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The Rescue of American International Group, Module C: AIG Investment Program[1]

Alec Buchholtz and Aidan Lawson[2]

February 19, 2020

Abstract

In September 2008, the Federal Reserve Bank of New York (FRBNY) extended an $85 billion credit line to AIG to address its liquidity stresses, but AIG's balance sheet remained under pressure (FRB PR, 09/16/2008), McDonald and Paulson, 2015). AIG was projected to report large third quarter losses and it was at risk of being downgraded by major credit rating agencies (GAO September 2011 - pp. 52 - 53). For these reasons, in early November 2008, Treasury invested $40 billion of Troubled Asset Relief Program (TARP) funds into AIG through the Systemically Significant Financial Institutions (SSFI) program, later renamed the AIG Investment Program (Term Sheet: Series D Preferred Stock). In exchange, the Treasury received 4,000,000 shares of AIG Series D Preferred Stock and a warrant to purchase AIG common stock (SPA: Series D Preferred Stock - pdf pp. 53). The investment helped repay a portion of AIG's debt to the FRBNY, restructured the terms of the Revolving Credit Facility (RCF), and deleveraged AIG's balance sheet. With similar concerns arising at the end of the first quarter of 2009, Treasury made a second TARP investment of $30 billion in exchange for 300,000 shares of Series F Preferred Stock and another common stock warrant (Webel 2017 - pp. 12-14; Amended SPA: 12/10/2010). Treasury converted the preferred stock accumulated from its TARP investments into AIG common stock in January 2011 and sold off the common stock over the following two years (Webel 2017 - pp. 5).

Keywords: AIG, Troubled Asset Relief Program, Emergency Economic Stabilization Act, preferred stock, warrant, systemically significant financial institutions, equity capital facility, capital injection, recapitalization, shareholders, credit rating agencies

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[1] The Yale Program on Financial Stability (YPFS) has written 7 case studies that examine in detail the various elements of the government's rescue of American International Group:

Buchholtz, Alec and Rosalind Z. Wiggins. 2018. "The Rescue of American International Group, Module A: The Revolving Credit Facility."

Engbith, Lily and Alec Buchholtz. 2018. "The Rescue of American International Group, Module B: The Securities Borrowing Facility."

Buchholtz, Alec. 2018. "The Rescue of American International Group, Module C: AIG Investment Program."

Engbith, Lily. 2018. "The Rescue of American International Group, Module D: Maiden Lane II."

Engbith, Lily. 2018. "The Rescue of American International Group, Module E: Maiden Lane III."

Buchholtz, Alec. 2018. "The Rescue of American International Group, Module F: The AIG Credit Facility Trust."

Engbith, Lily. 2018. "The Rescue of American International Group, Module Z: Overview."

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American International Group, Inc.: AIG Investment Program

At a Glance

Purpose: To assist AIG in managing its leverage by paying down a portion of the loan provided by the Federal Reserve and providing cash reserves.		
	November 2008 Investment	**March 2009 Investment**
Announcement Date	November 10, 2008	March 2, 2009
Operational Date	November 25, 2008	April 17, 2009
Termination Date	January 14, 2011	January 14, 2011
Investment Amount	$40.0 billion	Up to $30.0 billion
Max. Amount Utilized	$40.0 billion	$27.8 billion
Type of Preferred Stock Included	4,000,000 shares of Series D Cumulative Preferred Stock, Later swapped for Series E Non-Cumulative Preferred Stock	300,000 shares of Series F Non-Cumulative Preferred Stock
Warrant	2% common stock	1% common stock

Congress passed the Emergency Economic Stabilization Act on October 3, 2008, which introduced the Troubled Asset Relief Program (TARP), a $700 billion program that the Treasury used to provide financial assistance to bank, non-bank, and non-financial institutions and markets (P.L. 110-343). Under TARP, the Systemically Significant Failing Institutions (SSFI) program aimed to "to provide capital on a case-by-case basis to systemically significant institutions that are at substantial risk of failure (UST Report December 2008 - pp. 3)."

The Federal Reserve Bank of New York (FRBNY) had rescued AIG, the nation's largest insurance company, with a $85 billion loan in September, but the company's financial woes continued. In November, Treasury invested $40 billion in AIG under the SSFI program (Webel 2017 - pp. 14). AIG used the funds to partially repay some of its debt to FRBNY (AIG 6/30/2010). In exchange, Treasury received four million shares of Series D Preferred Stock and a warrant to purchase 53 million shares of common stock (2008 Annual Report - pp. 193, (Series D Warrant - pdf pp. 228).

As AIG's financial condition continued to worsen, Treasury announced a restructuring plan in March 2009 in which it modified some of the terms of the November 2008 investment (FRB PR 03/02/2009). Treasury exchanged the Series D Preferred Stock it had received for 400,000 shares of Series E Preferred Stock that better resembled AIG common equity and would thus improve AIG's financial leverage (Ibid.). Additionally, Treasury committed an additional $30 billion of TARP funds to AIG under an equity capital facility, with $165 million set aside to pay retention bonuses for employees of AIG's Financial Products unit (GAO September 2009 - pp. 35). In exchange, Treasury received 300,000 shares of Series F Preferred Stock and a warrant to purchase 3,000 shares of AIG common stock (Ibid. - pp. 35). Treasury later retitled the two SSFI investments in AIG the "AIG Investment Program."

In January 2011, Treasury executed a recapitalization plan for AIG, converting the preferred stock accumulated through the two TARP investments into over one million shares of AIG common stock. By December 2012, Treasury had sold off all its AIG common stock to recoup its investment. (Treasury PR 12/12/2012) In March 2013, Treasury sold its warrants back to AIG, officially ending all government interest and assistance in AIG (Webel 2017 - pp. 4).

Summary Evaluation

Financial analysts and regulators believe that the TARP investments in AIG did improve the company's leverage and restore AIG's outlook in the eyes of credit rating agencies (Moody's PR 11/10/2008, Moody's PR 03/02/2009). However, the added commitment of $70 billion in taxpayer money, on top of the $85 billion RCF, drew stark criticism from Congress and the public. Criticism focused in part on the $165 million in retention bonuses for executives in the AIG unit that caused a large portion of its financial losses. (SIGTARP October 2009 - pp. 15 - 18).

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I. Overview

Background

In September 2008, the Federal Reserve Bank of New York (FRBNY) announced that it would utilize its emergency lending powers under Section 13(3) of the Federal Reserve Act to provide AIG with an $85 billion Revolving Credit Facility (RCF) (FRB - AIG Reform). The RCF offered AIG immediate liquidity to address collateral calls from trading partners and counterparties of the AIG Financial Products (AIGFP) division. (GAO September 2011 - pp. 25) For more details on the terms of the RCF, please refer to the Buchholtz & Wiggins 2018.

The RCF was the first federal assistance provided to AIG. However, it quickly seemed insufficient to alleviate AIG's worsening capital and liquidity position. The company drew $72 billion on the RCF by early November (FRB - AIG Reform). Credit rating agencies continued to express concerns about AIG's poor capital position and the size and stringency of the company's debt to the FRBNY (GAO September 2011 - pp. 8). The U.S. government was also worried that investors would react badly to the upcoming announcement of major third-quarter losses. Negative news could affect investor confidence and damage the value of subsidiaries that the company was trying to offload. (Ibid. - pp. 52 - 53) The FRBNY even considered asking the rating agencies to take a "ratings holiday," that is, to refrain temporarily from downgrading the company (Ibid. - pp. 53). In order to satisfy rating agencies and restore AIG's financial condition, the government decided to restructure the terms of the RCF and provide further financial assistance to AIG. (Ibid. - pp. 52 - 53)

The funding to assist AIG was available through the $700 billion Troubled Asset Relief Program (TARP), authorized by Congress under the Emergency Economic Stabilization Act (EESA) on October 3, 2008. (P.L. 110-343) Administered by the Treasury, TARP made available a variety of asset purchase and capital injection facilities "aimed at stabilizing the financial system and restoring liquidity, enabling the flow of credit consumers and businesses, and restoring economic growth." (UST Section 105 April 2009 - Summary)

Among them, the Systemically Significant Failing Institutions (SSFI) program aimed "to provide stability and prevent disruption to financial markets in order to limit the impact on the economy and protect American jobs, savings and retirement security from the failure of a systemically significant institution." (UST Section 105 December 2008 - pp. 3) For more information on the SSFI program, please refer to Appendix A.

Program Description

November 2008 TARP Investment

On November 10, 2008, the Fed and Treasury announced that Treasury would invest $40 billion into AIG via the SSFI program, in part to repay a portion of the debt owed by AIG under the FRBNY's RCF and in part to provide a cash buffer on AIG's balance sheet (FRB PR, 11/10/2008, Webel 2017 - pp. 14). Since FRBNY's RCF was extended prior to the passage of EESA, the preferred stock obtained as collateral for the loan was given to the FRBNY, which then placed it in the hands of an independent Trust that it had established "for the benefit of the U.S. Treasury." The original $40 billion, as well as any subsequent investments, was made possible through EESA, which gave Treasury the ability to invest in the equity of banks and other institutions, a power it did not have before.

