Congressional Oversight Panel

September 9, 2009

Accounting for the Troubled Asset Relief Program

Excerpted from the Congressional Oversight Panel's September 2009 report, "The Use of TARP Funds in the Support and Reorganization of the Domestic Automotive Industry."

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TARP Accounting

Each month since its April oversight report, the Panel has summarized the resources that the federal government has committed to economic stabilization. The following financial update provides: (1) an updated accounting of the TARP, including a tally of dividend income and repayments the program has received as of July 31, 2009; and (2) an update of the full federal resource commitment as of August 28, 2009.

1. The TARP

a. Costs: Expenditures and Commitments[1]

Treasury is currently committed to spend $531.2 billion of TARP funds through an array of programs used to purchase preferred shares in financial institutions, offer loans to small businesses and automotive companies, and leverage Federal Reserve loans for facilities designed to restart secondary securitization markets.[2] Of this total, $369.5 billion is currently outstanding under the $698.7 billion limit for TARP expenditures set by EESA, leaving $329.2 billion available for fulfillment of anticipated funding levels of existing programs and for funding new programs and initiatives. The $369.5 billion includes purchases of preferred and common shares, warrants and/or debt obligations under the CPP, TIP, SSFI Program, and AIFP; a $20 billion loan to TALF LLC, the special purpose vehicle (SPV) used to guarantee Federal Reserve TALF loans; and the $5 billion Citigroup asset guarantee, which was exchanged for a guarantee fee composed of additional preferred shares and warrants and has subsequently been exchanged for Trust Preferred shares.[3] Additionally, Treasury has allocated $21.5 billion to the Home Affordable Modification Program, out of a projected total program level of $50 billion.

b. Income: Dividends, Interest Payments, and CPP Repayments

A total of 32 institutions have completely repaid their CPP preferred shares, 22 of which have also repurchased warrants for common shares that Treasury received in conjunction with its preferred stock investments. The rapid pace of preferred shares and warrant repayments has slowed considerably since the issuance of the Panel's August report – out of a total preferred shares and warrant repayment of $70.3 billion, only $200 million has been repaid since July 29, 2009.[4] In addition, Treasury is entitled to dividend payments on preferred shares that it has

[1] Treasury will release its next tranche report when transactions under the TARP reach $450 billion.

[2] EESA, as amended by the Helping Families Save Their Homes Act of 2009, limits Treasury to $698.7 billion in purchasing authority outstanding at any one time as calculated by the sum of the purchases prices of all troubled assets held by Treasury. *EESA § 115(a)-(b)*, *supra* note 2; Helping Families Save Their Homes Act of 2009, Pub. L. 111-22, § 402(f) (reducing by $1.26 billion the authority for the TARP originally set under EESA at $700 billion).

[3] August 28 TARP Transactions Report, *supra* note 102.

[4] August 28 TARP Transactions Report, *supra* note 102.

purchased, usually five percent per annum for the first five years and nine percent per annum thereafter.[5] Treasury has begun to report dividend payments made by all TARP recipients. In addition to $7.3 billion in dividend payments, Treasury has received $206 million in interest from its assistance provided under the AIFP and over $2 million in interest stemming from the ASSP. In total, the Treasury has received approximately $85 billion in income from repayments, warrant repurchases, dividends, and interest payments deriving from TARP investments.[6]

c. Citigroup Exchange

Treasury has invested a total of $49 billion in Citigroup through three separate programs: the CPP, TIP, and AGP. As noted in the Panel's March report, Treasury announced on February 27, 2009 that it would convert up to $25 billion of its preferred stock holdings in Citigroup into common stock, which would provide additional tangible common equity for Citigroup. On June 9, 2009, Treasury agreed to terms to exchange its CPP preferred stock holdings for 7.7 billion shares of common stock priced at $3.25/share (for a total value of $25 billion) and also agreed to convert the form of its TIP and AGP holdings.

