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The Rescue of the US Auto Industry, Module A: Automotive Bridge Loans[1]

Alexander Nye[2]

Yale Program on Financial Stability Case Study
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Abstract

In 2008, in the midst of the Global Financial Crisis, America's Big Three automakers neared their breaking point. Two of them, General Motors (GM) and Chrysler, asked Congress for funding to prevent uncontrolled bankruptcies. Policymakers realized these uncontrolled bankruptcies would damage the manufacturing sector. Congress considered but failed to pass a framework conditioning short-term financing on the companies' producing acceptable restructuring plans. With the companies warning that they could not survive the coming presidential transition, on December 19, 2008, President George W. Bush announced the Automotive Industry Financing Program (AIFP) under the authority of the Emergency Economic Stability Act (EESA) of 2008, which made up to $17.4 billion available to the two companies. After two extensions to GM, the government would lend a total of $23.8 billion to GM and Chrysler under this program, funding the companies from late 2008 through their mid-2009 bankruptcies (the Bridge Loans). This case discusses these Bridge Loans, which helped the companies survive the presidential transition and begin creating plans to survive bankruptcy.

Keywords: AIFP, auto finance, bridge loan, Chrysler, EESA, General Motors, nonbanks, TARP

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[1] This case is one of eight Yale Program on Financial Stability (YPFS) modules considering the various elements of the government's rescue of the US auto Industry and published in 2022:

- "The Rescue of the US Auto Industry, Module A: Automotive Bridge Loans" by Alexander Nye.
- "The Rescue of the US Auto Industry, Module B: Restructuring General Motors Through Bankruptcy" by Kaleb B. Nygaard.
- "The Rescue of the US Auto Industry, Module C: Restructuring Chrysler Through Bankruptcy" by Alexander Nye.
- "The Rescue of the US Auto Industry, Module D: Emergency Assistance to Ally Financial (formerly GMAC)" by Riki Matsumoto and Kaleb B. Nygaard.
- "The Rescue of the US Auto Industry, Module E: Emergency Assistance for Chrysler Financial" by Alexander Nye.
- "The Rescue of the US Auto Industry, Module F: Auto Supplier Support Program" by Riki Matsumoto.
- "The Rescue of the US Auto Industry, Module G: The Auto Warranty Commitment Program" by Benjamin Henken.
- "The Rescue of the US Auto Industry, Module Z: Overview" by Rosalind Z. Wiggins, Greg Feldberg, Alexander Nye, and Andrew Metrick.

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Automotive Bridge Loans

At a Glance

Summary of Key Terms	
Purpose: To finance the day-to-day operations of Chrysler and General Motors through the first quarter of 2009 (the transition period) while ensuring that the companies begin restructuring themselves	
Announcement date	December 19, 2008
Operational date	December 31, 2008
Expiration date	December 31, 2011, for GM and January 2, 2012, for Chrysler (July 10, 2009 for both at the option of the President's Designee)
Legal authority	Emergency Economic Stabilization Act of 2008 (EESA)
Rate	The greater of three-month LIBOR plus 3%, or 5% plus a default penalty (adds an additional 5%)
Collateral	Senior Liens on all unencumbered assets and junior liens on encumbered assets
Funder	US Department of the Treasury
Participants	General Motors Corporation, Chrysler Holding LLC
Initial commitment	$17.4 billion ($13.4 billion for GM and $4 billion for Chrysler)
Final commitment	$23.8 billion ($19.8 billion for GM and $4 billion for Chrysler)

In 2008, due to the confluence of the financial crisis and years of decline, the Big Three American auto companies—General Motors (GM), Chrysler, and Ford—began to experience significant losses and financing constraints. During the lame duck period of George W. Bush's presidency in late 2008, GM and Chrysler could not find private funding to sustain their operations. Neither of the companies had adequate restructuring plans, and the collapse of the companies would devastate the larger auto industry. Congress did not approve aid to the automakers by winter recess, and it was clear the companies would not survive the coming months without government aid.

The Bush administration determined that the auto companies were eligible for assistance from the $350 billion first tranche of the recently passed Troubled Assets Relief Program (TARP). On December 19, 2008, President Bush announced up to $17.4 billion in Bridge Loans as part of the Automotive Industry Financing Program (AIFP). These Bridge Loans became part of a government rescue of the auto industry, which involved aid to two automotive finance companies, two bankruptcy reorganizations, a warranty guarantee program, aid to auto suppliers, Department of Energy loans for financing the development of fuel-efficient vehicles, "Cash for Clunkers" (a vehicle scrappage program), and a Small Business Administration (SBA) dealer floorplan financing program. Although Ford was also impacted by the financial crisis, it was in a healthier financial position than its peers and chose not to participate in the AIFP. It did, however, participate in a Department of Energy funding program and financial assistance programs such as the Commercial Paper Funding Facility (CPFF).

Many of the terms of the bridge loan agreement closely mirrored those outlined in the Auto Industry Financing and Restructuring Act, which passed the House on December 10, 2008, but failed to pass the Senate.

The Bridge Loans sustained the companies while a comprehensive auto industry restructuring was crafted. They also forced Chrysler and GM to restructure themselves into viable companies and required them to develop and implement long-term viability plans that were evaluated by a “car czar,” a role that ultimately fell to a Presidential Task Force.

Summary Evaluation

In that the borrowers did survive the presidential transition and implemented viability plans, one could argue that the Bridge Loans succeeded. However, the companies did not produce viable plans by the initial deadline. Some observers have questioned whether making the auto companies eligible for TARP went beyond the intent of Congress and whether some of the terms in the loan agreements were effective in protecting taxpayer funds.

There were also criticisms of the government’s design of and rapid exit from the $4 billion bridge loan to Chrysler. Treasury relinquished its claim on 40% of Chrysler Financial’s proceeds for $1.9 billion in May 2010, but some argued that it could have received $600 million more if it had waited until the end of the year (COP 2011, 11).

Automotive Bridge Loans: United States Context 2007–2008	
GDP (SAAR, Nominal GDP in LCU converted to USD)	$14,681.5 billion in 2007 $14,559.5 billion in 2008
GDP per capita (SAAR, Nominal GDP in LCU converted to USD)	$47,976 in 2007 $48,383 in 2008
Sovereign credit rating (5-year senior debt)	As of Q4, 2007: Fitch: AAA Moody's: Aaa S&P: AAA As of Q4, 2008: Fitch: AAA Moody's: Aaa S&P: AAA
Size of banking system	$9,231.7 billion in total assets in 2007 $9,938.3 billion in total assets in 2008
Size of banking system as a percentage of GDP	62.9% in 2007 68.3% in 2008
Size of banking system as a percentage of financial system	Banking system assets equal to 29.0% of financial system in 2007 Banking system assets equal to 30.5% of financial system in 2008
5-bank concentration of banking system	43.9% of total banking assets in 2007 44.9% of total banking assets in 2008
Foreign involvement in banking system	22% of total banking assets in 2007 18% of total banking assets in 2008
Government ownership of banking system	Data not available for 2007 0% of banks owned by the state in 2008
Existence of deposit insurance	100% insurance on deposits up to $100,000 in 2007 100% insurance on deposits up to $250,000 in 2008
Sources: Federal Deposit Insurance Corporation; World Bank Bank Regulation and Supervision Survey; World Bank Global Financial Development Database; Bloomberg.	

I. Overview

Background

Rick Wagoner, CEO of General Motors (GM), the largest of America's Big Three auto companies (GM, Ford, and Chrysler), first requested emergency funding from the government on October 13, 2008, a few weeks before the presidential election. However, the Big Three as a whole had been in dire straits for several years before the financial crisis (Klier and Rubenstein 2012, 35–36; Paulson 2010, 361). This was largely due to a combination of declining market share, miscalculated labor arrangements, slim profit margins, and reliance on gas-guzzling vehicles for profit. These factors left the industry vulnerable (COP 2011, 9-11; Canis et al. 2009, 1–2). The Big Three had been losing market share in the passenger car market for more than 20 years and had endured these losses by focusing on trucks and SUVs, which were more profitable on a per-unit basis (Klier and Rubenstein 2012, 35–36). However, the Big Three even began losing market share in the truck and SUV segment in the 2000s, sending their overall market share plummeting more than 15% between 2000 and 2008 (Klier and Rubenstein 2012, 35–36). Hurricanes in 2004–2005 exacerbated already high and volatile fuel prices, further damaging demand for American cars (Canis et al. 2009, 35). Correspondingly, automotive sales for the Big Three declined about 25% between January and October 2008 (BEA 2019). Chrysler and General Motors, two of the Big Three, found their cash reserves depleted by combined 2008 losses of $39 billion (GAO 2009, 5). Chrysler and General Motors faced an extremely weakened competitive position, and policymakers believed that achieving long-term viability would require fundamental changes to their products, their organizational structure, and their operations (Rattner 2010, 14–21, 75–81, 91–92, 182–200).

Chrysler and GM's treasuries could no longer finance some of their most basic day-to-day operations (Klier and Rubenstein 2012, 36–37; Goolsbee and Krueger 2015, 7; Canis et al. 2009, 7–8).[3] Restructuring via bankruptcy was not considered an option because of the companies' lack of preparation for the administrative challenges of Chapter 11 and because the failure of the companies would have major repercussions (Rattner 2010, 59; Klier and Rubenstein 2013, 146–147). The failure of GM and Chrysler was expected to cost approximately 1.1 million jobs and the fallout from a failed restructuring would have likely

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[3] Unlike Chrysler and GM, Ford had shored up its cash reserves by borrowing $23.5 billion from the private sector before the financial crisis (in 2006) and initiated a massive restructuring program (Klier and Rubenstein 2012, 3637). Ford was also damaged by the financial crisis, but Ford was extremely hesitant to participate in the TARP automotive industry restructuring programs. The Ford family was worried about a potential dilution of their stake in the company coming as a result of their participation in these programs. However, Ford did participate in other government programs during this time, the Commercial Paper Funding Facility (CPFF), the Term Asset-Backed Securities Loan Facility (TALF), and the Department of Energy's Advanced Technology Vehicle Manufacturing (ATVM) Loan Program in the 20082010 period (Adrian and Schaumburg 2012; Canis and Yacobucci 2015; Federal Reserve 2009).

"create[d] more panic, and it would [have] crush[ed] auto suppliers and other carmakers" (Paulson 2010, 424; COP 2011, 11).

After the passage of the Emergency Economic Stabilization Act of 2008 (EESA) on October 3, 2008 (which created the Troubled Assets Relief Program [TARP]), the government gained access to $350 billion to support the financial sector (Canis et al. 2009, 9). However, the Bush administration was hesitant to use TARP funds for an auto bailout (Rogers 2008a). On November 17, Senator Harry Reid introduced a bill that would have provided up to $25 billion to fund bridge loans to the auto companies using some of the money allocated to TARP, but the Bush administration and many members of Congress opposed the effort (Canis et al. 2009, 42). It failed to progress beyond some introductory remarks in the Senate (Senate 2008.).

