Untwisting Lifeline Nonprofits in the Economic Crisis

Danne L. Johnson, Oklahoma City University School of Law

Available at: https://works.bepress.com/danne_johnson/3/
Untwisting Lifeline Nonprofits in the Economic Crisis

Danné L. Johnson*

INTRODUCTION

State and federal governments must join forces to provide financial assistance to Lifeline Nonprofits1 through an initial cash infusion followed by contribution match programs and focused grants.

Lifeline Nonprofits play an essential role in the United States. These organizations, big and small, work to fill the gap for many American families who are unable to completely care for themselves. They provide a necessary complement to private and public sector organizations by providing food and shelter to the poorest and weakest among us. The recent economic crisis began in December 2007 and officially ended in June 2009. As this recession continues to impact the United States through chronic joblessness, homelessness, poverty, and hunger, the services and safety nets provided by Lifeline Nonprofits are in increasingly high demand.2

While historical data indicate that philanthropic giving declines only slightly during recessions,3 this was no ordinary recession. Nonprofits are under unprecedented financial strain because of the recent economic crisis. Revision of American methods of financial support for Lifeline Nonprofits is necessary in

---

* Associate Professor of Law, Oklahoma City University School of Law. The author wishes to thank OCU for support during the writing process, OCU Professors Michael Gibson, Michael Mitchelson, Lee Peoples, and Emma Rolls, the OCU library staff, former OCU student Amy Buehrle for research assistance, and OCU students Lindsay Simon and Brett Stingley. She would like to thank the participants and organizers of the LatCrit XV Conference for the opportunity to share this paper. She would also like to thank Anahaita N. Kotval, Managing Director and General Counsel, RBS Global Banking and Markets Americas, Ellen M. Leigh Mariner Capital, and Professors Horace Anderson, Pace University, and Lisa H. Nicholson, Louis D. Brandeis School of Law. Copyright © 2011, Danné L. Johnson.

1. Lifeline Nonprofits are organizations that provide shelter and food to needy families in the United States. Familiar examples of Lifeline Nonprofits are: Community for Creative Non-Violence, a homeless shelter with a bed capacity of 1,350 for men, women, and children in Washington, D.C., and Holy Apostles Soup Kitchen in New York, NY, which serves over 1,200 meals each weekday.


3. Research suggests that for a 10% increase or decrease in income, Americans increase or decrease their contributions to charity by 7%. For a 10% increase or decrease in wealth (the value of personal savings, investments, and property), the change is 3%. This means that charities grow slower than the overall economy, but generally fare better in recessions. ARTHUR C. BROOKS, WHO REALLY CARES: THE SURPRISING TRUTH ABOUT COMPASSIONATE CONSERVATISM 77-78 (2006).
this economic environment if they are to continue assisting poor Americans. This Article will make the case that Lifeline Nonprofits are too essential to American society to fail. Part I of the Article will discuss the history of government bailouts. Part II of the Article will discuss the significance of Lifeline Nonprofits to the population that they serve, as well as to the American economy. Part III of the Article will discuss the impact of the economic crisis on the nonprofit sector, and Part IV will prescribe a solution for the funding crisis faced by Lifeline Nonprofits.

I. WHO IS “TOO BIG TO FAIL”

A. History of Government Bailouts of Private Enterprises

“Too Big to Fail,” as a regulatory and public policy term of art, gained pop culture status in 2007. At the start of the economic crisis, large financial institutions were given federal financial support in the form of guarantees and loans. The rationale behind these actions was that the failure of these large enterprises would have a negative impact on the national economy because of their size. It was suggested that these entities could continue with temporary governmental support and appropriate regulation.

4. Government bailouts have been seen internationally, and in nonfinancial industries, including cities and municipalities. Numerous countries, including, but not limited to, Italy, Japan, and Sweden, have dealt with bailouts. In 1979, Italy enacted the Amministrazione Straordinaria Grandi Imprese, a measure that captured the too big to fail philosophy and dealt exclusively with nonfinancial firms. Decreto Legge 1979 n. 301, n. 26 (IL); see BENTON E. GUP, TOO BIG TO FAIL: POLICIES AND PRACTICES IN GOVERNMENT BAILOUTS 32 (2004). In the late 1990s, Japan, in response to a 70% decline in property values over six years, enacted measures to use taxpayer dollars to purchase government agency owned properties repossessed from failed lenders. These measures also established real estate investments trusts and enacted tax and securitization laws. GUP, supra note 4 (citing William Dawkins, Tokyo Package Aims to Spur Property Market, FIN. TIMES, Apr. 1, 1997, at 1; Jathon Sapsford, Japanese Panel Backs Creation of Real Estate Investment Trusts, WALL ST. J., Apr. 1, 1997, at A15). In 2008, after the United States approved a bailout for U.S. auto makers, Sweden enacted a bailout for Saab, owned by General Motors, and Volvo, owned by Ford. Swedish Car Firms Get Bail-Out, BBC NEWS (Dec. 11, 2008), http://news.bbc.co.uk/go/pr/fr/-/2/hi/business/7777395.stm. The car industry accounts for 15% of Sweden’s exports and, with some 700 companies and suppliers, employs about 140,000 people. Id. The $3.5 billion plan included credit guarantees, rescue loans, and research and development funds for the car industry. Id.


Bailouts are nothing new, but they are always met with controversy. They carry with them concerns about business norms, financial distress, moral hazard, market discipline, and disruption.\(^8\) Bailouts seem fundamentally inconsistent with market forces and capitalism, and increase taxpayer exposure to losses.\(^9\) In spite of these consequences, the lure of stability and the avoidance of systemic risks associated with large corporate failures are sufficient to make bailouts seem attractive in some circumstances. Common methods of governmental intervention to secure particularly important industries or sectors of the economy include debt forgiveness, investments (both long- and short-term), enhancing short-term liquidity, nationalization, and liquidation.\(^10\) Some bailouts combine these methods in the form of bridge loans or stock repurchase plans.

The U.S. government has conducted numerous bailouts across a variety of market sectors.

---


\(^9\) Id.

The histories behind several of the major bailouts help to identify the factors considered for the applicability of a government bailout, exemplify that bailouts are available to private companies regardless of market sector, and describe the various means of bailout assistance employed. Bailout measures are generally

<table>
<thead>
<tr>
<th>Year</th>
<th>Industry, Organization or Title of Aid</th>
<th>Amount in 2008 Dollars</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970</td>
<td>Penn Central Railroad</td>
<td>$3.2 billion</td>
</tr>
<tr>
<td>1971</td>
<td>Lockheed</td>
<td>$1.4 billion</td>
</tr>
<tr>
<td>1974</td>
<td>Franklin National Bank</td>
<td>$7.8 billion</td>
</tr>
<tr>
<td>1975</td>
<td>New York City</td>
<td>$9.4 billion</td>
</tr>
<tr>
<td>1980</td>
<td>Chrysler</td>
<td>$4 billion</td>
</tr>
<tr>
<td>1984</td>
<td>Continental Illinois National Bank and Trust Company</td>
<td>$9.5 billion</td>
</tr>
<tr>
<td>1989</td>
<td>Savings and Loan</td>
<td>$293.3 billion</td>
</tr>
<tr>
<td>2001</td>
<td>Airline Industry</td>
<td>$18.6 billion</td>
</tr>
<tr>
<td>2008</td>
<td>Bear Sterns</td>
<td>$30 billion</td>
</tr>
<tr>
<td></td>
<td>Fannie Mae and Freddie Mac</td>
<td>$400 billion</td>
</tr>
<tr>
<td></td>
<td>American International Group (“AIG”)</td>
<td>$180 billion</td>
</tr>
<tr>
<td></td>
<td>Auto Industry</td>
<td>$25 billion</td>
</tr>
<tr>
<td></td>
<td>Troubled Asset Relief Program (“TARP”)</td>
<td>$700 billion</td>
</tr>
<tr>
<td></td>
<td>Citigroup</td>
<td>$280 billion</td>
</tr>
<tr>
<td>2009</td>
<td>Bank of America</td>
<td>$142.2 billion</td>
</tr>
<tr>
<td>2010</td>
<td>Wholesale Credit Unions</td>
<td>$30 billion</td>
</tr>
</tbody>
</table>

