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Alexander Nye
Yale Program on Financial Stability

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The Rescue of the US Auto Industry, Module E: Emergency Assistance for Chrysler Financial[1]

Alexander Nye[2]

Yale Program on Financial Stability Case Study
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Abstract

In the fall of 2008, due to the confluence of the Global Financial Crisis and years of structural decline in the auto industry, Chrysler was nearing bankruptcy. Chrysler's related finance company, Chrysler Financial, was also in dire straits. On December 19, 2008, President Bush announced the Automotive Industry Financing Program and that the US Treasury would extend Chrysler a $4 billion Bridge Loan to give the company time to prepare a viable restructuring plan. Two weeks later, the Treasury arranged $1.5 billion in low-interest financing for Chrysler Financial to fund the securitization of new consumer car loans and the facility subjected Chrysler Financial to several management restrictions, most of which related to executive compensation. Chrysler Financial drew down the entire $1.5 billion between January 16 and April 9, 2009. When Chrysler entered bankruptcy on April 30, GMAC, General Motors' related auto finance company, took over most of Chrysler Financial's business. Chrysler Financial continued to do business at a much smaller scale and Treasury expected Chrysler Financial to wind down its business. Although the loan bore a five-year term, Chrysler Financial paid off the loan in July after accessing another government program, the Term Asset-Backed Securities Loan Facility (TALF) and continued to operate. In December 2010, TD Bank bought Chrysler Financial from Cerberus, its major shareholder, for $6.3 billion. Commentators do not have much to say on the impact of the government's

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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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[2] Research Associate, YPFS, Yale School of Management.

aid for Chrysler Financial, although the $1.5 billion facility coincided with several months of increased sales.

Keywords: AIFP, auto finance, Chrysler, Chrysler Financial, manufacturing, securitization, TALF, TARP

Emergency Assistance for Chrysler Financial

At a Glance

In late 2008, due to the confluence of the financial crisis and years of structural decline in the auto industry, Chrysler, a large auto manufacturer, was nearing bankruptcy (Klier and Rubenstein 2012, 35–37). Treasury provided Chrysler Holding (direct parent of Chrysler and Chrysler Financial) with a $4 billion Bridge Loan under the Emergency Economic Stabilization Act of 2008 (Office of Financial Stability 2018; Canis et al. 2009, 9; Nye 2021a). That funding was based on the idea that saving auto finance companies required saving the auto manufacturers to which they were tied, and vice versa (COP 2009, 74–76).

Chrysler's related finance company, Chrysler Financial, was chafing under nearly frozen asset-backed securities (ABS) markets and asked the US government for $2.5 billion in aid to fund new loans (Kolka 2009, 30). In January 2009, the US government agreed to provide Chrysler Financial $1.5 billion in financing to fund new consumer automotive loans (Treasury 2009a).

Summary of Key Terms	
Purpose: To finance the day-to-day operations of Chrysler Financial through the first quarter of 2009 by financing new consumer auto loans in connection with the overall restructuring of Chrysler.	
Announcement date	January 16, 2009
Operational date	January 16, 2009
Maturity date	January 16, 2014
Date repaid	July 14, 2009
Legal authority	Emergency Economic Stabilization Act of 2008 (EESA), § 101 (a)(1), § 3 (9)
Rate	Year 1: 1-month LIBOR plus 100 basis points Years 25: 1-month LIBOR plus 150 basis points
Collateral	Two classes of variable funding floating-rate asset-backed notes issued by a trust holding liens on all property related to the auto loans financed by the TARP loan to Chrysler Financial
Funder	US Department of the Treasury
Participants	Chrysler Financial Services Americas LLC, Chrysler Balloon Depositor II LLC, Chrysler LB Receivables Trust
Amount used	$1.5 billion

This financing was structured in a manner that mimicked auto loan securitizations and was offered to Chrysler Financial under favorable interest rates (Bansal and Krolicki 2008; Nye 2021b). The financing also imposed several restrictions on Chrysler Financial's management, mostly related to executive compensation.

The financing facility was announced and became operational on January 16, 2009 (Treasury 2009a). Once Chrysler Financial received the financing, Chrysler sales grew for several months (Mitchell 2009). Chrysler Financial fully drew on the facility by April 9, 2009 (GAO

2009c, 62). Upon finding that it would not receive additional aid, the company paid off the loan on July 14, 2009, through its participation in the Term Asset-Backed Securities Loan Facility (TALF) (PR Newswire 2009e).

When Chrysler entered bankruptcy on April 30, 2009, Chrysler Financial did not join that action (Kellogg and Bennett 2009). Instead, a large portion of its assets were sold to, and its floorplan finance operations taken over by, GMAC, the financing partner of General Motors (COP 2010, 59). Treasury indirectly supported GMAC and Chrysler Financial in the transition (GMAC LLC 2009, PDF pp. 1–2; Docket 6273 2009, PDF p. 62). Chrysler Financial was expected to be wound down, but Cerberus Capital Management, its ultimate parent, sold it to TD Bank in 2010 (COP 2011, 9–12).

Summary Evaluation

The effectiveness of the aid to Chrysler Financial is not clear. Chrysler Financial survived 2009, and Chrysler survived long enough to enter a planned bankruptcy (Kellogg and Bennett 2009). There were questions as to the extent the program actually benefited Chrysler or Chrysler dealers (Reuters News 2009; Stein 2009). Commentators do not have much to say on the impact of the government's aid for Chrysler Financial, although the $1.5 billion facility coincided with several months of increased sales.

Context: United States 2008–2009	
GDP (SAAR, Nominal GDP in LCU converted to USD)	$14,559.5 billion in 2008 $14,628.0 billion in 2009
GDP per capita (SAAR, Nominal GDP in LCU converted to USD)	$48,383 in 2008 $47,100 in 2009
Sovereign credit rating (5-year senior debt)	As of Q4, 2008: Fitch: AAA Moody's: Aaa S&P: AAA As of Q4, 2009: Fitch: AAA Moody's: Aaa S&P: AAA
Size of banking system	$9,938.3 billion in total assets in 2008 $9,789.1 billion in total assets in 2009
Size of banking system as a percentage of GDP	68.3% in 2008 66.9% in 2009
Size of banking system as a percentage of financial system	Banking system assets equal to 30.5% of financial system in 2008 Banking system assets equal to 30.2% of financial system in 2009
5-bank concentration of banking system	44.9% of total banking assets in 2008 44.3% of total banking assets in 2009
Foreign involvement in banking system	18% of total banking assets in 2008 16% of total banking assets in 2009
Government ownership of banking system	0% of banks owned by the state in 2008 0% of banks owned by the state in 2009
Existence of deposit insurance	100% insurance on deposits up to $250,000 in 2008 100% insurance on deposits up to $250,000 in 2009
Sources: Federal Deposit Insurance Corporation; World Bank Bank Regulation and Supervision Survey; World Bank Global Financial Development Database; Bloomberg.	

