



37.17	38.72	21.95	0.34%	+0.65
38.70	28.93	29.47	-0.13%	+0.55
28.92	21.96	488.06	0.47%	-0.06
21.95	29.47	117.02	-0.29%	-0.18
29.46	488.19	20.84	-0.84%	-0.50
488.07	117.02	21.31	-1.55%	+0.22
117.00	20.84	31.66	0.64%	+0.36
20.83	21.32	34.51	1.09%	+0.36
21.31	31.66	33.43	-1.55%	-0.47
31.65	34.52	29.79	-0.47%	-0.10
34.51	33.44	21.35	-1.86%	-0.68
33.43	29.82	35.87	0.79%	+0.75
29.79	21.37	95.76		
21.35	35.87	95.72		
35.87	17			
17	3			



# Bailout Report Card:

## What did Obama's Team Learn?

*Second in Series,  
Updated for June 2009*

**U.S. PIRG**  
Education Fund

*The Campaign To  
Secure America's Financial Future*

## **Bailout Report Card: June 2009**

### **The U.S. Public Interest Research Group Education Fund June 2009**

Written by Nicole Tichon, Federal Tax and Budget Reform Advocate  
Special Thanks to Ed Mierzwinski and Phineas Baxandall

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U.S. PIRG Education Fund gratefully acknowledges the Colston Warne Program of Consumers Union of the United States for its general support of our consumer research and education program. The findings and views expressed in this report and on the website are solely those of the authors, U.S. PIRG Education Fund.

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***“We need better clarity on the rules of the game.”***

- Treasury Secretary Tim Geithner, to House Financial Services Committee, March 24, 2009

## **1. Executive Summary**

Leading economists, members of Congress and the Administration have very different ideas as to the chances that the Financial Stability Programs (formerly Troubled Asset Relief Programs) will increase lending, increase the flow of credit, keep families in their homes and ultimately stabilize the economy. No one may have the complete answer on that – but everyone has a suggestion and a criticism for moving forward.

A full-scale financial collapse has (at least temporarily) been avoided, but have fundamental problems been addressed and at what cost long-term? When will American families and the average taxpayer see the benefit of protecting shareholders of Citigroup, Bank of America or Goldman Sachs? Especially as their pensions, retirement savings and investments evaporate? What benefits will taxpayers reap for becoming shareholders of AIG and now General Motors?

The U.S. Public Interest Research Group (U.S. PIRG) determined that one of the most disturbing aspects at the outset of the bailout programs was that an enormous group of people did not know what the programs were, how participation was determined, what the money would be used for, what it meant to accept the money, and if it would ever be returned. Did we mention that this group of people included Congress, the American taxpayers and even the bankers themselves?

To that end, PIRG investigated and created a report card on transparency and accountability in the hope that the next Administration would answer some of these very basic questions and begin to hold the banks accountable for how the money was spent. In February of 2009, U.S. PIRG released its first report card on how the bailout had been handled by the departing administration in terms of transparency and accountability, resulting in almost entirely “F” or failing grades.

In terms of transparency, June’s results show marked improvement, as a result of the Obama Administration’s establishment of online resources, planning documentation, reporting requirements and taxpayer protection principles for at least some of the programs. Marks have improved marginally for accountability (holding banks accountable for how they spend the money and how they operate going forward).

This report updates those findings. The *updated* findings include:

- Grades improved on every line item on the Report Card, with a C average (the January 2009 Report Card earned a failing average of “F”)
- The new Administration has made important progress around transparency in terms of developing online resources, fact sheets, guidelines, interactive programs and tools to help taxpayers navigate the myriad programs and hundreds of participants
- Lending data is now required for all banks receiving bailout assistance, both at a summary level and individual bank level While the data results have not shown an increase in lending, at least the data is being collected across the banks, which we hope leads to further evaluation of the program itself
- Serious ambiguities in the rules are reflected in poorly defined criteria and definitions for separate protocol governing “exceptional cases” and some quantities defined only as “substantial assistance.”
- Foreclosure mitigation data is not yet available (so we don’t know if it’s working), although the Make Homeownership Affordable program information is user-friendly and thorough
- Because many reforms and new conditions only apply going forward, the institutions that have received the largest amount of taxpayer dollars will not be subject to some of the new

transparency and accountability terms outlined in the Financial Stability Plan. To a large extent, regulators have shut the barn door after the horses are gone – and left the public in debt and in the dark.

## **2. Background and Introduction**

### **2.1 Why Do Transparency and Accountability Matter?**

The bailout process has created an odd new hybrid entity: the reluctant taxpayer-shareholder. As a major, often majority- shareholder, the public is faced with the risk that bailout funds will not be repaid. If this occurs, the public will pay in the form of higher future taxes and with cutbacks to public programs.

