

The Trade-Policy Blindspot in the U.S. Financial Crisis Response

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Presentation for IDEAS Conference on “Re-regulating Global Finance
in the Light of the Global Crisis,” Tsinghua University, Beijing, China,
April 10, 2009.

¹ The opinions expressed here are the author's alone. They represent a work in progress: do not cite or distribute without permission of author (tucker@citizen.org). Thanks to Dean Baker, Mary Bottari, Heather Boushey, Ellen Gould, Matt Sherman, Damon Silvers, Lori Wallach and Rob Weissman for conversations and presentations that illuminated this piece. Thanks to Jessica Boehner, Rick Relinger and Brandon Wu for research assistance.

This presentation will focus on a somewhat incongruous angle on the financial crisis, that of the constraints set up by so-called “trade policy.” Through the talk, we will indirectly get at the U.S. response to the crisis, which is the focus of this panel, as well as illuminate some of the path not taken. This is a part of some ongoing investigations which I hope will be further informed by this conference. Please visit tradewatch.org for more up to date materials.

Political and Institutional Origins

If anyone picked up the papers last week, you might have seen Hank Greenberg – the CEO of American International Group from the early 1960s to 2005 – deny to a congressional panel that there was anything wrong with the way he did business. He maintains that his successors over-invested in subprime mortgages, and thus the walls came a tumbling down. But what exactly was AIG’s model during Greenberg’s tenure? Starting as early as the 1970s, Greenberg was frustrated with the rates of return in the property & casualty insurance business, so began expanding into other businesses, and financing it all via complex reinsurance schemes using tax-haven nations.²

Greenberg’s genius was in realizing that not only should financial services firms look for the loopholes in the state apparatus, but that they should work to reshape the state itself. Their advocacy pursued the domestic, bilateral and multilateral tracks. On the domestic front, they were able to move most quickly. The way that the financial services industry steadily broke down U.S. domestic financial regulation is fairly well-known. From the 1983 accounting rules changes which allowed off-balance sheet transactions, to thousands of mergers and acquisitions, to successfully staving off a regulatory clamp-down on subprime lending or derivatives, AIG and its ilk used law campaign finance laws to buy support for all of it.³

But they’ve also had impressive success on breaking down trade-related policy space. His firm, together with American Express, became the main domestic U.S. constituents pushing for an expansion of the ambit of trade agreements into the way that countries regulate their service sectors inside their borders. **The goal was not just national treatment, but the establishment of a regulatory ceiling globally. The model was perfected in the United States, and then exported.** One of their consultants was the then-academic Larry Summers, and American Express said that hiring Summers was the smartest thing he ever did. Greenberg and the AmEx CEO provided their Washington lobby teams with a limitless amount of resources.⁴

² Under his watch, AIG would offload losses onto offshore entities, who would then provide reinsurance services to the core company *at above market rates*. This margin would then ensure the profitability of the offshore entities, who in turn were used to provide equity compensation to AIG’s top staff. Because these transactions were run out of countries like Panama, with extensive banking secrecy practices and no taxation, the IRS and other entities were rarely able to catch up with the shenanigans. Public Citizen, forthcoming; Charles Gasparino, “Is It Vindication or Revenge?” *Forbes*, Nov. 26, 2007; Carol S. Loomis, “AIG: Aggressive, Inscrutable, Greenberg,” *Fortune Magazine*, April 27, 1998; Lynnley Browning, “AIG’s Lucrative and Unusual Ties to Affiliate,” *New York Times*, Feb. 25, 2005.

³ “Sold Out: How Wall Street and Washington Betrayed America,” WallStreetWatch.Org, March 2009.

⁴ Harry L. Freeman, “The Role of Constituents in U.S. Policy Development Towards Trade in Financial Services,” in Alan Deardoff and Robert Stern, *Constituent Interests and U.S. Trade Policy*, (Ann Arbor: University of Michigan

Within the first Reagan administration, and largely flying under the radar, corporate interests were able to reshape the domestic institutional relationship between Congress and the executive. The 1984 Fast Track – which is the Nixon-created device that transferred effective control over U.S. trade policy from Congress to the executive – dramatically expanded the subject matter and the types of agreements that the president was authorized to negotiate without meaningful congressional input. It created substantial new mandates to negotiate on services and investment issues.⁵

In addition to pushing various bilateral agreements,⁶ Greenberg and AIG were also instrumental in pressuring for the 1986 Uruguay Round. Because of developing country resistance, they couldn't get the financial services negotiations done in time for the single undertaking of the mid 1990s, and had to extend special sectoral negotiations for several years. Summers and Timothy Geithner were instrumental in working alongside the financial services industry to complete these talks, along with the financial service-related aspects of China's accession to the World Trade Organization (WTO).

In general, international talks on financial services liberalization advanced much more rapidly than talks on prudential regulation, although the trade dimension remains relatively isolated from the financial dimension in most advocacy and regulatory circles, despite its powerful, binding dispute settlement mechanisms.⁷

Trade Disciplines on Financial Services

The WTO Secretariat was unusually direct in describing the implications of the outcome of the overall General Agreement on Trade in Services (GATS): “Governments are free in principle to pursue any national policy objectives provided the relevant measures are

Press, 1999).