I. Overview

Background

By the time that two of America's largest auto makers, General Motors (GM) and Chrysler, obtained a $17.4 billion financing commitment from the George W. Bush administration on December 19, 2008, they had been in dire straits for several years (Klier and Rubenstein 2012, 35–36; Paulson 2010, 361). This was due to a combination of declining market share, miscalculated labor arrangements, slim profit margins, and reliance on gas-guzzling vehicles for profit (COP 2011, 9–11; Canis et al. 2009, 1–2). The Global Financial Crisis had been raging for more than a year, and consumer confidence and access to credit was evaporating (COP 2011, 911). The companies and the rest of the American auto industry were insolvent and unable to fund themselves (COP 2011, 911).

Credit was and is the lifeblood of the American auto industry (Canis et al. 2009, 4650). Dealers use cheap financing to buy cars for their showrooms. Before the crisis, manufacturers themselves typically provided this "floorplan financing" through captive (or de facto captive) finance companies such as General Motors Acceptance Corporation (GMAC) for GM, Ford Motor Credit for Ford, and Chrysler Financial for Chrysler (Canis et al. 2009, 46–50).[3] Credit is equally important to fund consumer purchases, because "90 percent of consumers finance automobile purchases through loans, either directly from the manufacturers" financing arms or through third-party financial institutions" (COP 2009, 7). Both kinds of credit typically take the form of loans from third-party banks and the same captives. If these two kinds of financing are not available, sales in the US auto market can collapse (Canis et al. 2009, 46–50).

Before the crisis, the companies providing auto financing frequently obtained funding by securitizing the loans; for example, by packaging loans into asset-backed securities (ABS), bonds that are sold to provide immediate cash that can be re-lent (GM Financial n.d.). Prior to the crisis, securitization financed about a third of all US auto loans (Campbell et al. 2011, PDF p. 3).

Chrysler Financial: From Crown Jewel to Chief Liability

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

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[3] In 2008, GMAC, which was GM's former captive auto finance company, and Chrysler Financial were both controlled by Cerberus Capital Management (Cerberus), but each was still informally acting as a captive finance company for their respective brands (COP 2010, 9)

Daimler was losing money on Chrysler and expected losses to continue to grow due to Chrysler's future benefit liabilities (Isidore 2007). For that reason, it sold Chrysler for one-fifth of what it had paid nine years earlier (Isidore 2007).[4] After the sale, DaimlerChrysler and DaimlerChrysler Financial were renamed Chrysler and Chrysler Financial, respectively (Isidore 2007; Chrysler Financial Auto Securitization Trust 2009-B 2009, 16). This split from Daimler would cause Chrysler Financial to lose its business providing auto financing for Mercedes and Maybach in North America.

Credit conditions were bad and getting worse by fall of 2008. From early 2008 through at least mid-2009, the market for ABS was essentially nonexistent (COP 2010, 34, 55). Chrysler Financial had tried to renew its $30 billion line of credit from 22 large banks but had to settle for just $24 billion on August 4, 2008. Credit was also growing increasingly expensive (Koons 2008). The banks lent the $24 billion at an interest rate of between LIBOR plus 110 basis points and LIBOR plus 225 basis points, a rate that was unexpectedly high and which would have made offering attractive consumer financing difficult (Rappaport 2008; Boudette 2008). Also, as a condition of its new financing, Chrysler Financial rapidly tightened lending requirements, increased interest rates, stopped leasing vehicles to consumers, and began charging Chrysler dealerships additional fees for older unsold inventory (Banks 2008).

These factors crippled Chrysler's ability to sell vehicles, which had been under pressure since early 2008 when Cerberus had directed it to reduce the number of dealerships. (Banks 2008). It is especially important to note that Chrysler Financial had a significantly lower debt-to-equity ratio than its peers, but Treasury considered its situation to be worse than that of GMAC because all of its outstanding debt was set to mature in July 2009 (COP 2010, 22; Picarillo and Laterza 2009).

The Path to Aiding Chrysler Financial

Throughout 2008, automotive sales for the Big Three—GM, Chrysler, and Ford—rapidly declined due to a combination of factors: "rising gasoline prices, tightening credit markets, eroding consumer confidence, high unemployment, and discretionary spending concerns" (COP 2009). Automobile sales in the United States and abroad were down 18 percent lower than the previous year's. The tightened credit market was particularly significant because the overwhelming majority of consumers finance auto purchases, directly through the manufacturer's financing arm or from a third party. (COP 2009,7). "The particularly weak condition of the financing arms of Chrysler and GM—Chrysler Financial and GMAC, respectively—exacerbated the manufacturers' plummeting sales as the credit markets seized up" (Bureau of Economic Analysis 2019; COP 2009, 7).

In response to the manufacturers' requests, in December, the Bush administration announced a $4 billion Bridge Loan to Chrysler Holding to pay for Chrysler's operating costs and a $13.4 billion loan to GM under the Troubled Assets Relief Program (TARP) (see Nye 2021a for more on the late-2008 funding for the auto industry; Kolka 2009, 30). As discussed in Key Design Decision No. 1, use of TARP funds was controversial and at first President Bush

[4] Daimler had paid $37 billion for Chrysler, but sold the automaker to Cerberus for $7.4 billion (Isidore 2007).

and Treasury Secretary Henry M. Paulson, Jr., did not believe that Congress had authorized TARP funds to be used for an auto bailout. However, the Bush administration ultimate determined that the statute was broad enough to provide relief. Among other arguments, Treasury relied on the nexus between GM and Chrysler and their respective finance companies, GMAC and Chrysler Financial, and the critical role that financing played in the industry to support funding under TARP (COP 2009, 70; Wiggins, Metrick, and Nye 2021).

At the end of December 2008, Treasury also promised up to $6 billion in aid for Chrysler Financial's competitor, GMAC (Shepardson 2009). Officials from the two Chrysler companies complained that the aid put Chrysler Financial, and therefore Chrysler, at a "competitive disadvantage" (Shepardson 2009).[5] On January 16, 2009, days after the complaints were aired to the press, Treasury announced $1.5 billion in aid from TARP to Chrysler Financial as a measure to improve consumer access to credit and prop up auto sales Treasury 2009a).

Program Description

Use of the Federal Reserve's Broad-Based Liquidity Programs

In an attempt to stabilize itself, Chrysler accessed two broad Federal Reserve programs that assisted Chrysler Financial's auto finance business. The Commercial Paper Funding Facility (CPFF), which launched on October 27, 2008, was designed to backstop the commercial paper market and revive term lending. The CPFF provided funding for third parties to purchase highly rated unsecured and asset-backed commercial paper from eligible issuers (Wiggins 2020). Between October 27, 2008, and September 8, 2009, $4.82 billion of Chrysler Financial Auto Conduit Receivables were purchased under the auspices of the CPFF (BdofGov n.d.).