On July 23, 2009, Treasury, along with both public and private Citigroup debt holders, participated in a $58 billion exchange, which resulted in the conversion of Treasury's $25 billion CPP investment from preferred shares to interim securities to be converted to common shares upon shareholder approval of a new common stock issuance. The $25 billion exchange substantially dilutes the equity holdings of existing Citigroup shareholders and was subject to shareholder approval on September 2, 2009. Treasury's common stock investment in Citigroup, when finalized, will have a paper value of about $34.96 billion based on the company's September 1, 2009 $5.54 share price.[7] On July 30, Treasury exchanged its $20 billion of preferred stock holdings in Citigroup under the TIP and its $5 billion investment in the AGP[8] from preferred shares to Trust Preferred Securities (TruPS). The conversion allows Citigroup to improve its Tangible Common Equity ratio – a key measure of bank solvency and a component of the stress tests – 60 percent.[9]

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[5] *See, e.g.*, U.S. Department of the Treasury, *Securities Purchase Agreement: Standard Terms* (online at www.financialstability.gov/docs/CPP/spa.pdf).

[620] U.S. Department of the Treasury, *Cumulative Dividends Report as of July 31, 2009* (Sept. 2, 2009) (online at www.financialstability.gov/docs/dividends-interest-reports/072009_report.pdf).

[7] The Panel continues to account for Treasury's original $25 billion CPP investment in Citigroup under the CPP until formal approval of the exchange by Citigroup's shareholders and until Treasury specifies under which TARP program the common equity investment will be classified.

[8] The AGP provides certain loss protections to select pools of mortgage or related assets held by financial institutions viewed as critical to the functioning of the financial system, and whose portfolios of distressed or illiquid assets pose a risk to market confidence. Similar to a typical insurance plan, Treasury insures these assets by providing guarantees or non-recourse loans with respect to the assets in exchange for a premium paid by the institution in preferred stock.

[9] The key components of the old and new TIP and AGP financial agreements between Citigroup and Treasury, including the amount outstanding and the coupon rate (8 percent), are essentially the same. U.S.

d. TARP Accounting

Figure 17: TARP Accounting (as of July 31, 2009)

TARP Initiative	Anticipated Funding *(billions of dollars)*	Purchase Price *(billions of dollars)*	Repayments *(billions of dollars)*	Net Current Investments *(billions of dollars)*	Net Available *(billions of dollars)*
Total	$531.3	$444.1	$72.4	$369.5	[10]$329.2
CPP	218	204.3	70.3	134.2	[11]13.7
TIP	40	40	0	40	0
SSFI Program	69.8	69.8	0	69.8	0
AIFP	80	80	2.1	[12]75.5	[13]0
AGP	5	5	0	5	0
CAP	TBD	0	N/A	0	N/A
TALF	20	20	0	20	0
PPIP	30	0	N/A	0	30
Supplier Support Program	[14]3.5	3.5	0	3.5	[15]0

Department of Treasury, *Transaction Outline* (Feb. 27, 2009) (online at www.treas.gov/press/releases/reports/transaction_outline.pdf).

[10] This figure is the summation of the uncommitted funds remaining under the $698.7 billion cap ($167.4 billion) and the difference between the total anticipated funding and the net current investment ($168.8 billion).

[11] This figure reflects the repayment of $70.3 billion in CPP funds. Secretary Geithner has suggested that funds from CPP repurchases will be treated as uncommitted funds upon return to the Treasury. This Week with George Stephanopoulos, *Interview with Secretary Geithner*, ABC (Aug. 2, 2009) (online at www.abcnews.go.com/print?id=8233298) ("[W]hen I was here four months ago, we had roughly $40 billion of authority left in the TARP. Today we have roughly $130 billion, in partly [sic] because we have been very successful in having private capital come back into this financial system. And we've had more than $70 billion ... come back into the government"). The Panel has therefore presented the repaid CPP funds as uncommitted (i.e., generally available for the entire spectrum of TARP initiatives). The difference between the $130 billion of funds available for future TARP initiatives cited by Secretary Geithner and the $239.8 billion calculated as available here is the Panel's decision to classify certain funds originally provisionally allocated to TALF and PPIP as uncommitted and available for TARP generally. See *infra* notes xiv and xvi.

[12] This figure reflects the amount invested in the AIFP as of August 18, 2009. This number consists of the original assistance amount of $80 billion subtracted by de-obligations ($2.4 billion) and repayments ($2.1 billion), $2.4 billion in apportioned funding has been de-obligated by Treasury ($1.91 billion of the available $3.8 billion of DIP financing to Chrysler and a $500 million loan facility dedicated to Chrysler that was unused). U.S. Department of Treasury, *TARP Transactions Report* (Aug. 26, 2009).