AIG and Treasury signed a Securities Purchase Agreement on November 25, 2008 pursuant to which in exchange for its investment, Treasury received 4,000,000 shares of AIG Series D Fixed Rate Cumulative Perpetual Preferred Stock (Series D Preferred Stock) and a warrant to purchase 2% of AIG's outstanding common stock (Series D Warrant). (Term Sheet: Series D Preferred Stock - pp. 6) Treasury transferred the investment directly to the FRBNY on November 25 on AIG's behalf. (UST Report December 2008 - pp. 8)The Series D Preferred Stock came with an aggregate $40 billion liquidation preference, adjusted to $10,000 per share, with a par value of $5.00 per share, and had a perpetual life span. (SPA: Series D Preferred Stock - pdf pp. 223) Treasury would receive cumulative dividends on the Preferred Stock at a rate of 10% per annum and paid quarterly when AIG's Board of Directors declared dividends (Ibid. - pdf pp. 223). Any unpaid dividends would compound quarterly. In addition, the Series D Preferred Stock ranked senior to all other series of preferred stock and AIG common stock. (Ibid. - pdf pp. 223)

Dividends and Directors. If AIG did not pay dividends to Treasury for four quarters, consecutive or not, Treasury could nominate and elect the greater of two new directors to AIG's Board of Directors or the number of directors equal to 20% of AIG's Board of Directors (Ibid. - pdf pp. 111). Treasury would be able to elect its choice of directors as a separate class from all other AIG share classes. (Ibid – pdf pp. 111.) Following four consecutive quarters of dividend payments, thereafter, any Treasury-elected director would have to resign. (Ibid. - pdf pp. 111)

Beyond the election of directors associated with unpaid dividends, the Series D Preferred Stock was non-voting except in the cases of (Ibid. pdf pp. 111 - 112):

1. Any authorization or issuance of shares other than convertible preferred stock ranking senior or pari passu to the Series D Preferred Stock
2. Any amendment that adversely affects the rights of the Series D Preferred Stock
3. Any merger, exchange, or similar transaction unless the Series D Preferred Stock remains outstanding or is converted into or exchanged for preference securities of the surviving or resulting entity

Warrant. The Series D Warrant allowed Treasury, upon exercise, to purchase 53,798,766 shares of AIG common stock – then 2% of outstanding AIG common stock – at an initial strike (exercise) price of $2.50 per share. (Series D Warrant - pdf pp. 228) The strike price could be amended based on the market price of the common stock on the day of exercise (SPA: Series D Preferred Stock - pdf pp. 136). The warrant had a duration of ten years and could be "exercisable upon issuance, in whole or in part." (Ibid. - pdf pp. 136) However, Treasury agreed not to exercise any voting power of the common stock received from the exercise of this warrant at any point.[3] (Ibid. - Sec. 4.6, pdf pp. 39)

Executive Compensation. Since the November 2008 investment was made through TARP, AIG was required to change its compensation structure, bonuses, incentives, benefit plans, and other arrangements with senior executive officers to conform to Section 111 of EESA. (UST PR, 11/10/2008) Section 111 included an "anti-abuse rule" aimed at preventing executives and top officers of TARP recipients from reaping the benefits of federal assistance. (P.L. 110-343) EESA provided Treasury the ability to change AIG's executive compensation and corporate governance standards, including the compensation for senior executive officers; rules on bonuses, retention awards, or other incentive compensation provided to officers and other highly compensated employees; and the prohibition of "golden parachute payments" to the most senior executive officers, among other regulations. (GAO September 2009 - pp. 60)

Table 1, compiled by SIGTARP, summarizes the executive compensation and bonus pool terms included with the November 2008 investment to AIG.

Table 1: Executive and Bonus Compensation Terms for Nov. 2008 TARP Investment

EXECUTIVE COMPENSATION TERMS FOR AIG

Restriction	Definition	Employees Applicable to	Requirements for Compliance
Golden Parachutes	Any payment in the nature of compensation to (or for the benefit of) the applicable employee[c]	SEOs (the PEO, PFO, and the next 3 highest paid)[a]	Prohibits all severance payments to the aforementioned employee[a]
		Senior Partners (the partners who participate in the senior partners plan)[b]	Prohibits severance beyond 3x the aforementioned employees' base amount[b]
Bonus Compensation[b]	All payments (cash and assets) made in excess of the executive's base salary paid with respect to a fiscal year. This does not include: • benefits available to all employees • supplemental retirement benefits that senior executives and other leaders are already enrolled in as of 12/31/2008 • expatriate programs generally available • incentive compensation that is long-term and performance-based and vesting in FY 2009 and FY 2010 • sign-on awards for any senior executives and leadership starting in FY 2009	SEOs (the PEO, PFO, and the next 3 highest paid) and senior partners (the partners who participate in the senior partners plan)	Bonus compensation for FY 2009, retention payments, and termination payments shall not exceed 3.5 times the sum of the senior executives' base salary and target annual bonus for FY 2008. Bonus pools payable for FY 2008 shall not exceed the average of bonus pools paid in FY 2006, and for FY 2009, they shall not exceed the average paid in FY 2007.

Sources: Office of the Special Inspector General for the Troubled Asset Relief Program, February 6, 2009 (SIGTARP January 2009)
[a] Treasury: Notice 2008—PSSFI, 1/16/2009, www.treas.gov.
[b] AIG Securities Purchase Agreement, 11/25/2008.
[c] Treasury, "31 CFR Part 30 TARP Capital Purchase Program," www.treas.gov.

Corporate Governance. In terms of lobbying restrictions, AIG had to adhere to a new "comprehensive written policy on lobbying, governmental ethics, and political activity,"

[3] Ask about this in an interview. Was it because they were afraid of exercising any amount of government influence in the decisions of the company?

where any changes AIG desired would have to receive approval by Treasury (Term Sheet: Series D Preferred Stock - pp. 4). EESA rules also required AIG to create a new plan for corporate spending that Treasury would also have to approve. (UST PR, 11/10/2008)

The initial term sheet required AIG to create a Risk Management Committee that would "oversee the major risks involved in [AIG's] business operations and review [AIG's] actions to mitigate and manage those risks." (Term Sheet: Series D Preferred Stock - pp. 5) tThe term sheet required AIG to create such a committee within 30 days of the investment, and it would have to be active at least until Treasury no longer owned any shares of Series D Preferred Stock or the Series D Warrant. (SPA: Series D Preferred Stock - pdf pp. 45; Term Sheet: Series D Preferred Stock - pp. 5) Finally, the Term Sheet stipulated that AIG was subject to the same reporting requirements that it had to follow under the FRBNY's Revolving Credit Facility. (Term Sheet: Series D Preferred Stock - pp. 4)

March 2009 TARP Investment

In March 2009, Treasury announced a second investment under the AIG Investment Program in the form of a $30 billion funding commitment, sometimes referred to as the Equity Capital Facility (ECF), which had a duration of five years until April 17, 2014. (AIG Financial Supplement (Q3 2010) - pp. 11) In return for the new funding commitment, Treasury received 300,000 shares of Series F Fixed Rate Non-Cumulative Perpetual Preferred Stock (Series F Preferred Stock) in AIG, as well as another warrant (Series F Warrant), this time to purchase 1% of AIG common stock as of the date of the warrant's purchase. (Term Sheet: Series E and F Preferred Stock - pp. 2 - 3) The ECF went into effect on April 17, 2009 (GAO September 2009 - pp. 35).

The Series F Preferred Stock had a par value of $5.00 per share, with its liquidation preference beginning at $0 upon issue to Treasury. (SPA: Series F Preferred Stock - pp. 8) The stock's liquidation preference increased by the amount drawn on the new commitment. (Ibid. - pp. 5 - 6) According to SIGTARP, "the shares had no value until cash was disbursed from Treasury," or drawn upon by AIG. (SIGTARP July 2009 - pp. 62) For example, if AIG drew $1 billion from the March 2009 Investment, the overall value of the Series F Preferred Stock would increase to $1 billion, reducing the available amount of investment by an equal amount.

Commitment to make retention payments. Treasury provided AIG $165 million of the total $30 billion commitment to make retention payments to AIG Financial Product employees. (SPA: Series F Preferred Stock - pp. 1) The ECF agreement required AIG to repay Treasury for its commitment via three installments of $55 million from its operating cash flow: on December 17, 2010; August 17, 2012; and April 17, 2014. (Ibid. - pp. 2)

Dividends. Under the purchase agreement, AIG could not make dividend payments on any basic common stock or redeem any shares of common or other capital stock, without the consent of Treasury, prior to the termination of the March 2009 Investment. The Series F Preferred Stock became the most senior of all AIG preferred stock (COD: Series F Preferred Stock - pp. 2). Treasury would receive non-cumulative dividends "at a rate per annum equal to the Applicable Dividend Rate [10% per annum] on the applicable Liquidation Amount per share of the Series F Preferred Stock," payable quarterly, in arrears on

February 1, May 1, August 1, and November 1 every year, and payable when declared by AIG's Board of Directors. (Ibid. - pp. A-2)

As shareholders of the Series F Preferred Stock, Treasury had the right to nominate and elect the greater of two new directors to AIG's Board of Directors or the amount of directors equal to 20% of AIG's board (COD: Series F Preferred Stock - pp. A-7). However, unlike the Series D Preferred Stock, this right would become exercisable if dividends were not paid for any four quarters, whether consecutive or not. (Ibid. - pp. A-7)

Warrant. When Treasury purchased the Series F Warrant on April 17, Treasury would have been able to purchase 1%, or 3,000 outstanding, unissued shares of AIG common stock. (Term Sheet: Series F Preferred Stock - pp. 2) The warrant had an initial strike (exercise) price of $2.50 per share and had a ten-year limit "exercisable upon issuance, in whole or in part." (Series F Warrant - pp. 5) Moreover, Treasury agreed it would not exercise any voting rights of AIG common stock acquired upon exercising the Series F Warrant (Ibid. - pp. 7).