B. Bailout Stories

The histories behind several of the major bailouts help to identify the factors considered for the applicability of a government bailout, exemplify that bailouts are available to private companies regardless of market sector, and describe the various means of bailout assistance employed. Bailout measures are generally

12. There were twelve months of recession in 1974. Id.
13. There were three months of recession in 1975; this followed a recessionary period that began in November 1973. Id.
14. There were seven months of recession in 1980. Id.
17. See supra note 16.
19.
pursued when they are determined to be in the best interest of the national economy.\footnote{GUP, supra note 4, at 43.}

A review of past bailouts in the United States will give some indications of prerequisites to applying for and receiving a bailout. A U.S. General Accounting Office Study examined several bailouts and listed the following national interest reasons for government intervention:

- maintaining service or product continuity (NYC, Chrysler, Conrail),
- maintaining employment (NYC, Chrysler, Conrail, Lockheed),
- maintaining a defense contractor (Chrysler, Lockheed),
- maintaining technological capability (Chrysler, Lockheed),
- preventing market penetration by foreign firms (Chrysler),
- preventing industry concentration (Chrysler, Lockheed),
- preserving good relations with our allies (Lockheed),
- lessening adverse effects on financial markets (Chrysler, NYC, Conrail), and

In addition to these national interest reasons, an entity or sector seeking a bailout must be deemed essential. The theory of essentiality originates from bank bailouts done by the Federal Deposit Insurance Corporation (FDIC). The Federal Reserve System, created by Congress in 1913,\footnote{See Bd. of Governors of the Fed. Reserve Sys., The Federal Reserve System: Purposes and Functions (June 1-2, 2005) (9th ed. 2005), available at http://www.federalreserve.gov/pfd/pdf/pf_complete.pdf.} was authorized to take actions necessary to ensure a sound money supply and a safe banking system.\footnote{See Federal Reserve Act, ch. 6, 38 Stat. 251 (1913).} Safety and soundness are vague terms and could be interpreted to encompass all sorts of activity including the preservation of entities or market sectors and ensuring the stability of markets. This mission has been taken to mean that the Federal...
Reserve System, in its discretion, would and should take necessary steps to keep very large banks open to the public regardless of their performance. These efforts should ensure consumer confidence and the flow of money within the banking system. This doctrine of essentiality was codified in the 1950 amendment to the Federal Deposit Insurance Act of 1934. In practice, the essentiality doctrine means that when continued operation of a failed bank is essential to provide adequate banking service to the community, the government may rescue the failed bank.

If an entity seeking a bailout is not deemed essential to the community that it serves, as an alternative, that entity could be considered Too Big to Fail based on its size and sector influence and as such receive a bailout. The Too Big to Fail doctrine was first expressed in 1984 when the comptroller of the currency indicated that the top eleven banks, in terms of assets, would not be allowed to fail. This doctrine is based on the belief that the failures of certain corporations because of their size would undermine their market sector and create secondary consequences in the marketplace domestically and abroad. The Too Big to Fail doctrine was the government policy option utilized to deal with the most recent bailouts of the banking, automaker, and insurance industries.

1. The Transportation Sector

In 1970, the Penn Central Railroad looked to the United States government for financial assistance. The Penn Central Railroad, the largest transportation company in the United States, was created as a result of a merger between Pennsylvania and New York Central Railroads in 1968. These two leading railroads hoped that together they could survive the problems impacting the railroads.

Penn Central spiraled into debt with increasing labor costs, regulation rates not matching cost increases, and competition from other industries such as the trucking industry. The operating costs increased rapidly and rail passenger service losses increased drastically.

---

25. GUR, supra note 4, at 288.
26. Id.
27. Id.
30. GUR, supra note 4, at 33.
32. GUR, supra note 4, at 33.
34. Id.
In 1970, Penn Central, approaching bankruptcy, turned to the U.S. government and the Nixon Administration for assistance. Congress considered and rejected two possible plans to assist Penn Central and Penn Central filed for bankruptcy on June 21, 1970. This was then the largest bankruptcy in U.S. history.

Penn Central wasn’t the only railroad suffering financially. Congress decided federal intervention would serve the national interest in several ways, but not by the earlier methods proposed. Congress passed the Regional Rail Reorganization Act in an attempt to save several railroads and maintain necessary railway services to the Midwest and Northeast. Under this Act, Congress created Consolidation Rail Corporation (“Conrail”), which encompassed Penn Central and six other bankrupt railroads. Conrail was established as a for-profit government-owned corporation that would then later be returned to the private sector.

The government bailout of Penn Central and several other railroads worked for some time, and eventually Conrail was sold. The government sold Conrail for $3.1 billion to CSX Corporation and Norfolk Southern, and Conrail paid the U.S. Treasury a $579 million dividend.

In 2001, the government bailed out the airline industry, which also occupies the transportation sector. After the September 11th terrorist attacks, an already weakened airline industry was weakened further. In response, President George W. Bush signed the Air Transportation Safety and System Stabilization Act. The Act paid the airlines $5 billion in compensation for the grounding of flights as a result of the attacks, and provided an additional $10 billion in loan

35. There were two possible options proposed to Congress in order to try to save Penn Central. One proposal was to have the Defense Department underwrite $200 million in loans for Penn Central, and the other was a long-term loan from the Department of Transportation in the amount of $750 million, with $300 million going immediately to Penn Central. BARRY RITHOLTZ & AARON TASK, BAILOUT NATION: HOW GREED AND EASY MONEY CORRUPTED WALL STREET AND SHOOK THE WORLD ECONOMY 37 (2009); U.S. GEN. ACCOUNTING OFFICE, supra note 33, at 8. However, Congress rejected the ideas proposed by Nixon’s Administration and did not approve either option. See U.S. GEN. ACCOUNTING OFFICE, supra note 33, at 9; Perils of Penn Central, TIME (Feb. 19, 1973), http://www.time.com/time/magazine/article/0,9171,906904,00.html; RITHOLTZ & TASK, supra note 35, at 37; GUP, supra note 4, at 33.

36. GUP, supra note 4, at 33.


40. GUP, supra note 4, at 34.


42. Dollar amounts are adjusted to reflect 2008 values. GUP, supra note 4, at 34; History of U.S. Gov’t Bailouts, PROPUBLICA, http://www.propublica.org/special/government-bailouts#penncentral (last updated Apr. 15, 2009).

guarantees and additional federal instruments. The government profited from this bailout because a provision of the Act allowed the government to purchase airline stock at below-market prices from any airline receiving a loan guarantee. Government profits were estimated to range from $141.7 million to $327 million.

2. The Financial Sector

In the 1970s, many people began to believe that large banks could not fail. In 1974, a disastrous time for banks, these views changed. On October 8, 1974, Franklin National Bank, at the time the twentieth-largest bank in the country with $5 billion worth of assets, declared insolvency.

The bank had several problems domestically, including more than ten years of “rapid growth and poor management.” This rapid expansion led to bad loans and speculation in foreign markets. The result was that the majority of the bank’s funds were uninsured. Franklin National was susceptible to market confidence fluctuations and liquidity crisis because of its short-term financing, rapid expansion, and foreign holdings. The funds upon which Franklin relied could very easily disappear, leaving no money for debt repayment or withdrawals. Short-term reliance was also more costly and carried high and variable interest rates.

In addition, Franklin National was very generous in lending money, which heightened risk and increased loan losses. The bank continued to issue loans without due consideration of borrowers’ creditworthiness, and failed to adhere to any strict procedures in lending. Franklin made high-risk loans to nascent companies in order to stay competitive.
Franklin National’s crisis began to erupt publicly in 1974 with an announcement stating that the bank was unable to meet its quarterly dividend and Franklin National’s request that the Securities Exchange Commission suspend trading of its stock. After these two announcements, it was difficult for Franklin National to borrow additional money.