⁵ The 1984 act authorized the president to collect information on (and enter into agreements related to the elimination of) “barriers to international trade in services” and “the trade distortive effects of certain investment-related measures.” Service and investment barriers were defined as denial of “national treatment and restrictions on the establishment” of service operations and investments; “foreign industrial policies;” “export performance requirements;” and “direct or indirect restrictions on the transfer of information into, or out of” a given country. The Commerce Department was also authorized to collect information on other governments’ failures to enforce copyrights and patents identified as barriers to trade (even though protection of monopoly patents is one of the most trade-distorting measures). The 1988 Fast Track built on this by actually listing elimination of these measures as a “principal trade negotiating objective.” The net impact of these provisions was to transfer from Congress to executive-branch agencies the surveillance of trade agreements’ impact on domestic law. See Todd Tucker and Lori Wallach, “The Rise and Fall of Fast Trade Trade Authority,” (Washington, D.C.: Public Citizen, 2009, forthcoming at www.FastTrackHistory.Org.)

⁶ Parenthetically, I would just note that U.S. bilateral FTAs often go further in the financial services areas, with more strict limits on capital controls, and also the famous investor-state protection that is controversial. In the Peru FTA, for instance, we have what we call the Citigroup provision. While the FTA would probably allow Peru to reinstate its public-sector monopoly on pensions, they could not do so without compensating Citigroup – a participant in the private pension system – for all future expected earnings. Or the AIG provision in the Panama FTA, which would allow Hank Greenberg’s Panama shell corporations the right to sue the U.S. government if it started imposing tax-haven sanctions on Panama. One interesting footnote is that Mexico is amending its laws to allow Citigroup – now a U.S. government-owned entity – to have local presence, citing the emergency. Citigroup, which has owned Banamex since 2001, has dramatically slowed down its lending in Mexico, leading to some contraction there. “Mexico Treasury Seeks Measure Favoring Citigroup,” Associated Press, March 20, 2009.

⁷ See Daniel K. Tarullo, *Banking on Basel*, (Washington, D.C.: Peterson Institute, 2008); William R. White, “International Agreements in the Area of Banking and Finance: Accomplishments and Outstanding Issues,” Bank for International Settlements Working Paper Number 38, October 1996.

compatible with the GATS.” For those of you new to or rusty on the General Agreement on Trade in Services, here are some key points about this agreement.

1. It is one of 17 agreements administered by the WTO, which has binding dispute settlement provisions that can lead to hefty trade sanctions.
2. It applies to anything you can’t drop on your foot, from haircuts to financial services.
3. It covers four modes of delivery of a service: Mode 1 is cross-border supply, i.e. e-commerce. Mode 2 is consumption of a service abroad, i.e. medical tourism. Mode 3 is establishment rights or commercial presence. And Mode 4 is basically service provided by a migrant or immigrant.
4. GATS applies to federal and subfederal rules.
5. There are requirements on MFN and transparency that apply across the board to all services, unless exceptions were taken.
6. Also, there are requirements that domestic regulations not be more trade-restrictive than necessary – that famous word in trade law which means no policy should be adopted if any conceivable alternative policy would be less trade restrictive. Countries that try to invoke the “necessary” defense fail nearly 90 percent of the time in WTO panels.
7. There is also a requirement that subsidies should be provided on a national treatment basis at least to firms with a commercial presence in committed sectors.
8. There are some relatively loose rules forbidding limitations on payments/ transfers.
9. Finally, there are exceptions to get out of having to provide GATS treatment, including for morals, public order, health, tax, security – subject to some fairly stringent requirements.
10. Then there are specific commitments that generally apply only to service sectors that are scheduled. National treatment requirement not only limits discriminatory policies, but also policies that may inadvertently alter the “conditions of competition.”
11. Then there are the market access requirements, which restrict any limitations on the number of suppliers, transactions, size, operators or employees in a covered service sector. This also limits economic needs tests, or requirements that limit foreign capital participation or specify non-profit legal forms. The recent U.S.-Gambling case ruled that the GATS covered regulatory bans as zero quotas.
12. There’s a built in negotiating mandate for further liberalization.
13. Modification of schedules requires compensation.⁸

Old WTO hands are fairly familiar with these requirements. But the financial services agreement is a whole other beast. It is a set of three principal documents:

1. The 1995 Annex on Financial Services, which applies to the over 100 countries that made commitments in the sector.⁹
 - a. It defined the scope of the negotiations to include virtually all forms of insurance, banking and securities.
 - b. It set up an unusual “carve out” which said that prudential measures could be taken, except when they violated the agreement. Some legal scholars have

⁸ See our webpage at www.TradeWatch.Org for more information about the GATS.

⁹ http://www.wto.org/english/docs_e/legal_e/26-gats_02_e.htm#annfin

suggested that, because bodies like the Basel Committee have interpreted prudential measures to be a fairly limited set of issues related to capital adequacy – rather than prohibitions on certain types of transactions or products – that stronger forms of re-regulation would not qualify for this “carve out”.¹⁰

2. The 1997 Understanding on Commitments in Financial Services, which was an optional protocol that the United States, Nigeria and most developed nations signed onto. The Understanding:¹¹
 - a. Inverts the typical GATS protocol and make financial services a negative list rather than positive list endeavor;
 - b. Institutes a standstill on any new regulations in covered sectors;
 - c. Allows unlimited commercial presence and any new financial products into the market;
 - d. Endeavors to eliminate monopolies and even non-discriminatory regulations that may hinder market access; and
 - e. Requires national treatment for official funding and finance, although with a somewhat clumsy carve out as lender of last resort.