Other proposals emanating from Congress also failed. The most notable were the Auto Industry Financing and Restructuring Act of 2008 (AIFRA) and the request by various members of Congress for intervention by the Federal Reserve. The AIFRA would have financed a bailout by reallocating the funds appropriated to a Department of Energy loan program under the Energy Independence and Security Act of 2007. It was passed in the House but failed to pass in the Senate (Canis et al. 2009, 12).[4] Federal Reserve Chairman Ben Bernanke all but eliminated the possibility of Fed participation in an auto industry bailout owing to the companies' likely inadequate collateral (Federal Reserve 2009; Rogers 2008b).

With action by the Fed and Congress off the table, it became clear that taking executive action was the only solution available to the Bush administration for both keeping the auto companies alive for the remainder of the presidential transition period and putting them on the path to restructuring (Paulson 2010, 416–427).

One day after AIFRA failed, on December 12, 2008, the Bush administration began to publicly reverse course regarding its position on the use of TARP funds for an auto bailout (Canis et al. 2009, 9; Paulson 2010, 423–427). On December 19, 2008, President Bush announced $17.4 billion in TARP-funded loans (the Bridge Loans) to GM and Chrysler, conditioned on a number of restructuring and burden-sharing conditions (White House 2008). Then, on December 23, 2008, after consulting with Fed Chairman Bernanke, Treasury Secretary Henry M. Paulson, Jr., submitted to Congress an official determination (in line with a provision of EESA that allowed for executive branch designation of "troubled assets"), legitimizing TARP support for the auto industry (COP 2009b, 71–72; Secretary of Treasury 2008, PDF p. 1–3).

[4] Ford and several upstart automotive companies (for example, Tesla and Fisker) eventually received funding from the Department of Energy loan program starting in 2009. The US government lent Ford approximately $5.9 billion under this program (Canis and Yacobucci 2015, 13)

Program Description

Automobile Industry Financing Program (AIFP)

The Automobile Industry Financing Program's (AIFP)[5] Loan and Security Agreements (the Bridge Loans) were announced on December 19, 2008 (White House 2008). The Bridge Loans were designed as a stopgap measure to serve two purposes. First, to ensure that GM and Chrysler survived the presidential transition through the first quarter of 2009 (Paulson 2010, 415–428). Second, to make sure that the companies prepared themselves for bankruptcy and began restructuring themselves into viable companies in the long term (Paulson 2010, 427–428).

Chrysler Loan Terms

Treasury advanced secured loans to Chrysler at below-market rates without initiation or commitment fees (Brunel and Hufbauer 2009, 7). The loans bore the larger of two interest rates: (1) three-month LIBOR plus 3% or (2) 5%, with a penalty rate in cases of default (Chrysler and Treasury 2009, PDF pp. 28, 143–145). The loans were for a period of three years but subject to early termination in the event of default or if the companies failed to demonstrate a viable restructuring plan by a deadline, as described below (Chrysler and Treasury 2009, PDF pp. 8, 25, 60) Chrysler's maximum loan amount was $4 billion (Chrysler and Treasury 2009, PDF p. 143). The loan to Chrysler provided the company with the entirety of the promised $4 billion at the closing of its loan on January 2, 2009 (Treasury 2018). The company was to use the proceeds from the loans only for general corporate and working capital purposes (Chrysler and Treasury 2009, PDF p. 147).

Chrysler Collateral Requirements

Each Treasury Bridge Loan to Chrysler was also secured through a number of senior liens on all of Chrysler's unencumbered assets and junior liens on all of Chrysler's encumbered assets "to the extent legally and contractually permissible" (Chrysler and Treasury 2009, PDF p. 34–35). Most of Chrysler's assets were already encumbered, so this protection was limited (Canis et al. 2009, PDF pp. 57–58; GAO 2009, 20). Treasury also received first priority senior liens on a portion of Chrysler's encumbered real estate and parts inventory in connection with a term in the Bridge Loan that made lending contingent on Chrysler's creditors pledging senior liens on those assets to Treasury.

Chrysler Restructuring Plan Requirement

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[5] The Bridge Loans for Chrysler and GM were announced before the details of the AIFP, which would become the overall support program for assistance to the auto industry, were published. When published, on December 31, 2008, the details of the AIFP described the broad parameters that the government would reference in determining assistance to the industry. By then, the first GM loan had already been executed and the term sheets for both commitments had been available for at least a week. Although proceeding the published AIFP guidelines, the Bridge Loans do appear to largely comply with them.

The Bridge Loans to Chrysler required it to submit a Restructuring Plan to the government by February 17, 2009, outlining how the company intended to achieve viability (Chrysler and Treasury 2009, PDF pp. 59–60). On the same date, the company also had to submit signed term sheets certifying progress on securing concessions from the United Auto Workers (UAW) union and public debt holders.

The Restructuring Plan also had to detail monthly actions through 2010, monthly milestones through 2010, yearly actions from 2011 to 2014, and yearly milestones from 2011 to 2014. The company had to submit a Restructuring Plan Report by the March 31, 2009, Certification Deadline, which would document compliance with the Bridge Loans and the companies' progress on executing the Restructuring Plan. The Restructuring Plan Report recorded progress on implementing the Restructuring Plan as well as compliance with the various burden-sharing conditions imposed by the Bridge Loans.

Throughout the term of the Bridge Loans, Chrysler's progress on the Restructuring Plan, the Restructuring Report, and compliance would be administered by the President's Designee, "one or more officers from the Executive Branch appointed by the President to monitor and oversee the restructuring of the US domestic automobile industry" (Chrysler and Treasury 2009, PDF p. 68). If the President did not appoint a Designee, the role fell to the Secretary of Treasury by default.[6] This individual would also operate as a senior administrator with authority to approve bonuses to senior employees, reject transactions involving over $100 million, approve material changes to the company expense policy, receive required notices from the borrower, and generally conduct oversight (Chrysler and Treasury 2009, PDF p. 19, 58-61).[7]

Additional Consideration, Oversight, and DIP Conversion Terms

Under the Bridge Loan to Chrysler, Treasury was to receive additional promissory notes for 6.67% of the $4 billion that Treasury was authorized to disburse to Chrysler (these promissory notes were called Additional Notes) (Chrysler and Treasury 2009, PDF p. 142-145). These Additional Notes carried the same interest rate and terms as the loan (Chrysler and Treasury 2009, PDF pp. 153–155).

To maintain Treasury oversight, Chrysler had to provide financial and operating disclosures to Treasury at certain dates to certify compliance with the terms of the loan. These included weekly "13-week rolling cash forecasts" as well as biweekly reports showing current and future liquidity needs or upcoming major business changes (Chrysler and Treasury 2009, PDF pp. 54–56).

[6] President Bush did not appoint a Designee and thus Secretary Paulson assumed these duties for the balance of the administration. President Barack Obama choose to appoint the Presidential Task Force on the Auto industry as the Designee, as further discussed in Key Design Decision 14 herein. In this paper, references to the President's Designee refer to the respective Designee for the applicable time period (Secretary Paulson from December 30, 2008, to January 20, 2009, and Secretary Timothy F. Geithner from January 26, 2009, to January 25, 2013 [Chrysler and Treasury 2009, PDF p. 22]).

[7] See, for example, Section 1.01 of GM and Treasury 2008, Permitted Investments.

The Bridge Loans included the exclusive right to convert a Bridge Loan into a debtor-in-possession (DIP) loan in the event of a bankruptcy filing (Chrysler and Treasury 2009, PDF pp. 66–67). Since a bankruptcy filing by either of the companies would threaten the taxpayer funds, the conversion provision would grant the government a senior priority in any proceeding.[8] The Bridge Loans also included a number of standard contract terms common in secured loans. These included terms laying out procedures for optional and mandatory loan prepayments and a restriction on the payment of dividends (Chrysler and Treasury 2009, PDF pp. 29, 146, 150).

Sacrifices in the Chrysler Loan

The terms of each Bridge Loan imposed executive compensation restrictions, debt reduction requirements, and concessions from the UAW. Executives at Chrysler ultimately became subject to various types of concessions, including (but not limited to) public displays of concessions (for example, corporate aircraft divestment) and executive compensation restrictions similar to those in other EESA programs (Chrysler and Treasury 2009, PDF pp. 58-61).

The Bridge Loans committed Chrysler to make its best efforts to reduce its unsecured public debt by at least two-thirds (Chrysler and Treasury 2009, PDF p. 60). The concessions from UAW workers involved significant labor contract modifications and the conversion by the UAW's Voluntary Employee Benefits Association (VEBA) of half of its Chrysler debt into equity (Chrysler and Treasury 2009, PDF pp. 8, 14, 24–26, 60).

GM Loan Terms

The terms of the GM Bridge Loan were largely the same as those offered to Chrysler with some exceptions. They dealt with the amount of funding available, the timing of funding, how the loan was secured, and the protection of taxpayer funds differently.

The documents executing the loans to GM initially set the maximum loan amount at $13.4 billion to be spread across three advances (Canis et al. 2009, 13–14; GM and Treasury 2008, PDF pp. 258–262). Of the total, $4 billion would be advanced immediately after the execution of the Loan and Security Agreement on December 31, 2008 (similar to Chrysler's assistance under the Bridge Loans); $5.4 billion would be advanced on January 16, 2009; and $4 billion would be advanced on February 17, 2009 (contingent on the Secretary of Treasury's having sufficient TARP funds available) (GM and Treasury 2008, PDF pp. 258–262).

GM's Bridge Loan had similarly broad terms to Chrysler's, placing senior liens on all unencumbered assets and junior liens on all unencumbered assets (with the exception of

[8] Debtor-in-possession financing, better known as DIP financing, "provides the debtor-in-possession (or the trustee in a Chapter 7 case) with sufficient funds to meet continuing expenses while the business is either reorganized or liquidated. Generally, DIP financing is a post-petition obligation that enjoys a high priority for being repaid from the bankruptcy estate or under the reorganization plan. In contrast, the government loans were being made while the companies were still operating outside of bankruptcy protection, and the loans were pre-petition debts (Canis et al. 2009, 54).

some joint ventures and subsidiaries, which were not included as collateral) (GM and Treasury 2008, PDF pp. 56–57, 80–81; Consulate General Shanghai 2008). As GM had many more unencumbered assets than Chrysler did, Treasury was able to secure senior liens on a number of different assets owned by GM ("cash, inventory, real property, equity in domestic and foreign subsidiaries, and intellectual property") (COP 2009b, PDF p. 29). Treasury also received a secured interest in GM's associated finance company, GMAC LLC through terms making lending contingent on the other owners of GMAC LLC pledging that interest to Treasury (GAO 2009, 20–23; GM and Treasury 2008, PDF pp. 258–265).