Another broad Fed program accessed by Chrysler Financial was the Term Asset-Backed Securities Loan Facility (TALF), which was intended to stimulate the renewed issuance of consumer and small business loans by facilitating the securitization of such loans at more normal interest rate spreads (Rhee 2020). Specifically, the TALF allowed eligible institutions to borrow from the Federal Reserve Bank of New York (FRBNY) using, as collateral, among other types, newly-issued auto loan asset-backed securities (ABS) (Rhee 2020). Chrysler Financial issued enough auto ABS, some funded under TALF, so that on July 14, 2009 it was able to repay the remaining principal, interest, and amounts due under the vested notes owing with respect to the Chrysler Financial Trust Loan. (GAO 2009c; Langlois 2009). It seems the conditions and cost of the TALF loans may have been preferable to continuing to pay the fees associated with, and comply with, the executive compensation restrictions of the Chrysler Financial Trust Loan.

The Two Interventions Customized for Chrysler

[5] As part of Chrysler's requests for aid from TARP, Chrysler had asked for $2.5 billion to aid Chrysler Financial's floorplan and consumer financing operations (Kolka 2009, 30). This request was subsequently lowered to $1.5 billion in aid that would be allocated to only consumer financing (Kolka 2009, 30).

Two government interventions were customized for Chrysler and Chrysler Financial. In early 2009 Chrysler Financial accessed a $1.5 billion lending facility from Treasury under the Troubled Assets Relief Program (TARP) (Office of Financial Stability 2018). After Chrysler Financial drew down that funding, the company became involved in Treasury's restructuring of Chrysler via the bankruptcy code; this led to the second intervention. (COP 2010, PDF pp. 26, 46)de Starting in late April 2009, as part of Chrysler's bankruptcy proceedings, Treasury facilitated the replacement of Chrysler Financial by GMAC as Chrysler's auto finance partner (Treasury n.d., 5; COP 2010, 27,49).[6]

Treasury's $1.5 billion Funding Facility under TARP

Pursuant to a loan agreement, dated January 14, 2009, between Treasury and Chrysler LB Receivables Trust, a bankruptcy-remote trust established by Chrysler Financial ("Chrysler Financial Trust"), Treasury provided $1.5 billion in aid for Chrysler Financial that would fund a new pool of Chrysler Financial ABS (the Chrysler Financial Trust Loan) (Bansal and Krolicki 2008; Chrysler Financial Services and Treasury 2009, PDF p. 5; Treasury 2009a). The ultimate purpose of the program was the same as the original $17.4 billion Bridge Loan program that provided funding to GM and Chrysler: to provide financing to "restore stability to the domestic automobile industry in the United States" and "restore liquidity to its business" (Nye 2021a; Chrysler Financial Services and Treasury 2009, PDF p. 5). The proximate purpose of the program was to finance retail loans made by Chrysler Financial on or after January 1, 2009, with respect to the purchase of Chrysler vehicles, including cars, light-duty trucks, and recreational vehicles to "stimulate manufacturing and sales" of such vehicles Treasury n.d.; Chrysler Financial Services and Treasury 2009, PDF p. 5). It was thought that the extension and securitization of new consumer loans would temporarily help keep Chrysler Financial and thus, Chrysler, afloat (Treasury n.d.; Chrysler Financial Services and Treasury 2009, PDF pp. 5, 47–73; Dombey and Simon 2009). Tangentially, this would preserve jobs of American workers employed directly by the manufacturers and in related industries and "safeguard the ability of the [manufacturers and their affiliates] to provide retirement and health care benefits for their retirees and their dependents" (Chrysler Financial Services and Treasury 2009, PDF p. 5).

Authority: Funding for the Chrysler Financial Trust Loan came from Treasury's Automotive Industry Financing Program (AIFP), which Treasury authorized under TARP pursuant to the Emergency Economic Stabilization Act of 2008 (EESA). This was the same authority

[6] On March 30, 2009, Treasury had released a Determination of Viability for GM and Chrysler (Treasury 2009b). In the Chrysler document, the US government announced its expectations for Chrysler Financials' future (Treasury 2009b, PDF p. 5). In spite of Chrysler's reliance on Chrysler Financial for nearly half of its sales, Treasury cited the possibly divergent customer mix, "separation and independence of Chrysler Financial and increased credit standards," and "substantial financing challenges" faced by Chrysler Financial as causes for its suggestion that Chrysler's "future demand may depend on [its] finding alternate lending sources" (Treasury 2009b, PDF p. 5). This meant that Chrysler would likely further distance itself from Chrysler Financial, and Chrysler Financial would have to survive as a third-party auto finance company that would not follow Chrysler into the bankruptcy process (COP 2010, 27, 49).

Treasury relied on for all of its direct aid to the auto industry (Office of Financial Stability 2018).

Loan Terms: Treasury agreed to loan up to $1.5 billion to Chrysler Financial Trust. Treasury would make advances under the Chrysler Financial Loan commitment in specified amounts on several funding dates specified in the agreement upon Chrysler Financial Trust's request. Once advances were repaid, they could not be re-borrowed. The initial funding date was January 16, 2009 (Chrysler Financial Services and Treasury 2009, PDF p. 60).[7] The loan was for a term of five years and all advances were fully repayable on January 16, 2014, along with any outstanding interest and/or fees (Treasury n.d.). Advances could be prepaid by Chrysler Financial Trust in whole or in part. However, in the event of any prepayment, Chrysler Financial Trust would be responsible for making Treasury whole for any losses or costs that it suffered in redeploying funds maintained for advances (Chrysler Financial Services and Treasury 2009, PDF pp. 7, 11).

Each advance under the loan was evidenced by two classes of Variable Funding Floating Rate Asset Backed Notes (promissory notes) issued to Treasury by Chrysler Financial Trust (Chrysler Financial Services and Treasury 2009, PDF pp. 10, 137, 145).[8] (See Figure 1.) Class A promissory notes required Chrysler Financial Trust to pay Treasury the outstanding principal and interest on the advance on a monthly basis (Chrysler Financial Services and Treasury 2009, PDF pp. 90, 171172; Treasury 2009a, PDF pp. 1–2). Principal and interest accrued at a rate of LIBOR plus 100 basis points for the first year and LIBOR plus 150 basis points for the second through fifth years. For Class A notes, overdue installments of interest accrued interest at a penalty rate of LIBOR plus 4% for the first year and LIBOR plus 4.5% for years two through five (Chrysler Financial Services and Treasury 2009, PDF p. 184).

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[7] We have not been able to determine other funding dates, or their frequency, as this information was included on Appendix A to the agreement, which is fully redacted in the public copy of the agreement. However, we do know that Chrysler Financial Trust drew on the facility multiple times before April 9, 2009 (Chrysler Financial Services and Treasury 2009, PDF p. 60; GAO 2009a, 62).

[8] Treasury could have received a third class of these notes (called Class C notes) in the event that Chrysler Financial wanted to deploy supplemental loans that enhanced the credit of the ABS master trust through overcollateralization (although it is not clear whether these loans would have been extended by the US government or some other entity) (Treasury 2009a, PDF p. 2). However, Chrysler Financial appears to have chosen not to draw on these supplemental loans (Chrysler Financial Services and Treasury 2009, PDF pp. 154-162, 171–179). The Class C notes appear to have carried the same interest rate and many of the terms of the other notes (Chrysler Financial Services and Treasury 2009, PDF pp. 154162, 171179).