Within the first month of 1974 Franklin had lost $47 million in foreign exchange trading alone, and in the first five months Franklin had lost over $63.6 million. Five weeks prior to this reported loss, Franklin had lost $39 million because of unauthorized trading in foreign currencies. False reports were being filed regarding profits and losses, and while Franklin National’s problems had been known to only a few markets in the beginning, in May 1974 its losses could no longer be kept from the public eye.

Not only was Franklin important due to its size and ties with the international banking system, but when Franklin was on the verge of collapse, public confidence decreased and fear erupted that Franklin’s collapse would impact many banks. There was concern from both private people and international markets. Franklin’s collapse would threaten foreign exchange and Eurocurrency markets, causing a lack of confidence in domestic and international markets spurring worldwide credit contraction and economic crisis.

While Franklin National could have dissolved in May 1974, several agencies stepped in to protect the markets that would be affected by Franklin National’s sudden downfall. Comptroller James Smith, of the Office of the Comptroller of the Currency, stepped in and actively pursued a solution to the Franklin crisis. Smith replaced management and looked into a merger. The FDIC and Federal Reserve System both played roles in finding a solution to Franklin National Bank’s insolvency. The Federal Reserve worked to forestall a massive failure, provided large loans eventually totaling about $1.725 billion, and took on many of Franklin National’s foreign-exchange liabilities. In addition to these direct

60. Id.
61. MARKHAM, supra note 51, at 19.
63. Franklin National Fizzes Out, supra note 49.
64. See SPERO, supra note 48, at 86.
65. WOLFSON, supra note 59, at 56-57.
66. See SPERO, supra note 48, at 109-10; Franklin National Fizzes Out, supra note 49.
67. See SPERO, supra note 48, at 86.
68. Id. at 110.
69. WOLFSON, supra note 59, at 58.
70. Id.
71. See SPERO, supra note 48, at 120.
72. Id.
73. Id. at 120-21.
loans, the Federal Reserve also encouraged other banks to loan money to Franklin, all of which was guaranteed by the Federal Reserve. The Federal Reserve hoped these loans would increase confidence in the domestic markets.

Five months later, Comptroller Smith contacted the FDIC and tried to arrange a government-assisted purchase of Franklin. Then the FDIC entered negotiations with sixteen banks, and four of them submitted bids. The European American Bank and Trust Company presented the winning bid and took over Franklin’s 104 branches.

Recently the government bailed out another giant in the financial sector: AIG. The fall of AIG, a large insurance conglomerate, was steep and dramatic. In 2007, the company ranked tenth on the Fortune 500 list of America’s largest corporations. Early in 2008, AIG had over a trillion dollars in assets. By most estimates, it was the largest insurance company in the United States. At the end of 2007, AIG was just a few days from bankruptcy, and the Federal Reserve Board authorized an $85 billion loan to prevent a complete collapse of the company. That same day, AIG’s stock closed at $3.75, down from $50 in early 2008.

The center of AIG’s failure was its credit default swap (CDS) program. As the housing market declined, AIG sustained substantial losses on its CDS agreements that were written on collateralized debt obligations (CDO) which were partially backed by sub-prime mortgage loans. Although these losses were significant, they did not directly impact AIG’s cash flow.

The primary reason for AIG’s cash shortage was its collateral-posting obligations under its troubled CDS portfolio. Per the CDS agreement, as CDO

---

75. WOLFSON, supra note 59, at 58.
76. Id.
77. Franklin National Fizzes Out, supra note 49; SPERO, supra note 48, at 136-38.
78. Franklin National Fizzes Out, supra note 49.
80. Franklin National Fizzes Out, supra note 49.
83. Id. at 944 n.1.
84. Id. at 963, 979.
86. A CDS is a private contract in which the seller (AIG) insures the buyer against a credit event. A “credit event” can be a bankruptcy, default, or any other event specified by the CDS contract. CDS agreements are primarily purchased by hedge funds, securities firms, banks, and insurance companies to offset the risk of loans issued by companies. Andrew M. Kulpa, Minimal Deterrence: The Market Impact, Legal Fallout, and Impending Regulation of Credit Default Swaps, 5 J.L. ECON. & POL’Y 291, 293 (2009).
87. Sjostrom, supra note 82, at 959-60.
88. Id.
89. Id. at 960-61.
values fell, AIG was required to post an increasing amount of collateral from the company’s operating cash. For instance, AIG had $17.6 billion in available cash on July 1, 2008.90 From that date to August 31, AIG had agreed to post $6 billion in collateral (34%) directly out of its operating budget.91 When the government intervened with the Emergency Economic Stabilization Act,92 AIG was faced with an estimated $100 billion in collateral obligations.93

The government rationalized the bailout of AIG with concerns of a giant and diverse company suddenly failing in an already weak economy. The Federal Reserve Board argued that a “disorderly” failure of AIG would cause severe secondary consequences, including “substantially higher borrowing costs, reduced household wealth, and materially weaker economic performance.”94

3. The Manufacturing Sector

Both Lockheed and Chrysler requested and qualified for government assistance during rough economic periods.

In 1971, the nation’s biggest defense contractor, Lockheed Aircraft Corporation faced insurmountable debt and the inability to secure bank loans. Lockheed had invested heavily in the development of a new aircraft and was unable to bring it to market due in part to its engine supplier’s going into receivership.95 Lockheed sought assistance from the Nixon Administration in the form of loans. The lobbying efforts on behalf of Lockheed were fierce, including calls and letters and involving the unions and employees. The failure of Lockheed would have meant significant job losses for the state of California, a loss to the Gross National Product (GNP), and a negative impact on national defense.96 By Lockheed’s estimate, their failure would have cost 60,000 jobs—at Lockheed, its

90. Id.
91. Id.
93. Kulpa, supra note 86, at 299.
95. U.S. GEN. ACCOUNTING OFFICE, supra note 33, at 11.
96. Id. at 10-11 (noting that the potential loss in GNP from a Lockheed bankruptcy was estimated between $120 and $475 million).
subcontractors, and related businesses.\textsuperscript{97} In August 1971, Congress passed the Emergency Loan Guarantee Act,\textsuperscript{98} which was created to provide funds to any major business enterprise in crisis.\textsuperscript{99} Lockheed was the first company to benefit from this Act and was provided a $1.4 billion\textsuperscript{100} loan guarantee.\textsuperscript{101} By 1977, Lockheed had repaid its loans.\textsuperscript{102}

In the late 1970s, Chrysler Corporation was the nation’s third largest automobile manufacturer. In 1978, Chrysler posted sales of $16.34 billion and employed 250,000 workers.\textsuperscript{103} It ranked as the tenth largest industrial firm in the United States and as the fourteenth largest in the world.\textsuperscript{104} By 1979 Chrysler had combined losses of $1.1 billion and requested aid from the government to avoid bankruptcy.\textsuperscript{105}

If the company failed, the effects would be widespread, translating to the loss of as many as 360,000 related jobs.\textsuperscript{106} According to a Department of Transportation study, the cost of resulting unemployment compensation and the erosion of corporate and individual tax collections would have a devastating effect on the city, state, and federal governments.\textsuperscript{107} The study estimated that the loss resulting from the Chrysler failure would be $16 billion by 1982.\textsuperscript{108} The government denied the loan request and instead, Congress passed the Chrysler Corporation Loan Guarantee Act,\textsuperscript{109} which provided $1.5 billion in federal loan guarantees to banks who would loan funds to Chrysler.\textsuperscript{110} Treasury Secretary G. William Miller stated, “There is a public interest in sustaining [its] jobs and maintaining a strong and competitive national automotive industry.”\textsuperscript{111}

Chrysler succeeded, with these loan guarantees in place, by making changes in leadership and auto design, and engaging in strategic planning. By 1983, Chrysler had repaid its loans, seven years earlier than agreed, with $350 million

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{97} See \textit{The Lockheed Bailout Battle}, Time, Aug. 9, 1971, available at http://www.time.com/time/magazine/article/0,9171,903076,00.html.
\item \textsuperscript{100} The dollar amount is stated in 2008 dollars. This is equivalent to approximately $250 million in 1971.
\item \textsuperscript{101} The dollar amount is stated in 2008 dollars.
\item \textsuperscript{102} The repayment ended Lockheed dependence on government guarantees and the government netted $112.22 million in loan fees.
\item \textsuperscript{103} \textit{MANUEL G. VELASQUEZ, BUSINESS ETHICS: CONCEPTS AND CASES} 163 (3d ed. 1992).
\item \textsuperscript{104} Id.
\item \textsuperscript{105} Robert B. Reich, \textit{Bailout: A Comparative Study in Law and Industrial Structure}, 2 \textit{YALE J. ON REG.} 163, 183-84 (1985).
\item \textsuperscript{106} \textit{Chrysler’s Crisis Bailout}, Time, Aug. 20, 1979, at 41.
\item \textsuperscript{108} Id.
\item \textsuperscript{110} Reich, supra note 105, at 183.
\item \textsuperscript{111} \textit{Chrysler’s Crisis Bailout}, supra note 106, at 41.
\end{itemize}
\end{footnotesize}
in interest.²¹² Twenty-five years later, Chrysler would return seeking economic support from the government.