The Bridge Loan to GM also contained additional terms intended to protect the taxpayers' investment. The loan entitled Treasury to receive warrants worth up to 19.99% of its commitment (GM and Treasury 2008, PDF p. 1). In addition to the capped warrants, Treasury received Additional Notes along terms consistent with those of the Chrysler Bridge Loan as described above and shown in Figures 1 and 2 (GM and Treasury 2008, PDF p. 2).[9] GM issued Additional Notes for 6.67% of the initial $13.4 billion commitment less one-third the value of the warrants already issued (GM and Treasury 2008, PDF p. 2).[10]

The Bridge Loans also included a prohibition on the issuance of stock that would dilute the Treasury's stake upon the exercise of the warrants.

Figure 1: Major Amendments and Advances to GM under the Bridge Loans

Date Implemented	Governing Document	Type	Amounts Expended (USD)	Date Terminated
12/31/2008	Execution of Loan and Security Agreement (LSA)	Initial Note/Advance	$13.4 billion	07/10/2009 (Converted to stake in New GM)
03/31/2009	1st Amendment to Bridge Loan – extending the Certification Deadline to June 1, 2009, and adjusting related dates (GM and Treasury 2008, PDF p. 295)		N/A	
04/22/2009	2nd Amendment to LSA – providing for the working capital advance (GM and Treasury 2008, PDF p. 301)	Working Capital Advance	$2 billion	07/10/2009 (Converted to stake in New GM)
05/20/2009	3rd Amendment to LSA – providing for the working capital advance (GM and Treasury 2008, PDF p. 319)	Working Capital Advance	$4 billion	07/10/2009 (Converted to stake in New GM)

[10] GM issued Additional Notes as the commitment was increased to $15.4 billion and later to $19.8 billion (GM and Treasury 2008, PDF pp. 300–321).

05/27/2009	4th Amendment to LSA – providing for the warranty advance for the purpose of capitalizing GM Warranty and entering into the related Administration Agreement. Increased the maximum loan amount. (Expires 36 months after warranty program expires) (GM and Treasury 2008, PDF p. 325)	Warranty Advance	$360.6 million	Warranty Advance Maturity Date

Source: Treasury 2018.

Figure 2: Advances to Chrysler under the Bridge Loans

Date Implemented	Loan	Type	Amounts Expended (USD)	Date Terminated
01/02/2009	Secured Loan to Chrysler	Bridge Loan	$4 billion	06/10/2009 ($ 500 million transferred to New Chrysler) 05/14/2010 (Remaining $3.5 billion principal and interest settled for $1.9 billion)

Source: Treasury 2018.

Outcomes

Both GM and Chrysler were able to continue operating through the first quarter of 2009. Under the Bridge Loans, Treasury lent a total of $23.8 billion to the two automakers between December 2008 and July 2009, $4 billion to Chrysler and $19.8 billion to GM (Treasury 2018). The role of the President's Designee was filled by the Presidential Task Force on the Auto Industry (the Task Force), which was created on February 16, 2009 (Knowledge@Wharton 2010; Klier and Rubenstein 2012, 38–39). The day-to-day administration of the loans was led by an auto team within Treasury (COP 2009b, 10).

On March 30, 2009, Treasury released Determinations of Viability, which stated that neither company's plan as submitted by the February 17 deadline was "viable as currently structured" and that the government could not justify "a substantial new investment" in either company"; but revised plans could make the companies viable (Treasury 2009a; Treasury 2009b). Each company was asked to revise, resubmit, and achieve progress on its targets in a set time to receive further government funding (Treasury 2009b; Treasury 2009a). In response to these Determinations, Treasury offered to amend the Bridge Loans to extend the deadline that would terminate the loans and to provide the companies with working capital while they each produced a viable business plan (Treasury 2009d, 1).

Details of Chrysler Viability Plan Determination

The government announced that Chrysler would be given a 30-day extension of its Certification Deadline, to May 1, 2009, through an amendment to its loan that offered up to $500 million in working capital. None of this was drawn (GAO 2009, 13; Treasury 2009d, 1). The same amendment incorporated changes to EESA enacted by the American Recovery and Reinvestment Act of 2009 (ARRA)[11] and removed the requirement that Chrysler reduce its unsecured public indebtedness by two-thirds. However, the government, in its March 30 Viability Determination document, argued that a potential partnership with Fiat that could make Chrysler's plan viable (Treasury 2009a, 5). If it succeeded in securing such a partnership deal with Fiat (which had been proposed early in 2009), negotiating a haircut with its secured creditors, and meeting other stated criteria, it would be able to access up to $6 billion more in government funds for restructuring and possibly avoid bankruptcy (COP 2009b, 13). If Chrysler failed to seal such a deal, the Bridge Loans would be terminated (COP 2009b, 13).

During April, Chrysler successfully executed a satisfactory partnership arrangement with Fiat but failed to reach an agreement with its secured creditors (COP 2009a, PDF p. 48). With $6.9 billion in secured debt weighing on the company, Chrysler began to restructure itself through a Chapter 11 bankruptcy on April 30, 2009 (King and McCracken 2009). The same day, Treasury formally accepted Chrysler's Restructuring Plan as viable (OMB 2009, PDF p. 40).

Details of GM Viability Plan Determination

In its March 30, 2009, Determination of Viability, the government requested that GM develop and implement a "more aggressive" plan to include "leadership changes" by "working closely with the Task Force" (COP 2009b, 11; Treasury 2009d, 1). GM partially responded to the Determination of Viability by firing its Chairman and CEO in favor of two appointees suggested by Treasury (Rattner 2010, 112–114, 133–137).

GM was given a 60-day extension of its Certification Deadline, to June 1, 2009, and 60 days of working capital through amendments to the Bridge Loans. The amount of additional funds made available to GM was not specified in the early press release. It would eventually amount to $6 billion of working capital disbursed in a $2 billion advance on April 22, 2009, and a $4 billion advance on May 20, 2009 (GAO 2009, 2; Treasury 2018).

GM ultimately underwent a successful restructuring with additional government funds after submitting an acceptable plan in June 2009 (OMB 2009, 71).

Effect of Bankruptcies

Treasury sustained losses on the bridge loans during the bankruptcies of General Motors and Chrysler. Treasury did two things that limited losses on the Chrysler Bridge Loans. In July

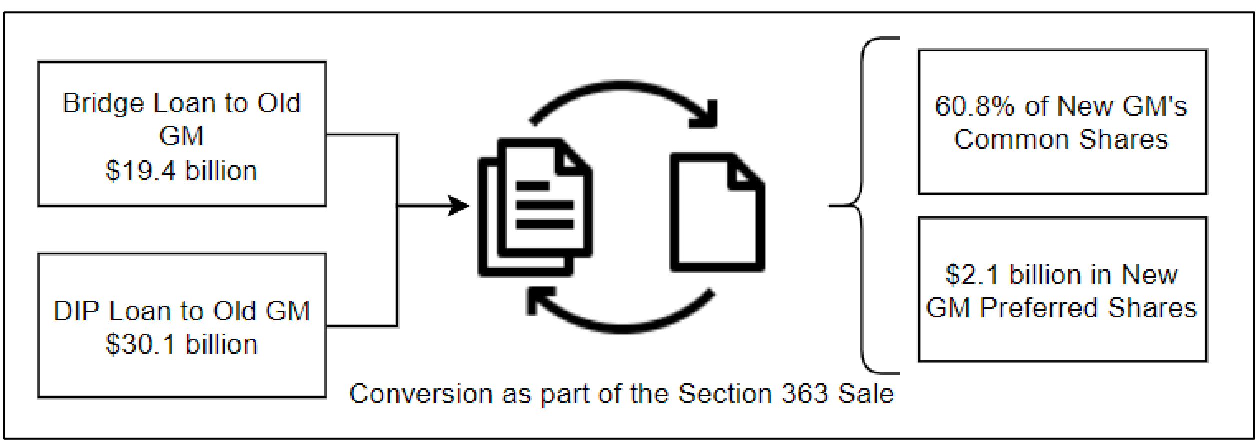
[11] ARRA was the economic stimulus bill passed on February 17, 2009.

2009, the Treasury and Chrysler amended its Bridge Loan documents as part of a plan to transition Chrysler's auto-financing partnership from Chrysler Financial to GMAC (Chrysler and Treasury 2009, PDF p. 383–401). The amendment required Chrysler to pay Treasury 40% of any distributions Chrysler Holding received from its stake in Chrysler Financial, including the first $1.375 billion (Chrysler and Treasury 2009, PDF p. 383–401). Treasury also transferred $500 million of Chrysler's $4 billion obligation under the Bridge Loans to Chrysler's post-bankruptcy organization (New Chrysler) as part of its post-bankruptcy support of the company. Treasury would have lost $1.6 billion plus interest on the $4 billion loan to Chrysler, but $500 million of the loan was transferred to New Chrysler and subsequently repaid (Treasury 2018). In late spring 2010, Cerberus offered Treasury $1.9 billion to settle Chrysler Holding's debts and facilitate Treasury's exit from its potential 40% interest in Chrysler Financial's proceeds (COP 2011, 16). Cerberus was a private equity company which had bought Chrysler from its previous owner, Daimler-Chrysler, in 2007. Chrysler Holding still owed Treasury $3.5 billion under the Bridge Loans and Treasury wished to exit Chrysler Holding quickly, hoping to recoup some revenues for the taxpayers (COP 2011, 16). Treasury subsequently accepted the offer on May 17, 2010 (COP 2011, 16).

On December 21, 2010, TD Bank announced that it would buy Chrysler Financial from Cerberus for about $6.3 billion, which would have resulted in Treasury's receiving $2.5 billion if it had retained its interests in Chrysler Financial, $0.6 billion more than it received from Cerberus earlier in the year (COP 2011, 16-17). Chrysler Financial was rebranded as TD Auto Finance and as of 2019 has continued operating (TD Auto Finance 2015).

It is difficult to determine Treasury's loss on the $19.8 billion in Bridge Loans to GM, as Treasury put the Bridge Loans and DIP financing for GM together when they converted them into equity in New GM (Treasury 2018). While Treasury received $2.1 billion in preferred shares and 60.8% of New GM's common shares when they converted the two loans, it is not clear what portion of the preferred and common shares were allocated to the value of the Bridge Loans. (See Figure 3.) However, the government sold the last of its GM shares and exited its investment in GM on December 9, 2013. It recovered $39.7 billion of its total $51.0 billion investment in the company for a loss of $11.3 Billion.

Figure 3-The Government's Ownership of GM



Source: Treasury 2018.

II. Key Design Decisions

1. Legal Authority: The Bridge Loans were authorized under the TARP.

The Bridge Loans were authorized under EESA as part of the AIFP, which was authorized under the TARP. Although the Bush administration initially argued that EESA did not give it the authority to use TARP funds for aid to the automotive industry, failure to pass a legislative solution forced it to pivot (Canis et al. 2009, 9). On December 23, 2008, Secretary Paulson relied on Sections 101(a)(1), 3(5), and 3(9)(B) of EESA to send an official determination to Congress (Secretary of Treasury 2008). This determination defined "certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles" as "financial institutions" pursuant to EESA and further defined their assets as "troubled assets" eligible for purchase with TARP funds to promote financial stability (Secretary of Treasury 2008).

