $14.9 billion in loans and $7.5 billion in membership interest associated with PPIP. On January 4, 2010, Treasury and one of the nine fund managers, TCW Senior Management Securities Fund, L.P. (TCW), entered into a "Winding-Up and Liquidation Agreement." Treasury's final investment amount in TCW totaled $356 million. Following the liquidation of the fund, Treasury's initial $3.33 billion obligation to TCW was reallocated among the eight remaining funds on March 22, 2010. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf).

[lxxiii] Of the $30.5 billion in TARP funding for HAMP, $28.8 billion has been allocated as of September 1, 2010. However, as of September 14, 2010, only $395.4 million in non-GSE payments has been disbursed under HAMP. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf). Disbursement information provided by Treasury staff in response to a Panel inquiry.

[lxxiv] A substantial portion of the total $81.3 billion in loans extended under the AIFP has since been converted to common equity and preferred shares in restructured companies. $8.1 billion has been retained as first lien debt (with $1 billion committed to old GM and $7.1 billion to Chrysler). This figure ($67.1 billion) represents Treasury's current obligation under the AIFP after repayments and losses. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf).

[lxxv] This figure represents Treasury's total adjusted investment amount in the ASSP. U.S. Department of the Treasury, *Troubled Asset Relief Program Transactions Report for the Period Ending September 1, 2010* (Sept. 3, 2010) (online at financialstability.gov/docs/transaction-reports/9-3-10%20Transactions%20Report%20as%20of%209-1-10.pdf).

[lxxvi] U.S. Department of the Treasury, *Troubled Assets Relief Program (TARP) Monthly 105(a) Report – August 2010* (Sept. 10, 2010) (online atwww.financialstability.gov/docs/105CongressionalReports/August%202010%20105(a)%20Report_final_9%2010%2010.pdf).

[lxxvii] U.S. Department of the Treasury, *Troubled Assets Relief Program (TARP) Monthly 105(a) Report – August 2010* (Sept. 10, 2010) (online at www.financialstability.gov/docs/105CongressionalReports/August%202010%20105(a)%20Report_final_9%2010%2010.pdf).

[lxxviii] This figure represents the current maximum aggregate debt guarantees that could be made under the program, which is a function of the number and size of individual financial institutions participating. $292.6 billion of debt subject to the guarantee is currently outstanding, which represents approximately 57.4 percent of the current cap. Federal Deposit Insurance Corporation, *Monthly Reports on Debt Issuance Under the Temporary Liquidity Guarantee Program: Debt Issuance Under Guarantee Program* (July 31, 2010) (online at www.fdic.gov/regulations/resources/TLGP/total_issuance07-10.html). The FDIC has collected $10.4 billion in fees and surcharges from this program since its inception in the fourth quarter of 2008. Federal Deposit Insurance Corporation, *Monthly Reports Related to the Temporary Liquidity Guarantee Program: Fees Under TLGP Debt Program* (July 2010) (online at www.fdic.gov/regulations/resources/tlgp/fees.html).

[lxxix] This figure represents the FDIC's provision for losses to its deposit insurance fund attributable to bank failures in the third and fourth quarters of 2008, the first, second, third, and fourth quarters of 2009, and the first quarter of 2010. Federal Deposit Insurance Corporation, *Chief Financial Officer's (CFO) Report to the Board: DIF Income Statement (Fourth Quarter 2008)* (online at www.fdic.gov/about/strategic/corporate/cfo_report_4qtr_08/income.html); Federal Deposit Insurance Corporation, *Chief Financial Officer's (CFO) Report to the Board: DIF Income Statement (Third Quarter 2008)* (online at www.fdic.gov/about/strategic/corporate/cfo_report_3rdqtr_08/income.html); Federal Deposit Insurance Corporation, *Chief Financial Officer's (CFO) Report to the Board: DIF Income Statement (First Quarter 2009)* (online at www.fdic.gov/about/strategic/corporate/cfo_report_1stqtr_09/income.html); Federal Deposit Insurance Corporation, *Chief Financial Officer's (CFO) Report to the Board: DIF Income Statement (Second Quarter 2009)* (online at www.fdic.gov/about/strategic/corporate/cfo_report_2ndqtr_09/income.html); Federal Deposit Insurance Corporation, *Chief Financial Officer's (CFO) Report to the Board: DIF Income Statement (Third Quarter 2009)* (online at www.fdic.gov/about/strategic/corporate/cfo_report_3rdqtr_09/income.html); Federal Deposit Insurance Corporation, *Chief Financial Officer's (CFO) Report to the Board: DIF Income Statement (Fourth Quarter 2009)* (online at www.fdic.gov/about/strategic/corporate/cfo_report_4thqtr_09/income.html); Federal Deposit Insurance Corporation, *Chief Financial Officer's (CFO) Report to the Board: DIF Income Statement (First Quarter 2010)*