[13] Treasury has indicated that it will not provide additional assistance to GM and Chrysler through the AIFP. *Nick Bunkley August 5 New York Times Report*, *supra* note 80. The Panel therefore considers the repaid and de-obligated AIFP funds to be uncommitted TARP funds.

[14] On July 8, 2009, Treasury lowered the total commitment amount for the program from $5 billion to $3.5 billion, this reduced GM's portion from $3.5 billion to $2.5 billion and Chrysler's portion from $1.5 billion to $1 billion. *August 28 TARP Transactions Report, supra* note 102.

[15] Treasury has indicated that it will not provide additional funding to auto parts suppliers through the Supplier Support Program. *Nick Bunkley August 5 New York Times Report*, *supra* note 80.

Unlocking SBA Lending	15	0	N/A	0	15
HAMP	50	[16]21.5	0	21.5	28.5
(Uncommitted)	*167.4*	*N/A*	*N/A*	*N/A*	[17]*242.2*

Figure 18: TARP Repayments and Income (as of August 28, 2009)

TARP Initiative	**Repayments** *(billions of dollars)*	**Dividends**[18] *(billions of dollars)*	**Warrant Repurchases**[19] *(billions of dollars)*	**Total** *(billions of dollars)*
Total	$72.4	$9.1	$2.9	[20]$84.6
CPP	70.3	7.3	2.9	80.5
TIP	0	1.5	0	1.5
AIFP	2.1	.16	N/A	2.46
AGP	0	.17	0	.17

2. Other Financial Stability Efforts

Federal Reserve, FDIC, and Other Programs

In addition to the direct expenditures Treasury has undertaken through TARP, the federal government has engaged in a much broader program directed at stabilizing the U.S. financial system. Many of these initiatives explicitly augment funds allocated by Treasury under specific TARP initiatives, such as FDIC and Federal Reserve asset guarantees for Citigroup, or operate in tandem with Treasury programs, such as the interaction between PPIP and TALF. Other programs, like the Federal Reserve's extension of credit through its section 13(3) facilities and SPVs and the FDIC's Temporary Liquidity Guarantee Program, operate independent of TARP.

[16] This figure reflects the total of all the caps set on payments to each mortgage servicer. *August 28 Transactions Report*, *supra* note 102.

[17] This figure is the summation of the uncommitted funds remaining under the $698.7 billion cap ($167.4 billion), the repayments ($72.4 billion), and the de-obligated portion of the AIFP ($2.4 billion). Treasury provided de-obligation information in response to specific inquiries relating to the Panel's oversight of the AIFP. Treasury provided the Panel with information regarding specific investments made under the AIFP on August 18, 2009. Specifically, this information denoted allocated funds that had since been de-obligated. (hereinafter "Treasury De-obligation Document").

[18] U.S. Department of the Treasury, *Cumulative Dividends Report as of July 31, 2009* (Sep. 2, 2009) (online at www.financialstability.gov/docs/dividends-interest-reports/072009_report.pdf).

[19] This number includes $1.6 million in proceeds from the repurchase of preferred shares by privately-held financial institutions. For privately held financial institutions that elect to participate in the CPP, Treasury receives and immediately exercises warrants to purchase additional shares of preferred stock. August 28 Transactions Report, *supra* note 102.

[20] This includes interest payments made by recipients under the ASSP ($2 million) and AIFP ($200 million).

3. Total Financial Stability Resources (as of August 28, 2009)

Beginning in its April report, the Panel broadly classified the resources that the federal government has devoted to stabilizing the economy through a myriad of new programs and initiatives as outlays, loans, or guarantees. Although the Panel calculates the total value of these resources at over $3.1 trillion, this would translate into the ultimate "cost" of the stabilization effort only if: (1) assets do not appreciate; (2) no dividends are received, no warrants are exercised, and no TARP funds are repaid; (3) all loans default and are written off; and (4) all guarantees are exercised and subsequently written-off.