During the legal battles associated with GM and Chrysler's 2009 bankruptcies, the government had to further justify Secretary Paulson's determination as being in line with the intentions of Congress in passing TARP (COP 2009b, 74–76). In one such instance, the government argued that there was "a certain connection between the automotive companies' financing entities and the automotive companies themselves that permits the use of TARP funds to support the automotive companies, thereby supporting the companies' financial divisions" (COP 2009b, 74–76). The Congressional Oversight Panel discussed the validity of the Treasury's arguments and concluded that the issue "may never be answered with any finality" because it had not been brought to any court for adjudication (COP 2009b, 79).

The Secretary of Treasury did not mention the potential impact of a GM and/or Chrysler collapse on public finances. However, two economic advisors to the Obama administration later said that a Chapter 7 bankruptcy by either company would have transferred billions in liabilities to the government's Pension Benefit Guarantee Corporation (PBGC), straining its resources, threatening the economic security of thousands of retirees, and probably demanding another taxpayer bailout (Goolsbee and Krueger 2015, 10).

2. The bridge loans were part of a multi-faceted program to assist Chrysler and GM.

Under the auspices of the AIFP, the government would ultimately provide funding to not only the auto manufacturers but also to other related stakeholders, such as suppliers and customers. Because of the interdependence of companies in the industry, such aid was thought necessary to ensure the restructuring plans and survival of the manufacturers. Assistance was provided to suppliers, to finance companies to maintain financing for new car purchases, and to special purpose vehicles that guaranteed warranties on new cars. The government also helped the two companies restructure using the bankruptcy code, committing billions of dollars in debtor-in-possession and post-petition financing (Klier and Rubenstein 2013, 148150).

3. Treasury argued that the program focused on companies whose disruption could have a negative effect on financial stability.

Although AIFP was the formal program authorized by and receiving funding under EESA to assist the auto industry with TARP funds, the program itself served more as a line item that could encompass Treasury's various loans and investments in the auto industry within TARP documentation. The AIFP appeared on the Treasury website weeks after the Bridge Loans were signed.

Treasury argued that the companies it supported through the AIFP were systemically important. The overall objective of the AIFP as stated in the program guidelines was: "…to prevent a significant disruption of the American automotive industry that poses a systemic risk to financial market stability and will have a negative effect on the real economy of the United States" (Treasury 2014). Treasury said that it had determined eligibility for the AIFP, and the Bridge Loans put forward under it, on a case-by-case basis that took several factors into account (Treasury 2014), including:

- "The importance of the institution to production by, or financing of, the American automotive industry;
- "Whether a major disruption of the institution's operations would likely have a materially adverse effect on employment and thereby produce negative effects on overall economic performance;
- "Whether the institution is sufficiently important to the nation's financial and economic system that a major disruption of its operations would, with a high probability, cause major disruptions to credit markets and significantly increase uncertainty or losses of confidence, thereby materially weakening overall economic performance; and
- "The extent and probability of the institution's ability to access alternative sources of capital and liquidity, whether from the private sector or other sources of US government funds" (Treasury 2014).

4. The Bridge Loans served to sustain GM and Chrysler through the presidential transition and forced them to make long-term viability plans.

The Bridge Loans served two purposes. The first was to ensure the survival of GM and Chrysler through the end of the Bush administration (Paulson 2010, 415–418). The officials designing the Bridge Loans thought that the transition period would be "a barbarically long time to be without adequate resources" and that GM in particular was likely to fail by the end of 2008 without funding assistance from the government since it was experiencing critical difficulty accessing market funding (Paulson 2010, 415–418).

The second purpose was to force the companies to develop sufficient plans for achieving long-term viability, a concept directly embodied in the guidelines: "The program will require steps be taken by participating firms to implement plans that achieve long-term viability."

The Paulson Treasury contemplated survival only as it was accompanied by major restructuring (Paulson 2010, 428).

Achieving long-term viability, however, was complicated by the fact that Chrysler and GM were not just having liquidity problems. GM was technically insolvent; Chrysler may have been as well, but as a private company it was not required to publish its financial statements (Vlasic and Wayne 2008; GM 2009, 140). Companies facing insolvency in ordinary times would try to raise capital and reorganize through the Bankruptcy Code. However, during the financial crisis the two companies lacked the financing and the time for a conventional restructuring (Paulson 2010, 421–424). They would have probably failed to reorganize through a Chapter 11 bankruptcy and found themselves liquidated in a Chapter 7 bankruptcy (Klier and Rubenstein 2013, 147).[12] Even if the companies managed to survive bankruptcy, an expedited bankruptcy would have been complicated by negotiations among the thousands of GM and Chrysler creditors, counterparties, and labor (across multiple countries). It would certainly take longer than the couple months left in the Bush administration (Rattner 2010, 59, 62, 107; Goolsbee and Krueger 2015, 9).

Figure 4: Restructuring Plan Principles

Enable "the Borrower and its Subsidiaries to develop a viable and competitive business that minimizes adverse effects on the environment"	Enhance "the ability and the capacity of the Borrower and its Subsidiaries to pursue the timely and aggressive production of energy-efficient advanced technology vehicles"	**Preserve and promote "the jobs of American workers employed directly by the Borrower and its Subsidiaries and in related industries"[13]**	Safeguard "the ability of the Borrower and its Subsidiaries to provide retirement and health care benefits for their retirees and their dependents"	Stimulate "manufacturing and sales of automobiles produced by the Borrower and its Subsidiaries"

Sources: GM and Treasury 2008, PDF p. 52; Chrysler and Treasury 2009, PDF p. 6.

Because officials were concerned that they "would not be around to oversee [...] changes" at the two companies, the Bridge Loans had to "put the automakers on a path to reorganization through bankruptcy proceedings," which required intricate restructuring plans to succeed (Paulson 2010, 428429).[14] These restructuring plans were to be based around five principles (Figure 4). The Paulson Treasury (and later the Geithner Treasury) knew that GM and

[12] There was also some skepticism as to whether any automaker, no matter their previous strength, would be able to survive a bankruptcy (Rattner 2010). A major reason for the skepticism was the belief that consumers wouldn't buy vehicles from a bankrupt company out of concern that their warranties would not be honored (Rattner 2010).

[13] Boldface is used here to indicate the fact that policymakers emphasized this principle.

[14] Although sources indicate that officials contemplated using bankruptcy as a tool as early as late December 2008 when the Bridge Loans were put in place, this term was not included in official announcements about the AIFP until March 31, 2009 (Paulson 2010, 421–428; Treasury 2009d, 1). This may indicate the willingness to avoid bankruptcy if possible; however, given the market conditions and the conditions of the companies this appeared a limited possibility (Krolicki 2009).

Chrysler were having difficulty producing realistic plans and might not do so voluntarily (Rattner 2010, 27–32).

On March 30, 2009, Treasury determined that the companies' submitted plans were not viable and began directly collaborating with them to produce new ones (Treasury 2009a; Treasury Department 2009b). The modified plans were ultimately approved by the government and carried the companies through Chapter 11.

5. The Bridge Loans were administered by Treasury.

As a part of the AIFP, which itself was part of TARP, the Bridge Loans were administered by a team in Treasury's Office of Financial Stability (Treasury 2014). Treasury's auto team drew upon the few automobile industry experts in the federal government but was largely composed of restructuring and bankruptcy experts. The team was "was notable for not including any individual with close ties to the auto industry" (Klier and Rubenstein 2012, 39). The primary reason for this seems to be that the auto rescue was considered a private-equity-style restructuring deal, which tends to rely on non-sectoral financial and bankruptcy expertise (Rattner 2010).

6. The loans had three-year terms but included significant provisions that would trigger early maturation.

The Bridge Loans were scheduled to mature at the earlier of the expiration date, which was in approximately three years unless other designated events occurred sooner: the occurrence of certain standard acts of default at the Lender's option such as any "Change of Control [occurring] without the prior consent of" Treasury, or the President's Designee failed to issue a Plan Completion Certification (PCC) after their respective closing dates of December 30, 2011, and January 2, 2012 (Chrysler and Treasury 2009, PDF p. 143; GM and Treasury 2008, PDF pp. 112, 258). The loans tied their maturity to each company's restructuring progress.

Each loan would mature three years after execution if the President's Designee signaled acceptance of the company's viability plan by issuing a PCC by the March 31, 2009, deadline or any permitted extension (GM and Treasury 2008, PDF pp. 67, 71, 106; Chrysler and Treasury 2009, PDF pp. 21, 25, 60). However, the Bridge Loans would terminate on April 30 if the stakeholders could not reach an agreement by March 31. In that case, a company would be obliged to repay all advances and any interest and fees due under the agreement (GM and Treasury 2008, PDF pp. 67, 71, 74, 106; Chrysler and Treasury 2009, PDF pp. 21, 25, 60). This was provision that could exert extra pressure on the stakeholders to achieve a compromise.

The Fact Sheet accompanying the announcement of the Bridge Loans stated that "all funds [would be] returned to the Treasury Department" when the loan was called in the event that a firm did not attain viability by the deadline (White House 2008). This suggests that some believed the companies had the capacity to repay the loans, implying that taxpayers would not lose money on the Bridge Loans if the companies failed to demonstrate viability.

However, given the high possibility of bankruptcy, there could be no certainty that even if repaid, the amounts would not be recaptured by the court as preferences.[15]

7. Treasury committed to lend GM and Chrysler an aggregate $17.4 billion but $4 billion was contingent on the release by Congress of the final tranche of TARP funds.

Loan size was a central consideration for the Bush administration (Deese, Shafran, and Jester 2020, 363–368). Proposals for financing the two companies varied from a $10 billion GM loan to a $25 billion loan program for both companies, as there was significant uncertainty as to how much money the companies needed to stay alive (Deese, Shafran, and Jester 2020, 363–368). As announced on December 19, 2008, Treasury initially committed to lend $17.4 billion in short-term financing to GM and Chrysler through the Bridge Loan program, but $4 billion of this was not to be available until February 2009 and was "contingent upon drawing down the final tranche of TARP funds" (White House 2008). The initial White House announcement did not allocate specific amounts to the two companies (White House 2008).

Notwithstanding the contingency related to the $4 billion third advance to GM, the GM Bridge Loan Agreement was written with a maximum commitment of $13.4 billion to be paid to the company in three advances. The first $4 billion advance was paid on execution of the loan agreement (GM and Treasury 2008, PDF p. 262). The $5.4 billion second advance, which also relied on the first $350 billion tranche of TARP, was paid to the company on January 16, 2009 (GM and Treasury 2008, PDF p. 261; COP 2009b, 9). The third $4 billion advance to GM was scheduled for February 17, 2009, and was made conditional on the release by Congress of the second tranche of TARP funds or on Treasury's finding another source of funds (White House 2008).[16] While GM did need an immediate $4 billion advance to survive through the New Year, it is not clear why Treasury divided the loan to GM into three advances rather than two. It is also unclear why the date of the second advance to GM was set for January 16, 2009, beyond the fact that it would happen before the inauguration on January 20, 2009.