In October 2008, General Motors’ (GM) Chief Executive Officer Rick Wagoner and the leaders of Chrysler, Ford, and the United Automobile Workers testified before Congress that a bailout was necessary to sustain operations.²¹³ The House of Representatives responded by passing the Auto Industry Financing and Restructuring Act.²¹⁴ The Bill concludes that financial aid to the automobile industry is “necessary to stabilize the economy.”²¹⁵ However, the Bill failed to pass the Senate. In response, President George W. Bush decided to use TARP money to rescue four main companies: GM for $49.5 billion; Chrysler for $14.9 billion; GMAC (the financing arm of GM) for $13.4 billion; and Chrysler Financial for $1.5 billion.²¹⁶

When President Barack Obama took office, the government expanded its involvement with GM. President Obama doubled the money available to GM and provided a $30.1 billion bridge loan while the company filed for Chapter 11 reorganization.²¹⁷ In return for the increased funding, the new GM that emerged from restructuring is more receptive to the environmental initiatives of the Obama Administration.²¹⁸ The U.S. Treasury now owns 60.8% of the new GM and 8% of the company remaining after the government supported Fiat acquisition of Chrysler in 2009.²¹⁹

4. The Case of Enron

In 2001, Enron was one of 257 publically traded corporations to file bankruptcy.²²⁰ It applied for and was denied government assistance. Of those 257

---

²¹² Olson, supra note 99, at 271. A part of the Chrysler bailout was the issuance of stock warrants given to the government in exchange for the loan guarantees. When Chrysler’s financial standing improved the warrants increased in value and the government netted a profit of approximately $660 million. Id.


²¹⁵ H.R. 7321 § 2(a).

²¹⁶ J.W. Verret, Treasury Inc.: How the Bailout Reshapes Corporate Theory and Practice, 27 YALE J. ON REG. 283, 295 (2010). This use of the TARP funds came over the objections of Congressional Republicans and Treasury Secretary Henry Paulson. The opponents argued that using TARP money to bail out a non-financial institution was against the legislative intent of the Emergency Economic Stabilization Act. Horton, supra note 113.

²¹⁷ Id.

²¹⁸ Id.


bankruptcies, Enron was the largest with 18,000 employees spread across thirty countries, and $63.3 billion in assets.\footnote{121} Enron had been voted the most innovative company and had appeared at number seven on the Fortune 500 list of largest U.S. companies.\footnote{122}

The fall of Enron began at the end of 2000. Company insiders were aware that the company was on the verge of being forced to recognize accounting scandals.\footnote{123} At the same time the media had begun to take an interest in the profits and business of Enron.\footnote{124} The Chief Executive Officer announced to Enron employees in 2001, that he expected the price of the stock to go up as he was selling off his holdings in the company.\footnote{125} In October 2001, Enron announced that it had a loss of $618 million, due in part to the failure of its Internet Services division.\footnote{126}

Just a few days after this announcement, the Securities and Exchange Commission announced that it was investigating Enron.\footnote{127} By November 8, 2001, Enron admitted that its earnings for the last four years had been overstated\footnote{128} by as much as $586 million.\footnote{129} It was now due to repay $6 billion in loans by the next year.\footnote{130}

The result of these announcements was a drastic drop in the price of Enron stock.\footnote{131} Almost overnight, Enron collapsed. Stockholder equity declined more than $1 billion, 4,000 employees were laid off, and employees were unable to sell their shares.\footnote{132} Enron had no option but to declare Chapter 11 bankruptcy on December 2, 2001.\footnote{133}

An Enron bailout was not forthcoming because the company’s failure was the result of internal fraud, and did not lead to economic distress reaching beyond company shareholders and creditors. This failure and its impact were narrow in
scope and did not threaten national economic stability.\textsuperscript{134}

The U.S. government has come to the aid of a variety of private companies and market sectors over time. The types of assistance have varied and the dollar amounts have ranged from $1.4 billion to $700 billion with an average of approximately $248.4 billion. The articulated rationales for these bailouts vary but consistency can be found in terms of stability. Each bailout offered stability to regional and national industries and markets. Some bailouts were based on national interests such as market penetration, national security, regional social cost, and employment. Others were motivated by the sheer size of the company or market sector in need. These Too Big to Fail bailouts offered stability from the negative secondary consequences anticipated from the collapse of a very large entity. The secondary consequences ranged from domestic financial panic to international monetary weakness. Other bailouts were motivated by the essential nature of the entity or the market sector and of course some bailouts can be seen as simultaneously appealing to each bailout theory.

A U.S. government bailout of Lifeline Nonprofits can appeal to each of these bailout theories. The underperformance and economic strain placed on this market segment implicates national interests. In addition, these organizations can be viewed as essential and Too Big to Fail because of the severe nature of the secondary consequences that would result from continued underperformance or failure. These secondary consequences range from an increase of crime and neighborhood blight to civil unrest.

\textbf{II. DEFINING AND EXAMINING THE LIFELINE NONPROFIT SECTOR}

\textit{A. History and Services of Lifeline Nonprofits}

Nonprofit organizations pursue social welfare missions, providing care for those members of our society who cannot provide for their own well-being.\textsuperscript{135} These charitable sentiments, and possibly the birth place of the modern nonprofit sector, date back to eighteenth-century Europe as a religious and social method to address the impact of the Industrial Revolution on society.\textsuperscript{136} Prior to the founding of the United States, early North American settlers formed churches,
orphanages, schools, and other voluntary associations to address social ills. In 1831, Alexis de Tocqueville lauded the American impulse to establish such organizations throughout the lands and noted that nothing is more deserving of our attention than America’s nonprofit sector.

America’s first rescue mission, The New York City Rescue Mission, was founded in 1872 as part of a growing movement toward social concern. After the Civil War, many homeless people lived near train tracks and were called tramps or hobos. This hobo phenomenon reemerged in the 1930s during the Great Depression when it was estimated that there were 2 million homeless people.

The practice of using soup kitchens to feed the poor began during the Great Depression. In 1932, when the economy worsened, 25% of the workforce, approximately 12 million people, were unemployed, the demand on soup kitchens increased, and federal, state, and local governments began food service around the nation.

In this century many factors have contributed to poverty, hunger, and homelessness. These factors include, but are not limited to; economic stress, decrease in affordable housing options, continued discrimination in terms of race, gender, ethnicity, and national origin, and healthcare issues including the deinstitutionalization of mentally ill patients and addiction. The recent economic decline exacerbates poverty, hunger, and homelessness through job loss, forced eviction, unemployment, foreclosure, displacement of returning military personnel, prison release due to overcrowding, and underemployment.