This is perhaps the most significant incorporating of the U.S. FTA-style approach into the WTO, minus the investor-state system.

3. The 1999 Financial Services agreement, which is basically countries scheduling of their commitments.¹² A couple of interesting things to point out about the U.S. schedule.
 - a. First, the Clinton administration – via Summers and Geithner – scheduled the elimination of Glass-Steagall in 1997, before it was repealed by Congress. This was a repeated demand by universal banks in Europe, who already combined securities and banking functions.
 - b. Second, this FSA was not formally approved by Congress, in yet another notable change in U.S. domestic institutions.
 - c. Very few exceptions or horizontal limitations were listed, meaning essentially all facets of finance are covered by U.S. commitments. In a somewhat absurd note, under derivatives, only onions futures were excluded. We’ve been steadily looking for that onion industry lobbyist to add to our team, with tearfully little luck.

What does all this mean for the U.S. response to the crisis?¹³

¹⁰ See for instance, Christine Kaufmann and Rolf Weber, “Reconciling Liberalized Trade in Financial Services and Domestic Regulation,” in Kern Alexander and Mads Andenas, *The World Trade Organization and Trade in Services*, (Amsterdam: Brill Academic, 2008).

¹¹ http://www.wto.org/english/docs_e/legal_e/54-ufins.pdf

¹² WTO, “Fifth Protocol to the General Agreement on Trade in Services - Notification of Acceptances, Entry into Force,” WTO document WLI/200-4, Feb. 18, 1999.

¹³ For an analysis of the FSA’s impact on other countries, see Wendy Dobson and Pierre Jacquet, *Financial Services Liberalization in the WTO*, (Washington, D.C.: Institute for International Economics, 1998); Russell Alan Williams, “Globalization, Deregulation and Financial Services Reform in Canada,” Dissertation for Simon Fraser University, 2006; Wei Wang, “The GATS and the Legal Framework of the

1. It means that any reinstatement of Glass-Steagall would likely put the U.S. in violation of its WTO obligations.
2. Banning of or limitation of exposure to derivatives – except those of onions futures – would also be a likely WTO violation.
3. Providing subsidies on a non-national treatment basis – by design or in practice – would also appear to be a WTO violation, if exceptions weren't made.
4. And, if the challenged measures weren't chilled out of existence first, prudential carve outs or exceptions would not stop a case from being launched. It could only be raised as a defense – and these exceptions do not have a good track record.

U.S. Bailout Package and Subsidies to Domestic Firms

Here is where we can get into the topic of interest to most of you, which is the nature of the U.S. bailout package. There are many different strands of reform proposals. I'll highlight a few:

1. The congressional Republican response is, essentially, do nothing. This is the “buy guns and call Obama a socialist” perspective. This is one response that would probably be WTO-legal, because it is a non-response.
2. The more progressive groups have called for a set of measures that are not seriously being discussed by the administration, including getting the government onto the governing boards of banks; banning derivatives; having government direct credit over the short term or permanently, or curtailing lending abroad; instituting the precautionary principle in regards to new financial instruments; cracking down on tax havens by requiring automatic exchange of tax information; prohibitions on bank lobbying of Congress; prohibitions on bonuses in financial sector; capping interest rates and late fees on credit cards; jailing bankers; and addressing in fundamental ways the financialization of the economy.¹⁴ Many of these could present potential WTO conflicts.
3. Many non-administration economists (Krugman, Sachs, Stiglitz) favor some form of temporary nationalization, in the sense of operating control. There is also some traction around too big to fail is too big to exist, with even some Peterson Institute types talking about this. A size cap would be a market-access violation.
4. The Congressional Oversight Panel recommends the following steps: “1. Identify and regulate financial institutions that pose systemic risk. 2. Limit excessive leverage in American financial institutions. 3. Modernize supervision of the shadow financial system. 4. Create a new system for federal and state regulation of mortgages and other consumer credit products. 5. Create executive pay structures that discourage excessive risk taking. 6. Reform the credit rating system. 7. Make establishing a global financial regulatory floor a U.S. diplomatic priority. 8. Plan for next crisis.”¹⁵

Chinese Banking Sector,” in Kern Alexander and Mads Andenas, *The World Trade Organization and Trade in Services*, (Amsterdam: Brill Academic, 2008).

¹⁴ “Sold Out: How Wall Street and Washington Betrayed America,” WallStreetWatch.Org, March 2009. See also work by Public Citizen, Global Financial Integrity Project , 额头从 G

¹⁵ Congressional Oversight Panel, “Special Report on Regulatory Reform,” January 2009. Available at:

These policies are often considered the left wing of the possible in terms of congressional opinion. It may ultimately influence some of Treasury's proposals.

The administration's response has come in several phases.

The first, actually coming from the Fed, revolved around currency swaps and the TSLF and PDCF, were not direct investments, although the latter were loans with a subsidy component. Combined, this was over \$700 billion in lending and insurance. This phase lasted from December 2007 to the fall of 2008. They included many subsidiaries of foreign firms, like UBS, and represented a subsidy in the low billions, according to the Center for Economic and Policy Research.