Figure 1: Attributes of Promissory Notes

Note category	Class A Variable Funding Floating Rate Asset Backed Notes	Class B Variable Funding Floating Rate Asset Backed Notes
Principal	• Minimum principal: $100 million • Maximum principal: $1.5 billion • Actual principal: $1.5 billion	• $75 million, with $15 million vested at closing and on each anniversary of the loan closing in which the loan is outstanding
Interest rate	• Year 1: 1-month LIBOR plus 100 basis points (bps) • Years 2–5: 1-month LIBOR plus 150 bps • (penalty rate adds 300 bps)	• Year 1: 1-month LIBOR plus 100 bps • Years 2–5: 1-month LIBOR plus 150 bps • (penalty rate adds 300 bps)
Term	• Five years (beginning January 16, 2009)	• Five years (beginning January 16, 2009)
Purpose	• To enable the securitization trust to fund retail loans made on or after January 1, 2009, to finance the purchase of Chrysler automobiles	• Issued as additional consideration for the Treasury in lieu of warrants, to fulfill the EESA Section 113(d)(1)(b) requirement
Security (Class A and Class B notes)	• All pooled receivables and related property • The collection account and its contents • Hedges entered or acquired by Chrysler Financial Trust • Any right to payment facilitated by the financing	• Same as Class A

Source: Chrysler Financial Services and Treasury 2009.

Class B notes, also issued to Treasury by Chrysler Financial Trust in connection with all advances, functioned as additional consideration, fulfilling Treasury's requirement that it had to receive "a warrant for common or preferred stock, or a senior debt instrument" when it purchased troubled assets from financial institutions under EESA Section 113(d)(1)(b) (EESA, § 113(Chrysler Financial Services and Treasury 2009, PDF p. 179).). Class B notes had the same terms and maturity dates as the Class A Notes. Treasury received 5% of the maximum loan amount, or $15 million, at closing and on each anniversary of the closing, up to a total of $75 million. The Class B notes ranked below the Class A notes in the payment waterfall (See Figure 2).

Figure 2: Payment Priority

Name and type of obligation	**Principal**	**Recipient**	**Priority**
Trustee fees	Assessed monthly, but must in total be less than or equal to $100,000 per annum	Pro rata among priority 1 to the Indenture Trustee and the Owner Trustee	1
Servicing fees	The servicer fee assessed and any unpaid monthly servicer fees	Pro rata among priority 1 to the Servicer (Chrysler Financial)	1
Hedging fees	Net payments assessed monthly (excluding termination payments)	Hedge counterparties	2
Interest, fees, and costs of relevant Notes	Assessed monthly	Class A note holders (Treasury); Class B note holders (Treasury); Class C note holders (Chrysler Retail Residual Depositor LLC, which could then transfer them to Chrysler Retail Residual Trust)	3
Principal on relevant Notes	Outstanding principal amount under relevant notes until said outstanding principal has been reduced to zero	Class A note holders (Treasury); Class B note holders (Treasury); Class C note holders (Chrysler Retail Residual Depositor LLC, which can then transfer them to Chrysler Retail Residual Trust)	4
Trustee fees overflow	Any fees owed beyond the $100,000 per annum cap	Indenture Trustee and Owner Trustees	5
Termination fees under hedges		Hedge counterparties	6
Distributions to Trust certificate holders		Certificate holder (assumed to be Chrysler Financial)	7

Source: Chrysler Financial Services and Treasury 2009

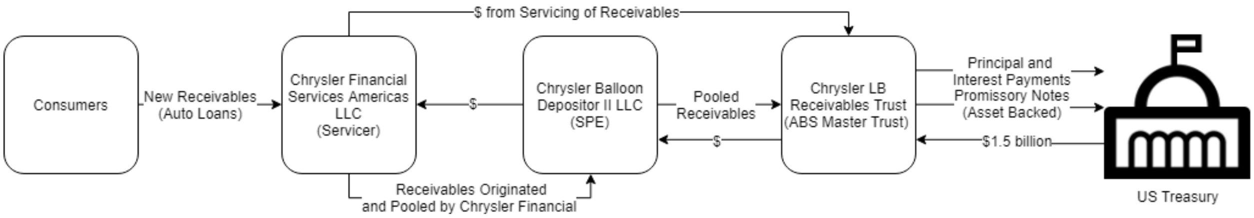
Collateral/Security: The loan and Treasury's right to payment of principal and interest under the notes were secured by all the property of the Chrysler Trust, the pool of loans that it purchased and the related receivables, the funding account and any hedges. These were held by the Indenture Trustee, who held perfected first-priority liens on all of Chrysler Trust's property for Treasury's benefit (Chrysler Financial Services and Treasury 2009, PDF pp. 15, 72, 79–81, 288–289).[9]

Mechanics: As illustrated in Figure 3, the legal structure of the loan mimicked that of an auto securitization, with the US Treasury playing the role of the bond-buying investor. (See Figure 2). Proceeds of the loan were received by Chrysler Trust, a bankruptcy-remote ABS master

[9] The indenture trustee's (Deutsche Bank Trust Company Americas) role was to act as trustee on behalf of those holding the various notes (Class A, Class B, and Class C) issued by Chrysler Trust (Chrysler Financial Services and Treasury 2009, PDF p. 60). The indenture trustee had a number of other duties to Treasury and Chrysler Trust under an indenture agreement (Chrysler Financial Services and Treasury 2009, PDF pp. 79–81).

trust (Chrysler Financial Services and Treasury 2009, PDF pp. 171172). The Chrysler Financial Loan promoted the sale of Chrysler vehicles through the following process:

Figure 3: Simplified Mechanics of the Facility



Source: Created by YPFS; based on Chrysler Financial Services and Treasury 2009.

Chrysler Financial would make loans to consumers buying Chrysler vehicles, then bundle these loan receivables into a pool that it would sell to a bankruptcy-remote special purpose entity (SPE) created for this purpose, which was called Chrysler Balloon Depositor II LLC (the "SPE" or the "Depositor") (Chrysler Financial Services and Treasury 2009, PDF pp. 53, 64–65, 67). The SPE purchased the pooled receivables from Chrysler Financial using funds it received from Chrysler Financial Trust, which held the proceeds from the Treasury loan (Chrysler Financial and Treasury 2009, PDF p. 137–141, 274). Chrysler Financial Trust then issued to Treasury two classes of notes providing for the repayment of the loan and for additional consideration for Treasury. Thus, Chrysler Financial funded a new pool of Chrysler Financial ABS, with Chrysler Financial Trust acting as a purchaser for auto loan receivables (Chrysler Financial Services and Treasury 2009, PDF pp. 5, 171173, 225–230; Bansal and Krolicki 2008). This allowed Chrysler Financial to originate new loans and leases for consumers at better terms, increasing its volume from the low levels of late 2008 (Chrysler Financial Services and Treasury 2009, PDF pp. 10, 47–73, 242–257).

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

Parent Company Guarantee: The loan documents also included a guarantee agreement under which Chrysler Financial's parent company, Chrysler Holding, guaranteed penalties that Chrysler Financial might become obligated to pay if it violated "dividend and distribution restrictions" contained in the loan agreement Treasury n.d., PDF p. 3; Chrysler Financial Services and Treasury 2009, PDF pp. 237–241). We have not been able to determine the substance of these restrictions; they have been redacted in the loan documents released to the public (Chrysler Financial Services and Treasury 2009, PDF p. 342; Treasury 2009a, PDF p. 3).