Executive Compensation. Executive compensation restrictions were broadened with the passage of The American Recovery and Reinvestment Act (ARRA) in February of 2009. Bonus restrictions from EESA that were exclusively placed on SEOs extended to SEOs and the 20 next highest paid employees (P.L 111-5 - pp. 518). AIG was allowed to issue "long-term, restricted stock" to its employees in lieu of now-prohibited bonuses, retention awards, and incentive payments, so long as the stock did not vest while AIG had TARP funds outstanding, and would not be more than one-third of total compensation to the employee receiving it (Ibid. - pp. 518).[4] Prohibitions on golden parachute payments, likewise, were extended to SEOs and the 5 next highest paid employees.

Corporate Governance. There were no significant changes with respect to Corporate Governance in the March 2009 restructuring.

After the March 2009 investment, Treasury issued additional guidance on these issues, summarized in their Interim Final Rule on TARP Standards for Compensation and Corporate Governance, released on June 10, 2009.

This Rule was designed to "implement the ARRA provisions, consolidate all of the executive-compensation-related provisions that are specifically directed at TARP recipients into a single rule (superseding all prior rules and guidance)..." It included a clawback provision on executive compensation, the creation of a Special Master for TARP Executive Compensation, and demanding further accountability for the Board of Directors of TARP recipients (UST PR, 06/10/2009).

For an overview of the two TARP investments in November 2008 and March 2009, please see Table 2 below.

Table 2: November 2008 and March 2009 TARP Investments in AIG

[4] The additional stipulations around the limitations of long-term restricted stock were specifically for AIG SEOs and the 20 next highest paid employees.

	November 2008 Investment	March 2009 Investment
Program	Systemically Significant Financial Institutions (SSFI) via TARP	Systemically Significant Financial Institutions (SSFI) via TARP
Date	November 25, 2008	April 17, 2009
Amount	$40 billion capital injection	$30 billion commitment
Preferred Stock	4,000,000 shares of Series D Cumulative Preferred Stock (Exchanged for 400,000 shares of Series E Non-Cumulative Preferred Stock in March 2009)	300,000 shares of Series F Non-Cumulative Preferred Stock ($2 billion was exchanged for 20,000 shares of Series G Cumulative Preferred Stock at Recapitalization in January 2011)
Warrant	2% of common stock	1% of common stock

Outcomes

November 2008 Investment

The FRBNY, Treasury, and AIG announced a restructuring plan for AIG on November 10, 2008, executing it on November 25, 2008 (COP: June 2010 Oversight Report). The November 2008 Investment enabled AIG to pay back $35 billion of the $69.3 billion that AIG had drawn on the FRBNY's RCF, reducing the debt to $34.3 billion. (FRB on Assistance to AIG) The November 2008 Investment helped to restructure AIG's balance sheet, thereby avoiding any downgrades from the major credit rating agencies. It also contributed to a restructuring of the terms of the RCF under the Credit Agreement. (YPFS Millstein Interview) The AIG common stock, into which the Series C Preferred Stock issued pursuant to the RCF could be converted, was adjusted to 77.9% of AIG outstanding common stock to accommodate the 2% conversion under the Series D Warrant, keeping the total conversion amount under 80% for accounting reasons.[5] (Term Sheet: Series D Preferred Stock - pp. 6) For more information on the changes implemented to the terms of the RCF and the preferred stock, please refer to the Buchholtz & Wiggins 2018.

With the expectation that 2008 fourth-quarter losses would be over $40 billion and that credit agencies would likely downgrade AIG again, the U.S. government sought to provide additional aid to the insurance firm (COP: June 2010 Oversight Report - Sec. 1(D)(1)). In March 2009, the U.S. government announced a second restructuring plan for AIG, which included exchanging the 4,000,000 shares of Series D Preferred Stock for 400,000 shares of Series E Preferred Stock.[6] (SEA: Series E Preferred Stock - pp. 1) The Series E Preferred Stock would "provide for non-cumulative dividends and limit AIG's ability to redeem the preferred stock except with the proceeds from the issuance of equity capital." (Report to Congress (March 2009) – pp. 9) The Series E Preferred Stock permitted Treasury to elect

[5] To maintain Generally Accepted Accounting Principles (GAAP) standards of maintaining the government's overall equity stake in AIG under 80%, Treasury's purchase of the Series D Warrant decreased the equity stake of the Series C Preferred Stock that would be issued to the Trust by 2% from 79.9% to 77.9%.

[6] The 400,000 shares of Series E Preferred Stock were valued at $104,011.44 per share, up from the $10,000 per share of the Series D Preferred Stock. The higher proportional value per share for Series E shares also includes about $1.6 billion in cumulative unpaid dividends that was due to Treasury on the Series D Preferred Stock. (GAO September 2011)

new directors to AIG's Board of Directors if dividends were not paid for four quarters, whether or not consecutive quarters. (COD: Series D Preferred Stock - pdf pp. 111)

The Series E Preferred Stock was also subject to a Replacement Capital Covenant, which stated that AIG could not repurchase the Series E Preferred Stock from Treasury prior to April 17, 2012, unless AIG replaced the Series E Preferred Stock with "qualifying equity replacement capital securities." (Replacement Capital Covenant - pp. 1) The qualifying securities could have included common stock, qualifying warrants, qualifying non-cumulative preferred stock, or mandatorily convertible preferred stock. (Ibid. - pp. 1)

Treasury and the Federal Reserve Board (FRB) stated that the new Series E Preferred Stock would "more closely resemble common equity and thus improve the quality of AIG's equity and financial leverage." (UST Section 105 April 2009 - pp. 8 - 9) The Series E shares were seen as more like common shares because their dividends were non-cumulative, meaning the company was under no obligation to pay past dividends; the Series D preferred shares had been cumulative (GAO September 2011 - pp. 10 - 11). This idea proved successful as credit rating agencies saw the new Series E Preferred Stock more favorably than the Series D Preferred Stock when assessing AIG's financial situation at the time. (Ibid. - pp. 10 - 11)

During AIG's 2009 Annual Meeting of Shareholders, AIG stockholders voted to conduct a 20:1 reverse stock split, which affected the total amount of stock available for purchase under the Series D Warrant, but nonetheless provided Treasury the ability to purchase 2% of the outstanding AIG common stock upon exercise. (SIGTARP January 2011 - pp. 61) Another vote during the meetings increased the exercise price of AIG common stock from $2.50 to $50.00 per share. (Ibid. - pp. 61) For more information on the events of the 2009 shareholder meeting, please refer to the Buchholtz 2018a case.

In September 2010, Treasury, the FRBNY, and AIG, designed a Recapitalization Plan (Recapitalization) for all of the federal assistance provided to AIG (Summary of Terms). As part of the Recapitalization, Treasury converted the 400,000 shares of Series E Preferred Stock to 924,546,133 shares of AIG common stock, on January 14, 2011, representing 51.4% of all outstanding AIG common stock. (Ibid. - pp. 2)

March 2009 Investment

While the payments provoked public outcry against providing payments to the employees of the division that contributed to AIG's near-failure, opinions by private parties and government legal counsels all concluded that the retention plans for those employees were contractually binding. (SIGTARP October 2009 - Summary) More specifically, because AIG agreed to the payments prior to the passage of the American Recovery and Reinvestment Act (ARRA) by Congress on February 11, 2009, the payments were not subject to ARRA bonus restrictions. (Ibid. - Summary) In late March 2009, Secretary Geithner requested that the Department of Justice (DOJ) conduct an investigation into the retention payments and determine if there was a "legal basis to recoup the retention awards." (Ibid. - pp. 17) However, the DOJ concluded there were no alternatives to paying the bonuses that had legal merit. (Ibid. - pp. 17)

According to the SIGTARP, over 400 AIGFP employees receiving retention payments were not affected by the executive compensation restrictions enacted by EESA, ARRA, or any Treasury guidelines, as well as by TARP for the investments in AIG. (SIGTARP October 2009

- pp. 400) These restrictions did not apply to any compensation plans agreed upon prior to the passage of ARRA on February 11, 2009. Therefore, the 400 recipients were "outside the scope of executive compensation restrictions imposed by Treasury." (Ibid. - pp. 16) Finally, Treasury's interim final rules on ARRA compensation guidelines for financial institutions receiving federal assistance, published on June 15, 2009, stated that restrictions did not apply to payment agreements agreed upon prior to the guidelines. (Ibid. - pp. 30)

At the 2009 Annual Meeting, shareholders passed a resolution to reduce the par value of AIG common stock, which reduced the Series F Warrant's exercise price from $2.50 to $0.00002 per share. (SIGTARP January 2011 - pp. 63)