As reluctant shareholders, the public and its governmental representatives lack the power of normal shareholders. We can't vote to replace failing executives or board members who continue to squander public funds. Taxpayers have acquired majority ownership of troubled institutions, but not control, not a meaningful voice, nor even basic information about how companies are run. In fact, when a company's interests and priorities are counter to the public interest, there appears to be no entity empowered to represent that contending point of view?

The scope of this crisis requires cooperation and proactive participation from both the bailout recipients and the government. Transparency will provide three key stakeholders with beneficial information to enhance accountability, efficiency, and the confidence of investors and citizens:

- The American taxpayers deserve to have evidence that the government is diligently monitoring their investment and that their investment will yield beneficial results
- The government needs to know what is working, what is not, and if the funds have been used in accordance with the law
- Recipients should know exactly what is expected in terms of how the funds should be used, how the acceptance of the funds impacts their organization and the details of reporting requirements.




The transparency and accountability efforts set the stage for massive analysis and performance measurement to assess whether or not any of these programs or even the overall strategy is working. If the Department of Treasury can take the steps necessary to collect the data, Taxpayers can have more confidence that decisions are being made based on reality. For instance, if banks are still failing miserably in their efforts to lend, perhaps a policy change needs to come from the top.

### **2.2 Why a Report Card?**

It is critical that the American people understand why decisions are made with respect to the bailouts, why program participants are chosen and how the government's actions affect the public domain. To help evaluate progress on these fronts, the U.S. PIRG Education Fund created a concise set of transparency and accountability benchmarks. Similar report cards are common among government agencies, technology firms, consumer organizations and universities to help stakeholders evaluate progress toward goals and make informed decisions. The Bailout Report Card draws from both the simplicity of consumer-focused reports and the detailed criteria of technical evaluations.

U.S. PIRG will continue to issue report cards to track efforts by the Administration to keep American taxpayers and lawmakers aware of the progress made in reforming the program. This report card tracks the efforts to make the bailout programs more transparent and to see that the government is taking steps to hold the banks more accountable. We hope that the Administration will use this framework to collect comprehensive data and then explain to the American people why they are choosing one strategy or program over another.

### 3. Bailout Report Card: June 2009

U.S. PIRG Education Fund's Bailout Report Card	June 2009				
Bailout Implementation Reforms Should Include:	Complete	Consistent	Usable	Overall Grade	Comments
<p><b>A clear strategy for the all TARP/Financial Stability programs</b></p>				<p><b>C</b></p>	<p>Detailed information on the new programs and greater Financial Stability Plan is available on <a href="http://FinancialStability.gov">FinancialStability.gov</a>, which is a clear departure from the previous administration. However, the Obama Administration needs to do a better job explaining why the programs such as the Public-Private Investment Program (PPIP) and Term Asset-Backed Securities Loan Facility (TALF) appear to have clear upsides to industries (including hedge funds, private equity firms) with the government (taxpayers) taking on the risk. Whether or not these are the right programs (though many leading economists have questioned both the risk to taxpayers and their chances to succeed), there has been little transparency around how these programs were chosen.</p> <p>The Administration also needs to be better combat the possibility for fraud and conflict of interest within the PPIP program. PPIP was introduced in March of 2009 to buy banks' toxic, or "legacy" assets. In his report to Congress in April Special Inspector General for TARP Neil Barofsky said, "Aspects of PPIP make it inherently vulnerable to fraud, waste and abuse, including significant issues relating to conflicts of interest facing fund managers, collusion between participants and vulnerabilities to money laundering."<sup>1</sup> At an April COP hearing, The Congressional Oversight Panel's Co-Chair Damon Silvers questioned the Treasury Secretary Geithner as to the rationale of rewarding private investors while leaving taxpayers to shoulder the majority of the risk.</p> <p>At this reports printing, banks are lobbying to purchase legacy assets with taxpayer loan money.<sup>2</sup> The FDIC temporarily halted the PPIP legacy loan program.</p>