The second phase was a gradual shift to investment programs that were discriminatory in effect. The March 2008 infusion of \$29 billion for Bear Stearns was the first action, followed in the fall and this year in investments in and guarantees of AIG, Citigroup and Bank of America. There were also the lending programs of the \$600 billion committed to the Term Auction Facility. This program allowed the Fed to require higher capital requirements for foreign participants. The October 2008 expansion of investment facilities – through SPEs – to buy up commercial paper and money-market assets – privileged JP Morgan and the other entities that were set up to administer the program.

Finally, there are the \$700 billion TARP and nearly \$1 trillion public-private investment funds. The first has only gone to over 300 U.S. firms, while there is a requirement for U.S. headquarters for the hedge funds participating in the latter program. According to government estimates, these represent over \$300 billion in subsidies to domestic firms. (The aspects of TARP that are most open to foreign firms, like APP, have not been used. A test of this may come if Fiat becomes the controlling shareholder in Chrysler.)

So of approximately \$12.2 trillion in committed or likely funding in 33 diverse programs, 77 percent of this funding is subject to restrictions that would seem to pose national treatment concerns for foreign financial firms, either facially or in practice.

Conclusion: Doha Round Would Set Back Cause of Financial Re-Regulation

Internationally, the latest G-20 statement leaves much to be desired in terms of the international strategy. The London summit communiqué does not address FSA reform, and instead includes a commitment “to refrain from raising new barriers to investment or to trade in goods and services” and to “rectify promptly any such measures.”¹⁶ It also

<http://cop.senate.gov/documents/cop-012909-report-regulatoryreform.pdf>. Accessed April 6, 2009.

¹⁶ The WTO and various corporate lobbies have launched a global campaign to gin up fears about a supposed new wave of protectionism. A WTO report issued recently described “significant slippage” in the global commitment to free trade and included a long list of recent “trade measures” as evidence. Yet the list included unilateral tariff cuts, domestic food and product safety protections, WTO-legal procurement policies and anti-dumping actions. Indeed, the report stated that “There is no indication of an imminent descent into high intensity protectionism involving widespread resort to trade restriction and retaliation.” The G-20 declaration identifies falling demand as the lead reason trade flows have declined, while also noting growing protectionist “pressures.”

commits support for the WTO Doha Round, which includes the built-in agenda of further financial services deregulation. Among the proposals on the table:

1. Overall, neoliberals are calling for OECD countries to liberalize e-finance regulations, and for developing nations to commit to the Understanding, open up commercial presence restrictions over a phase in period, bind the regulatory status quo, and pre-commit to additional de-regulation. They are even suggesting a ratchet-like mechanism where any voluntary liberalization would be automatically locked in via trade commitments.
2. The International Chamber of Commerce is demanding no supervision of branches, no limits on repatriation of earnings, and no limits on the types of services offered.¹⁷
3. The United States is offering to further lock-in Gramm-Leach-Bliley, and to allow interstate branch expansion through merger. It is requesting that countries impose no limits on equity requirements for branches and subsidiaries; rollback of economic needs tests; allowing derivatives and other products to be traded across borders; and transparency requirements that would allow U.S. firms to have more influence over the domestic policy formation process.
4. Europe is demanding that mutual funds be allowed to service domestic markets without a commercial presence, and market-country regulation; and for elimination of asset requirements for foreign branches.
5. Developing countries aren't necessarily much better, with Mexico requesting elimination of *all* limitations on access for Modes 1 through 3.¹⁸

In sum, at a time when the existing models of finance have failed, the Obama administration and other developed country governments do not appear to be pushing for fundamental reforms. Many of the proposals they are pushing domestically, however, are violations of the spirit if not letter of the FSA. Increasingly, the U.S. appears to be pushing Keynes at home and Hayek abroad. Or more specifically, Keynes for domestic financial operators, and Hayek for the domestic real economy as well. Perhaps this is not surprising, since so many U.S. officials were so instrumental in building up this system, as I show in Appendix I. The good news is that domestic constituents in the U.S. are increasingly aware of these conflicts, and are weighing in with the administration.

¹⁷ Pierre Sauvé and James Gillespie, "Financial Services and the GATS 2000 Round," Brookings –Wharton Papers on Financial Services, 2000; Pierre Sauvé and Karsten Steinfatt, "Financial Services and the WTO: What Next?" in *Trade Rules Behind Borders: Essays on Services, Investment and the New Trade Agenda*, (London: Cameron May Publishers, 2003.)

¹⁸ Detailed in Public Citizen, 2009, forthcoming.

Appendix I: Fiscal Stimulus

As Leo Gerard, the Steelworkers president, said, “Washington will bailout out those who shower before work but not those who shower afterwards.” To understand what he means, we can take the contrast between the fiscal stimulus package, and the various financial bailout measures.