With respect to the FDIC and Federal Reserve programs, the risk of loss varies significantly across the programs considered here, as do the mechanisms providing protection for the taxpayer against such risk. The FDIC, for example, assesses a premium of up to 100 basis points on Temporary Liquidity Guarantee Program (TLGP) debt guarantees. The premiums are pooled and reserved to offset losses incurred by the exercise of the guarantees, and are calibrated to be sufficient to cover anticipated losses and thus remove any downside risk to the taxpayer. In contrast, the Federal Reserve's liquidity programs are generally available only to borrowers with good credit, and the loans are over-collateralized and with recourse to other assets of the borrower. If the assets securing a Federal Reserve loan realize a decline in value greater than the "haircut," the Federal Reserve is able to demand more collateral from the borrower. Similarly, should a borrower default on a recourse loan, the Federal Reserve can turn to the borrower's other assets to make the Federal Reserve whole. In this way, the risk to the taxpayer on recourse loans only materializes if the borrower enters bankruptcy. The only loans currently "underwater" – where the outstanding principal amount exceeds the current market value of the collateral – are the non-recourse loans to the Maiden Lane SPVs (used to purchase Bear Stearns and AIG assets).

Figure 19: Federal Government Financial Stability Effort (as of August 28, 2009)

Program *(in billions)*	Treasury (TARP)	Federal Reserve	FDIC	Total
Total	**$698.7**	**$1,630.8**	**$834.6**	[iii]**$3,164.1**
Outlays[i]	388	0	35.6	423.6
Loans	40.5	1401	0	1441.5
Guarantees[ii]	25	229.8	799	1053.8
Uncommitted TARP Funds	245.2	0	0	245.2
AIG	**$69.8**	**$98**	**$0**	**$167.8**
Outlays	[iv]69.8	0	0	69.8
Loans	0	[v]98	0	98
Guarantees	0	0	0	0
Bank of America	**$45**	**$0**	**$0**	**$45**
Outlays	[vii]45	0	0	45
Loans	0	0	0	0
Guarantees[vi]	0	0	0	0
Citigroup	**$50**	**$229.8**	**$10**	**$289.8**
Outlays	[viii]45	0	0	45
Loans	0	0	0	0
Guarantees	[ix]5	[x]229.8	[xi]10	244.8
Capital Purchase Program (Other)	**$97.7**	**$0**	**$0**	**$97.7**
Outlays	[xii]97.7	0	0	97.7
Loans	0	0	0	0
Guarantees	0	0	0	0
Capital Assistance Program	**TBD**	**$0**	**$0**	[xiii]**TBD**
TALF	**$20**	**$180**	**$0**	**$200**
Outlays	0	0	0	0
Loans	0	[xv]180	0	180
Guarantees	[xiv]20	0	0	20
PPIP (Loans)[xvi]	**$0**	**$0**	**$0**	**$0**
Outlays	0	0	0	0
Loans	0	0	0	0
Guarantees	0	0	0	0
PPIP (Securities)	[xvii]**$30**	**$0**	**$0**	**$30**
Outlays	12.5	0	0	12.5
Loans	17.5	0	0	17.5
Guarantees	0	0	0	0
Home Affordable Modification Program	**$50**	**$0**	**$0**	[xix]**$50**
Outlays	[xviii]50	0	0	50
Loans	0	0	0	0
Guarantees	0	0	0	0
Automotive Industry Financing Program	**$77.5**	**$0**	**$0**	**$77.5**
Outlays	[xx]55.5	0	0	55.5
Loans	22	0	0	22
Guarantees	0	0	0	0

Auto Supplier Support Program	**$3.5**	**$0**	**$0**	**$3.5**
Outlays	0	0	0	0
Loans	[xxi]3.5	0	0	3.5
Guarantees	0	0	0	0
Unlocking SBA Lending	**$15**	**$0**	**$0**	**$15**
Outlays	[xxii]15	0	0	15
Loans	0	0	0	0
Guarantees	0	0	0	0
Temporary Liquidity Guarantee Program	**$0**	**$0**	**$789**	**$789**
Outlays	0	0	0	0
Loans	0	0	0	0
Guarantees	0	0	[xxiii]789	789
Deposit Insurance Fund	**$0**	**$0**	**$35.6**	**$35.6**
Outlays	0	0	[xxiv]35.6	35.60
Loans	0	0	0	0
Guarantees	0	0	0	0
Other Federal Reserve Credit Expansion	**$0**	**$1,123**	**$0**	**$1,123**
Outlays	0	0	0	0
Loans	0	[xxv]1,123	0	1,123
Guarantees	0	0	0	0
Uncommitted TARP Funds	[xxvi]**$245.2**	**$0**	**$0**	**$245.2**