---

140. Hobos were migratory workers, tramps moved from place to place but did not work, and bums did not travel and did not work.
143. Natural and manmade disasters are significant factors contributing to poverty, hunger, and homelessness. Since the poor are more likely to be dependent on their own labor for livelihood needs and more likely to live in substandard housing, natural disasters leave them few options to cope with loss of assets or death or disability of a working family member. See Robert Holzmann & Saroj Kumar Jha, Foreword to The World Bank, Building Resilient Communities: Risk Management and Response to Natural Disasters Through Social Funds and Community-Driven Development Operations xi (2009).
B. Surveying the Lifeline Nonprofit Terrain

1. The Great Recession

We are currently in the midst of the worst recession since the Great Depression. A host of measures can be examined to compare the duration and severity of the most recent recession to previous recessions since WWII. As a rule of thumb, a recession is defined by two successive quarters with a decline in Gross Domestic Product (GDP). The National Bureau of Economic Research (NBER) is the recognized authority for dating U.S. recessions. The NBER defines an economic recession as “a significant decline in [the] economic activity spread across the country, lasting more than a few months, normally visible in real GDP growth, real personal income, employment (non-farm payrolls), industrial production, and wholesale-retail sales.” The average length of a recession is 11.6 months and this recession has surpassed this average by seven months. According to the NBER, the most recent recession began on December 2007 and officially ended in June 2009.

a. GDP as a Measure of the Economic Recession

One of the primary measures of economic and social health in the United States is GDP. This figure is released each quarter and represents the total market value of all final goods and services produced in a country in a given year, equal to total consumer investment and government spending, plus the value of exports, minus the value of imports. The fall in GDP between the fourth quarter of 2007 and the second quarter of 2009 was 4.1%, making this the deepest recession since 1947. However, it is possible for GDP to rise even during times of weak economic and social health, thereby giving a false impression about economic wellness. For example, the U.S. Department of Commerce announced an increase of 5.9% in GDP during the fourth quarter of 2009. This follows an increase of 2.2% in the

previous quarter.\footnote{Gross Domestic Product: Fourth Quarter 2009 (Second Estimate), U.S. D\textsc{e}p\textsc{t} of Commerce (Feb. 26, 2010), http://www.bea.gov/newsreleases/national/gdp/2010/gdp4q09_2nd.htm.} Although these numbers give the impression of economic progress, other indicators, such as unemployment figures, tell a different story. Based on estimates from the U.S. Department of Labor, the unemployment rate during the same period hovered around 10\%, about two percentage points higher than the first quarter of 2009.\footnote{Labor Force Statistics, U.S. D\textsc{e}p\textsc{t} of Labor, http://data.bls.gov/cgi-bin/surveymost (last visited Dec. 3, 2010).}

\paragraph{b. Employment as a Measure of the Economic Recession}

During this economic recession, the United States has lost approximately 8.4 million jobs.\footnote{Timothy R. Homan & Alexandra Harris, Recession in U.S. Weighed on Incomes, Marriage, Teen Employment, B\textsc{l}oomberg (Sept. 29, 2010), http://www.bloomberg.com/news/2010-09-29/recession-s-toll-in-u-s-ranged-from-incomes-to-marriage-census-data-show.html.} Many of these jobs are in the manufacturing sector and are not anticipated to return.\footnote{Kristina J. Bartsch, The Employment Projections for 2008-18, 132 M\textsc{o}nthly Lab. Rev. 3, 8 (2009); U.S. Conference of Mayors, Types of Jobs Lost and Gained 2001-2005, at 2 (2003), available at http://www.usmayors.org/publications/metroecon1103.pdf.} All workers have faced rising unemployment and underemployment rates.\footnote{See SUM, supra note 147, at 12. By May 2009, the number underemployed workers doubled from 4.4 million in November 2007 to 8.8 million. \textit{Id.}} Persistent long-term joblessness is at its highest rate in the history of the United States.\footnote{Horizontal axis shows months. Vertical axis shows the ratio of that month’s nonfarm payrolls to the nonfarm payrolls at the start of recession. Note: Because employment is a lagging indicator, the dates for these employment trends are not exactly synchronized with National Bureau of Economic Research’s} These problems have been accompanied with shifts toward part-time labor as a method of corporate cost savings.\footnote{See SUM, supra note 147, at 1.} Workers under the age of thirty, especially teens and 20- to 24-year-olds without college degrees, have borne a disproportionate share of the decline in employment since the fall of 2007.\footnote{Id. at 19. Since November 2007, employment of persons 55 and older has actually increased. \textit{Id.}}

Older, professional, and educated workers have been the least impacted by the recession.\footnote{Id. at 18-19.} The current recession has been particularly hard for men and minorities.\footnote{Collection of this data began in 1948. Peter S. Goodman, Despite Signs of Recovery, Chronic Joblessness Rises, N.Y. Times, Feb. 20, 2010, available at http://www.nytimes.com/2010/02/21/business/economy/21unemployed.html.} The types of jobs that have been lost during the recession were concentrated in the manufacturing, construction, transportation, and labor sectors, where the majority of African American men were employed.\footnote{Id. at 12.} A tracking of the distribution of job loss from November 2007 to January 2009 reveals that male workers have absorbed 79\% of the net job losses, and similar data is available for each of the four major ethnic groups.\footnote{Id. at 18-19.} However, African American men incurred all of the net job losses experience by African American workers through January 2009,
and they experienced a higher relative job loss (6.4%) than any other group of males.164

c. Other Measures of the Economic Recession

Media reports of the economic crisis in terms of GDP fail to quantify or qualify the impact of the economic crisis on individual families.165 GDP ignores wealth variation, international income flows, household production of services, destruction of the environment, and many of the determinants of well-being such as the quality of social relations, economic security, personal safety, health, and official business cycle dates. Catherine Rampell, *Comparing This Recession to Previous Ones: Job Losses*, N.Y. TIMES, Mar. 5, 2010 (citing Bureau of Labor Statistics).

161. *See generally* SUM, supra note 147.


163. Id.

164. Id.

165. Critiques and possible alternatives to GDP reporting can be found in ERWIN DE LEON & ELIZABETH T. BORIS, URBAN INST., *THE STATE OF SOCIETY: MEASURING ECONOMIC SUCCESS AND HUMAN WELL-BEING* (2010). One particularly interesting measure could be the Genuine Progress Index (GPI) which measures the following factors: income distribution; household production of services; crime; resource depletion; pollution; long-term environmental damage; changes in leisure time; defensive expenditures; lifespan of consumer durables and public infrastructure; and dependence on foreign assets.
longevity. Increases in poverty, homelessness, and hunger discussed infra can serve as measures of the economic crisis which may not be reflected in GDP.

In 2009, 303.8 million people were living at the poverty level and 43.6 million people were living below the poverty threshold (increased from the 2008 figures of 301 million and 39.8 million respectively). Of those below the poverty level, 24.7 million were aged 18–64, 15.5 million were children, and 3.4 million were seniors 65 and older. Lifeline Nonprofits serve and in some cases sustain the very poor, the hungry, and the homeless. A large percentage of funding for nonprofits comes from governmental sources. These funds have not increased adequately to ensure that nonprofits can meet the increased demand for services.

In 2009, 303.8 million people were living at the poverty level and 43.6 million people were living below the poverty threshold (increased from the 2008 figures of 301 million and 39.8 million respectively). Of those below the poverty level, 24.7 million were aged 18–64, 15.5 million were children, and 3.4 million were seniors 65 and older. Lifeline Nonprofits serve and in some cases sustain the very poor, the hungry, and the homeless. A large percentage of funding for nonprofits comes from governmental sources. These funds have not increased adequately to ensure that nonprofits can meet the increased demand for services.


169. CARMEN DENAVAS-WALT ET AL., *INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2008*, at 13 (2009), available at http://www.lafla.org/pdf/2008_CensusPovertyReport.pdf. The U.S. Census Bureau determines who is “in poverty” by using a set of income thresholds based on family size and composition. For example, individuals in a family that consists of a single parent with two children 18 years old or younger are “in poverty” if their income is less than $17,346. Id. at 43.

170. Id.


172. See id. at 5. Only 15% of nonprofits anticipated an increase in government funding, while 73% anticipated an increase in demand for services. Id.
2. Increased Demand on Lifeline Nonprofits

a. Homelessness

The number of individuals and families faced with homelessness is difficult to calculate. Most estimates place the number of homeless people on any given day at somewhere between 500,000 and 750,000, and the number of homeless people throughout the year at anywhere between 1.5 million and 3.75 million. In 2007, a study by the National Law Center on Homelessness and Poverty stated that approximately 3.5 million people, 1.35 million of them children, are likely to experience homelessness in a given year. The impact of the recession in terms of children facing homelessness is yet to be determined. Homeless children are more likely to experience health and mental health problems and to perform poorly in school.