Executive Compensation Requirements: The executive compensation requirements imposed by the loan aimed to limit the benefits and compensation enjoyed by Chrysler Financial senior employees and executives. These restrictions were of two types: (1) regulations regarding compensation to senior executive officers issued by the Treasury in connection with EESA programs[10] and (2) restrictions contained in the loan agreement. It is not clear, however, what restrictions were contained in the loan agreement, because these terms have been redacted from the public version of the agreement. However, the term sheet for the Chrysler Financial Trust loan (Loan Term Sheet) included the following:

> (A) Chrysler Financial shall comply with EESA terms,
>
> (B) Chrysler Financial shall comply in all respects with the limits on annual executive compensation deductibles imposed by Section 162(m)(5) of the Code, as applicable;
>
> (C) Chrysler Financial shall reduce by 40.00% the aggregate amount of bonus compensation that may be paid to Senior Executive Officers [the top five highest-paid officers] or Senior Employees [the next 20 most highly compensated employees] in fiscal year 2009 from the aggregate bonus compensation actually paid to such employees in 2007, subject to certain adjustments;
>
> (D) Chrysler Financial shall not adopt or maintain any compensation plan that would encourage manipulation of its reported earnings to enhance the compensation of any of its employees; and
>
> (E) Chrysler Financial shall maintain all suspensions and other restrictions of contributions to Benefit Plans that are in place or initiated as of the closing date" Treasury n.d., PDF pp. 3–4).

In particular, the 40% bonus reduction appeared to be unusually restrictive compared to similar TARP programs at the time. Treasury press releases referred to the proposed executive compensation terms as "enhanced restrictions on executive compensation" Treasury 2009a).[11]

Corporate Governance Terms: Pursuant to the loan agreement, Chrysler Financial was required to suspend payment of dividends. It also had to comply with corporate governance requirements imposed by EESA, which included, a semi-annual risk review by the compensation committee and certain disclosures.[12]

Reporting Requirements and Administrative Burden: The reporting requirements included in the loan between the US Treasury and Chrysler Financial Trust were limited to standard

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[10] These terms were automatically imposed under 31 CFR 30 and Section 111 of EESA on organizations that received TARP money (Treasury 2009d; EESA 2008).These rules defined Senior Executive Officer (SEO) as the top five highest-paid officers and Senior Employees as the next 20 most highly compensated employees. Among other conditions, the rules prohibit or limit cash compensation, total compensation, short-term stock incentives, severance payments, and the adoption of any new benefit plan for SEOs who did not comply with the rules.

[11] As part of the loan agreements, Chrysler Financial and its individual SEOs and executive officers were required to sign individual waivers foregoing any claims against the company and Treasury for any changes to any compensation (Chrysler Financial Services and Treasury 2009, PDF pp. 12 (Sec. O), 39–43.)

[12] See pages A8-A9 of the Special Master's letter for a list of these requirements (Feinberg 2009, 11–12).

conditions (notification of defaults, litigation, changes in control, right of lender to perform due diligence, etc.) (Chrysler Financial Services and Treasury 2009, PDF pp. 22–31).

Replacing Chrysler Financial with GMAC

In early April 2009, Treasury realized that Chrysler's bankruptcy filing would cause Chrysler's bankers to withdraw all $22 billion of its remaining credit lines (Rattner 2011, 147). Given its significant relationship with Chrysler and other concerns regarding the company, Treasury sought to arrange a more secure financing source for Chrysler. A plan was proposed to have GMAC replace Chrysler Financial. Chrysler Financial would go into "runoff mode," continuing to hold the loans that it had made but not making new ones (COP 2011, 11; COP 2010, 48; Rattner 2011, 147). Treasury would not save Chrysler Financial. Chrysler made this plan public, announcing at the time that it "will enter into an agreement with GMAC that will provide dealer and customer financing after bankruptcy, in lieu of Chrysler Financial, which agreed to cooperate in the transition of its current dealer agreements to GMAC" (Canis et al. 2009, PDF p. 31; Docket 1261 2009, PDF pp. 8–11).[13]

Outcomes

Outcomes of the $1.5 billion Facility

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

Although the aid from the US government was lightening the financial load on Chrysler Financial, the company continued to be squeezed; Chrysler Financial's financial burden was increasingly felt by Chrysler and its dealerships. Less than a month after the Treasury loan closed, the *Wall Street Journal* reported that Chrysler Financial "has focused increasingly on protecting its own bottom line, often at the expense of the auto company" (Kellogg 2009a). Chrysler Financial continued to face significant problems, as evidenced by the fact that it asked for additional TARP funds in March 2009 (Kellogg 2009b). The *Washington Post* reported that Treasury offered Chrysler Financial an additional $750 million in loans (Krisher and Manning 2009). However, the Associated Press wrote that a "government official with knowledge of the negotiations" said Chrysler Financial was unwilling to agree to the accompanying executive pay cuts Treasury demanded (Krisher and Manning 2009). The deal never came together or fell apart during negotiations over these pay cuts and soon

[13] For more details of the terms of Chrysler's transition of its auto financing relationship from Chrysler Financial to GMAC see the Master Auto Finance Agreement at Chrysler Group LLC and GMAC 2009, PDF pp. 212–222.

Chrysler Financial indicated that it no longer needed such aid from the government (Krisher and Manning 2009).

Chrysler Financial reached the $1.5 billion maximum loan amount by April 9, 2009, and subsequently returned to raising lending rates, this time by an average of more than 1% (Kellogg 2009b; GAO 2009c, 62). The company repaid the loan in full (with interest and fees) quickly and made the last payment on July 14, 2009 (GAO 2009c, 62, 132). As a result, taxpayers received an extra $22.4 million (beyond the $1.5 billion they lent) (GAO 2009c, 134). Chrysler Financial stated that its speedy repayment was due to its successful participation in the Term Asset-Backed Securities Loan Facility (TALF) (Langlois, 2009).

Outcomes of GMAC's Replacement of Chrysler Financial

With the filing of Chrysler's Chapter 11 petition at the end of April 2009, Chrysler Financial's funding sources dried up (Docket 482 2009, PDF p. 8). As a result, Chrysler Financial stopped providing floorplan financing to dealers and financing to consumers (Kellogg 2009b). Chrysler Financial "announced that it would no longer provide additional advances under the wholesale lines of such Dealers," and Chrysler's attorney worried about the fact that Chrysler Financial had liens "on most of these Dealers' assets [including, among other things, new and used cars, parts, and other inventory]" (Docket 482 2009, PDF p. 8–9). Even worse, Chrysler Financial's contracts with dealers apparently barred any party "from placing new liens on Chrysler Financial's collateral without a waiver from Chrysler Financial" (Docket 482 2009, PDF p. 8–9). Chrysler Financial asserted that imposing new liens, like those of GMAC, would "result in an event of default under the financing documents between Chrysler Financial and the Dealers," permitting Chrysler Financial "to exercise its remedies against the Dealers and their assets" (Docket 482 2009, PDF p. 8–9).[14] Chrysler's attorneys asserted that Chrysler's "businesses cannot survive without financing for their Dealers and the Debtors cannot procure this substitute financing without the consent of Chrysler Financial" (Docket 482 2009, PDF pp. 8–9, 14). Accordingly, "Chrysler had to convince Chrysler Financial to waive the 'new liens' prohibition" in order for the GMAC transition to proceed (Docket 483 2009, PDF p. 12).