(online at www.fdic.gov/about/strategic/corporate/cfo_report_1stqtr_10/income.html). This figure includes the FDIC's estimates of its future losses under loss-sharing agreements that it has entered into with banks acquiring assets of insolvent banks during these seven quarters. Under a loss-sharing agreement, as a condition of an acquiring bank's agreement to purchase the assets of an insolvent bank, the FDIC typically agrees to cover 80 percent of an acquiring bank's future losses on an initial portion of these assets and 95 percent of losses of another portion of assets. *See, e.g.*, Federal Deposit Insurance Corporation, *Purchase and Assumption Agreement – Whole Bank, All Deposits – Among FDIC, Receiver of Guaranty Bank, Austin, Texas, Federal Deposit Insurance Corporation and Compass Bank*, at 65-66 (Aug. 21, 2009) (online at www.fdic.gov/bank/individual/failed/guaranty-tx_p_and_a_w_addendum.pdf). In information provided to Panel staff, the FDIC disclosed that there were approximately $132 billion in assets covered under loss-sharing agreements as of December 18, 2009. Furthermore, the FDIC estimates the total cost of a payout under these agreements to be $59.3 billion. Since there is a published loss estimate for these agreements, the Panel continues to reflect them as outlays rather than as guarantees.

[lxxx] Outlays are comprised of the Federal Reserve Mortgage Related Facilities. The Federal Reserve balance sheet accounts for these facilities under Federal agency debt securities and mortgage-backed securities held by the Federal Reserve. Board of Governors of the Federal Reserve System, *Factors Affecting Reserve Balances (H.4.1)* (Sept. 2, 2010) (online at www.federalreserve.gov/releases/h41/) (accessed Sept. 8, 2010). Although the Federal Reserve does not employ the outlays, loans, and guarantees classification, its accounting clearly separates its mortgage-related purchasing programs from its liquidity programs. *See* Board of Governors of the Federal Reserve, *Credit and Liquidity Programs and the Balance Sheet*, at 2 (Nov. 2009) (online at www.federalreserve.gov/monetarypolicy/files/monthlyclbsreport200911.pdf).

On September 7, 2008, Treasury announced the GSE Mortgage Backed Securities Purchase Program (Treasury MBS Purchase Program). The Housing and Economic Recovery Act of 2008 provided Treasury with the authority to purchase Government Sponsored Enterprise (GSE) MBS. Under this program, Treasury purchased approximately $214.4 billion in GSE MBS before the program ended on December 31, 2009. As of August 2010, there was $164.1 billion still outstanding under this program. U.S. Department of the Treasury, *MBS Purchase Program: Portfolio by Month* (online at www.financialstability.gov/docs/August%202010%20Portfolio%20by%20month.pdf) (accessed Sept. 8, 2010). Treasury has received $56.6 billion in principal repayments and $13.2 billion in interest payments from these securities. U.S. Department of the Treasury, *MBS Purchase Program Principal and Interest Received* (online at www.financialstability.gov/docs/August%202010%20MBS%20Principal%20and%20Interest%20Monthly%20Breakout.pdf) (accessed Sept. 8, 2010).