Prior to Recapitalization, AIG had drawn about $7.5 billion of the $30 billion March 2009 Investment. (GAO July 2011 - pp. 33) However, the March 2009 Investment played a large role during the January 2011 Recapitalization of AIG. Of the $7.5 billion drawn on the commitment, Treasury exchanged $2 billion of the Series F Preferred Stock for 20,000 shares of Series G Preferred Stock (Summary of Terms; Form 10-Q: AIG (Q1 2011) - pp. 11). Treasury exchanged the remaining $5.5 billion of Series F Preferred Stock for 167,623,733 shares of AIG common stock at $2.50 per share (Summary of Terms - pp. 7 - 8). Finally, Treasury drew down the remaining amount of $20.3 billion for preferred interest in two special purpose vehicles from AIG, preferred interest that AIG had repurchased from the FRBNY as repayment under the RCF. (Form 10-Q: AIG (Q1 2011) - pp. 10)

Treasury's Stake in AIG after Recapitalization

The Office of Financial Stability (OFS), which was created with the passing of TARP to manage the program, was used to look after the shares that Treasury held directly. Treasury, gradually sold the AIG common stock converted from the Series E and the Series F Preferred Stock during Recapitalization to the public, with the final sale of the remaining stock coming on December 10, 2012. Treasury received $38.2 billion in net proceeds from the sales. (UST Financial Report 2013 - pp. 14) Treasury never exercised the Series D and Series F Warrants, eventually selling both warrants back to AIG for approximately $25 million, in aggregate, in March 2013. (Ibid. - pp. 14)

2010 Shareholder Meeting

By the beginning of February 2010, AIG had not reinstated dividend payments to shareholders, which AIG's Board of Directors had originally suspended to all share classes on September 23, 2008 (Form 10-Q: AIG (Q3 2008) - pp. 137). Thus, on February 1, 2010, following over four quarters of zero dividend payments, Treasury received the right to elect new directors to AIG's Board of Directors granted by the Series E and Series F Preferred Stock. (GAO September 2011; Term Sheet: Series E Preferred Stock - pp. 1) At the time of the 2010 Annual Meeting, since eleven directors held seats on AIG's Board, Treasury was able to nominate and elect the number of members equal to 20% of the board, or in this case, two new directors. Treasury elected Donald Layton, the former CEO and Chairman for E*TRADE Financial Corporation, and Ronald Rittenmeyer, the former CEO, Chairman, and President of Electronic data Systems Corporation during the April 1, 2010 meeting. (2010 Proxy Statement - pp. 19) This boosted the total number of members on AIG's Board of Directors from eleven to thirteen.

According to the terms of the Series E and Series F Preferred Stock, any directors elected by Treasury would step down from AIG's Board of Directors when dividends had been paid for four consecutive quarters following their election (Term Sheet: Series E Preferred Stock - pp. 1). However, following the execution of the Recapitalization, AIG's Nominating and Corporate Governance Committee decided that it would be in the best interest of AIG and its shareholders to keep the two Treasury elected directors on AIG's Board of Directors. (2012 Proxy Statement - pp. 12 - 20)

II. Key Design Decisions

1. **The AIG Investment Program was part of a multi-faceted intervention by the government.**

The Systemically Significant Failing Institutions Program, later renamed the AIG Investment Program, was announced on November 10, 2008 as part of a restructuring agreement put forth by FRBNY and Treasury. The agreement restructured the original aid that AIG had obtained from FRBNY under the Revolving Credit Facility (RCF) to make the terms less aggressive, contingent on the disbursement of a capital injection via the purchase of $40 billion in cumulative perpetual preferred series D stock. (Restructuring Report - pp. 4 - 5). Additionally, the $37.8 billion Securities Borrowing Facility, which had been established in early October by the New York Fed, was terminated in favor of Maiden Lane II and III, two new facilities that were designed to purchase the company's residential mortgage-backed securities (RMBS) and Collateralized Debt Obligations (CDOs), respectively (Restructuring Report - pp. 7 - 8; FRB PR, 11/10/2008). The combined funds provided by the Treasury and Fed for AIG totaled $182.3 billion dollars. (UST PR, 12/14/2012)

2. **The Treasury used Troubled Asset Relief Program (TARP) funds to fund the AIG Investment Program.**

Congress passed the Emergency Economic Stabilization Act (EESA) of 2008 on October 3, 2008. Section 101 of the Act established TARP as the principal vehicle through which Treasury would fight the crisis (P.L. 110-343 - Sec. 111). The AIG Investment Program was one of the many programs that came out of the first wave of TARP funding and AIG was its only beneficiary (P.L. 110-343 - Title).

3. **Treasury, through the Office of Financial Stability, was the manager and administrator of the program.**

Treasury Created the Office of Financial Stability (OFS) as part of Section 101 of EESA to act as a general administrator for all TARP programs, which included monitoring the equity obtained through the AIG Investment Program.

Per section 5.04 of the original Credit Agreement signed in September 2008, AIG was also required to provide the "Lender", in this case Treasury, with "its consolidated balance sheet and related statements of income, stockholders' equity and cash flows showing the financial condition of [AIG] and its consolidated Subsidiaries" within 90 days, with unaudited reports coming sooner (Credit Agreement - pp. 35 - 36). Section 5.05 detailed additional reporting requirements, such as that of default, a change in AIG's corporate rating, or judicial proceedings (Credit Agreement - pp. 38 - 39).

4. **AIG was required to comply with restrictions on executive compensation and corporate governance that were outlined in Section 111 of EESA.**

Since the SSFI program was created under TARP, any institutions that took capital were subject to certain restrictions. Treasury, per Section 111 of EESA, required that AIG, "comply with the most stringent limitations on executive compensation for its top five senior executive officers." (UST PR, 11/10/2008) Additionally, the legislation included limitations on bonus and golden parachute payments, as well as lobbying restrictions (P.L. 110-343 - Sec. 111).

These restrictions would become more stringent with the passage of ARRA in February of 2009. The bonus and golden parachute restrictions would be broadened and retention and incentive rewards prohibited (except in the case of long-term, restricted stock).[7] Treasury published additional guidance on executive compensation in an Interim Final Rule, dated June 10, 2009. The Rule included a clawback provision on executive compensation, the creation of a Special Master for TARP Executive Compensation, and further accountability for the Board of Directors of TARP recipients (UST PR, 06/10/2009).

In addition to the conditions for accepting the TARP investment, AIG was required to create a Risk Management Committee within 30 days that would "oversee the major risks involved in [AIG's] business operations and review [AIG's] actions to mitigate and manage those risks."[8] (Term Sheet: Series D Preferred Stock - pp. 5) The committee was required to be active at least until Treasury no longer owned any shares of Series D Preferred Stock or the Series D Warrant. (Ibid. - pp. 5) As part of the terms of the Series D stock, the firm also was required to "continue to maintain and implement its comprehensive written policy on lobbying, governmental ethics, and political activity… (Term Sheet: Series D Preferred Stock - pp. 4)" Any changes to this plan were required to be approved by Treasury (Ibid. - pp. 3).

5. **FRBNY and Treasury released the details of the AIG Investment Program and Restructuring Plan on November 10, 2008, the same day that AIG released its third quarter results.**

[7] ARRA specified that prohibitions on "accruing any bonus, retention award, or incentive compensation" during the period in which an institution had TARP funding outstanding would not apply if payments in lieu of these were made in the form of "long-term, restricted stock." These restrictions applied to AIG's SEOs as well as its 20 next-highest compensated employees. For further discussion of the characteristics of this stock see ARRA, sec. 7001.

[8] While the term sheet said AIG had to create such a committee within 30 days of the investment, Treasury's guidelines to EESA released in early October 2008 dictated that a committee must be created within 90 days. (Notice 2008-PSSFI)

The decision to release details of the Restructuring Plan on the same day as its earnings release was made because officials had anticipated that AIG would show large losses and be prime targets for a ratings downgrade (GAO September 2011 - pp. 52 - 53). Treasury stated that, "Together with the steps taken by the Federal Reserve, this restructuring will improve the ability of the firm to execute its asset disposition plan in an orderly manner (UST PR, 11/10/2008)."

Even with less certainty around a downgrade, FRBNY officials explained that, "government action still would have been necessary, because markets would have punished AIG when it released its earnings report (Ibid. - pp. 53)." Ultimately, the $40 billion SSFI program would be one of several pieces in the November restructuring agreement, including lessening the harsh terms of the RCF and the creation of what would later become the Maiden Lane II and III SPVs (FRB PR, 11/10/2008).

6. **Treasury invested $40 billion into AIG in November 2008 as part of a joint Treasury-FRBNY restructuring effort of AIG assistance to improve its capital position.**

Despite the $85 billion RCF extended to AIG on September 22, 2008, the company liquidity issues still persisted, and was at risk of a ratings downgrade (GAO September 2011 - pp. 129). The loan, despite alleviating immediate problems, actually, "increased the company's leverage and lowered [its] interest coverage ratio, two key metrics used by credit rating agencies in assessing the financial strength of an issuer" (FR Section 129, 11/10/2008 - pp. 4).