Treasury effectively subsidized Chrysler's solution to this problem by increasing the $4.1 billion debtor-in-possession loan[15] that it had provided to Chrysler by $896 million, some of which Chrysler would use to pay Chrysler Financial to waive a number of its potential claims

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

[15] The debtor-in-possession (DIP) loan was a three-way agreement between Chrysler, Treasury, and Export Development Canada (EDC) dated May 5, 2009 (Chrysler LLC and Lenders 2009, PDF p. 21). See Nye 2021b for details.

against Chrysler once Chrysler had successfully restructured (Chrysler LLC and Lenders 2009, PDF p. 21; Docket 1903 2009; Docket 6273 2009, PDF p. 62).

Although Treasury originally intended for GMAC to acquire all of Chrysler Financial's assets, Treasury noticed that Chrysler Financial had substantial debts coming due in July 2009 (COP 2010, 26). To avoid exposing GMAC to these debts, Treasury determined that it would finance "GMAC's acquisition of only a part of Chrysler Financial's business."

In July 2009, the Treasury and Chrysler also amended the documents underpinning the $4 billion in Bridge Loan from late 2008 as part of the transition (Chrysler Holding and Treasury 2008, PDF pp. 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 $1.38 billion (Chrysler Holding and Treasury 2008, PDF pp. 383–401).

Outcome of Winding Down the Old Chrysler(s)

By September 2009, Treasury issued a directive to Chrysler Financial "to liquidate its business" and the Special Master for TARP Executive Compensation noted that Chrysler Financial planned to wind down operations by the end of 2011 (GAO 2009b, 6; Feinberg 2009). 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; Treasury 2010). Chrysler Holding still owed Treasury $3.5 billion under the Bridge Loan, 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 (COP 2011, 16–17). Chrysler Financial was rebranded as TD Auto Finance and as of the date of this case continues to operate (TD Auto Finance 2015). The alliance between Chrysler and GMAC did not last and was terminated in early 2013 when Chrysler replaced GMAC with Chrysler Capital, a captive full-service finance provider for Chrysler and associated companies executed in connection with Santander Bank (Chrysler Group 2014, 155; Chrysler Capital 2016).

II. Key Design Decisions

1. Treasury committed financing to Chrysler Financial from TARP using EESA based on the idea that Chrysler Financial's existence was intractably intertwined with Chrysler's.

It should be noted that at first President Bush and Secretary Paulson did not believe that Congress had authorized TARP funds to be used for an auto bailout since the act was generally thought to be targeted to the financial industry (Wiggins, Metrick, and Nye 2021, 12). In broad terms, TARP authorized the Secretary of the Treasury to purchase "troubled assets" from "financial institutions" (Wiggins, Metrick, and Nye 2021, 12). However, while descriptive, the definitions are not entirely restrictive and in particular, the definition of "troubled assets" can be expanded by determination of the Secretary of the Treasury in accordance with certain procedures set out in the statute. (Wiggins, Metrick, and Nye 2021, 12). The definition of financial institutions is arguably broad enough to include the auto manufacturers, as the Secretary determined (Wiggins, Metrick, and Nye 2021, 12). Among other arguments, President Bush and Secretary Paulson relied on the nexus between GM and Chrysler and their respective finance companies, GMAC and Chrysler Financial, and the critical role that financing played in the industry to support funding under TARP for all four companies.

The official determination by the Secretary of Treasury that authorized TARP funding for auto manufacturers defined "certain [...] companies [...] engaged in the manufacturing of automotive vehicles and the provision of credit in connection with the manufacturing and purchase of such vehicles" as "financial institutions" for the sake of EESA (Secretary of Treasury 2008, PDF p. 1). This enabled Treasury to purchase the "troubled assets" of Chrysler Financial. This decision was criticized by some (Wiggins, Metrick, and Nye 2021).

When litigation over the bankruptcy court's approval of Chrysler's restructuring reached the Second Circuit Court of Appeals, Treasury expounded on the Secretary's determination:

> [T]he Secretary of the Treasury, in determining what is a financial institution, looks at the interrelatedness [of the company and its financing arm].
>
> Chrysler Financial can't survive without Chrysler . . . . Without [Chrysler], the financial institution goes down . . . . [Chrysler Financial] is the financial institution and the relationship [with Chrysler is the one] that the Secretary of the Treasury based his determination on, and that determination is entitled to deference by this court under administrative law principles (COP 2009, 75–76).

(See COP 2009, 70, and Wiggins, Metrick, and Nye 2021, 11–15, for a discussion of the use of TARP for the auto industry.)

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

Under the auspices of the AIFP, the government would ultimately provide funding to not only the auto manufacturers and auto finance companies but also to other related stakeholders such as suppliers and customers. Because of the interdependence of companies in the industry, such aid was thought necessary to ensure both the success of the restructuring plans and the 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 auto companies restructure using the bankruptcy code, committing billions of dollars in debtor-in-possession and post-petition financing (Klier and Rubenstein 2013, 148–150).

3. Treasury authorized $1.5 billion in lending to aid Chrysler Financial's consumer financing.

As part of Chrysler's requests for aid from TARP, the manufacturer had asked for $2.5 billion to aid Chrysler Financial's floorplan and consumer financing operations (Kolka 2009, 30). This was subsequently lowered to a request for $1.5 billion in aid that would be allocated exclusively to consumer financing (Kolka 2009, 30). On January 16, 2009, days after Chrysler complained about being put at an "competitive disadvantage" by Treasury's announcement of up $6 billion in aid for Chrysler Financial's competitor, GMAC, Treasury announced $1.5 billion in aid from TARP to Chrysler Financial to improve consumer access to credit and stimulate Chrysler auto sales Treasury 2009a). The $1.5 billion was a relatively small amount compared with the $6 billion commitment to GMAC (Canis et al. 2009, 48). However, the $1.5 billion commitment for Chrysler Financial and the $6 billion committed to GMAC were in addition to the initial $17.4 billion authorized by the Bush administration for aid to automotive companies (White House 2008).

Despite the Treasury's commitment to Chrysler Financial, several dealerships complained about the lack of support for floorplan financing. While the $1.5 billion Chrysler Financial Trust Loan and facility could stimulate consumer financing, dealerships found it increasingly difficult to finance their inventories (Kellogg 2009a; Wernle 2009). However, additional funding was not forthcoming from Treasury, possibly because Treasury and Chrysler wished to shrink Chrysler's dealer network which both considered to be oversized and unprofitable (Rattner 2011, 194).