[i] The term "outlays" is used here to describe the use of Treasury funds under the TARP, which are broadly classifiable as purchases of debt or equity securities (e.g., debentures, preferred stock, exercised warrants, etc.). The outlays figures are based on: (1) Treasury's actual reported expenditures; and (2) Treasury's anticipated funding levels as estimated by a variety of sources, including Treasury pronouncements and GAO estimates. Anticipated funding levels are set at Treasury's discretion, have changed from initial announcements, and are subject to further change. Outlays as used here represent investments and assets purchases and commitments to make investments and asset purchases and are not the same as budget outlays, which under section 123 of EESA are recorded on a "credit reform" basis.

[ii] While many of the guarantees may never be exercised or exercised only partially, the guarantee figures included here represent the federal government's greatest possible financial exposure.

[iii] This figure is roughly comparable to the $3.0 trillion current balance of financial system support reported by SIGTARP in its July report. *SIGTARP Quarterly Report to Congress*, *supra* note 272, at 138. However, the Panel has sought to capture additional anticipated exposure and thus employs a different methodology than SIGTARP.

[iv] This number includes investments under the SSFI Program: a $40 billion investment made on November 25, 2008, and a $30 billion investment committed on April 17, 2009 (less a reduction of $165 million representing bonuses paid to AIG Financial Products employees). *August 28 Transactions Report*, *supra* note 102.

[v] This number represents the full $60 billion that is available to AIG through its revolving credit facility with the Federal Reserve ($37.8 billion had been drawn down as of August 28, 2009) and the outstanding principle of the loans extended to the Maiden Lane II and III SPVs to buy AIG assets (as of August 28, 2009, $16.9 billion

and $20.9 billion respectively). Board of Governors of the Federal Reserve System, *Federal Reserve Statistical Release H.4.1: Factors Affecting Reserve Balances* (Aug. 27, 2009) (accessed Sep. 2, 2009) (online at www.federalreserve.gov/releases/h41/Current/) (hereinafter "Fed Balance Sheet August 27"). Income from the purchased assets is used to pay down the loans to the SPVs, reducing the taxpayers' exposure to losses over time. Board of Governors of the Federal Reserve System, *Federal Reserve System Monthly Report on Credit and Liquidity Programs and the Balance Sheet*, at 16-20 (Aug. 2009) (online at www.federalreserve.gov/monetarypolicy/files/monthlyclbsreport200908.pdf) (hereinafter "Fed August 2009 Credit and Liquidity Report").exposure to losses over time. *See* Board of Governors of the Federal Reserve System, Federal Reserve System *Monthly Report on Credit and Liquidity Programs and the Balance Sheet*, at 16-20 (Aug. 2009) (online at www.federalreserve.gov/monetarypolicy/files/monthlyclbsreport200908.pdf).