Treasury allocated Chrysler $4 billion in loans out of the original funding commitment and Chrysler received this amount upon execution of the loan agreement on December 31, 2008 (Treasury 2018).

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[15] A "preference" is a payment made by a debtor within some short period before filing for bankruptcy and may be voided and added back into the estate because the debtor here has acted in preference to certain creditors over other similarly situated or superior creditors, contrary to the bankruptcy code's main tenet of treating similarly situated creditors equally. See Section 547(b) of the US Bankruptcy Code.

[16] The loan agreement addresses the contingency this way: "The Advance made on the Third Draw Date shall be in an amount equal to $4,000,000,000; provided, that notwithstanding anything to the contrary herein, the Lender's obligation to make such Advance is conditioned on either (x) the Secretary of the Treasury's authority to purchase additional Troubled Assets being increased as set forth in Section 115(a)(3) of EESA or (y) the availability to the Secretary of the Treasury of other funding for financial assistance to the automotive industry under Applicable Law" (GM and Treasury 2008, PDF p. 262).

8. The amount of funding authorized by Treasury for the Bridge Loans was increased and the term of the loans were extended.

On March 31, 2009, the Obama administration released its Determinations of Viability, which recognized that the two companies would not be able to provide viable restructuring plans by the Bridge Loan deadline (April 30, 2009). However, the Obama administration judged that the companies were well on their way to completing satisfactory viability plans, so they amended both of the Bridge Loans to provide the companies with more time to submit the plans and committed the necessary working capital to sustain the companies in the meantime. It extended GM's deadline by 60 days, to June 1, 2009, and extended Chrysler's deadline by 30 days, to May 1, 2009 (GM and Treasury 2008, PDF p. 296; Chrysler and Treasury 2009, PDF p. 274). Treasury committed to supporting General Motors for 60 days and Chrysler for 30 days (Treasury 2009d, 1). Treasury correspondingly increased the amount of funding for GM by $2 billion on April 22, 2009, and added a further $4 billion in available funding on May 20, 2009 (Treasury 2018). Treasury also made $500 million in additional working capital available to Chrysler, but Chrysler did not take advantage of that offer. However, there was no such increase in funding for Chrysler, as it does not appear that Chrysler requested it (Treasury 2018). The 4th amendment to the loan agreement on May 27, 2008 (see Figure 1) increased the maximum loan amount by $360 million to $19.8 billion.

9. The additional working capital loans contained further restrictions.

The first $17.4 billion to GM was to be used for "general corporate and working capital purposes," but the amended loans providing the $4 billion and $2 billion working capital further restricted the use of funds (GM and Treasury 2008, PDF pp. 301–307, 319–321). These amendments specified that the additional funds would be for only "working capital purposes" and would require a "Use of Proceeds Statement" to accompany each new request for working capital (GM and Treasury 2008, PDF pp. 301–307, 319–321). By restricting financing to "working capital" and requiring that the companies submit a detailed description of how a requested advance would be used, the Bridge Loan documents provided Treasury with an avenue for controlling the minutiae of what the emergency financing would be spent on. This did impose a larger administrative burden, but these new conditions were to affect GM for only 60 days or less, after which GM would enter bankruptcy (Klier and Rubenstein 2012, 42).

10. The loans carried favorable interest rates and no fees, but they had significant terms that would trigger penalty interest rates.

Each loan set the interest rate at the largest of (i) the three-month LIBOR rate as of December 2, 2008 plus 3.00%, or (ii) 5.00% (Chrysler and Treasury 2009, PDF pp. 8, 142–146; GM and Treasury 2008, PDF pp. 74, 258–263). These were seen as significantly below market rates (Brunel and Hufbauer 2009, PDF p. 7). In cases of default, the loan documents imposed a 5.00% interest rate increase as a penalty. The loans did not charge standard fees, such as a commitment fee.

11. The Bridge Loans were secured using liens.

Treasury sought first priority liens on all unencumbered assets and junior priority liens on encumbered assets "to the extent legally and contractually permissible" (Canis et al. 2009, PDF pp. 57–58; GM and Treasury 2008, PDF pp. 80–81). While GM had a relatively large amount of unencumbered assets, Chrysler had already encumbered most of its assets with senior liens in two previous secured loans (GAO 2009, 20). Treasury supplemented this with terms that gave it access to senior liens on some of Chrysler's already encumbered assets, which involved making the loan contingent on Chrysler's creditors pledging their senior liens on a number of assets to Treasury (Chrysler and Treasury 2009, PDF pp. 142–143, 147–148). However, Treasury was able to receive first priority senior liens on only a small portion of Chrysler's encumbered real estate and parts inventory, which had a recovery value between $149 million and $261 million (GAO 2009, 20).

The GM Bridge loan was secured by a pledge of "a Lien on and security interest in all of its rights, title and interest in and to all personal property and real property wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, of every kind and description, tangible or intangible" (GM and Treasury 2008, PDF p. 80). In practical terms there was much more in the way of unencumbered assets that could serve as collateral to protect Treasury's loan to GM, which resulted in Treasury's obtaining first priority senior liens on much of the collateral, "cash, inventory, real property, equity in domestic and foreign subsidiaries, and intellectual property," and junior priority liens on collateral subject to a Senior lien permitted under the agreement (GM and Treasury 2008, PDF p. 80; GAO 2009, 20). GM told the GAO that the assets it had provided to the Treasury as collateral would have been sufficient to support similar funding from commercial lenders in normal times but did not provide data to support that statement. Treasury said it could not put a dollar value on the collateral it accepted from the two companies because of volatile market conditions (GAO 2009, 20).

GM was able to use the common and preferred shares it held in its finance company subsidiary, GMAC LLC, as collateral for the Bridge Loan. This required the consent of GMAC's other shareholders, who included GMAC senior executives and an affiliate of Cerberus, a private equity fund. (GM and Treasury 2008, PDF p. 265).

In March 2009, when the Obama administration amended its loans with the two companies, neither amendment improved Treasury's position among the creditors or expanded Treasury's access to collateral (GM and Treasury 2008, PDF p. 296; Chrysler and Treasury 2009, PDF p. 274). It would have been difficult for the Treasury to expand its access to collateral, as Treasury had already secured as much collateral as it legally could on the Bridge Loans (GAO 2009, 20). There is little chance that there were any assets unencumbered, and newly generated or acquired assets were already automatically covered by pledge (GM and Treasury 2008, PDF p. 80; Chrysler and Treasury 2009, PDF p. 34–35).

12. Treasury received warrants to purchase shares in GM and additional promissory notes from both companies as further compensation for the financial risks it assumed.

Under the law that created TARP, Treasury was mandated to receive some type of warrant or some other type of additional security as consideration. The warrant and additional note policies in the Bridge Loans were more complex than other TARP programs in that the government received both warrants and additional security.[17]

In the case of Chrysler, which was privately held, Treasury received additional promissory notes (Additional Notes) for 6.67% of the "Maximum Loan Amount" (in other words, the $4 billion committed to Chrysler) (Chrysler and Treasury 2009, PDF p. 142). This meant that Chrysler would owe roughly $4.3 billion in total on the $4 billion it borrowed from Treasury.

In the case of GM, which was publicly traded, Treasury received a warrant to purchase common shares equal to 20% of the "Maximum Loan Amount" ($13.4 billion) based on the average closing price of the company's stock during the 15 days ending December 2, 2008. The number of shares could be adjusted to limit dilution (GM and Treasury 2008, PDF p. 2). The Bridge Loans capped Treasury's stake at 19.99% of GM's total common equity prior to the exercise of the warrants. If that provision prevented Treasury from purchasing common shares equal to a full 20% of the Maximum Loan Amount, Treasury would receive an additional promissory note similar to Chrysler's. This Additional Note would be in an amount equal to 6.67% of the Maximum Loan Amount minus one-third the value of the common shares Treasury had received on the exercise of the warrants (GM and Treasury 2008, PDF p. 2).

It is not clear why December 2, 2008, was chosen as the reference date but December 2 was the date that lawmakers requested the submission of Restructuring Plans from the automakers during the hearings that preceded the drafting (and eventual failure) of AIFRA (Kim 2008).

The Congressional Hearings in the weeks before the bailout as well as the past use of warrants can better illustrate the reasoning behind the warrant requirement and the exception for private companies. In the 1980s, the government was able to achieve a return to taxpayers on its 1979 Chrysler loan guarantee by including 14.4 million warrants to buy Chrysler stock for $13 per share until 1990, which the government sold back to Chrysler for $311 million in 1983 (General Accounting Office 1984, 1617, 2930). However, the warrants would protect taxpayers only if the businesses did not fail, there was a market for the warrants, or the stock value exceeded the warrant exercise price.

[17] See EESA 2008, Sec. 113(d). This requirement emerged from various lessons learned from bailouts of the late 1970s. Namely, that the government could obtain risk compensation for its aid through equity participation; for example, receiving warrants, as it did in its support for Chrysler in the late 1970s. In that circumstance, the government, which had guaranteed certain Chrysler borrowing and received warrants for its assistance, ultimately sold the warrants back to the company at a profit (General Accounting Office 1984, v-vi).

In a hearing before the Senate Committee on Banking, Housing, and Urban Affairs, Senator Tom Carper made a case that the government should "do warrants […] or something akin to warrants" that would provide some kind of benefit to the taxpayers for the substantial risk of rescuing the struggling automaker, but he was unsure of how to do this for privately held companies like Chrysler (Senate Banking Committee 2008, 86). The reasoning for Senator Carper's sentiment may be that "valuing a warrant in a private company is difficult" (Schiffer and Fraley 2008, PDF p. 5). Receiving Additional Notes avoided these difficulties while preserving a benefit to taxpayers in the case that the companies did not fail.

Each time that Treasury increased the Maximum Loan Amount (the two successive amendments to the GM loans that increased the amount by $2 billion and $4 billion, respectively), Treasury received warrants and Additional Notes in related amounts (GM and Treasury 2008, PDF p. 300–321). These warrants and notes were effectively the only financial security, beyond the interest payments, that the government received in return for extending the term of and the authorized amount loaned to GM.

13. Treasury's $4 billion Bridge Loan to Chrysler was backed by unencumbered collateral held by Chrysler Holding, but the only unencumbered collateral with apparent value was the 40% share in Chrysler Financial's future distributions.

When contemplating an exit from Chrysler Financial, Treasury did limited due diligence and "relied primarily on a valuation premised on the wind-down assumption" (COP 2011, 11). Under the wind-down assumption, Chrysler Financial would remain in survival mode, originating as few new auto loans as possible and shrinking operations to pay off outstanding liabilities. By restricting themselves to a wind-down assumption, Treasury rejected the possibility that Chrysler Financial had much value as a going concern when it sold its interest to Cerberus later that year. While Treasury received $1.9 billion, more than what the company was worth under the wind-down assumption, this proved to be $600 million less than the $2.5 billion that Treasury would have netted when the firm was sold to TD Bank Group if it had retained such interest and if the parties had agreed to similar terms (COP 2011, 11).