4. The Chrysler Financial Trust loan had a five-year term but could be prepaid.

The term of the $1.5 billion loan to Chrysler Financial Trust was slightly shorter than the common loan terms for automobile asset-backed securities in a normal market (for example, 72 months in 2016) (Lei et al. 2017). The term was also longer than that on the three-year term loans TALF announced at the close of 2008, which would have made it more attractive than waiting for TALF to be implemented (Leinfuss 2008).

Treasury also allowed Chrysler Financial to prepay its advances under the Chrysler Financial Trust loan in whole or in part (Chrysler Financial Services and Treasury 2009, PDF pp. 7, 11). However, in the event of any prepayment, Chrysler Financial had to make Treasury whole for any losses or costs that it suffered in redeploying funds maintained for advances (Chrysler Financial Services and Treasury 2009, PDF pp. 7, 11).

5. Chrysler retail auto financing had to comply with certain terms to benefit from the Chrysler Financial Trust loan and financing program.

The Master Auto Finance Agreement Term Sheet describing the financing program (MAFA Term Sheet) stated that financing extended to retail consumers on or after January 1, 2009, which meet "certain geographic, credit quality and other standard overconcentration limits." (Chrysler Group LLC and GMAC 2009, Treasury 2009a, PDF p. 1). However, beyond the eligibility date for retail loans, more information on this topic does not appear in the Chrysler Financial Loan Agreement itself. (Chrysler Financial Services and Treasury 2009).

It is unclear why Treasury settled on January 1, 2009, as the earliest eligible date, as the Chrysler Financial Trust loan was executed on January 16, 2009 (Treasury 2009, PDF p. 1). However, this date is consistent with a goal of having the Chrysler Financial Trust loan stimulate new auto purchases, rather than subsidizing existing ones. There is no publicly available information on additional requirements, how they were enforced, or why they were put in place.

6. The legal structure of the Chrysler Financial Trust loan and facility mimicked that of an auto securitization, with the Treasury playing the role of the bond-buying investor.

The legal structure is important because it was a much more complicated structure for lending than that of any of the other programs under the AIFP. However, there is no public information available to explain why this structure was chosen (GM Financial n.d.).

The interest and principal of the $1.5 billion Chrysler Financial Trust loan was secured by the receivables and related property arising from the auto loans that Chrysler Financial would be making to retail customers Treasury 2009a). These receivables would have included the proceeds of defaulted customer loans that were subsequently liquidated. Treasury n.d., PDF pp. 3–4).

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

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

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

The Chrysler Financial Trust loan had an interest rate of the one-month LIBOR plus 100 basis points for the first year and the one-month LIBOR plus 150 basis points for the second through fifth years. The interest rate was significantly less than what Chrysler Financial had to pay when it renewed its $24 billion credit line in August 2008 (Bansal and Krolicki 2008) and less than what Chrysler paid to Treasury under the Bridge Loan (Nye 2021a). However, the Class B promissory notes to be issued by the trust with respect to any advance under the Chrysler Financial Trust Loan provided further upside to Treasury for extending the loan to Chrysler Financial, worth as much as 5% of the advance amount.

The Chrysler Financial Trust loan also provided for penalty rates in cases of default or overdue payments (Chrysler Financial and Treasury 2009, PDF pp. 7–8). The loan added 300 basis points to the interest rate for overdue payments (resulting in a penalty rate of 400 basis points in year one and 450 basis points in years two through five). The penalty was significantly smaller than the one imposed under the auto Bridge Loans to the manufacturers Chrysler and GM, which added a 500 basis point penalty (Nye 2021a).

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

The Class B promissory notes served as an alternative method for fulfilling EESA Section 113(d)(1)(b)'s requirement that the Secretary of the Treasury could only purchase the troubled assets of financial institutions that do not have their securities traded on a national securities exchange if the Secretary of Treasury received "a warrant for common or preferred stock, or a senior debt instrument" from the financial institution in question Treasury n.d., PDF p. 4; EESA, § 113). Because Chrysler Financial was a private company, it did not have its securities traded on a national securities exchange at that time. The Class B promissory notes fulfilled the requirement as a "senior debt instrument" that would act as additional consideration with respect to the $1.5 billion loan (EESA, § 113; Picarillo and Laterza 2009).[16] The Class B notes carried Maturity and interest rate terms and conditions that were similar to the Class A notes. The Class B Note issued to Treasury had a face value of $75 million—set at 5% of the maximum loan amount—and would vest over five years, with $15 million vested on issuance and an additional $15 million vesting annually on the anniversary of issuance while the loan was outstanding (Chrysler Financial Services and Treasury 2009, PDF pp. 145–146, 171–187; Treasury 2009a, PDF p. 4).

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

The press release announcing the Chrysler Financial Trust Loan and financing program indicated that Chrysler Financial would be required to "be in compliance with the executive compensation and corporate governance requirements of Section 111 of the Emergency Economic Stabilization Act, as well as enhanced restrictions on executive compensation" Treasury 2009a). The accompanying Loan Term Sheet included a requirement that bonuses of senior executive officers (SEOs) and senior employees for the 2009 fiscal year be reduced to no more than 60% of their 2007 levels Treasury n.d., PDF p. 3). It is worth noting that this condition appears to be more onerous than the restrictions imposed on Chrysler and GM, which were subject to ESSA provisions but not to specific compensation caps.

EESA Section 111, provided for review of compensation by the Special Master for TARP Executive Compensation (the "Special Master") "to determine whether the compensation structure for each senior executive officer and certain most highly compensated employees 'will or may result in payments inconsistent with the purposes of section 11 of EESA or TARP, or [is] otherwise contrary to the public interest (31 C.F.R. §30.16(a)(3)) (Treasury 2015, 1, 6)." This is often referred to as the Public Interest Standard (Treasury 2015, 6). The executive

[16] The author inferred that the purpose of the Class B Notes was to satisfy the TARP requirements because there was a lack of other instruments within the assistance for Chrysler Financial that would fulfill such requirements and because the language Treasury used for the Class B Notes in the Loan Term Sheet is similar to the language it used for the Additional Notes in the Bridge Loans term sheets.

compensation of the SEOs of Chrysler and GM were also subject to such review (Feinberg 2009). As required, on October 22, 2009, the Special Master issued its review of Chrysler Financial's proposed executive compensation, which took into account that at the time, the company was "following Treasury's directive to liquidate its business in an orderly fashion" (Treasury 2015, A5).

The Special Master was found that the company proposed cash salaries that represented decreases from 2008 levels of between 10% to 67% for its SEOs and highly compensated employees. Total cash compensation for this group would be reduced by 30% from 2008 levels and total compensation would be reduced by 56%. The Special Master found these terms to be consistent with the Public Interest Standard (Treasury 2015, 1, A6). The Special Master also limited all other compensation and perquisites to no more than $25,000 and ordered that there be no increases in severance arrangements. The Special Master also ruled that severance paid in excess of its ruling would have to be reclaimed (Treasury 2015, A7). The Special Master found that the proposed compensation for the company's other highly compensated employees (the 26th through 100th highly compensated employees) was consistent with the rule (Feinberg 2009).