<b>U.S. PIRG Education Fund's Bailout Report Card</b>	<b>June 2009</b>				
<b>Bailout Implementation Reforms Should Include:</b>	Complete	Consistent	Usable	<b>Overall Grade</b>	<b>Comments</b>
<b>Evaluation of alternative plans or strategies</b>	◐	◐	◐	<b>C</b>	The Treasury Department provided some information around the PPIP strategy as compared to other plans to rid the banks of bad assets on the Financial Stability website. The information is misleading in some ways because it indicates that private investors stand to lose their investment with taxpayers enjoying only the upside. On the contrary, the PPIP investors are required only to invest 7-33% (depending on the program) with the government covering the remainder of the investment (and therefore the downside risk). In addition, the Treasury and Federal Reserve have yet to produce documentation around why certain programs evolved (legacy of previous administration) and why agreements were restructured (Citi, AIG).
<b>Provision of clear and objective criteria for establishing eligibility for TARP assistance</b>	●	◐	●	<b>B</b>	Treasury published standard criteria for the Capital Assistance Program. <sup>3</sup> Criteria for participating in the new PPIP as well as the application are available as well. At issue is how "exceptional assistance" is defined – because firms requiring such assistance must agree to additional terms and conditions, and most recently, to having the government weigh in on management and board decisions. <sup>4</sup>
<b>Accessible information regarding the terms of receipt of TARP funds</b>	●	◐	◐	<b>B -</b>	Treasury published terms and conditions of the Capital Assistance Program <sup>5</sup> on the Financial Stability website. The site also includes transaction reports and contracts. These are good first steps, but accessibility could be greatly improved. Instead of a dynamic searchable online database, the large files are large and difficult to navigate. The summary tables are in the form of static PDFs, which is difficult to navigate. Finally, it is unclear which firms will qualify for the terms outlined in the Principles for Managing Ownership Stake.
<b>Metrics to make sure that the TARP recipient is using the funds to forward the objectives of the</b>					

U.S. PIRG Education Fund's Bailout Report Card	June 2009				
Bailout Implementation Reforms Should Include:	Complete	Consistent	Usable	Overall Grade	Comments
<b>Emergency Economic Stability Act, including:</b>					
-- Reporting on lending	●	●	●	<b>A</b>	Initially, only the top 21 firms were required to report. However, Treasury now requires all recipients of assistance to provide lending data. <sup>6</sup> It includes summary tables as well as individual bank data, which is helpful. <sup>7</sup>
-- Reporting on foreclosure assistance/loan or rate modification	◐	◐	○	<b>D</b>	The Financial Stability Plan states, "Every servicer participating in the program will be required to report standardized loan-level data on modifications, borrower and property characteristics, and outcomes. The data will be pooled so the government and private sector can measure success and make changes where needed." The data are not on the Financial Stability site as of the release of this report.
-- Clear consumer and taxpayer protection provisions	◐	◐	◐	<b>C</b>	Overall, there is evidence that the taxpayer-investor is finally getting some due diligence on the bailout. Evidence includes the newly created "Principles for Managing Ownership Stake," for firms receiving "substantial assistance." These principles are designed to protect taxpayers. It's not clear how these principles will be implemented for banks and for which banks they will apply. It is also not clear how the public interest will be represented without actual representation on the Boards or by some other mechanism.  As previously stated, the PPIP program inherently puts taxpayers at risk and offers a tremendous upside to industry investors.
-- Reporting on all activities that do not directly support the goals	◐	○	○	<b>D-</b>	Last fall, it was not clear to the banks what they were supposed to do with the cash infusions and there were no reporting requirements. During the last quarter, the Special Inspector General, not Treasury, sent letters to all recipients asking for information as to how the initial \$350 billion was spent. Results varied, but at least offered some window as to where the money went. <sup>8</sup> Treasury should adopt this practice as SIGTARP has



U.S. PIRG Education Fund's Bailout Report Card	June 2009				
Bailout Implementation Reforms Should Include:	Complete	Consistent	Usable	Overall Grade	Comments
					demonstrated that it is possible to ask the questions and receive responses. <sup>9</sup>  Going forward, however, participants will be required to lay out their plans to use the funding prior to receiving it, according to the Financial Stability Plan.
<b>Prohibition for using funds for mergers and acquisitions</b>	●	◐	○	<b>C</b>	While the Financial Stability Plan prohibits acquisitions, it remains unclear how this information will be reported or monitored. A large potential loophole also exists because "exceptions will be made for explicit supervisor-approved restructuring plans," according to the Financial Stability Plan. <sup>10</sup>
<b>Organizational/operational reforms established for recipients</b>	●	◐	○	<b>C</b>	In June, the Administration provided "Principles for Managing Ownership Stake," for firms receiving "substantial assistance." The Principles speak to governance, board changes and major transactions. The primary purpose put forth is to protect taxpayers by communicating "up front conditions". It's not clear what the conditions will be, how this will be implemented for banks and for which banks they will apply. It is also not clear how the public interest will be represented without actual representation on the Boards or by some other mechanism.
<b>A plan to make sure assets are accurately evaluated to give a realistic picture of recipients and the taxpayer investment</b>	●	◐	○	<b>C</b>	The COP's report on the valuation of assets indicated that the government overpaid for assets by \$78 million. <sup>11</sup> The COP assessed that the government essentially purchased stocks for \$100 that were only worth \$66. This figure has been scrutinized, <sup>12</sup> but it is accurate to say that in October of 2008, the previous administration invested in the banks without a clear accounting for their health balance sheets. This is important because as banks repurchase stocks and warrants, the taxpayer's investment will become realized.  As opposed to continuing down the one-size-fits-all path, the stress tests conducted in February and March helped to determine the health of the banks and their ability to handle additional economic downturns.