173. Id. at 62.


poorly in school than children in stable homes.\textsuperscript{176}

Homelessness has been on the rise for some time.\textsuperscript{177} As a result, the shelter crisis for homeless people is getting worse. Forty-two percent of homeless persons are unsheltered, meaning that they sleep in places not intended for habitation like abandoned buildings, parks or other public spaces.\textsuperscript{178} In 2009, USA Today estimated that 1.6 million people in 2009 used transitional housing or emergency shelters.\textsuperscript{179} The 2009 report of the U.S. Conference of Mayors based on a 27-city survey estimated that requests for emergency shelter had increased since 2008, with 82\% of cities reporting an increase.\textsuperscript{180} Of the 27 cities surveyed, 14 (52\%) reported that some persons seeking emergency shelter were turned away.\textsuperscript{181} Seventy-six percent of the cities surveyed reported an increase in families experiencing homelessness since 2008.\textsuperscript{182} These families are especially hard hit by the lack of affordable housing options.\textsuperscript{183}

A survey of 50 of the largest cities found that none had enough beds or shelter slots for the number of homeless people in that city on any given day.\textsuperscript{184} As the need for temporary shelter increases in American cities, homeless people are

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{177} National Coalition for the Homeless reports that a review of research conducted between 1987 and 1997 in 11 communities and 4 states found that shelter capacity more than doubled in 9 communities and 3 states during that time period. In 2 communities and 2 states, shelter capacity tripled over the decade. A 1991 study examined homelessness “rates” (the number of shelter beds in a city divided by the city’s population) in 182 U.S. cities with populations over 100,000. The study found that homelessness rates tripled between 1981 and 1989 for the 182 cities as a group. See Martha R. Burt, Causes of the Growth of Homelessness During the 1980s, in Understanding Homelessness: New Policy and Research Perspectives 169, 182 (Dennis P. Culhane & Stephen P. Hornburg eds., 1997), available at http://www.knowledgeplex.org/kp/report/report/references/homeless_1997_burt3.pdf. While an exact measure for the growth in homelessness is difficult to determine, an increase in shelter beds over the past two decades is apparent. How Many People Experience Homelessness?, Nat’l Coal. for the Homeless (2009), http://www.nationalhomeless.org/factsheets/How_Many.html. An increase in legal and illegal tent cities can be seen across the country. See Nat’l Coal. for the Homeless, Tent Cities in America: A Pacific Coast Report 8, 66 (2010).
\item \textsuperscript{178} Geography of Homelessness, Part 3: Subpopulations by Geographic Type, Nat’l Alliance to End Homelessness (Sept. 29, 2009), http://www.endhomelessness.org/content/article/detail/2529.
\item \textsuperscript{181} Id.
\item \textsuperscript{182} Id. at 9.
\item \textsuperscript{183} Id. at 11.
\item \textsuperscript{184} Nat’l Coal. for the Homeless, Illegal to Be Homeless: The Criminalization of Homelessness in the United States 13 (2003); Nat’l Law Ctr. on Homelessness & Poverty, supra note 142. In Atlanta, there are 15,000 to 22,000 people homeless on any given night, and a maximum of 2700 beds. In Los Angeles, there are 42,000 to 77,000 people homeless on any given night and a maximum of 8300 beds. See Maria Foscarinis, Downward Spiral: Homelessness and its Criminalization, 14 Yale L. & Pol’y Rev. 1, 13 (1996).
\end{itemize}
\end{footnotesize}
turning to public spaces to conduct their private activities including bathing, eating, and toileting.

Minorities are overrepresented in the homeless population. For example, African Americans are 12.4% of the general population but estimated to be 42% of the homeless population.\textsuperscript{185} Twenty-six percent of homeless people are considered mentally ill, while 13% of homeless individuals were physically disabled.\textsuperscript{186} Nineteen percent of single homeless people are victims of domestic violence, while 13% are veterans and 2% are HIV positive.\textsuperscript{187} Nineteen percent of homeless people are employed.\textsuperscript{188}

The Council for Affordable and Rural Housing estimates that about 9% of the nation’s homeless are in rural areas.\textsuperscript{189} Homeless children and people in rural areas are less likely to be included in statistics about homelessness. Children and people in rural areas are often able to stay with friends and relatives when they face homelessness.

Even when a homeless person is able to secure a spot in a shelter, many homeless shelters close during the day, which requires residents to vacate, presumably to the streets.\textsuperscript{190} Additionally, many shelters forbid the storage of personal belongings.\textsuperscript{191} In 32% of cities, families may have to spend their daytime hours outside the shelter used at night.\textsuperscript{192}

Homelessness is a multifaceted problem that is much more intractable than hunger. The federal, state, and local governments and support agencies have more work to do in the area of solving homelessness. While the solutions are being developed, there are still hundreds of thousands of individuals, families, couples, and children who need safe shelter each night.


\textsuperscript{187} \textit{Id.} at 18.

\textsuperscript{188} \textit{Id.}


\textsuperscript{190} Office of Policy Dev. & Research, U.S. Dep’t of Hous. & Urban Dev., A Report to the Secretary on the Homeless and Emergency Shelters 38 (1988). In addition, some shelters charge fees, usually between $3 and $10, a price that can be prohibitively expensive for those seeking accommodations. Foscarinis, \textit{supra} note 184, at 13.

\textsuperscript{191} Office of Policy Dev. & Research, U.S. Dep’t of Hous. & Urban Dev., \textit{supra} note 190, at 38; Foscarinis, \textit{supra} note 184, at 13.

\textsuperscript{192} Office of Policy Dev. & Research, U.S. Dep’t of Hous. & Urban Dev., \textit{supra} note 190, at 38.
b. Hunger

While Lifeline Nonprofits provide shelter to between 1.7 and 3 million people each year, similar organizations feed 37 million Americans per year. In 2002, leading up to the recession, an additional 1.7 million Americans fell below the poverty line. This brought the total to 34.6 million—an astonishing one in eight of the U.S. population. Over 13 million of those below the poverty line are children. About 50.2 million Americans were deemed to be “food insecure” (they literally did not know where their next meal was coming from). Of those, more than 17 million live in households with “very low food security,” which is defined by the United States Department of Agriculture (USDA) as experiencing real hunger, or an “uneasy or painful sensation caused by lack of food due to lack of resources to obtain food.” Americans need additional help as unemployment and foreclosures increase.

The USDA, state agencies, and food banks collect demographic data about hunger in the United States. Surveys and other data suggest that hunger in America has deepened considerably since 2002. In 2008, 49.1 million people lived in food insecure households (up from 36.2 million in 2007, and from 31 million in 2002), 32.4 million are adults (14.4% of all adults) and 16.7 million are children (22.5% of all children). Black (25.7%) and Hispanic (26.9%) households experienced food insecurity at far higher rates than the national average.

Additionally, 17.3 million people lived in households that were considered to have “very low food security,” a USDA term (previously denominated “food insecure with hunger”) that means one or more people in the household were hungry over the course of the year because of the inability to afford enough

---

195. Id.
197. Id.
201. Id. at 6, 7.
202. Id. at 8.
food. This was up from 11.9 million in 2007 and 8.5 million in 2000. Very low food security had been getting worse even before the recession. The number of people in this category in 2008 is more than double the number in 2000. The data from the USDA is mirrored by the reported 19% increase for emergency food in twenty-five major cities.

A second indicator that hunger has increased over the last several years is the demand for food stamps, the government aid program of last resort, and other governmental food programs. While food stamps are available in some states, families must wait months to have their applications approved. In fiscal year 2009, Texas took more than thirty days to process 33% of its applications. A review by the Associated Press reveals that programs in thirty-nine states left at least 25% of their applications waiting weeks or months for food stamps.

Approximately one in eight Americans, the largest percentage in U.S. history, receive food stamps. In addition to food stamps, the federal government has a National School Lunch Program. In 2008, 31 million children participated in the National School Lunch Program through about 100,000 schools and residential child care institutions. On a typical school day, 18.5 million of these 31 million total participants were receiving free or reduced price lunches.