As a result, the restructuring effort for the FRBNY RCF included $40 billion in SSFI funds from Treasury into AIG on November 10, 2008. According to Treasury, the investment aimed to "restructure federal assistance" to AIG for debts accrued under the RCF and help AIG to "execute its asset disposition" plan. (UST PR, 11/10/2008) Treasury made this possible by "establish[ing] a "durable capital structure" for AIG and facilities designed to resolve the liquidity issues AIG had experienced in its CDS portfolio and its U.S. securities lending program." (AIG PR, 11/10/2008 - pp. 1) Since the RCF had a maturity date of two years at the time, set to expire on September 16, 2010, the government was concerned that pressure from continued collateral calls, the rates under the RCF, and disinterest from investors in buying AIG subsidiaries and assets would hamper AIG's ability to repay the FRBNY for funds drawn under the RCF.[9] (GAO September 2011 - pp. 45)

It was through the EESA of 2008 that authorized Treasury to establish TARP and Treasury intended for the announcement to coincide with the release of AIG's third quarter financial reports, based on the possibility of further credit downgrades for AIG from newly reported losses. (Ibid. - pp. 52 - 53) Treasury further stated that the $40 billion investment "was necessary to preserve stability in the financial system and to give AIG time to sell assets in an orderly manner to pay back taxpayers." (UST Report December 2008 - pp. 8)

[9] The FRBNY amended the Credit Agreement on November 25, 2008 to reduce the interest rate, the commitment fee, and the maturity date associated with the RCF. The maturity date was extended from two years to five years, setting an expiration date of September 13, 2013. (Amendment No. 2)

7. **Treasury received shares of Series D Cumulative Preferred Stock and a warrant to purchase 2% of outstanding AIG common stock to increase the return to taxpayers in the event that AIG ultimately recovered.**

According to the Federal Reserve Board of Governors' general counsel, Scott Alvarez, Treasury's receipt of Series D Preferred Stock was based on a review of the equity classes that were already available. Alvarez stated that in order to come to agreements with AIG quickly, the government needed to use everything that was available and avoid having to seek a shareholder vote in order to issue new classes of preferred stock. (YPFS Alvarez Interview)

Finally, as part of the term sheet, Treasury had a 10 year Series D Warrant which allowed it to purchase 53,798,766 shares of AIG common stock – which represented 2% of outstanding AIG common stock at the time (Series D Warrant - pdf pp. 127). The strike price, which was $2.50 at the time, could be amended based on the market price of the common stock on the day of exercise (SPA: Series D Preferred Stock - pdf pp. 136). The warrant, if exercised, would allow the sale of AIG common stock which would contribute to Treasury's ability to recoup the funds invested in AIG (SPA: Series D Preferred Stock - pp. 131-144).

8. **The Series D Cumulative Preferred Stock was exchanged for Series E Non-Cumulative Preferred Stock that better resembled common equity in March 2009.**

The exchange from Series D to E stock occurred on March 4, 2009 after a restructuring agreement, dated March 2, had been finalized. One of the major changes that came with this exchange was that the dividends on the Series E preferred equity were noncumulative, whereas they were cumulative for the Series D preferred equity (GAO September 2011 - pp. 10). The series E (and series F stock after it) more closely resembled common equity, as they were not obligated to pay out missed dividends, and thus, ratings agencies evaluated the stock more positively (Ibid. - pp. 10 - 11).

9. **The Series E Preferred Stock was subject to a Replacement Capital Covenant, which clarified Treasury's senior rights to repayment and served as notice that the government would continue to support AIG.**

A Replacement Capital Covenant (the Covenant) was placed on the Series E Preferred Stock in order to ensure that AIG could not repurchase the Series E Preferred Stock prior to repaying Treasury for the November 2008 Investment, unless AIG replaced the Series E Preferred Stock with "qualifying equity replacement capital securities." (Replacement Capital Covenant - pp. 1).

The Covenant favors senior debtholders, in this case Treasury, where Treasury would have senior rights to receive repayments before any new AIG debtholders. (COD: Series E Preferred Stock - pp. A-3)

Treasury's Chief Restructuring Officer, Jim Millstein, stated that the credit rating agencies and AIG's auditor, PricewaterhouseCoopers, were concerned in early 2009 that

AIG would announce losses of over $40 billion in its upcoming 2008 annual report; AIG would reported losses of over $60 billion (COP: June 2010 Oversight Report - Section 1(D)(5)). The agencies and auditor wanted to be assured that the government would continue to stand behind AIG after the 2008 losses were reported (YPFS Millstein Interview). More specifically, the auditor wished to issue AIG's financial statements without a going concern qualification, which likely would have led to a credit downgrade, and consequently to further liquidity runs on AIG by counterparties (YPFS Millstein Interview). The Covenant served as a notice that the government stood behind their investments to AIG and allowed the auditor to feel comfortable in issuing AIG's 2008 statements. (YPFS Millstein Interview)

10. **In March 2009, Treasury committed an additional $30 billion to AIG via the AIG Investment Program to signal the government would continue to stand behind AIG.**

Treasury announced its intent to commit the March 2009 Investment, sometimes referred to as the Equity Capital Facility (ECF), of $30 billion to AIG on March 2, 2009 (AIG Equity Capital Facility). Moreover, AIG assets continued to be in low demand and the possibility of further credit downgrades again played a major factor into the U.S. government's decisions. (Ibid. - pp. 49) According to Treasury's Chief Restructuring Officer, Jim Millstein, 2008 fourth quarter losses "prompted AIG's auditors and credit rating agencies to require incremental equity in order to ensure that [AIG] had sufficient liquidity." (Millstein 2010 - pp. 8) The new commitment signaled to AIG's auditors and credit rating agencies that the U.S. government stood behind AIG even with its losses, providing an additional $30 billion of credit if need be, thereby allowing the auditor to issue AIG's 2008 financial statements without a going concern qualification and allow AIG to maintain its credit ratings. (Ibid. - pp. 8)

At the time, according to FRBNY records, the government considered a variety of new financial packages for AIG. One possibility was to establish "a derivatives products company with a government backstop to engage in transactions with AIGFP's derivative counterparties…" Another was to fully nationalize AIG. This was seen as a potentially attractive option because, "…Although nationalization posed a number of risks and issues, it simplified certain aspects of the AIG situation. For instance, it would have provided a solution for AIGFP, prevented credit ratings downgrades, and addressed complex restructuring issues that would no longer have been relevant." (GAO September 2011 - pp. 50) Ultimately, what would become the March 2009 Investment was intended to "strengthen AIG's capital levels and improve its leverage." (Ibid. - pp. 11)

As part of the March 2009 Investment agreement, AIG was to submit an outline on its use of the capital received from Treasury's purchase of Series F Preferred Stock. (SPA: Series F Preferred Stock - pp. 5) According to a SIGTARP report, AIG used funds from the March 2009 Investment to (SIGTARP July 2010 - pp. 87 - 88):

> "meet capital solvency requirements resulting from declines in the value of AIG's investments, purchase shares of United Guaranty Corporation ("UGC"), an AIG subsidiary; provide capital support to UGC; settle payments for UGC; redeem all of its preferred shares held by National Union Fire Insurance Company of Pittsburgh;

purchase its shares from American International Assurance Co., Ltd. ("AIA") subsidiaries AIA(B) and Philam Life AIG; and purchase its shares held by the American Life Insurance Company ("ALICO") unit (Japan)."

11. **Treasury received shares of Series F Non-Cumulative Preferred Stock and a warrant to purchase 1% of outstanding AIG common stock to provide further potential upside to taxpayers.**

As in the case of the Series D shares, the Treasury chose to receive preferred shares because XXX. Like Series E, Series F was non-cumulative.

The Series F preferred stock again came with warrants. Similar to the Series D Warrant included in the November 2008 investment, the Series F Warrant served as an additional consideration to the corresponding preferred stock, that if exercised, the sale of the received common stock could contribute to Treasury's ability to recoup the funds invested in AIG (Term Sheet: Series E Preferred Stock - pp. 2 - 3).

12. **Using its authorities under Section 111(b) of EESA, Treasury imposed executive compensation, bonus payments, and corporate governance restrictions on AIG.**

Based on its powers under Section 111(b) of EESA, Treasury required strict compensation restrictions and corporate governance guidelines for TARP recipients. (P.L. 110-343) Prior to the announcement of the first restructuring plan, however, Treasury determined that because AIG was already receiving federal assistance from the FRBNY – via the RCF and Maiden Lane facilities it would impose "greater compensation restrictions than those imposed on [other] financial institutions" receiving TARP assistance. (SIGTARP October 2009 - pp. 4)

According to the Treasury's Notice 2008-PSSFI, to comply with ESSA Section 111(b)(2)(A) a committee had to be established "to review the relationship between risk management policies and executive compensation arrangements." (Notice 2008-PSSFI - pp. 3) The committee would also have to review compensation plans for senior executive officers and ensure that those employees were not incentivized via bonuses to take "unnecessary and excessive risks that threaten the value of the financial institution." (Ibid. - pp. 3)

13. **$165 million of the total March 2009 Investment was devoted to AIG Financial Product employees as retention payments that were seen as contractually binding and necessary to maximize value as AIG unwound its derivatives portfolio.**

Although $30 billion was committed, in aggregate, to AIG under the March 2009 Investment, the maximum commitment decreased to slightly over $29.8 billion after Treasury designated $165 million of the commitment towards retention payments for employees of AIG Financial Products (AIGFP), AIG Trading Group, Inc., and the respective subsidiaries of both.[10] (GAO September 2009 - pp. 35) These retention payments were