Treasury described this exit as receiving "less than face value [, but] significantly more than the Treasury expected to recover on this loan and […] greater than an independent valuation of the loan" (Treasury 2010). They explained the low expectations by pointing to "the uncertainty regarding the amount and timing of any income distributions by Chrysler Financial that would be applied to the loan" (Treasury 2010). In the same press release, Treasury gave the public some good news: it announced that "total TARP repayments now stand at $189 billion—well ahead of last fall's repayment projections for 2010" (Treasury 2010).

14. Each company was compelled to submit a detailed Restructuring Plan by February 17, 2009, including five specific outcomes.

The Bridge Loans' Restructuring Plan requirements were designed to fulfill the second purpose of the program: to force GM and Chrysler to make the plans needed to survive both bankruptcy proceedings and the long-term aftermath of those proceedings. The Bush administration did not have the political capital or the time to design and effect a complete restructuring of the companies but wanted to ensure that the Obama administration would have a foundation on which to build a long-term solution (Paulson 2010, 425–428).

The mid-February due dates for the Restructuring Plans and the March 31 Certification Deadline[18] imposed short timelines on the automakers to secure concessions.[19] This would have conceivably put pressure on the stakeholders in GM and Chrysler to participate in developing sufficient Restructuring Plans, since an unsatisfactory plan would have terminated the Bridge Loans and likely would have led to the companies' bankruptcies (GM and Treasury 2008, PDF p. 296; Chrysler and Treasury 2009, PDF p. 274).[20]

To ensure that the restructuring plans would actually force GM and Chrysler to make the required preparations for a successful bankruptcy, the Bush administration set down five outcomes the plans would have to achieve.[21] Although the loan agreements did not differentiate between the criteria, other commentators (such as the Congressional Oversight Panel) have pointed out that they seem to fit into two categories: (i) conditions pushing the restructuring to advance US energy policy, and (ii) conditions describing the business aspects of a successful restructuring.

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[18] Although the plans were submitted in February, there is evidence that the companies continued to negotiate with their stakeholders to improve their plans after that date.

[19] The short deadlines dovetailed with Treasury Secretary Paulson's desire to "make it difficult for President Obama to avoid [restructuring through bankruptcy]" (Paulson 2010). However, the deadlines could have easily been altered by the Obama administration through amendments to the Bridge Loan documents. Additionally, the March 31 Certification Deadline had an impact on negotiations because negotiations continued from the Determination of Viability through the April 30, 2009, bankruptcy filing (see Kolka 2009, 37).

[20] This was not the case, as the Obama administration determined that the Restructuring Plans submitted in February were not viable by March 30, 2009, and that the companies would not be able to produce viable restructuring plans within the one-month deadline extension (to April 30, 2009) originally allowed by the Bridge Loans.

[21] In full, Section 7.20 of the GM Agreement describes the outcomes as follows:

> (i) Repayment of all Advances, together with all interest thereon and reasonable fees and out-of-pocket expenses of the Lender accruing under the Loan Documents, and any other financing extended by the United States Government under all applicable terms and conditions;
> (ii) Ability of the Borrower and its Subsidiaries to (x) comply with applicable federal fuel efficiency and emissions requirements, and (y) commence domestic manufacturing of advanced technology vehicles, as described in section 136 of the Energy Independence and Security Act of 2007 (Public Law 110-140; 42 U.S.C. 17013);
> (iii) Achievement by the Borrower and its Subsidiaries of a positive net present value, using reasonable assumptions and considering all existing and projected future costs, including repayment of all Advances, together with all interest thereon and reasonable fees and out-of-pocket expenses of the Lender accruing under this Loan Agreement, and any other financing extended by the United States Government;
> (iv) Rationalization of costs, capitalization, and capacity with respect to the manufacturing workforce, suppliers and dealerships of the Borrower and its Subsidiaries; and
> (v) A product mix and cost structure that is competitive in the United States marketplace.

This first category contains a single outcome, which was compliance with environmental requirements and the production of more green vehicles (defined as Advanced Technology Vehicles in line with the Energy Independence and Security Act of 2007).

This second category contains the other four outcomes:

- the repayment of all financing from the US government,
- the achievement of a positive net present value,
- a competitive product mix and cost structure competitive in the US, and
- the rationalization of manufacturing workforce, supplier, and dealership costs, capitalization, and capacity.

The last outcome targeted the costs, capitalization, and capacity of the "manufacturing workforce, suppliers and dealerships." While the achievement of a positive net present value and the ability to repay the government funding were considered more easily measurable outcomes, the other outcomes depended on concepts that were less clearly defined (GAO 2009, 16). Achievement of these more objectively measurable outcomes became what Treasury referred to as "Financial Viability," which became its most important indicator of long-term viability (COP 2009b, 9). Some outcomes may have been at odds with those quantifiable financial viability measures; at least in the short term, in particular, the financial costs of producing green vehicles would likely exceed the revenues generated (Government Accountability Office 2009, 16).

Under the Bridge Loans, the President's Designee would receive the Restructuring Plan to be submitted by February 17, 2009, as well as the Restructuring Plan Report to be submitted no later than March 31, describing progress made under the plan (GM and Treasury 2008, PDF p. 106). Then, the President's Designee would judge the viability of the company in question, based on the Restructuring Plan Report and the Restructuring Plan, and subsequently decide whether to issue a Plan Completion Certification (PCC) by the Certification Deadline of March 31. If the President's Designee issued the PCC by the Certification Deadline, the loans would continue in effect until their expiration dates of December 30, 2011 (for GM) and January 2, 2012 (for Chrysler)(Chrysler and Treasury 2009, PDF p. 143; GM and Treasury 2008, PDF p. 258). If the President's Designee did not issue the PCC by the Certification Deadline, the loan would automatically accelerate, becoming due in 30 days and most likely forcing the company into bankruptcy. This Certification Deadline could be extended for up to 30 days by the President's Designee without having to amend the Bridge Loan (GM and Treasury 2008, PDF p. 296; Chrysler and Treasury 2009, PDF p. 274).

15. The restructuring process was originally to be headed by a car czar, but this was revised by the Obama administration.

The Bush Administration envisioned that there would be a single President's Designee (informally approved by then president-elect Obama) appointed by President Bush to oversee the loans. However, senior staffers from the Obama transition team instead opted for a "one president at a time" approach and declined to participate in this selection (Rattner 2010, 32–35). Therefore, the role of President's Designee reverted to the Secretary of the Treasury. Additionally, public opinion on the prospect of a car czar was negative and remained so for the first month of the Obama administration (Rattner 2010, 32–33, 51–56, 63–66).

President Obama announced that the role would be filled by the Presidential Task Force on the Auto Industry on February 16, 2009 (a day before the deadline for submitting the Restructuring Plans) (Klier and Rubenstein 2013, 146–147). This was legitimized by the fact that the Bridge Loan documents did not specify that the President's Designee had to be one person (Chrysler and Treasury 2009, PDF p. 22; GM and Treasury 2008, PDF p. 68). This Presidential Task Force was co-chaired by the Secretary of Treasury and the Director of the National Economic Council in the Office of the President (Klier and Rubenstein 2013, 146–147). However, the day-to-day administration of the Bridge Loans and the staffing for the Presidential Task Force fell to the Treasury auto team, which was led by two appointed advisers that reported to the Presidential Task Force, Ron Bloom and Steven Rattner (COP 2009A, 10-11; Klier and Rubenstein 2012, 38-39; Knowledge@Wharton 2010).[22]

Just as envisioned by the Bush administration, the collective President's Designee did enjoy wide-ranging administrative leverage over the restructuring process through its ability to review a number of company actions and its power to trigger the loan's termination by determining the company's viability (Chrysler and Treasury 2009, PDF pp. 19, 58–61, 68). Specifically, the Designee had the authority to approve bonuses to senior employees, reject transactions involving over $100 million, approve material changes to the company expense policy, receive required notices from the borrower, and generally conduct oversight (Chrysler and Treasury 2009, PDF pp. 19, 58–61, 68).

Throughout the term of the Bridge Loans, the President's Designee (who would be the Secretary of Treasury if the President did not select a Designee) would administer the companies' pathways to viability, Restructuring Plans, Restructuring Reports, and compliance (Chrysler and Treasury 2009, PDF pp. 19, 58–61, 68).

16. The Bridge Loans required significant concessions from stakeholders.

The Bridge Loans spread the burden of the restructuring process among GM and Chrysler stakeholders and required concessions from, or imposed limitations on, executives and management, employees and retirees (largely represented by the UAW), unsecured public debtholders, and secured creditors. The union employees and retirees and secured and unsecured debtholders represented most of the companies' long-term liabilities and would need to make concessions if the companies were to be viable in the long run. Sacrifices for

[22] Ron Bloom was an investment banker who came from a labor background and was, "in effect, the United Steelworkers' chief restructuring officer" in the late 1990s (Rattner 2010, 56). Rattner came from a private equity background and had been considered by the Obama administration to be the leader of the team (Geithner 2014, 258-262).

executives and management aimed to reduce the moral hazard associated with the bailout (Knowledge@Wharton 2010).

The Restructuring Plan mandated that management use its best efforts to achieve certain restricting targets including "reduction of the outstanding unsecured public indebtedness (other than with respect to pension and employee benefits obligations) . . . by not less than two-thirds," implementation of certain significant labor modifications, and implementation of certain Voluntary Employee Benefits Association (VEBA) modifications (GM and Treasury 2008, PDF p. 106).

Labor and VEBA Modifications

The labor modifications were aimed at making GM and Chrysler workers' compensation and work rules competitive, by December 31, 2009, with those of employees at US locations of Japanese auto companies (Japanese Transplants).[23] This included reductions in compensation, elimination of any compensation to laid off, fired, furloughed, or idled employees other than customary severance pay, and modification of work rules for employees so that rules applied were competitive with those for employees of Japanese Transplants. The VEBA Modifications required GM and Chrysler to convince the UAW's Voluntary Employee Benefits Association to accept at least half of its future contributions from GM and Chrysler in the form of company shares (GM and Treasury 2008, PDF p. 72).

Other government bailouts during the crisis did not explicitly place these kinds of burdens on workers, nor did they focus their efforts on protecting workers.[24] However, labor costs in the auto industry were a significant element that had often been criticized. According to Goolsbee and Krueger (2015), the state of compensation, work rules, and benefit costs (pensions and health care) had made American auto companies uncompetitive with Japanese foreign transplants in the US. They note that the "average labor costs for the Big Three were almost 45 percent higher" than for foreign transplants. From this, they inferred that a successful auto rescue would have had to have "reduced fixed costs associated with retirees and the uncompetitive compensation levels for existing workers" (Goolsbee and Krueger 2015, 8).

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[23] According to the GM and Treasury Loan Agreement, "'Compensation Reductions' shall mean, with respect to the Borrower or any Subsidiary, the reduction of the total amount of compensation, including wages and benefits, paid to its United States employees so that, by no later than December 31, 2009, the average of such total amount, per hour and per person, is an amount that is competitive with the average total amount of such compensation, as certified by the Secretary of the United States Department of Labor, paid per hour and per person to employees of Nissan Motor Company, Toyota Motor corporation, or American Honda Motor Company whose site of employment is in the United States" (See GM and Treasury 2008, Sec. 1.01; also see "Labor Modifications," "Severance Rationalization," and Work Rule Modifications).