[lxxxi] Federal Reserve Liquidity Facilities classified in this table as loans include primary credit, secondary credit, central bank liquidity swaps, Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility, loans outstanding to Commercial Paper Funding Facility LLC, seasonal credit, term auction credit, the Term Asset-Backed Securities Loan Facility, and loans outstanding to Bear Stearns (Maiden Lane LLC). Board of Governors of the Federal Reserve System, *Factors Affecting Reserve Balances (H.4.1)* (Sept. 2, 2010) (online at www.federalreserve.gov/releases/h41/).

[lxxxii] Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, TARP resources cannot be allocated to programs that were not established prior to June 25, 2010. Also, any TARP funds that have been repaid may not be used to fund additional TARP commitments. *Dodd-Frank Wall Street Reform and Consumer Protection Act*, Pub. L. No. 111-203, at § 1302 (2010).

Section Four: Oversight Activities

The Congressional Oversight Panel was established as part of the Emergency Economic Stabilization Act (EESA) and formed on November 26, 2008. Since then, the Panel has produced 22 oversight reports, as well as a special report on regulatory reform, issued on January 29, 2009, and a special report on farm credit, issued on July 21, 2009.

Upcoming Reports and Hearings

The Panel will release its next oversight report in October on TARP contracting.

The Panel is planning a hearing in Washington on September 22, 2010, to discuss the topic of the October report. The Panel intends to hear testimony from Treasury officials as well as TARP contractors and other financial agents.

Section Five: About the Congressional Oversight Panel

In response to the escalating financial crisis, on October 3, 2008, Congress provided Treasury with the authority to spend $700 billion to stabilize the U.S. economy, preserve home ownership, and promote economic growth. Congress created the Office of Financial Stability (OFS) within Treasury to implement the TARP. At the same time, Congress created the Congressional Oversight Panel to "review the current state of financial markets and the regulatory system." The Panel is empowered to hold hearings, review official data, and write reports on actions taken by Treasury and financial institutions and their effect on the economy. Through regular reports, the Panel must oversee Treasury's actions, assess the impact of spending to stabilize the economy, evaluate market transparency, ensure effective foreclosure mitigation efforts, and guarantee that Treasury's actions are in the best interests of the American people. In addition, Congress instructed the Panel to produce a special report on regulatory reform that analyzes "the current state of the regulatory system and its effectiveness at overseeing the participants in the financial system and protecting consumers." The Panel issued this report in January 2009. Congress subsequently expanded the Panel's mandate by directing it to produce a special report on the availability of credit in the agricultural sector. The report was issued on July 21, 2009.

On November 14, 2008, Senate Majority Leader Harry Reid and the Speaker of the House Nancy Pelosi appointed Richard H. Neiman, Superintendent of Banks for the State of New York, Damon Silvers, Director of Policy and Special Counsel of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), and Elizabeth Warren, Leo Gottlieb Professor of Law at Harvard Law School, to the Panel. With the appointment on November 19, 2008, of Congressman Jeb Hensarling to the Panel by House Minority Leader John Boehner, the Panel had a quorum and met for the first time on November 26, 2008, electing Professor Warren as its chair. On December 16, 2008, Senate Minority Leader Mitch McConnell named Senator John E. Sununu to the Panel. Effective August 10, 2009, Senator Sununu resigned from the Panel, and on August 20, 2009, Senator McConnell announced the appointment of Paul Atkins, former Commissioner of the U.S. Securities and Exchange Commission, to fill the vacant seat. Effective December 9, 2009, Congressman Jeb Hensarling resigned from the Panel and House Minority Leader John Boehner announced the appointment of J. Mark McWatters to fill the vacant seat. Senate Minority Leader Mitch McConnell appointed Kenneth Troske, Sturgill Professor of Economics at the University of Kentucky, to fill the vacancy created by the resignation of Paul Atkins on May 21, 2010.