[10] Shortly after the creation of the March 2009 Investment, the House of Representatives passed a bill that placed a 90% tax on all bonuses received by employees with companies receiving TARP funds. The Senate

intended to maintain operations and contribute to the wind down of CDS portfolios within the Financial Products division. However, in order to ensure that Treasury recouped the $165 million, a commitment fee was included in the terms of the March 2009 Investment, where AIG would pay in three installments of $55 million, due on December 17, 2010; August 17, 2012; and April 17, 2014. (SPA: Series F Preferred Stock - pp. 2)

At the time of both TARP investments, the FRBNY was closely monitoring AIG's financial situation and was aware of the payments extended to employees to retain their services as they wound down the complex trades and/or general operations of AIGFP. (SIGTARP October 2009 - pp. 11 - 13) It was not until late February 2009 that Treasury had been included in discussions about the retention plans for AIGFP employees, as the retention payments had "garnered press and Congressional attention." (Ibid. - pp. 13)

According to then-Secretary of the Treasury, Timothy Geithner, former AIG Chief Executive Officer, Ed Liddy, communicated to him that $165 million of retention bonuses were "contractually committed and payable by March 15 [2009]" to AIGFP employees and that the "contracts were legally binding." (Geithner 2009 - pp. 1) Following the advice of Treasury's counsel, Geithner indicated that any contracts signed prior to the passage of the ARRA were still effective, notwithstanding any executive compensation limits under ARRA. (Ibid. - pp. 1) Thus, Treasury and AIG devoted $165 million of the March 2009 Investment to the retention payments, including commitment fees "to recover funds on behalf of taxpayers." (Ibid. - pp. 2)

14. In 2011, the Treasury and Federal Reserve engaged in a proactive restructuring and recapitalization agreement to cut down AIG's reliance on taxpayer money while allowing the government to sell its investment to the public.

While the preferred stock had a perpetual term length, the original SSFI agreement indicated that Treasury's consent would be needed if any equity were repurchased prior to 1) the fifth anniversary of the agreement being signed, or 2) the entirety of Treasury's stake in AIG being sold off to third parties. Subsequent to one of these conditions being met, AIG was then allowed to purchase the warrant for the Series D Preferred stock (Term Sheet: Series D Preferred Stock - pp. 2). The Equity Capital Facility (ECF), as well, had a five-year lifespan, but neither the ECF nor the original SSFI investment would be held for that long.

Following the FRBNY and Treasury-led Restructuring and Recapitalization Agreement signed on January 14 of 2011, the U.S. government worked with AIG to exchange its remaining preferred stock into common stock and, after the plan had finished, Treasury held about 1.65 billion shares of AIG common stock that it could offer to the public (GAO May 2012 - pp. 10 - 12). The $30 billion ECF from the March 2009 agreement would, in conjunction with the January 2011 agreement, be converted into 1) approximately 167 million shares of common stock, 2) 20,000 shares of Series G Cumulative Preferred Stock, and 3) Preferred Interests in the AIA and ALICO SPVs (Form 10-Q: AIG (Q1 2011) - pp. 11).

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version of the bill decreased the bonus tax to 70% (35% to the corporation and 35% on the receiver), however it did not pass when brought to a vote. (Dye 2010)

Treasury began to sell its stake in AIG in early 2011, and conducted six large public offerings of common stock, totaling about 1.65 billion and with an average price of $31.18 per share (UST PR, 12/11/2012). Total proceeds of these sales came out to about $38.2 billion after its final sale on December 10, 2012 (UST Financial Report 2013 - pp. 14).

III. Evaluation

Treasury authorized a total of $69.8 billion for investment into AIG under the AIG Investment Program and ultimately disbursed $67.8 billion (Ibid. - pp. 14). Treasury exchanged the right to draw down the final $2 billion with AIG for 20,000 shares of Series G Preferred Stock. (Form 10-Q: AIG (Q1 2011) - pp. 11) OFS completed the public sale of all TARP-related common stock in December 2012, netting $34 billion (CBO April 2019 - pp. 5). Subsequently AIG would repurchase the Series D and Series F Warrants on March 1, 2013 for $25 million. (UST Financial Report 2013 - pp. 14) According to the Congressional Research Service, the final net loss for Treasury on its TARP investments in AIG amounted to about $13.5 billion. (Webel 2013 - pp. 9)

Although proceeds from the TARP reimbursements were less than Treasury's investments, the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) argued, "this was offset by the proceeds from the additional Treasury shares of AIG, resulting in overall proceeds exceeding disbursements for Treasury." (UST Financial Report 2013 - pp. 14)

Credit rating agencies viewed both TARP investments in AIG favorably, maintaining AIG's credit rating following each announcement in November 2008 and March 2009 (Moody's PR 11/10/2008, Moody's PR 03/02/2009). Commenting on the November 2008 Investment, Moody's said, the "recapitalization and de-risking transactions [would] provide AIG with additional time and flexibility to facilitate asset sales and bolster AIG's operating performance." (Moody's PR, 11/10/2008) Moody's also said the new capital structure would promote market confidence, especially by AIG counterparties, and "[provided] significant incremental protection for senior creditors" at the time. (Ibid.) In March 2009, despite AIG's $61.7 billion loss for the fourth quarter of 2008, Treasury's $30 billion investment gave credit rating agencies renewed confidence in AIG's viability (Moody's PR 03/02/2009). S&P said the new $30 billion commitment and the continuance of federal financial assistance to AIG "improves [AIG's] capital adequacy and reduces pressure on debt holders." (Scroggins 2009)

The $165 million AIGFP retention payments, and exclusion of 57 employees from executive compensation restrictions, drew considerable public and congressional outrage in March 2009. (SIGTARP October 2009 - pp. 16 - 18) SIGTARP released an audit examining the compensation proposals and schemes at AIG. It noted that the public and Congress mainly questioned why AIG, was rewarding the employees of the division whose losses were largely blamed for the losses and near bankruptcy of the company. (Ibid. - pp. 2) The SIGTARP audit found that AIGFP employees had lost "$790 million in future compensation" based on AIG's performance as of March 2009 (Ibid. - pp. 7). It found that the compensation plans and rewards encouraged employees, who were unsure of their job stability because of the market conditions and AIG's circumstances, to stay with AIG (Ibid. - pp. 7).

Through a series of debates over amending the U.S. tax code, Democrats and Republicans both agreed that employee bonuses should be subject to a high corporate tax for companies that received more than $5 billion from TARP (H.R. 1586 - pp. H3656). The bonus tax rate was disputed across parties, ranging from 90% to even 100% of the amount paid out (Ibid. - pp. H3656). Congress members also argued that because Treasury and the FRBNY were so involved with AIG, they could have forced AIG to not have paid out any bonuses, have employees repay their bonuses, or have negotiated new bonus contracts, similar to how employees of the autoworkers were doing as a condition of receiving TARP funds (Ibid. - pp. H3657 - 3658). House members described the bonuses as "outrageous" and "an egregious waste of taxpayer dollars." (Ibid. - pp. H3664) Moreover, an AIG shareholder filed a civil suit in the Los Angeles Superior Court asserting, "There was no rational business purpose or justification for these lucrative additional payments, particularly given AIG's deteriorating financial condition." (The Telegraph, 04/02/2009) Representatives suggested during a House meeting to amend the law so that any bonus payments by TARP recipients to its employees, as well as any future contractual obligations, must be approved by Treasury prior to any payout. (H.R. 1586 - pp. H3661) Following the public response, New York governor Andrew Cuomo announced that fifteen of the top twenty bonus recipients at AIG voluntarily returned their bonuses, equal to about an estimated $50 million, to AIG. (CNN NA, 03/23/2009)

Because AIG was the only institution to utilize the SSFI program, one scholar has argued that that the SSFI program, along with other programs like the Targeted Investment Program and the Asset Guarantee Program (used by Citigroup and Bank of America), were discriminatory and that the U.S. government had violated World Trade Organization (WTO) agreements. (Leonardi 2011 - Abstract) Given its narrow investment to a single institution, he argued that the SSFI program "discriminated, de facto, against foreign-like financial service suppliers commercially present in the US." (Ibid. - pp. 310)

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V. Key Program Documents

Summary of Program

- June Oversight Report: The AIG Rescue (Congressional Oversight Report, 06/10/2010) – *Congressional Oversight Panel releases information on AIG's rescue, highlighting hearing testimonies, government actions, and impacts of government intervention*
https://www.gpo.gov/fdsys/pkg/CPRT-111JPRT56698/html/CPRT-111JPRT56698.htm

- Actions Related to AIG – *page on Federal Reserve Bank of New York's website covering highlights, timelines, and documents surrounding the Bank's actions on AIG.*
https://www.newyorkfed.org/aboutthefed/aig/index.html#slide1

- Investment in American International Group (AIG) (12/09/2013) – *page on the U.S. Department of the Treasury's website covering all TARP-related assistance to AIG, which includes press releases, program documents, and a timeline of Treasury's investments.*
https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/aig/Pages/default.aspx