[24] Government aid for firms like Bear Stearns and AIG did not include any provisions explicitly impacting the compensation, benefits, pensions and work rules of employees other than executives and management (although there may have been some incidental impact through management decisions) (Wiggins et al. 2021). Further, the terms of the conservatorships and Treasury aid to Fannie Mae and Freddie Mac provided for oversight of executive, but not nonexecutive, compensation.

By contrast, in some other automobile bailouts, such as the €7 billion ($8.96 billion) French government aid to Renault, Peugeot, and Citroën, the manufacturers were required to keep their domestic factories operating and protect domestic automotive manufacturing jobs while making no mention of employee concessions (Speer 2009).[25]

Reduction of Unsecured Debt

GM had unsecured public debt of about $27 billion (COP 2009b, PDF p. 124). Chrysler's unsecured public debt was more limited (GAO 2009, 36–37). The companies were required to make their best efforts to reduce their unsecured public indebtedness by two-thirds via a "Bond Exchange and other appropriate means" (GM and Treasury 2008, PDF p. 106). These terms were meant to make it easier for the companies to impose sacrifices on unsecured public debt holders.

When facing intransigence from unsecured creditors, the President's Designee could threaten to determine the company unviable, plunging the company into bankruptcy, which would likely impose severe haircuts on, if not entirely wipe out. these unsecured liabilities (GAO 2009, 36–37; Canis et al. 2009, 14–15). However, this threat would only be effective at reducing public indebtedness so long as the general public believed it was still possible to avoid bankruptcy. Since the expectation that the companies would restructure through bankruptcy appeared in Treasury announcement as early as December 2008 (Paulson 2010, 415–428), Treasury might have had to have kept this intention a secret through a presidential transition and three months of negotiating for the requirement to be realistic.

Differentiating them from the bailouts of industrial companies throughout the 1970s, the Bridge Loans did not require or incentivize state or local governments to share the burden of financing the restructuring (General Accounting Office 1984, 44).[26] Another significant difference from the 1970s bailouts was that the Bridge Loans did not differentiate between foreign and domestic creditors when it came to burden sharing. During the 1979 Chrysler bailout, Treasury negotiated one set of concessions from the 15 largest American bank lenders and different set of concessions from a committee of Japanese and European bank lenders (Reich and Donahue 1985, 245).

17. Supplier companies and dealerships were not initially bailed out and were not asked to make any specific concessions in the Bridge Loans.

Unlike the French government's bailout of its auto sector, aid under the Bridge Loans did not extend to suppliers and dealerships; nor did it seek concessions from such stakeholders (Speer 2009). This is not in line with the General Accounting Office's 1984 recommendation that, "Suppliers whose main or only customer is the distressed firm or municipality should make financial concessions" (43). The substantive elements of the Bridge Loans ignored

[25] At an EUR-USD exchange rate of 1.28;1

[26] In previous bailouts, these [state and local governments] governments supported the restructuring process by "lower[ing] taxes, offer[ing] loans and industrial revenue bonds, decreas[ing] regulatory burdens, or offer[ing] other advantages that increase the recipient's cash flow and improve its prospects" (1984).

suppliers and dealerships, even though some of the proceeds of the loans would likely pay various debts owed to suppliers and dealerships.

Debates over the auto rescue in the Senate also mentioned suppliers and dealerships (alongside management, labor, and creditors) as two parties that would make concessions (Senate Banking Committee 2008, 7). Rattner (2010), however, notes that from a very early stage, restructuring would have entailed the reduction of dealerships. Instead of explicitly requiring dealership closures in the Bridge Loans, there appears to have been an expectation that dealership reductions would occur organically (59, 194).

Treasury eventually did provide aid to the suppliers under a program separate from the Bridge Loans, but not immediately (COP 2009b, 22). It is not clear why the government did not initially take a more comprehensive approach to assisting the auto industry, including suppliers and dealers, as some other countries did, or immediately extend benefits to struggling suppliers instead of waiting until March 19, 2009, to announce an auto supplier program (COP 2009b, 29). As for the issue of the dealerships, GM and Chrysler eventually did shrink their dealership networks in the aftermath of the respective bankruptcies (Goolsbee and Krueger 2015, 17–18).

18. The Bridge Loans addressed moral hazard by imposing more stringent restrictions on executives and senior employees than those imposed on most financial institutions.

Provisions attempting to reduce moral hazard in the Bridge Loans targeted the activities of management in the public eye, which imposed a kind of penance on behalf of management.

Similar to firms participating in the Capital Purchase Program (CPP),[27] auto companies receiving funds from Bridge Loans under the TARP were required to restrict what are known as golden parachutes. Bridge Loans documents contained a definition of golden parachutes broader than the CPP definition. For the CPP, golden parachutes were defined as "payments of more than three times an executive's average base compensation from a firm over the five most recent years in the event of the official's involuntary termination, or bankruptcy or receivership of a financial institution" (Treasury 2009f, 28395). The Bridge Loan documents defined golden parachutes as "*any* payment in the nature of compensation to (or for the benefit of) an SEO [Senior Executive Officer] made on account of an applicable severance from employment" [emphasis added]" (Chrysler and Treasury 2009, PDF p. 58).

The Bridge Loan documents also banned incentive compensation for the 25 most highly paid employees of GM and Chrysler, which goes beyond the restrictions placed on other TARP recipients by late 2008 (Canis et al. 2009, 69–71). This more aggressive measure may reflect a response to the increasing public outrage at "what many perceived to be excessively large bonuses paid to executives from other firms receiving TARP money" (Canis et al. 2009, 71).

[27] The CPP was a capital injection program for financial institutions conducted by Treasury between late 2008 and December 2009 (Treasury 2015).

The Bridge Loans also contained a provision forcing Chrysler and GM to divest from all private aircraft, a restriction on a kind of executive compensation, which may have been meant to satisfy the public's desire to punish executives for their actions during their first public requests for public aid in November 2008 (Chrysler and Treasury 2009, PDF p. 59; GM and Treasury 2008, PDF p. 10). On this early trip, the auto executives had traveled to Washington, DC, in separate private jets, an action widely reported on in the media, which made the private jets a symbol of corporate excess. That said, the Bridge Loans left room for corporate travel policies that allowed chartered flights "when supported by a business rationale" (Vlasic 2010).

19. Treasury had the exclusive right to turn the loans into debtor-in-possession loans in the event of a bankruptcy filing.

The Bridge Loans anticipated the bankruptcy of the borrowers by providing that in the event of a bankruptcy filing the Treasury could elect to convert the Bridge Loans into debtor-in-possession (DIP) loans (GM and Treasury 2008, PDF p. 112; Canis et al. 2009, 53–54). In bankruptcies, DIP loans (by definition, loans made to the debtor after a bankruptcy filing) provide the bankrupt organization with the working capital to survive while moving through the bankruptcy process (Canis et al. 2009, 53–54). DIP loans enjoy extremely high priority. If a debtor can demonstrate that it could not secure financing by any other means, a bankruptcy court can authorize a debtor to grant liens to the DIP lender that are senior to liens of all the pre-bankruptcy creditors. In theory, Treasury's ability to convert the bridge loans to DIP loans would enable it to maintain, or increase, the priority of its loans if one of the borrower companies went into bankruptcy.

Conversion would increase the likelihood that Treasury's loans would be paid ahead of the other secured creditors, increasing returns to the taxpayers. However, the Congressional Research Service concluded that this conversion provision would go against the very purpose of DIP loans, and even the key tenets of the bankruptcy process, which require that senior creditors be paid before junior creditors (Canis et al. 2009, 54). The converted Bridge/DIP loans would not provide GM or Chrysler with additional working capital, they would keep the bankruptcy court from relieving the debtor of its pre-bankruptcy debts, and they would negatively impact other creditors. Ultimately, the Bridge Loans were not converted to DIP loans and Treasury provided new DIP funding to both companies under a Joint DIP Facility with Export Development Canada, Canada's export credit agency (COP 2009b, 23–31)

The value of the DIP conversion right was also disputed by at least one commenter. According to Levitin (2008), the courts might reject the provision as an executory contract under 11 U.S.C. §365(c)(2) of the Bankruptcy Code or draw the Treasury into a fight for lien priority in a 11 U.S.C. §364 hearing. If the provision held up in court, GM and Chrysler might have found it more difficult to find additional DIP financing for the restructuring (Canis et al. 2009, 53–54). Although Levitin (2008) contemplated the government's converting the loan into a DIP loan through a rollup refinancing or a cross-collateralization, he noted that this would probably result in "sharp litigation." It is difficult to say whether these criticisms would have come to fruition, because the government did not use the DIP loan conversion provision and obtained senior liens through other tactics.

20. The Bridge Loans involved significant coordination between the US and Canada.

The transnational nature of American auto manufacturing meant that the GM auto companies also advocated for access to foreign government aid for their foreign subsidiaries in 2008 and 2009 (see Embassy Berlin 2009). Perhaps because of these efforts, the Canadian government collaborated with both the outgoing Bush administration and president-elect Obama's transition team before the December 19, 2008, announcements of the Bridge Loan commitments (Wilson 2008).

On the same day as the Bush administration announced the Bridge Loans, there was an announcement of similar support to General Motors of Canada and Chrysler Canada by the Canadian and Ontario governments. The aid to the Canadian subsidiaries was for 20% of the amount offered to the US auto companies by the US government (C$4 billion, or $3.28 billion).[28] The C$4 billion commitment was never drawn. It was replaced with other assistance measures in spring 2009, when the Canadian subsidiaries requested C$10 billion in aid from central and provincial governments. In response, Canada committed C$1 billion in financing for Chrysler Canada (Chrysler Canada drew on C$250 million of this commitment) and C$3 billion for General Motors of Canada (Export Development Canada 2009, 4; Industry Canada 2009). However, there was extremely limited documentation of the mechanics of how the lending to General Motors of Canada was used (Office of the Auditor General of Canada 2014). The Canadian government continued to use this 20% proportion when deciding the assistance to the two companies throughout 2009 (Export Development Canada, 4). GM evidently did not pledge all of its foreign subsidiaries as collateral, which the US government was aware of and mentioned in at least one diplomatic cable (Consulate General Shanghai 2008).[29]

21. Treasury worked closely with GM on revising its plan.

When the President' Designee determined, on March 30, 2009, that GM's Restructuring Plan was not viable, its auto team adopted a policy of working closely with GM to produce a "more aggressive plan" (Rattner 2010, 208–210; COP 2009b, 1–3; Treasury 2009e). While Treasury worked closely with GM in negotiating terms with stakeholders and helping to revise their plans, Treasury attempted to ensure that it did not appear that the government was itself producing or revising the plans.