[vi] Beginning in our July report, the Panel excluded from its accounting the $118 billion asset guarantee agreement among Bank of America, the Federal Reserve, Treasury, and the FDIC based on testimony from Federal Reserve Chairman that the agreement was never signed and was never signed or consummated and the absence of [vi] Beginning in our July report, the Panel excluded from its accounting the $118 billion asset guarantee agreement among Bank of America, the Federal Reserve, Treasury, and the FDIC based on testimony from Federal Reserve Chairman that the agreement was never signed and was never signed or consummated and the absence of the guarantee from Treasury's TARP accounting. House Committee on Oversight and Government Reform, Testimony Federal Reserve Chairman Ben S. Bernanke, *Acquisition of Merrill Lynch by Bank of America*, 111th Cong., at 3 (June 25, 2009) (online at oversight.house.gov/documents/20090624185603.pdf) ("The ring-fence arrangement has not been consummated, and Bank of America now believes that, in light of the general improvement in the markets, this protection is no longer needed."); Congressional Oversight Panel, *July Oversight Report: TARP Repayments, Including the Repurchase of Stock Warrants,* at 85 (July 7, 2009) (online at .cop.senate.gov/documents/cop-071009-report.pdf). According to a recent news report, it now appears that the U.S. government is seeking at least $500 million from Bank of America to shelve the tentative agreement. Dan Fitzpatrick, *B of A Seeks to Repay a Portion of Bailout*, Wall Street Journal (Sept. 1, 2009) (online at online.wsj.com/article/SB125176546582274505.html). The account reports the government as taking the position that even though the guarantee deal was never signed, the government believes that because Bank of America benefited in the marketplace from its implied protection between from January to May 2009, Bank of America benefited in the marketplace from its implied protection between from January to May 2009, Bank of America should be responsible for the payment of dividends and other fees, including an program exit fee, associated with the program. *Id.* While the past and current status of the program is in some doubt, in the absence of official guidance, the Panel continues to follow Treasury and exclude it from our accounting, in part because the putative protection offered by the program is no longer in place. The Panel will include in its accounting premiums or fees, if any, that Bank of America ultimately agrees to pay the U.S. government in relation to the guarantee program.

[vii] *August 28 TARP Transactions Report*, *supra* note 102. This figure includes: (1) a $15 billion investment made by Treasury on October 28, 2008 under the CPP; (2) a $10 billion investment made by Treasury on January 9, 2009 also under the CPP; and (3) a $20 billion investment made by Treasury under the TIP on January 16, 2009.

[viii] *August 28 TARP Transactions Report*, *supra* note 102. This figure includes: (1) a $25 billion investment made by Treasury under the CPP on October 28, 2008; and (2) a $20 billion investment made by Treasury under TIP on December 31, 2008.

[ix] U.S. Department of the Treasury, *Summary of Terms: Eligible Asset Guarantee* (Nov. 23, 2008) (online at www.treasury.gov/press/releases/reports/cititermsheet_112308.pdf) (hereinafter "Citigroup Asset Guarantee") (granting a 90 percent federal guarantee on all losses over $29 billion of a $306 billion pool of Citigroup assets, with the first $5 billion of the cost of the guarantee borne by Treasury, the next $10 billion by FDIC, and the remainder by the Federal Reserve). See also U.S. Department of the Treasury, *U.S. Government Finalizes Terms of Citi Guarantee Announced in November* (Jan. 16, 2009) (online at www.treas.gov/press/releases/hp1358.htm) (reducing the size of the asset pool from $306 billion to $301 billion).

[x] *Citigroup Asset Guarantee*, *supra* note ix.

[xi] *Citigroup Asset Guarantee*, *supra* note ix.

[xii] This figure represents the $218 billion Treasury has anticipated spending under the CPP, minus the $50 billion investment in Citigroup ($25 billion) and Bank of America ($25 billion) identified above, and the $70.3

billion in repayments that will be reflected as uncommitted TARP funds. This figure does not account for future repayments of CPP investments, nor does it account for dividend payments from CPP investments.

[xiii] Funding levels for the CAP have not yet been announced but will likely constitute a significant portion of the remaining $245.2 billion of TARP funds.

[xiv] This figure represents a $20 billion allocation to the TALF SPV on March 3, 2009. *August 28 Transactions Report*, *supra* note 102. Consistent with the analysis in our August report, see *COP August Report*, *supra* note 317, and the fact that only $43 billion dollars has been lent through TALF as of September 2009, the Panel continues to predict that TALF subscriptions are unlikely to surpass the $200 billion currently available by year's end.

[xv] This number derives from the unofficial 1:10 ratio of the value of Treasury loan guarantees to the value of Federal Reserve loans under the TALF. U.S. Department of the Treasury, *Fact Sheet: Financial Stability Plan* (Feb.10, 2009) (online at www.financialstability.gov/docs/fact-sheet.pdf) (describing the initial $20 billion Treasury contribution tied to $200 billion in Federal Reserve loans and announcing potential expansion to a $100 billion Treasury contribution tied to $1 trillion in Federal Reserve loans). Because Treasury is responsible for reimbursing the Federal Reserve Board for $20 billion of losses on its $200 billion in loans, the Federal Reserve Board's maximum potential exposure under the TALF is $180 billion.