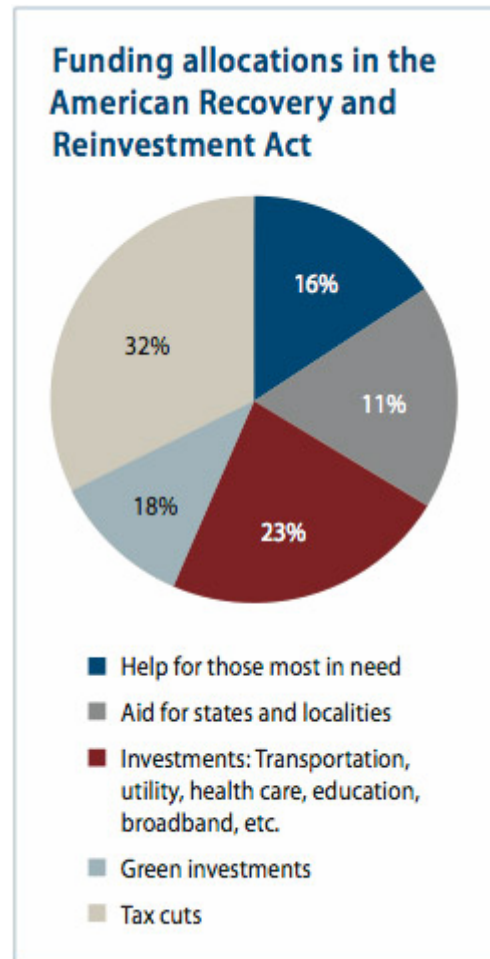
The pain is overwhelmingly being felt in the real economy:

- Total job losses are now at 5.1 million since the recession began in December 2007, and nearly two-thirds of the total (3.3 million) have occurred in just the last five months.
- The unemployment rate spiked 0.4 percentage points up to 8.5 percent in March, and is now higher than at any time since 1983. There are 13.2 million people unemployed—more than at any other time in history.
- Manufacturing has shed 1.5 million jobs since the recession began in December 2007; over half of that has come in just the past four months, and 161,000 jobs were lost last month. The construction industry has lost 1.1 million jobs; more than half of that total has occurred in the past five months, and 126,000 jobs were lost last month.¹⁹

The stimulus package, passed in February 2009, dedicates \$787 billion, mostly in direct investments and federal grants to the states. The table below shows the composition of the spending:

A stimulus provision which received an outside amount of attention was the “Buy America” provisions on iron, steel, and manufactured products. This provision had a long and tangled path to becoming law, but a few points are worth making here.

1. The provision is consistent with U.S. law and practice, and international trade obligations. Indeed, this was a major reason my group, which has been critical of these agreements,



Source: CAP analysis.

¹⁹ Heather Boushey, “No Good News for Workers,” Center for American Progress, April 3, 2009. http://www.americanprogress.org/issues/2009/04/no_good_news.html

2. The provision is substantially less radical than some of the “policy space” that Canada and other countries allowed themselves at the WTO.
3. As has a schizophrenic status in the regulations, both expanding and rolling back preferences. It expands by increasing price preference to 25% from 6% for U.S. products, but because of WTO and FTAs, about 102 countries are treated like U.S. products. Also, the components of manufactured goods do not have to be made in the U.S., according to regulations issues last week.

The most obvious double standards in the approach to manufacturing and finance is not only that there are much steeper governance conditions being placed on manufacturing, but that the administration is bending over backwards to ensure these are compliant with WTO rules, while we are violating the spirit of WTO commitments on finance. Finally, there is simply the scale – \$500 billion in direct spending in the stimulus package and \$12.1 trillion in commitments to the financial sector.

For more information on Buy America and the stimulus debate, go to our website at www.TradeWatch.Org and www.EyesOnTrade.Org.

APPENDIX II: More Detail on TARP and Financial Bailouts

Status of TARP Funds as of March 27, 2009, In billions

Program	Maximum announced program funding level^a	Projected use of funds	Disbursed
Capital Purchase Program	\$250.00	\$218.00	\$198.80
Systemically Significant Failing Institutions	70	70	40
Targeted Investment Program	40	40	40
Automotive Industry Financing Program	24.9	24.9	24.5
Citigroup Asset Guarantee	5	5	0
Bank of America Asset Guarantee	7.5	7.5	0
Homeowner Affordability & Stability Plan	50	50	0
Term Asset-Backed Securities Loan Facility (TALF) ^b	100	55	0.1
Unlocking Credit for Small Business	15	15	0
Auto Supplier Support Program	5	5	0
Public Private Investment Program	100	100	0
Capital Assistance Program	TBD ^c	TBD	0
Total	\$667.40	\$590.40	\$303.40

Source: Government Accountability Office²⁰

²⁰ <http://www.gao.gov/new.items/d09504.pdf>

Congressional Oversight Panel Estimates of TARP Subsidies

Summary of Estimated Value Conclusions					
Purchase Program Participant	Valuation Date	Face Value	Total Estimated Value		
			Value	Subsidy %	Subsidy \$
Capital Purchase Program					
Bank of America Corporation	10/14/2008	\$15.00	\$12.50	17%	\$2.60
Citigroup, Inc.	10/14/2008	25	15.5	38%	9.5
JPMorgan Chase & Co.	10/14/2008	25	20.6	18%	4.4
Morgan Stanley	10/14/2008	10	5.8	42%	4.2
The Goldman Sachs Group, Inc.	10/14/2008	10	7.5	25%	2.5
The PNC Financial Services Group	10/24/2008	7.6	5.5	27%	2.1
U.S. Bancorp	11/3/2008	6.6	6.3	5%	0.3
Wells Fargo & Company	10/14/2008	25	23.2	7%	1.8
Subtotal		\$124.20	\$96.90	22%	\$27.30
311 Other Transactions*		\$70.00	\$54.60	22%	\$15.40
SSFI & TIP					
American International Group, Inc.	11/10/2008	\$40.00	\$14.80	63%	\$25.20
Citigroup, Inc.	11/24/2008	20	10	50%	10
Subtotal		\$60.00	\$24.80	59%	\$35.20
Total		\$254.20	\$176.20	31%	\$78.00