U.S. PIRG Education Fund's Bailout Report Card		June 2009			
Bailout Implementation Reforms Should Include:	Complete	Consistent	Usable	Overall Grade	Comments
					This is a positive step. However, as noted by the Congressional Oversight Panel (COP) Chair, Elizabeth Warren, questions remain as to the details of the tests, the calculations used, and the "quality of self-reported data." <sup>13</sup> The stress tests results provided at least some transparency as to how banks will be treated going forward, instead of across-the-board cash infusions. There have also been criticisms as to the circumstances of the tests being too optimistic.
Limits and restrictions on executive pay, bonuses and payment of dividends	●	○	◐	<b>C</b>	Congress passed and the President signed executive compensation restrictions into law, and additional guidance was released in June. After much confusion over how the President's previous proposals would reconcile with the new law, the end product focused on the future: changing the incentive system to deter risky behavior. The restrictions that remained for the TARP recipients limit the bonuses of executives to one-third of their compensation, but leaves traders untouched. The Administration's salary cap of \$500,000 was eliminated. Past experience suggests that companies will circumvent restrictions and disclosure rules without strong oversight from the government.

Criteria Definitions	
Complete	Item has been addressed and implemented.
Consistent	Consistent implementation of item/program across all TARP recipients.
Usable	Information provided to the recipient and the public is clear and accessible.

#### Legend for Ratings



## Appendix I: Bailout Report Card – Previous Administration: January 2009

*Full Report available at [U.S. PIRG's website](#).*

U.S. PIRG Education Fund's Bailout Report Card	January 2009			
	Complete	Consistent	Usable	Overall Grade
<b>TARP Reforms Should Include:</b>				
<b>A clear strategy for all TARP programs</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	F
<b>Evaluation of alternative plans or strategies</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	F
<b>Provision of clear and objective criteria for establishing eligibility for TARP assistance</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	F
<b>Accessible information regarding the terms of receipt of TARP funds</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	F
<b>Metrics to make sure that the TARP recipient is using the funds to forward the objectives of the EESA, including:</b>				
-- Reporting on lending	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	F
-- Reporting on foreclosure assistance/loan or rate modification	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	F
-- Clear consumer and taxpayer protection provisions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	F
-- Reporting on all activities that do not directly support the goals	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	F
<b>Prohibition for using funds for mergers and acquisitions</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	F
<b>Organizational/operational reforms established for recipients</b>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	D-
<b>A plan to make sure assets are accurately evaluated to give a holistic picture of recipients and the taxpayer investment</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	F
<b>Limits and restrictions on executive pay, bonuses and payment of dividends</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	F

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**Endnotes**

- <sup>1</sup> <http://www.reuters.com/article/newsOne/idUSTRE53K0KX20090421>
- <sup>2</sup> <http://online.wsj.com/article/SB124338836675757049.html#articleTabs=article>
- <sup>3</sup> <http://financialstability.gov/latest/tg40.html>
- <sup>4</sup> <http://www.politico.com/news/stories/0609/23204.html>
- <sup>5</sup> <http://financialstability.gov/latest/tg40.html>
- <sup>6</sup> <http://www.ustreas.gov/press/releases/tg59.htm>
- <sup>7</sup> <http://financialstability.gov/docs/Summary%20Table%20March%202009.pdf>
- <sup>8</sup> [http://www.sig tarp.gov/reports/testimony/2009/Testimony\\_Before\\_the\\_Senate\\_Finance\\_Committee.pdf](http://www.sig tarp.gov/reports/testimony/2009/Testimony_Before_the_Senate_Finance_Committee.pdf)
- <sup>9</sup> [http://www.sig tarp.gov/reports/testimony/2009/Testimony\\_Before\\_the\\_Senate\\_Finance\\_Committee.pdf](http://www.sig tarp.gov/reports/testimony/2009/Testimony_Before_the_Senate_Finance_Committee.pdf)
- <sup>10</sup> <http://financialstability.gov/docs/fact-sheet.pdf>
- <sup>11</sup> <http://cop.senate.gov/documents/cop-020609-report.pdf>
- <sup>12</sup> <http://blogs.wsj.com/economics/2009/04/24/guest-contribution-tarps-66-cent-myth/>
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