[xvi] It now appears unlikely that resources will be expended under the PPIP Legacy Loans Program in its original design as a joint Treasury-FDIC program to purchase troubled assets from solvent banks. In June, the FDIC cancelled a pilot sale of assets that would have been conducted under the program's original design. Federal Deposit Insurance Corporation*, FDIC Statement on the Status of the Legacy Loans Program* (June 3, 2009) (online at www.fdic.gov/news/news/press/2009/pr09084.html). In July, the FDIC announced that it would rebrand its established procedure for selling the assets of failed banks as the Legacy Loans Programs. Federal Deposit Insurance Corporation, *Legacy Loans Program – Test of Funding Mechanism* (July 31, 2009) (online at www.fdic.gov/news/news/press/2009/pr09131.html). These sales do not involve any Treasury participation, and FDIC activity is accounted for here as a component of the FDIC's Deposit Insurance Fund outlays.

[xvii] U.S. Department of the Treasury, *Joint Statement By Secretary of the Treasury Timothy F. Geithner, Chairman of the Board Of Governors Of The Federal Reserve System Ben S. Bernanke, and Chairman of the Federal Deposit Insurance Corporation Sheila Bair: Legacy Asset Program* (July 8, 2009) (online at www.financialstability.gov/latest/tg_07082009.html) ("Treasury will invest up to $30 billion of equity and debt in PPIFs established with private sector fund managers and private investors for the purpose of purchasing legacy securities"); U.S. Department of the Treasury, *Fact Sheet: Public-Private Investment Program*, at 4-5 (Mar. 23, 2009) (online at www.treas.gov/press/releases/reports/ppip_fact_sheet.pdf) (hereinafter "Treasury PPIP Fact Sheet") (outlining that, for each $1 of private investment into a fund created under the Legacy Securities Program, Treasury will provide a matching $1 in equity to the investment fund; a $1 loan to the fund; and, at Treasury's discretion, an additional loan up to $1). In the absence of further Treasury guidance, this analysis assumes that Treasury will allocate funds for equity co-investments and loans at a 1:1.5 ratio, a formula that estimates that Treasury will frequently exercise its discretion to provide additional financing.

[xviii] GAO, *Troubled Asset Relief Program: June 2009 Status of Efforts to Address Transparency and Accountability Issues*, at 2 (June 17, 2009) (GAO09/658) (online at www.gao.gov/new.items/d09658.pdf) (hereinafter "GAO June 29 Status Report"). Of the $50 billion in announced TARP funding for this program, $21.5 billion has been allocated as of August 28, 2009, and no funds have yet been disbursed. *August 28 Transactions Report*, *supra* note 102.

[xix] Fannie Mae and Freddie Mac, government-sponsored entities (GSEs) that were placed in conservatorship of the Federal Housing Finance Housing Agency on September 7, 2009, will also contribute up to $25 billion to the Making Home Affordable Program, of which the HAMP is a key component. U.S. Department of the Treasury, *Making Home Affordable: Updated Detailed Program Description* (Mar. 4, 2009) (online at www.treas.gov/press/releases/reports/housing_fact_sheet.pdf).

[xx] *August 28 Transactions Report, supra* note 102. A substantial portion of the total $80 billion in loans extended under the AIFP has since been converted to common equity and preferred shares in restructured companies. $22 billion has been retained as first lien debt (with $7.7 billion committed to GM and $14.3 billion to Chrysler). This figure represents Treasury's cumulative obligation under the AIFP, the total does not reflect the aid

provided under the Auto Supplier Support Program or any de-obligations or repayments. *Treasury De-obligation Document*, *supra* note 286. See also GAO June 29 Status Report, *supra* note xviii at 43.

[xxi] *August 28 Transactions Report, supra* note 102.

[xxii] *Treasury PPIP Fact Sheet, supra* note xvii.