Source: Congressional Oversight Panel²¹

Description of Other Bailout Programs, with subsidy and possible discrimination note

Aspects of Financial Bailout Program					
Program	Type of Activity	Agency	Committed / Possible	Subsidy	Discriminatory?
Currency Swaps	Other	Fed	500		N/A
Bear Stearns	Investment	Fed	29		Y
AIG	Investment / Lending	Fed	113		Y
Citigroup	Insurance	Fed	234		Y
Bank of America	Insurance	Fed	87		Y
Primary and Secondary Loans	Lending	Fed	63		?
Term Auction Facility	Lending	Fed	600		Y
Commercial Paper Funding Facility	Investment	Fed	1,800		N
Money Market Investor Funding Facility	Investment	Fed	540		Y
Asset-Backed Commercial Paper Money Market	Investment	Fed	15		N

²¹ <http://cop.senate.gov/documents/cop-020609-report.pdf>

Mutual Fund Liquidity Facility					
Term Securities Lending Facility & Term Securities Lending Facility Options Program	Lending	Fed	200	1	N
Primary Dealer Credit Facility	Lending	Fed	33	0	N
Fannie Mae, Freddie Mac, Federal Home Loan Banks	Investment	Fed	100		Y
Mortgage-backed Securities	Investment	Fed	500		Y
Term Asset-Backed Securities Loan Facility	Lending	Fed	200		Y
Trouble Asset Relief Program	Investment	Treasury	700	94	Y
Housing-related Tax Provisions	Other	Treasury	12		N/A
Securities purchases for Fannie Mae & Freddie Mac	Investment	Treasury	71	(1)	Y
Conservatorship of Fannie Mae and Freddie Mac	Insurance	Treasury	200		Y
Temporary Guarantee Program for Money Market Funds	Insurance	Treasury	3,000		Y
Supplemental Financing Program	Other	Treasury	175		N/A
Public private investment funds	Investment	Treasury	900	276	Y
Raised Limits on Insurance Coverage	Insurance	FDIC	700		Y
Bank debt (Temporary Liquidity Guarantee Program)	Insurance	FDIC	700		Y
Non-interest-bearing deposit accounts (Temporary Liquidity Guarantee Program)	Insurance	FDIC	684		Y
Citigroup	Insurance	FDIC	10		Y
Redevelopment of Abandoned and Foreclosed Homes	Investment	HUD	4		N/A
HOPE Program	Insurance	HUD	1		N/A
FHA Secure	Lending	HUD	1		N/A
Fannie Mae and Freddie Mac	Other	FHFA			N/A
Homeowners Program	Investment	NCUA	41		N/A
Streamlined Modification Program	Insurance	NCUA			N/A
Temporary Corporate Credit Union Liquidity Guarantee Program	Insurance	NCUA			N/A
Total			12,213	370	
Total with Discrimination Implications			9368	369	
Percent with Discrimination implications			77%	100%	

Source: GAO, CBO, COP, CEPR, Sachs, Cleary Gottlieb, Authors' calculations

Except as noted in italics, the source of these descriptions is SubsidyScope.Org.

Federal Reserve Programs

1. **Currency Swaps:** The Fed contracted with 14 foreign banks to make U.S. dollars temporarily available. After a set period of time, the original amount will be returned to the U.S. in exchange for the foreign currency.
2. **Bear Stearns:** The Fed creates Maiden Lane I, a limited liability company that spent \$29 billion to acquire assets from Bear Stearns to help the takeover of Bear Stearns by JP Morgan Chase. An LLC allows for protection from personal liability for business debts, but any profits or losses of the business pass through to its owners. Maiden Lane I will manage the assets with the hopes that the investment is repaid.
3. **AIG:** The Fed acquired control of 80 percent of AIG and loaned the company \$60 billion. It also bought \$19.5 billion of AIG's residential mortgage-backed securities, and another \$24.5 billion in collateralized debt obligations on which AIG wrote contracts for credit default swaps.
4. **Citigroup:** The Fed will absorb 90 percent of any losses that could occur from the federal government's guarantee of a pool of Citigroup's assets after payouts have been made by Citigroup, the Troubled Assets Relief Program, and the Federal Deposit Insurance Corporation.
5. **Bank of America:** The Fed will absorb 90 percent of any losses resulting from the federal government's guarantee of a pool of Bank of America's assets after payouts have been made by Bank of America, the Troubled Assets Relief Program, and the Federal Deposit Insurance Corporation.
6. **Primary and Secondary Loans:** The Fed disbursed short-term loans up to 90 days directly to banks and other institutions that are legally allowed to accept monetary deposits from consumers.
7. **Term Auction Facility:** The Facility allows banks and other financial institutions to pledge collateral in exchange for a negotiated-rate loan from the Fed. The interest rate on the loan is determined by auction that is conducted biweekly for loans with a maturity of either 28 or 84 days. The maximum size of each auction is \$150 billion, although accepted bids for most recent auctions have been considerably smaller. *(Foreign entities may face higher capital requirements. Source: Federal Reserve.)*²²
8. **Commercial Paper Funding Facility:** Encourages corporate borrowing by buying commercial paper (securities sold by large banks and corporations to get money to meet short-term borrowing needs, like payroll and bills) directly from companies. Such securities are backed by assets or unsecured; must be highly rated, in U.S. dollars, and have a maturity of three months. The program is in effect until April 30, 2009. *(Does not appear to be discriminatory.)*²³
9. **Money Market Investor Funding Facility:** Aimed at restoring liquidity to money markets by buying certificates of deposit and commercial paper from money market mutual funds. Program is in effect until April 30, 2009. *(Appears to be limited to U.S. entities.)*²⁴
10. **Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility:** The Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility (AMLF) provides funding to banks and bank holding companies to purchase high-quality asset-backed commercial paper from money market mutual funds under certain conditions. Aimed at helping money market funds with such paper to meet demands for redemptions by investors, and to foster liquidity in the money markets.