Implementation Documents

- TARP AIG SSFI Investment: Summary of Senior Preferred Terms (11/10/2008) – *term sheet for Treasury's $40 billion TARP investment in AIG under the Systemically Significant Financial Institutions (SSFI) program.*
https://www.treasury.gov/press-center/press-releases/Documents/111008aigtermsheet.pdf

- Securities Purchase Agreement (11/25/2008) – *documents that authorized the purchase of 4,000,000 shares of Series D Preferred Stock and a warrant to purchase approximately 53 million shares of AIG common stock by Treasury from AIG in exchange for the $40 billion investment through the TARP Systemically Significant Financial Institutions (SSFI) program.*
  https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/aig/Documents/AIG_Agreement_11252008.pdf

- Term Sheet: March 2, 2009 (03/02/2009) – *term sheet describing the changes to Treasury's November SSFI preferred stock, where Treasury exchanged Series D Preferred Stock for 400,000 shares of Series E Preferred Stock. Also described the terms of a new $30 billion TARP capital commitment the Equity Capital Facility, to AIG, in exchange for Series F Preferred Stock and a warrant to purchase common stock.*
  https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/aig/Documents/030209_AIG_Term_Sheet.pdf

- Securities Exchange Agreement (04/17/2009) – *document describing the exchange of Treasury's Series D Preferred Stock for Series E Preferred Stock as part of the second restructuring plan for federal assistance to AIG.*
  https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/aig/Documents/Series.E.Securities.Exchange.Agreement.pdf

- Certificate of Designations of Series E Fixed Rate Non-Cumulative Perpetual Preferred Stock of American International Group, Inc. (03/04/2009) – *certificate of designations by AIG creating 400,000 shares of Series E Fixed Rate Non-Cumulative Perpetual Preferred Stock.*
  https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/aig/Documents/Series.E.COD.pdf

- Replacement Capital Covenant (04/17/2009) – *document describing terms in reference to the Series E Preferred Stock Treasury received resulting from the Securities Exchange Agreement, that AIG cannot repurchase such stock prior to April 17, 2012.*
  https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/aig/Documents/Replacement%20Capital%20Covenant.pdf

- Certificate of Designations of Series F Fixed Rate Non-Cumulative Perpetual Preferred Stock of American International Group, Inc. (04/17/2009) – *certificate of designations by AIG creating 300,000 shares of Series F Fixed Rate Non-Cumulative Perpetual Preferred Stock.*
  https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/aig/Documents/Series.F.COD.pdf

- Securities Purchase Agreement: Series F Preferred Stock (04/17/2009) – *document that authorized the purchase of 300,000 shares of Series F Preferred Stock by Treasury from AIG in exchange for the $30 billion commitment through the TARP SSFI's Equity Capital Facility (ECF).*

https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/aig/Documents/Series.F.Securities.Purchase.Agreement.pdf

- Series F Fixed Rate Non-Cumulative Perpetual Preferred Stock (04/17/2009) – *certificate of ownership for Treasury of 300,000 shares of AIG Series F Preferred Stock.* https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/aig/Documents/Series%20F%20Preferred%20Stock%20Certificate.pdf

- Warrant to Purchase Common Stock (04/17/2009) – *document that authorized the purchase of a warrant to purchase 3,000 shares of AIG common stock by Treasury from AIG in exchange for the $30 billion commitment through the TARP SSFI's Equity Capital Facility (ECF).* https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/aig/Documents/Warrant.pdf

- Recapitalization Plan Summary of Terms (09/30/2010) – *document explaining the terms of the full Recapitalization of AIG, including the conversion of the Series E Preferred Stock and Series F Preferred Stock into AIG common stock received from Treasury's two TARP investments.* https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/aig/Documents/Recapitalization.Summary.Terms.Executed.pdf

- Master Transaction Agreement (12/08/2010) – *agreement between AIG, the ALICO SPV, the AIA SPV, Federal Reserve Bank, Treasury, and AIG Credit Facility Trust over the closing of the Recapitalization Plan announced on September 30, 2010. The agreement describes further drawdowns of the Series F Preferred Stock, the exchange of an amount of the Series F Preferred Stock for Series G Preferred Stock, and the conversion of the Series E Preferred Stock and Series F Preferred Stock into AIG common stock by Treasury.* https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/aig/Documents/Master.Transaction.Agt.with.Attachments.pdf

- Registration Rights Agreement (01/14/2011) – *agreement between AIG and Treasury where AIG issued 1.655 billion shares of common stock to Treasury as part of the Recapitalization Plan announced in September 2010, converted from all other preferred shares Treasury received through government aid packages to AIG.* https://www.sec.gov/Archives/edgar/data/5272/000095012311003061/y88987exv99w4.htm

- Agreement to Amend Warrants (01/14/2011) – *agreement between AIG, the AIA SPV, the ALICO SPV, the Federal Reserve Bank of New York, Treasury, and AIG Credit Facility Trust to issue warrants to purchase common stock from November 25, 2008 (Securities Purchase Agreement) and April 17, 2009 (Securities Exchange Agreement).* https://www.sec.gov/Archives/edgar/data/5272/000095012311003061/y88987exv99w5.htm

Legal/Regulatory Guidance

- Section 13 Powers of Federal Reserve Banks – *law that states what rights the Federal Reserve has in the case of emergency lending, bankruptcy, and recapitalization of financial firms and institutions.*
  https://www.federalreserve.gov/aboutthefed/section13.htm

- Emergency Economic Stabilization Act of 2008 (10/03/2008) – *legislation for the Emergency Economic Stabilization Act of 2008 (EESA) passed by Congress in order to stabilize the American financial system and restore liquidity in struggling financial, bank, and non-bank institutions.*
  https://www.gpo.gov/fdsys/pkg/PLAW-110publ343/html/PLAW-110publ343.htm

- American Recovery and Reinvestment Act of 2009 (02/17/2009) – *legislation for the American Recovery and Reinvestment Act of 2009 (ARRA) passed by Congress in order to maintain the employment level and create new job opportunities through a $787 billion economic stimulus package. The act included provisions on executive compensation and corporate governance.*
  https://www.gpo.gov/fdsys/pkg/PLAW-111publ5/html/PLAW-111publ5.htm

Press Releases/Announcements

- Federal Reserve Board and Treasury Department announce restructuring of financial support to AIG (11/10/2008) – *press release announcing a $40 billion investment through TARP in AIG and changes to the Credit Facility including reduction of the RCF to $60 billion, the reduction of the interest rate, reduction of the commitment fee, and extension to five years.*
  https://www.federalreserve.gov/newsevents/press/other/20081110a.htm

- Treasury to Invest in AIG Restructuring Under the Emergency Economic Stabilization Act (03/02/2009) – *Treasury announces investment in restructuring plan for AIG, which includes investing $40 billion of TARP related money under the Systemically Significant Financial Institutions (SSFI) program in exchange for preferred stock from AIG.*
  https://www.treasury.gov/press-center/press-releases/Pages/hp1261.aspx

- Treasury Announces the Completion of AIG's Recapitalization (01/14/2011) – *Treasury announces that the recapitalization of AIG is complete and the Credit Facility has been terminated. Also, Treasury now owns 92% of the company after conversion of preferred shares to common stock.*
  https://www.treasury.gov/press-center/press-releases/Pages/tg1024.aspx

Media Stories

- Fed's $85 Billion Loan Rescues Insurer (New York Times – 09/16/2008) – *news article on the Federal Reserve's decision-making process on extending an $85 billion loan to AIG.*
  http://www.nytimes.com/2008/09/17/business/17insure.html

- Treasury will give AIG another $40 billion, restructure loans (ABC News – 11/10/2008) – *news article on Treasury's extension of $40 billion to AIG as part of TARP* *and changes under a restructuring plan to the FRBNY's Revolving Credit Facility.* http://abcnews.go.com/Business/story?id=6221498

- Moody's maintains present ratings on AIG (senior debt at A3, review down); comments on 3Q08 results and restructuring plan (Moody's Investor Service – 11/10/2008) – *Moody's views the federal restructuring of AIG assistance positively and maintains AIG's ratings, citing that the new infusion of TARP funds provides AIG "with additional time and flexibility to facilitate asset sales and bolster AIG's operating performance." https://www.moodys.com/research/Moodys-maintains-present-ratings-on-AIG-senior-debt-at-A3--PR_167020*

- AIG ratings affirmed on new bailout plan (Business Insurance – 03/02/2009) – *news article reflecting the changes in AIG's credit ratings following the additional $30 billion in TARP funds extended to AIG and latest restructuring plan.* http://www.businessinsurance.com/article/20090302/NEWS/200015592

- Short-Term Solutions to Long-Term Problems (New York Times – 03/26/2009) – *news article discussing the federal government's interventions during the crisis, specifically with AIG, and if actions taken help solve the long-term problem too?* https://dealbook.nytimes.com/2009/03/26/short-term-solutions-to-long-term-problems/

- AIG to get $22 billion in TARP funds for Fed exit (Reuters – November 1, 2010) – *news article describing the final steps to be taken by the Federal Reserve Bank of New York, U.S. Department of the Treasury, and AIG in the Recapitalization Plan, which includes AIG drawing an additional $22 billion from the TARP equity capital facility. https://www.reuters.com/article/us-aig-treasury/aig-to-get-22-billion-in-tarp-funds-for-fed-exit-idUSTRE6A03EK20101102*