A third indicator of increased hunger in America is data obtained from Feeding America, the nation’s leading domestic hunger-relief charity. Feeding America is an umbrella organization that coordinates a nationwide network of food banks and others to feed America’s hungry and fight to end hunger. Annually, this network feeds more than 37 million low-income people, including more than 13 million children under 18 and nearly 3 million seniors. Feeding America’s network of food banks, comprised of more than 200 food banks in locations across the United States and Puerto Rico, secures and distributes more than 2

---

203. Id. at 16. The Food Stamp Program provides a basic safety net to millions of people. The idea for the program was born in the late 1930s, with a limited program in effect from 1939 to 1943. It was revived as a pilot program in 1961 and was extended nationwide in 1974. The current program structure was implemented in 1977 with a goal of alleviating hunger and malnutrition by permitting low-income households to obtain a more nutritious diet through normal channels of trade. In March 2010, for the first time ever, Food Stamps participation topped 40 million persons (40,157,395), an increase of 483,170 individuals from February 2010, the prior record level, and an increase of more than seven million people compared with March 2009.

204. Id. at 6.

205. Id.

206. As of October 1, 2008, Supplemental Nutrition Assistance Program (SNAP) is the new name for the federal Food Stamp Program. See NORD ET AL., supra note 200, at 6, 15, 19.

207. Id.


209. Id.

210. NORD ET AL., supra note 200, at 28.


212. MATHEMATICA POLICY RESEARCH, INC., supra note 193, at 75.
billion pounds of food and grocery items annually.213 Among members of Feeding America, 74% of pantries, 65% of kitchens, and 54% of shelters reported that there had been an increase since 2006 in the number of clients who come to their emergency food program sites.214 In September 2009, Feeding America said that the demand at its 63,000 soup kitchens and food pantries is 30% higher than it was at the end of 2008.215

Based on surveys conducted at emergency feeding centers, such as soup kitchens and food pantries, approximately 5.7 million people per week receive emergency food assistance from an agency served by a Feeding America member.216 This is a 27% increase over numbers reported in Hunger in America 2006, which reported that 4.5 million people were served each week.217

Of the 37 million people the Feeding America network serves, 70% of households have incomes below the federal poverty line.218 The average monthly income for client households is $940.219 36% of households have one or more adults who is working.220 10% of client households are homeless.221

Many of the client households served by Feeding America food banks report that their household incomes are inadequate to cover their basic household expenses.222 These households report being faced with tough decisions: 46% report having to choose between paying for utilities or heating fuel and food; 39% report having to choose between paying for rent or a mortgage and food; 34% report having to choose between paying for medical bills and food; and 35% report having to choose between transportation and food.223 In New Jersey, many people who are now turning to food pantries to supplement their kitchens are nurse’s aides, real estate agents, and secretaries facing a financial crisis for the first time.224

As America awaits the economic rebound, shelter and food remain necessary commodities that lie beyond the reach of an increasingly large segment of our population. The solutions to stem the growth of poverty, homelessness, and hunger will take years. During this period, Lifeline Nonprofits will need financial support to continue to fill the gaps.

214. MATHEMATICA POLICY RESEARCH, INC., supra note 193, at 256.
216. These numbers do not factor in the many individuals also served at non-emergency locations, such as Kids Cafe programs and senior centers.
217. MATHEMATICA POLICY RESEARCH, INC., supra note 193, at 1.
218. Id. at 94.
219. Id. at 93.
220. Id. at 85.
221. Id. at 108.
222. See id. at 167.
223. Id.
As of April 2009, nonprofit leaders in markets nationwide, while responding to a survey, Nonprofit Finance Fund Survey: America’s Nonprofits in Danger, indicated that their organizations are strained to the breaking point. This survey focuses on the financial state and particular challenges facing these organizations. Nonprofits are suffering during the economic crisis and in the recent past these same organizations have not received sufficient support. This must change. Along with the business and government sectors, the nonprofit sector is the third leg of the stool on which American communities depend.

C. Non-Charitable Impact of Nonprofits

Nonprofits make significant contributions to American society beyond their charitable purposes. These nonprofits, when taken on a cumulative basis, have a large impact on taxpayers, the government, and the national economy. Nonprofits protect taxpayers by providing free services to those in need. When nonprofits provide relief to the poor, the distressed, or the underprivileged, prevent cruelty to children or animals, advance education and science, or combat community blight and juvenile delinquency, they benefit the taxpayer who would otherwise be taxed by the government to provide these services. The retail cost avoided by the taxpayer for these services is difficult to calculate.

Nonprofits lessen the burden on governments as well. Without nonprofits, government would grow and taxes would rise substantially in order to maintain basic services including childcare, senior assistance programs, homeless shelters, and food pantries.

In the United States, the nonprofit sector is a major employer, employing more people than the utility, wholesale trade, and construction industries combined. This workforce segment is comprised of 9.4 million paid and 4.7 million unpaid volunteers, equaling 10.5% of the total U.S. workforce. The nonprofit workforce contributes nearly $322 billion in wages to the economy. If the nonprofit sector were a country, it would have the seventh-largest economy in the world.

---


226. Id.


229. Id.


231. Id.

232. Id.
world. In addition, nonprofits, by providing childcare and other types of family support, assist parents as they participate in the work force.

In 2007, public charities in the United States reported nearly $1.4 trillion in total revenues, $2.6 trillion in total assets, and $1.1 trillion in total expenses. Of the nearly $1.4 trillion in total revenues, 22% came from contributions, gifts, and grants, and 67% came from program service revenue (including government fees and contracts) and the remaining 11% came from other sources (including dues, fees, rental income, and special event income). Nonprofits spend billions on goods and services, which spurs economic growth by creating and sustaining jobs in other industries. Nonprofits accounted for over 8.11% of all wages and salaries paid in the United States in 2006. In 2004, nonprofits paid $321.6 billion in wages, compared to $355.8 billion in wages paid by the finance and insurance sectors combined. In 2005 and 2006, nonprofits accounted for 5% of GDP.

III. TWISTING IN THE WIND: LIFELINE NONPROFITS IN THE ECONOMIC CRISIS

A. Lifeline Nonprofits are at Risk because Demand has Increased and Charitable Giving has Slowed

An examination of a small slice of corporate giving helps to highlight some of the funding problems faced and fearfully anticipated by nonprofits. Many larger donors have experienced significant hardship. AIG and Lehman Brothers are good examples. Both companies and their employees were large contributors to nonprofit organizations. From 2004 to 2006 AIG donated $6.2 million to ACCION, a nonprofit whose mission is to give microloans, business training, and other financial services to poor individuals domestically and abroad. In the twelve months preceding November 2007, Lehman Brothers gave $39 million to


236. Id.


charity, including $375,000 to Doctors Without Borders. The cuts and closings at the largest auto-makers in Michigan caused the United Way for Southeastern Michigan to reduce its fundraising goal by 35%. The disappearance of nonprofit donors, and in some instances their inability to continue to support the nonprofit sector, is concerning.

Recent surveys directly contradict our historical experience of continued charitable giving during recessionary times. These reports reflect the fears engulfing the nonprofit sector. They paint a grimmer picture of charitable giving at a time when Lifeline Nonprofits are experiencing unprecedented demand. Based on these surveys the impact on small nonprofits (those with less than $2 million in revenues) seems to be most severe. These small nonprofits have no mechanism to weather the economic downturn.

Considering the strain placed on the federal, state, and local budgets nonprofits might reasonably fear slow contract payments, reductions in reimbursement rates, or the complete withdrawal of funding. Failure is a realistic threat to Lifeline Nonprofits. Thirty-eight percent of nonprofits surveyed that receive government funding reported longer than usual delays in receiving funding. In a national survey 35% of responding nonprofits reported declines in overall government support and more than 33% reported delayed payments.