²² <http://www.federalreserve.gov/monetarypolicy/taffaq.htm#q3>

²³ http://www.newyorkfed.org/markets/cpff_terms_conditions.html

²⁴ http://www.newyorkfed.org/markets/mmiff_terms.html

Program is in effect until April 30, 2009. (*Foreign entities can only participate subject to Federal Reserve discretion.*)²⁵

11. **Term Securities Lending Facility & Term Securities Lending Facility Options Program:** The Term Securities Lending Facility offers to lend Treasury securities held by the Fed for a one-month term in exchange for other types of securities held by 17 financial institutions, known as primary dealers, that trade directly with the Fed. The TSLF Options Program or TOP, offers options on short-term TSLF loans that will be made on a future date. (*Subsidiaries of foreign banks have been among the top program beneficiaries. Source: CEPR.*)
12. **Primary Dealer Credit Facility:** The Primary Dealer Credit Facility (PDCF) provides one-day loans to financial institutions that trade directly with the Fed in exchange for eligible collateral. Program is in effect until April 30, 2009. (*Subsidiaries of foreign banks have been among the top program beneficiaries. Source: CEPR.*)
13. **Fannie Mae, Freddie Mac, Federal Home Loan Banks:** The Fed will purchase up to \$100 billion in debt issued by three government-sponsored enterprises -- Fannie Mae, Freddie Mac, and the Federal Home Loan Banks -- through competitive auctions over the next several quarters.
14. **Mortgage-backed Securities:** Over the next several quarters, the Fed will purchase up to \$500 billion in mortgage-backed securities issued by Fannie Mae, Freddie Mac and the Federal Home Loan banks and the Government National Mortgage Association (Ginnie Mae). Expected to begin in early January.
15. **Term Asset-Backed Securities Loan Facility:** The Term Asset-Backed Securities Loan Facility (TALF) is aimed at supporting consumer and small business lending. The Fed will lend up to \$200 billion to holders of certain AAA-rated asset-backed securities and the Troubled Asset Relief Program will provide \$20 billion in credit protection against those that do not pay because of insolvency or default for those loans. Program is expected to begin lending in February 2009; the authority expires on December 31, 2009. (*There is a "significant U.S. operations requirement," and a requirement that the entity not be owned or controlled by a foreign government. Source: Cleary Gottlieb.*)

Treasury Programs

16. **Trouble Asset Relief Program:** The Emergency Economic Stabilization Act of 2008 allowed Treasury to purchase \$700 billion in assets through the new Troubled Asset Relief Program (TARP). As of December 31, 2008, TARP had disbursed \$247 billion that have fallen into three categories including capital purchases, loans and other actions. *Certain TARP programs exclude foreign banks by design, but no foreign banks have received funds in practice under any TARP program. (Foreign entities have benefited indirectly as counterparties and creditors to AIG and other entities. Source: Cleary Gottlieb)* The subsidy cost (which accounts for market risk) was estimated by the Congressional Budget Office totals about \$64 billion. This consists of:
 - a. Capital Purchase Program: \$178 billion given (estimated subsidy: \$32 billion);
 - b. AIG capital purchases: \$40 billion given (estimated subsidy: \$21 billion);
 - c. Citigroup capital purchases: \$20 billion given (estimated subsidy: \$5 billion);
 - d. GMAC capital purchases: \$5 billion given (estimated subsidy: \$3 billion);
 - e. Loans to auto companies: \$1 billion given (estimated subsidy: \$3 billion).
17. **Housing-related Tax Provisions:** The Housing and Economic Recovery Act of 2008 authorized a refundable tax credit for first-time home buyers to be repaid, without interest, over a 15-year period. The Act also had other housing-related tax provisions.
18. **Securities purchases for Fannie Mae & Freddie Mac:** The Housing and Economic Recovery Act of 2008 authorized Treasury to buy obligations and securities issued by Fannie Mae and Freddie Mac. About \$71 billion of residential mortgage-backed securities have been purchased as of December 31,

²⁵ <http://www.frbdiscountwindow.org/mmmftc.cfm?hdrID=14&dtIID>

2008. Authority to make such market purchases expires on December 31, 2009. The subsidy cost recorded in the budget is computed using standard credit reform procedures.