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

The inclusion of a provision for Class C Notes anticipated that Chrysler Financial might arrange for supplemental subordinated loans. The third-party holders of these loans would receive Class C Notes to represent the funding that they provided. The Class C Notes would accrue interest and would be subordinate to the Class A and Class B Notes, with related secondary payment priorities. However, we have not been able to determine why these provisions were never used or why the credit enhancement and hedging contemplated by the Class C Notes were given such attention in the Chrysler Financial Loan Agreement. (Chrysler Financial Services and Treasury 20009).

12. Chrysler Holding offered a limited guarantee of Chrysler Financial that served as a claw back mechanism in some cases of noncompliance.

Pursuant to the Chrysler Financial Trust loan agreement, Chrysler Financial was required to suspend payment of dividends while the loan was outstanding and could incur certain penalties payable to Treasury. Chrysler Holding, Chrysler Financial's parent company, guaranteed to any amounts paid to it by Chrysler Financial in violation of the dividend and distribution restrictions Treasury n.d., PDF p. 3). This functioned as a claw back provision in the event that amounts due to Treasury were not properly paid.

Treasury communicated the support for Chrysler Financial providing details of the loan and its intended purpose.

In January 2009, Treasury released a short press release announcing the Chrysler Financial Trust loan and financing program for new vehicle purchases and also providing the Loan Term Sheet. Treasury 2009a, Treasury 2009a). The press release described the loan as "a $1.5 billion loan to a special purpose entity created by Chrysler Financial to finance the extension of new consumer auto loans […] secured by a senior secured interest in a pool of newly originated consumer automotive loans" Treasury n.d.). Treasury also noted that Chrysler Financial would have to comply with the executive compensation and corporate governance restrictions under EESA in addition to "enhanced restrictions on executive compensation" Treasury 2009a). (Treasury also later published some (redacted) loan documents.)

In March, in its Determination of Viability for Chrysler, Treasury foreshadowed the need for Chrysler to modify its auto financing arrangement with Chrysler Financial describing Chrysler Financial as having "substantial financing challenges of its own" such that "future demand may depend on Chrysler finding alternate lending sources" (Treasury 2009b, PDF p. 5). Treasury also pointed to Chrysler Financial's "separation and independence" from Chrysler as a barrier to increasing demand for Chrysler's cars (Treasury 2009b, PDF p. 5). This foreshadowing came to fruition when, in connection with Chrysler entering bankruptcy in April, it entered into a new financing arrangement with GMAC.

13. Treasury indirectly subsidized GMAC's assumption of Chrysler Financial's auto financing relationship with Chrysler.

When Chrysler entered bankruptcy on April 30, 2009, Chrysler Financial did not join the action (Kellogg and Bennett 2009). However, a large portion of Chrysler Financial's assets were sold to, and its floorplan finance operations taken over by, GMAC, the former captive, and then current, financing arm of General Motors, also then controlled by Cerberus (COP 2010, 59). Treasury supported this reorganization and indirectly subsidized both GMAC and Chrysler Financial during the transition.

Rather than directly enter into a loss-sharing facility with GMAC, on May 15, 2009, Treasury and Export Development Canada amended their debtor-in-possession (DIP) loan[17] to Chrysler, increasing the $4.1 billion facility by $896 million and the Treasury increased its funding to GMAC by $7.5 billion to "support GMAC's ability to originate new loans to Chrysler dealers and consumers and help address GMAC's capital needs as identified through the Supervisory Capital Assessment Program (SCAP)" (Chrysler LLC and Lenders 2009, PDF p. 21; Docket 1903 2009; Treasury 2009c).

As for Chrysler Financial, some of the increased DIP loan would also be used to effectively pay the company to cap its potentially large "superpriority administrative expense claims"

[17] The debtor-in-possession (DIP) loan was a three-way agreement between Chrysler, Treasury, and Export Development Canada (EDC) dated May 5, 2009 (Chrysler LLC and Lenders 2009, PDF p. 21). See Nye 2021b for details.

and pay for an agreement that Chrysler's post-bankruptcy successor (which would later be known as New Chrysler) would assume Chrysler's obligations under the Risk Sharing Agreement between Chrysler and Chrysler Financial after Chrysler successfully restructured (Docket 6273 2009, PDF p. 62).[18]

III. Evaluation

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

Once the Chrysler Financial Trust loan was executed, sales of Chrysler vehicles ticked up slightly in February 2009 (+4,501), showed a major boost in March (+34,343), and stabilized somewhere in the mid-70,000 units per month range (–24,219) in April after the loan was fully drawn down (data from PR Newswire 2009a-d). However, the drop in sales in April may have occurred because some Chrysler Financial loan rates increased by over 1% as the loan was fully drawn that month (Kellogg 2009b). By then, however, the TALF was operational, which allowed Chrysler Financial to continue securitizing new loans. Thus, given its limited purpose, the Chrysler financial Trust loan and financing program can be said to have achieved its goal of maintaining and even stimulating Chrysler vehicle sales as the government worked with the company on a broader rescue plan.

Once TALF was available, Chrysler Financial was able to use TALF to fund an exit from the Chrysler Financial Trust loan (Langlois 2009).[19] Commentators note that the TALF seemed to improve the liquidity of the auto ABS market with triple-A-rated auto ABS spreads plummeting in the month after its December 2008 second announcement (Rhee 2020). Besides an uptick in sales (which could have been due to TALF), there does not seem to have been any significant public reaction to the Chrysler Financial Trust loan and financing program.

It's unclear how the Chrysler Financial Trust loan and financing program impacted Chrysler Financial other than in increased sales. Even as Chrysler announced that the loan allowed customers with credit scores as low as the 620s "to apply for affordable loans," sales continued to decline for Chrysler relative to 2008 (Shepardson and Priddle 2009). The impact of the loan and financing program is also obscured by the fact that Chrysler and

[18] The superpriority administrative expense claims were Chrysler's obligations to Chrysler Financial related to the management of its bankruptcy proceedings; they enjoyed a high payment priority under 11 US Code § 503,507. Under the Risk Sharing Agreement, Chrysler would convey the $1.5 billion in collateral to Chrysler Financial and commit to several other agreements in favor of Chrysler Financial in exchange for Chrysler waiving the "new liens" prohibition (Docket 483, PDF pp. 9–10, 12).

[19] One commentator alleged that the loan to Chrysler Financial "[was] also intended as a bridge to further funding from a $200bn Federal Reserve programme intended to support consumer credit," in other words, TALF (Dombey and Simon 2009).

Chrysler Financial behaved more independently from each other in early 2009 than Treasury had anticipated. Chrysler Financial provided wholesale financing to 62% of Chrysler dealerships and handled 50% of Chrysler's consumer financing (Docket 483, PDF p. 8). However, Chrysler Financial seemed to have a relationship with Chrysler defined more by conflict than by cooperation. While Chrysler attempted to sell the vehicles piling up in its inventory to dealerships, there were multiple media reports of Chrysler Financial's attempting to frustrate dealership access to the floorplan financing they needed to purchase vehicles from Chrysler (Kellogg 2009a; Wernle 2009).

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