Key Academic Papers

- The AIG Bailout (Sjostrom, 02/19/2009) – https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1502773_code342221.pdf?abstractid=1346552&mirid=1&type=2

- A Bailout for the International Trade System: Rescuing the WTO from TARP (Leonardi, 2011) – http://heinonline.org/HOL/PrintRequest?collection=journals&handle=hein.journals/itbla14&div=12&id=299&print=section&format=PDFsearchable&submit=Print%2FDownload

- The AIG Bailout (Sjostrom, 04/04/2015) – https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2591534_code575020.pdf?abstractid=2588871&mirid=1&type=2

Reports/Assessments

- Initial Section 105(a) Troubled Asset Relief Program Report to Congress: October 6, 2008 to November 30, 2008 (U.S. Department of the Treasury, 12/04/2008) – https://www.treasury.gov/initiatives/financial-stability/reports/Documents/TARPfirst-105report.pdf

- Responses to Questions of the First Report of the Congressional Oversight Panel for Economic Stabilization (U.S. Department of the Treasury, 12/30/2008) – https://web.archive.org/web/20090401172930/http://www.financialstability.gov/docs/123108%20cop%20response.pdf

- Federal Financial Assistance: Preliminary Observations on Assistance Provided to AIG (Government Accountability Officer, 03/18/2009) – http://www.gao.gov/assets/130/121962.pdf

- Troubled Asset Relief Program: Status of Government Assistance Provided to AIG (Government Accountability Office, 09/21/2009) – http://www.gao.gov/assets/300/295521.pdf

- Extent of Federal Agencies' Oversight of AIG Compensation Varied, and Important Challenges Remain (SIGTARP, 10/14/2009) – https://www.sigtarp.gov/Testimony/Extent_of_Federal_Agencies%27_Oversight_of_AIG_Compensation_Varied_and_Important_Challenges_Remain_10_14_09.pdf

- Factors Affecting Efforts to Limit Payments to AIG Counterparties (SIGTARP, 11/17/2009) – http://www.sigtarp.gov/Audit%20Reports/Factors_Affecting_Efforts_to_Limit_Payments_to_AIG_Counterparties.pdf

- Troubled Asset Relief Program: Update of Government Assistance Provided to AIG (Government Accountability Office, 04/2010) – http://www.gao.gov/new.items/d10475.pdf

- COP Hearing on TARP and Other Assistance to AIG, Written Testimony (Jim Millstein, 05/26/2010) – https://cybercemetery.unt.edu/archive/cop/20110401232000/http://cop.senate.gov/documents/testimony-052610-millstein.pdf

- June Oversight Report: The AIG Rescue (Congressional Oversight Panel, 06/10/2010) – *Congressional Oversight Panel releases information on AIG's rescue, highlighting hearing testimonies, government actions, and impacts of government intervention* https://www.gpo.gov/fdsys/pkg/CPRT-111JPRT56698/html/CPRT-111JPRT56698.htm

- Financial Crisis: Review of Federal Reserve System Financial Assistance to American International Group, Inc. (Government Accountability Office, 09/2011) – http://www.gao.gov/assets/590/585560.pdf

- Troubled Asset Relief Program: Government's Exposure to AIG Lessens as Equity Investments are Sold (Government Accountability Office, 05/2012) – https://www.gao.gov/assets/600/590677.pdf

- Troubled Asset Relief Program (TARP): Implementation and Status (Congressional Research Service, 06/27/2013) – https://fas.org/sgp/crs/misc/R41427.pdf

- AIG Remains in TARP as TARP's Largest Investment (SIGTARP, 07/25/2012) – http://www.sigtarp.gov/Audit%20Reports/AIG_Remains_in_TARP_Mini_Book.pdf

- The Department of the Treasury: Agency Financial Report (U.S. Department of the Treasury, 12/11/2013) – https://www.treasury.gov/initiatives/financial-stability/reports/Documents/AFR_FY2013_TARP-12-11-13_Final.pdf

- Starr International Co. v. United States and American International Group, Inc. (United States Court of Federal Claims, 06/15/2015) – *opinion and order from Court of Federal Claims, stating that Federal Reserve was illegal in its takeover of AIG equity interests, but zero damages are awarded as there were no economic consequences to shareholders as a result of actions.* https://ecf.cofc.uscourts.gov/cgi-bin/show_public_doc?2011cv0779-443-0

VI. Appendix

A: TARP's Systemically Significant Failing Institutions program (SSFI)

On October 3, 2008, Congress passed the Emergency Economic Stabilization Act, which authorized Treasury to establish a $700 Troubled Asset Relief Program (TARP) through a newly established Office of Financial Stability (OFS) within Treasury. (EESA 2008) The EESA allowed Treasury to purchase and insure assets from financial institutions, which included residential mortgages and other financial instruments, such as equities, in order to "promote financial market stability." (GAO September 2009 - pp. 10) Under TARP, Treasury created the Systemically Significant Financial Institutions (SSFI) program "to provide stability and prevent disruption to financial markets in order to limit the impact on the economy and protect American jobs, savings and retirement security from the failure of a systemically significant institution." (UST Section 105 December 2008 - pp. 3) The program provided Treasury with the abilities to determine:

1. The extent to which the failure of an institution could threaten the viability of its creditors and counterparties;
2. The number and size of financial institutions that are seen by investors or counterparties as similarly situated to the failing institution, or that would otherwise be likely to experience indirect contagion effects from the failure of the institution;

3. Whether the institution is sufficiently important to the nation's financial and economic system; or,
4. The extent and probability of the institution's ability to access alternative sources of capital and liquidity.

More specifically, the SSFI program aimed to "provide capital on a case-by-case basis to systematically significant institutions that are at substantial risk of failure." (UST Report December 2008 - pp. 3) Treasury intended to inject capital through the purchase of debt, equity, or warrants, following a consultation with the Chairman of the Board of Governors of the Federal Reserves and notifying Congress. (UST Section 105 December 2008 - pp. 4) Treasury maintained that warrants would be required of any institution participating in the SSFI program "to minimize the long-term costs and maximize the benefits to the taxpayers in accordance with EESA." (Ibid. pp. 4)

Although the SSFI program was capable of assisting a variety of companies and institutions, AIG was the only institution to utilize the SSFI program throughout the program's existence. This contributed to the program's renaming to the AIG Investment Program (AIGIP), according to the U.S. Department of the Treasury website. (Treasury)

<u>Timeline</u>

September 16, 2008:	The Federal Reserve Bank of New York, with the support of the Treasury, authorizes the extension of an $85 billion emergency credit line to AIG in order to provide the firm with liquidity assistance and prevent its failure.
November 10, 2008:	AIG and Treasury agree in principle, under the Troubled Asset Relief Program (TARP) Systemically Significant Financial Institutions (SSFI) program, for the Treasury to purchase $40 billion in newly issued Series D Preferred Stock with limited class voting rights, with the cash being used to pay down AIG's debt under the FRBNY's Revolving Credit Facility.
November 25, 2008:	The purchase agreements for the Series D Preferred Stock and Series D Warrant are executed, giving Treasury 4 million shares of Series D Preferred Stock in AIG. The 2nd amendment to the Credit Agreement is agreed upon, reducing the amount available from the Revolving Credit Facility from $85 billion to $60 billion, reducing the interest rate on the Facility, extending the duration of the facility to five years, and reducing the FRBNY's controlling equity interest from Series C Preferred Stock to 77.9%.
March 2, 2009:	The Federal Reserve Bank of New York, Treasury, and AIG announce the second restructuring of federal assistance to AIG, involving a new Equity Capital Facility under TARP, modifications to the Revolving Credit Facility, and changes to the preferred stock under the SSFI program.
April 17, 2009:	The exchange agreement for Treasury's Series D and Series E Preferred AIG stock is executed. The purchase agreement for the Series F Preferred Stock, which Treasury received in connection with the Equity Capital Facility, is executed. The 3rd Amendment to the Credit Agreement is agreed upon.
April 1, 2010:	Treasury nominates and elects two new members to AIG's Board of Directors at the 2010 Annual Meeting of Shareholders, after AIG fails to pay dividends out for four quarters.
September 30, 2010:	The U.S. Treasury, the Federal Reserve Bank of New York, and AIG Credit Facility Trust, and AIG release a Recapitalization Plan for the Revolving Credit Facility, which involves the use of funds and the equity provided by the two TARP investments.

December 8, 2010:	A Master Transaction Agreement is agreed upon that provides all the transactions and terms of the Recapitalization Plan and effectively end the FRBNY's involvement in AIG. The terms include converting all Preferred Stock held by the AIG Credit Facility Trust and Treasury into AIG common stock, with the intent to gradually sell such stock to recoup Treasury's TARP investments.
January 14, 2011:	The Master Transaction Agreement is executed. The AIG Credit Facility Trust converts its Series C Preferred Stock to AIG common stock and transfers it to Treasury's General Fund. Treasury's Office of Financial Stability converts its Series E and Series F Preferred Stock to AIG common stock.
December 10, 2012:	Treasury sells off the remaining AIG common stock in its sixth and final public offering, netting Treasury a $36 billion gain and ending any remaining active equity stake in AIG.
March 2013:	Treasury sells its Series D Warrant and Series F Warrant back to AIG for $25 billion, ending all government interest and assistance in AIG.