19. **Conservatorship of Fannie Mae and Freddie Mac:** Treasury received senior preferred equity shares and warrants in exchange for any future contributions necessary to keep Fannie Mae and Freddie Mac solvent. Preferred equity shares provide a specific dividend that is paid before dividends are paid to common stockholders. They also take precedence over common stock in a liquidation. A warrant is a security that entitles the holder to buy stock of the company that issued it at a specified price.
20. **Temporary Guarantee Program for Money Market Funds:** Treasury will guarantee investors' shares as of September 19, 2008. The guarantee is in effect through April 30, 2009, but can be extended through September 18, 2009. Participating funds pay a fee of 1.5 or 2.2 basis points times the number of shares outstanding. (*Appears to be same as MMIFF and limited to U.S. entities.*)²⁶
21. **Supplemental Financing Program:** The Treasury is borrowing from the public to assist the Federal Reserve.
22. **Public private investment funds:** *Treasury will leverage private capital with substantial government contributions. In each of the programs the government will provide matching equity capital for the private investors, and either loans to the public-private vehicles or guarantees of their debt. The Legacy Securities Program targets solely residential and commercial mortgage-backed securities, envisages about five asset managers, and seems to contemplate actual purchases occurring within 6-8 weeks. The Legacy Loans Program aims at a much broader range of bank loans and securities, and envisions large numbers of private sector buyers for differing pools. Foreign entities are excluded by design from the Legacy Securities program, and they worry about being excluded in practice from the Legacy Loans program. (Source: Cleary Gottlieb and Institute for International Bankers.)*

FDIC Programs

FDIC insurance typically covers foreign subsidiaries, but only 11 foreign branches. In the bank debt program discussed below, no foreign branches are allowed to participate.

23. **Raised Limits on Insurance Coverage:** The Emergency Economic Stabilization Act of 2008 temporarily raised the limit on deposit insurance from \$100,000 to \$250,000 per depositor through December 31, 2009. The raise is estimated to increase the amount of insured deposits by about \$700 billion, or 15 percent.
24. **Bank debt (Temporary Liquidity Guarantee Program):**
25. **Non-interest-bearing deposit accounts (Temporary Liquidity Guarantee Program):** The Temporary Liquidity Guarantee Program (TLGP) has two parts. The Debt Guarantee Option allows participating institutions to borrow and lend money more readily. The guarantee applies to debt that is issued by June 30, 2009 and matures no later than June 30, 2012. Participating institutions pay fees based on the maturity of the debt. According to the FDIC, the agency has guaranteed \$224 billion of new debt under the Debt Guarantee Option; potential guarantees could total \$1 trillion. The second component is the Transaction Account Guarantee Option, which provides full guarantees for certain checking and other non-interest-bearing accounts through December 31, 2009. Participating institutions also pay fees for this guarantee. The FDIC reports that it has guaranteed approximately \$684 billion under the Transaction Account Guarantee Option.
26. **Citigroup:** The FDIC may absorb up to \$10 billion in losses resulting from the federal government's guarantee of a pool of Citigroup's assets after payouts have been made by Citigroup and the Troubled Asset Relief Program. As a fee for the guarantee, the FDIC will receive \$3 billion in preferred stock.

²⁶ http://www.newyorkfed.org/markets/mmiff_terms.html

Other Agency Programs

27. **Redevelopment of Abandoned and Foreclosed Homes:** The Housing and Economic Recovery Act of 2008 provided \$4 billion in funding to state and local governments to purchase and rehabilitate foreclosed and abandoned homes.
28. **HOPE Program:** The HOPE for Homeowners program permits home mortgages to be refinanced through private lenders with a guarantee from the Federal Housing Administration. The new loans must have a loan-to-value ratio that is no greater than 90 percent of the property's appraised value.
29. **FHA Secure:** FHA Secure was a temporary initiative to permit lenders to refinance non-Federal-Housing-Administration adjustable-rate mortgages. The program made about 4,000 loans since fall 2007 and expired on December 31, 2008.'
30. **Fannie Mae and Freddie Mac:** The Federal Housing Finance Agency and the Treasury took control of Fannie Mae and Freddie Mac, two government-sponsored enterprises, on September 6, 2008. Under the current circumstances, the Congressional Budget Office views Fannie Mae and Freddie Mac as governmental entities.
31. **Homeowners Program:** The Credit Union Homeowners Affordability Relief Program (CU HARP) and the Credit Union System Investment Program (CU SIP) are run through the National Credit Union Administration's Central Liquidity Facility and are financed by borrowing from the Federal Financing Bank. The CU HARP program will provide subsidized funding intended to help credit unions modify mortgages. The CU SIP program aims to facilitate lending by shoring up corporate credit unions which primarily provide financial resources and services to other credit unions.
32. **Streamlined Modification Program:** The Streamlined Modification Program aims to avoid foreclosures by creating a fast-track method for reducing monthly payments on mortgages. The program will restrict payments to 38 percent of a household's gross monthly income by reducing the interest rate, extending the life of the loan, or deferring principal. The policy applies to loans held by Fannie Mae and Freddie Mac and was launched on December 15, 2008.
33. **Temporary Corporate Credit Union Liquidity Guarantee Program:** The Temporary Corporate Credit Union Liquidity Guarantee Program guarantees certain unsecured debt of participating corporate credit unions issued between October 16, 2008 and June 30, 2009. Such debt must mature by June 30, 2012. Participating institutions pay annualized fees for the guarantees.