[xxiii] This figure represents the current maximum aggregate debt guarantees that could be made under the program, which, in turn, is a function of the number and size of individual financial institutions participating. $320.1 billion of debt subject to the guarantee has been issued to date, which represents about 41 percent of the current cap. Federal Deposit Insurance Corporation, *Monthly Reports on Debt Issuance Under the Temporary Liquidity Guarantee Program: Debt Issuance Under Guarantee Program* (July 31, 2009) (online at www.fdic.gov/regulations/resources/tlgp/total_issuance7-09.html) (updated Sep. 2, 2009).

[xxiv] This figure represents the FDIC's provision for losses to its deposit insurance fund attributable to bank failures in the third and fourth quarters of 2008 and the first quarter of 2009. Federal Deposit Insurance Corporation, *Chief Financial Officer's (CFO) Report to the Board: DIF Income Statement (Fourth Quarter 2008)* (online at www.fdic.gov/about/strategic/corporate/cfo_report_4qtr_08/income.html); Federal Deposit Insurance Corporation, *Chief Financial Officer's (CFO) Report to the Board: DIF Income Statement (Third Quarter 2008)* (online at www.fdic.gov/about/strategic/corporate/cfo_report_3rdqtr_08/income.html); Federal Deposit Insurance Corporation, *Chief Financial Officer's (CFO) Report to the Board: DIF Income Statement (First Quarter 2009)* (online at www.fdic.gov/about/strategic/corporate/cfo_report_1stqtr_09/income.html). This figure includes the FDIC's estimates of its future losses under loss share agreements that it has entered into with banks acquiring assets of insolvent banks during these three quarters. Under a loss sharing agreement, as a condition of an acquiring bank's agreement to purchase the assets of an insolvent bank, the FDIC typically agrees to cover 80 percent of an acquiring bank's future losses on an initial portion of these assets and 95 percent of losses of another portion of assets. See, for example Federal Deposit Insurance Corporation, *Purchase and Assumption Agreement Among FDIC, Receiver of Guaranty Bank, Austin, Texas, FDIC and Compass Bank* at 65-66 (Aug. 21, 2009) (online at www.fdic.gov/bank/individual/failed/guaranty-tx_p_and_a_w_addendum.pdf). The FDIC does not publish aggregated data on the total amount of assets subject to these agreements and the amount that the FDIC has guaranteed, and it does not disaggregate anticipated losses from loss share agreement from total losses under the Deposit Insurance Fund. But, in contrast, see Damian Paletta, *Raft of Deals for Failed Banks Puts U.S. on Hook for Billions*, Wall Street Journal (Aug. 31, 2009) (online at http://online.wsj.com/article/SB125166830374670517.html) (calculating the total insolvent bank assets subject to loss sharing agreements at $80 billion and reporting an FDIC estimate of the FDIC's anticipated losses from its guarantees on these assets at $14 billion).

[xxv] This figure is derived from adding the total credit the Federal Reserve Board has extended as of August 27, 2009 through the Term Auction Facility (Term Auction Credit), Discount Window (Primary Credit), Primary Dealer Credit Facility (Primary Dealer and Other Broker-Dealer Credit), Central Bank Liquidity Swaps, loans outstanding to Bear Stearns (Maiden Lane I LLC), GSE Debt Securities (Federal Agency Debt Securities), Mortgage Backed Securities Issued by GSEs, Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility, and Commercial Paper Funding Facility LLC. *Fed Balance Sheet August 27*, *supra* note v. The level of Federal Reserve lending under these facilities will fluctuate in response to market conditions. The Federal Reserve has earned significant amounts of interest in these lending and purchase programs. *Fed August Report on Credit and Liquidity*, *supra* note v, at 23-24, Tables 30-32 (showing partial income statement for various Federal Reserve programs, including $1.88 billion interest earned from Jan. 1-June 30, 2009 on Central Bank Liquidity Swaps, $614 million interest earned from Jan. 1-June 30, 2009 on GSE Debt Securities, $4.97 billion interest earned from Jan. 1-June 30, 2009 on Mortgage Backed Securities, and $4.18 billion interest earned from Jan. 1-June 30, 2009 under the CPFF).

[xxvi] As discussed in the Panel's August report, we do not account for the Temporary Guarantee Program for Money Market Mutual Funds because it does not involve TARP funds and this program will expire September 18, 2009. *August COP Report*, *supra* note 317.