This approach might not have been in line with a bailout best practice identified by the General Accounting Office in 1984, which noted:

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[28] Exchange rate of 1.21 CAN-USD (Office of the Auditor General of Canada 2014)

[29] The GM Loan and Security Agreement (LSA) lists the broad companies that they did pledge, but the list of companies excluded from the collateral (which could or might have included a number of subsidiaries of companies that they did pledge) was redacted (GM and Treasury 2008, PDF pp. 141–142, 184–190, 206–212)

> When the government rejects a proposed plan or contract because it is too risky, it should require the firm's or municipality's management to make changes and resubmit the proposal, but the government should not attempt to develop its own plans and impose them on management. To do so could leave the government responsible for the outcome (57).

22. The Bridge Loans contained termination provisions—in other words, Treasury had an exit strategy in case of a default.

The Bridge Loans contained numerous terms that terminated the lending facility with the two automakers. The Bridge Loans terminated upon any "Events of Default," which the two Loan and Security Agreements (LSAs) defined broadly (Chrysler and Treasury 2009, PDF p. 64; GM and Treasury 2008, PDF p. 110-112). Once terminated, the relevant borrower would have to repay "the aggregate principal amount of all Advances then outstanding under the Note, together with all interest thereon and fees and out-of-pocket expenses of the Lender" by the thirtieth day after the Certification Deadline, when the outstanding amounts would become "become due and payable [...] without any further action on the part of the Lender" (Chrysler and Treasury 2009, PDF p. 28; GM and Treasury 2008, PDF p. 74).

23. Treasury followed a pattern of transparency in communicating about the Bridge Loans.

Treasury made most of the documents underpinning the Bridge Loans and its lending activities associated with Bridge Loans public on its website (Chrysler and Treasury 2009; GM and Treasury 2008; Treasury 2018). It also issued a few press releases on the Presidential Task Force on the Auto Industry's activities and on its determinations regarding the February viability plans (Treasury 2009c; Treasury 2009a; Treasury 2009b). The latter explained the government's thinking on how an effective restructuring process would proceed as well as on the problems with the February viability plans.

III. Evaluation

Commentators acknowledge that the two auto companies did survive the presidential transition as a result of the aid and, with an extension and additional assistance from the Treasury, Restructuring Plans for their long-term viability were produced. The Congressional Oversight Panel (2011) concluded that there is little doubt that GM and Chrysler would have faced the prospect of bankruptcy and liquidation in absence of government aid (115). This is also the position of former government officials involved in the bailout (see Goolsbee and Krueger 2015, 9). However, two members of the Congressional Oversight Panel, in concurring opinions, disagreed with this conclusion. They argued that a private-sector reorganization with some potential debtor-in-possession financing from the government could have secured the necessary resources for restructuring. They argued that such a restructuring would have been possible before the private sector was spooked by signals of an impending government bailout (COP 2011, 122).

Ultimately, the pressure of the initial restructuring plan requirements and the timeline put forward by the Bush administration did not extract viable restructuring plans from the companies. The government had to take a hands-on role in developing the plans and commit additional working capital to keep the companies afloat during the process (Rattner 2010, 157–159, 186–187).

Other commentary on the Bridge Loans addressed Treasury's transparency in administering the Bridge Loans, the legality of the Bridge Loans, and the effectiveness of provisions meant to protect taxpayers.

The Congressional Oversight Panel (2009b) stated that Treasury's public statements were relatively vague on what the primary purpose of the Bridge Loan portion of the bailout was, but this complaint was also applied to the auto bailout as a whole (4). This was not in line with the 1984 General Accounting Office recommendations for the rescue of large firms, which emphasized that goals and objectives should "identify intended benefits, including expected levels of attainment; identify unavoidable adverse consequences or […] unintended benefits, […] include to the extent possible measures of desired degree of attainment; and provide guidance to administrators on how to make trade-offs among conflicting aims" (37).

As for the legality of the aid, some argue that by interpreting EESA broadly enough to justify aid to the auto companies, the Bush and then the Obama administrations went beyond Congress's intent, which was for EESA to assist the financial industry (COP 2009b, 78–79). The Congressional Oversight Panel (2009b) was not sanguine about the legality of using TARP funds, as they said that the debate over AIFRA showed EESA was never intended to cover automobile companies; Congress would not have had to debate AIFRA if it had (78–79). Ultimately, this legality question hinged on a provision of TARP that gave the Secretary of Treasury significant discretion when determining whether a financial institution was systemically important (those being the institutions eligible for TARP funds).

Others noted that the Bridge Loans might have been a violation of the World Trade Organization's (WTO) Agreement on Subsidies and Countervailing Measures (Benson 2009, 117–118). This could have exposed the US to countervailing duties from abroad or cases before the WTO's dispute settlement mechanism (Benson 2009, 117–118). One reason for this is that the loans to the two companies were provided at significantly below-market rates (Brunel and Hufbauer 2009, 7). However, a WTO case might have triggered tit-for-tat countervailing tariffs, and the environmental terms of the Restructuring Plans would make bringing a WTO case extremely controversial (Brunel and Hufbauer 2009, 7–8).

In the days before the Treasury executed the Bridge Loans, bankruptcy law commentator Adam Levitin (2009) argued that several terms in the Chrysler agreement would not have provided sufficient protection for taxpayer funds. While the loans were supposed to be secured under the Bridge Loans' terms related to collateral, they predominantly created junior liens that were likely to "be underwater from the start" in the case of Chrysler. He also argued that the government could have secured higher-quality collateral in negotiations before the Bridge Loans for Chrysler were executed. Levitin also speculated that the lowquality collateral the government actually received senior liens on would have such a limited liquidation value that it could only protect taxpayers through its hostage value.

There are also several criticisms directed at the government's exit from its stake in Chrysler Financial's profits. As with the auto bailout as a whole, the Congressional Oversight Panel (2011) felt that the government's exit from Chrysler Financial had transparency problems. However, the Congressional Oversight Panel also faulted Treasury for carrying out limited due diligence in its decision to exit Chrysler Financial, describing the exit as "hasty" (2). The Congressional Oversight Panel went on to claim that Treasury appeared to have sacrificed "taxpayer returns […] in favor of an unnecessarily accelerated exit" (2).

In general, however, the decision to rescue the auto companies seems to have been viewed positively. Public opinion on the Bridge Loans is difficult to judge, as multiple lending programs were layered on top of the Bridge Loans to provide a more comprehensive funding structuring over time. In December 2008, 60% of consumers surveyed agreed "that the US government should keep loaning money to GM and Chrysler," but this number dropped to 25% in February 2009 before gradually climbing to 38% by June 2014 (Wallace 2014; First Research 2009, PDF p. 4). Although UAW leadership was initially upset about the required concessions and hoped that they would be retracted by the president-elect, they later supported the bailout process (Canis et al. 2009, 11).

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V. Key Program Documents

Summary of Program

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Treasury document outlining the initially proposed terms of lending to Chrysler.
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Indicative Summary of Terms for [GM] Secured Term Loan Facility
Treasury document outlining the initially proposed terms of lending to General Motors.
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Summary fact sheet of Determinations of Viability for Chrysler and GM as well as the government framework for restructuring going forward.
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Implementation Documents

(Chrysler and Treasury 2009) Chrysler Original Loan and Security Agreement (with amendments) (January 2, 2009)
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(Secretary of Treasury 2008) Determination, December 19, 2008, and Letters from Henry M. Paulson, Jr., to Members of the House of Representative, December 23, 2008
Determination and letters written by Secretary Paulson that defined the obligations of domestic automotive companies as "troubled assets" eligible for purchase under TARP.
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Short evaluation of Chrysler's viability plan as well as the conditions under which the government will grant Chrysler further funding.
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Short evaluation of GM's viability plan as well as the conditions under which the government will grant GM further funding.
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Key Academic Papers

(Deese, Shafran, and Jester 2020) "The Rescue and Restructuring of General Motors and Chrysler"
Chapter written by former officials tasked with the auto restructurings during the Obama and Bush administrations.

(Goolsbee and Krueger 2015) "A Retrospective Look at Rescuing and Restructuring General Motors and Chrysler"
Analysis of the government's involvement in the auto sector by two economists involved in the Obama administration's Council of Economic Advisors.
https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/SSRN-id2575486.pdf.

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Federal Reserve Bank of Chicago analysis of the declining auto industry and US government interventions in the industry during the financial crisis that also touches on the changing

geography of automotive production in the US.
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Legal/Regulatory Guidance

TARP Standards for Compensation and Corporate Governance (06/15/2009)
Rule made by Treasury outlining the executive compensation and corporate governance requirements with which TARP recipients must comply.
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Legislation

Text of the Auto Industry Financing and Restructuring Act of 2008 (AIFRA), H.R.7321
Text of the failed Auto Industry Financing and Restructuring Act as received in the Senate on 12/11/2008.
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Press Releases/Announcements

(Industry Canada 2009) "The Governments of Canada and Ontario Reject Automakers' Restructuring Plans" (03/30/2009)
Joint press release by the Canadian and Ontarian governments announcing details of the limited bridge financing they would offer to Chrysler Canada and General Motors of Canada. All of this financing was to be coordinated with the United States' auto rescue efforts.
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Secretary Paulson Statement on Stabilizing the Automotive Industry (12/19/2008)
Treasury announcement of support for the auto industry under TARP; it contemplates that the process will be discussed with Congress and President Obama's transition team.
https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/Secretary%20Paulson%20Statement%20on%20Stabilizing%20the%20Automotive%20Industry.pdf.

Statement by Timothy F. Geithner, US Secretary of the Treasury before the Senate Banking Committee, May 20, 2009
Treasury Secretary Geithner's statement of May 20, 2009, outlining the state of the economy and including a detailed section on the actions taken to date by the Obama administration on the auto industry.
https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/Statement%20by%20Timothy%20F.%20Geithner%20U.%20S.%20Secretary%20of%20the%20Treasury%20before%20the%20Senate%20Banking%20Committee%20May%2020,%202009.pdf.

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Press release discussing the requirements of a viable Chrysler-Fiat Alliance as well as support for Chrysler from the American and Canadian governments going forward.
https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/Obama%20Administration%20Auto%20Restructuring%20Initiative%20Chrysler-Fiat%20Alliance_0.pdf.

Media Stories

Bush announces $17.4 billion auto bailout (12/19/2008)
Politico *coverage of President Bush's statement outlining initial aid to the auto industry.*
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First impressions of the legal aspects of the Bridge Loan term sheets.
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Commentary on the structure of the GM and Chrysler Loan and Security Agreements.
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Politico *coverage of Fed Chairman Bernanke's letter doubting the possibility of a Fed loan to the automakers.*
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Reports

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Office of Management and Budget oversight report containing a section on the AIFP, which includes the Bridge Loans.
https://ypfsresourcelibrary.blob.core.windows.net/fcic/YPFS/09frusg.pdf.

(Treasury 2018) TARP Transactions Report – Investments (10/05/2018)
Transaction-level details for all TARP programs except housing programs .
https://ypfs.som.yale.edu/library/tarp-transactions-report-investments-period-ending-october-5-2018.