In June 2009, Guidestar released the results of a survey of the nonprofit sector to determine the impact of the economic downturn. Respondents compared the March to May 2009 period with the same period in 2008. Fifty-eight percent of those surveyed reported an increased demand for services, 52% reported a decrease in contributions, 69% reported fewer individual contributions, 38% indicated that corporate grants were smaller, 23% indicated that corporate grants were discontinued, and 8% reported that they were in danger of closing their doors. These results contradict the wisdom that in times of economic hardship, nonprofit giving will continue at a normal pace.

The results were similar to the survey results for the time period from October
2008 to February 2009, but the tone of organizational comments had worsened.\(^{249}\) Nonprofits, when polled about their financial health, were less hopeful. Their overall sentiments were more pessimistic.\(^{250}\) For example, comments about closing and just barely holding on were more frequent.\(^{251}\)

2. Johns Hopkins University Listening Post Project 2009 Report

In June 2009, the Johns Hopkins University Listening Post Project published a report on the impact of the 2007–2009 Economic Recession on Nonprofit Organizations.\(^{252}\) Eighty percent of responding nonprofits described some level of “fiscal stress,” and close to 40% of the respondents considered the stress to be “severe” or “very severe.”\(^{253}\) Thirty-two percent of those who responded identified an increased demand for services, and 53% reported increased operating costs, the majority of which were due to increased health benefits and wages.\(^{254}\) When comparing revenue looking back a year, 51% of the organizations surveyed reported revenue losses between September 2008 and March 2009, as compared to the same time period a year earlier.\(^{255}\) Smaller nonprofits (defined in the report as those with revenue under $500,000) reported a more severe impact: close to 63% of smaller organizations reported revenue losses compared to 47% of larger organizations.\(^{256}\) Thirty-five percent of all respondents reported declines in government support and 37% reported delayed payments from the government.\(^{257}\) The measure of the toll of the financial crisis is that 13% of respondents reported concern for the survival of the organization.\(^{258}\)


In June 2009, Bridgespan released its updated “Managing in Tough Times – 7 Steps” report\(^{259}\) (initially released in November 2008).\(^{260}\) The original survey

\(^{249}\) Id. at 4-5.
\(^{250}\) Id.
\(^{251}\) Id.
\(^{253}\) Id. at 1-4.
\(^{254}\) Id. at 7.
\(^{255}\) Id. at 4-5.
\(^{256}\) Id. at 6.
\(^{257}\) Id. at 5.
\(^{258}\) Id. at 20.
\(^{260}\) See BRIDGESPAN GROUP, MANAGING IN TOUGH TIMES: 7 STEPS (2008).
instrument was shared with 800 nonprofit chief executives, presidents, and executive directors; more than 100 responded. This updated report reflects drastic funding cuts to nonprofits, especially small nonprofits, and a simultaneous marked increase in demand for services. During the seven months between the first survey findings reported in November 2008 and June 2009:

- Fifty-six percent identified an increase in the demand for services, nearly doubling the percentage reported in Bridgespan’s November 2008 survey.
- In addition to the dramatic increase in demand for services, the percentage of nonprofits reporting funding cuts increased from 52% to 69% (a leap of 17% in just over a half a year, totaling more than two-thirds of respondents losing funding).
- Almost 25% of the respondents reported cuts of more than 20% of their overall funding.
- Smaller nonprofits (defined in the report as those with revenues of less than $1 million) felt the impact more severely: 70% of small nonprofits responding to the survey reported that their finances have worsened in the past six months.
- Of the smaller nonprofits, 41% reported cuts exceeding 20% of their overall funding.

4. The Nonprofit Finance Fund 2009 Survey

In April 2009, the Nonprofit Finance Fund (NFF) released results of its nationwide survey in which more than 1100 nonprofit professionals participated. The majority of the respondents represented nonprofits with less than $2 million in total operating expenses. While the survey largely asked respondents to reflect on anticipated future events, it reinforced other national survey findings that nonprofits providing social services are experiencing financial stress due to an increased demand for their services and a simultaneous decrease in revenues. In blunt terms, the NFF report observes, “America’s nonprofits, including the ‘lifeline’ organizations that many depend on for food, shelter, and other basic services, are strained to the breaking point.” The report shared the following key findings:

262. Id. at 2-3.
263. Id. at 6.
264. Id. at 3.
265. Id. at 3, 5.
266. Id.
267. Id. at 5.
269. Id.
Ninety-three percent of “lifeline” organizations that provide essential services anticipate an increase in demand for their services during 2009.270

Eighty-seven percent of lifeline organizations saw an increase in demand in 2008.271

Only 12% of the respondents expected their budgets to finish above breaking even in fiscal year 2009.272

Just 16% expect to be able to cover their operating expenses in both 2009 and 2010.273

Thirty-one percent do not have enough cash to cover even one month’s operating expenses, and another third have less than three months’ operating expenses.274

Sixty-two percent expect a decrease in foundation support.275

Forty-nine percent expect a decrease in contributions from individuals during 2009.276

Forty-three percent expect a drop in government funding.277

5. Giving USA Foundation

A recent report from Giving USA Foundation paints a slightly more optimistic picture than the other nationwide surveys and examples.278 On June 10, 2010 the Giving USA Foundation and the Center on Philanthropy at Indiana University announced that U.S. charitable giving had fallen 3.6% in 2009.279 The report suggests that the overall economy saw slight price deflation, which makes the adjusted change in charitable giving year-over-year a decline of 3.2%. This drop in charitable giving is not as severe as the largest recessionary drop of 5.5% in 1974.

However, human service organizations have suffered a substantial decrease in contributions. In 2008 individuals, foundations, and corporations contributed $307.65 billion to public charities—a 2% drop in current dollars over 2007. Human service organizations received 9% of these contributions or $25.88

270. Id.
271. NONPROFIT FIN. FUND, supra note 171, at 5.
272. Id. at 10.
273. Id.
274. Id.
275. Id.
276. Id.
277. Id.
278. This survey went to a random sample of human service charities. The overall response rate was 7.1%, with 228 completed surveys.
billion. Contributions to these organizations decreased by 15.9% in 2008.280 The Survey reports further that among nonprofits working to meet the basic needs of food, shelter, and clothing that 53% of these organizations said that they were underfunded or severely underfunded for 2009.281

6. State Data on Nonprofits and the Economic Crisis

This national data is echoed at the state level through state-specific surveys.282 The estimated cumulative state budget gap for 2009-2012 is $460 billion.283 The damage done to the states during this recession will not be undone for years. In many states, governments are forced to cut essential services. In California, Governor Schwarzenegger, faced with a $12 billion shortfall, proposed a 2010-2011 budget which would force 200,000 children off low-cost medical insurance, end in-home care for 350,000 seniors, and possibly dismantle the state’s welfare to work system.284 California is one of the states currently experiencing the highest rate of homelessness, making the cuts to human service areas more devastating to California’s poor.285 Similar cuts were adopted in Arizona.

There are several instances where state governments have taken a year to pay nonprofits for services that have been performed. Nonprofits in Louisiana, Tennessee, and Northern California have had to maneuver to avoid closure when faced with government nonpayment. For example, the state of Illinois is running

---

280. These numbers are adjusted for inflations. Id.
281. Id.
283. Jake Grovum, Going to the Mat Over Money, STATELINE.ORG (Mar. 8, 2010), http://www.stateline.org/live/details/story/contentId=466367.
285. One out of every six people in HUD’s 2009 point-in-time count lived in the Greater Los Angeles/Orange County area, New York City, Las Vegas or New Orleans, while only 8% of all Americans resided in these areas. Over half of all people experiencing homelessness were in California, Florida, Nevada, Texas, Georgia, and Washington, as compared to representing just 31% of the general population. Annual Estimate of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2000 to July 1, 2009, U.S. CENSUS BUREAU (2009), http://www.census.gov/popest/states/NST-ann-est.html.
five months behind in payment to nonprofit organizations. \footnote{286} The state of Illinois owes Springfield Arc, a nonprofit that provides foster care, job placement and services for the mentally ill, $1.5 million for services already provided. \footnote{287} In order for Springfield Arc to meet its obligations, it was forced to take a large loan. The repayment of this loan will further deplete the limited resources of Springfield Arc. \footnote{288} It is estimated that the state of Illinois could owe nonprofits and other contract providers $6 billion by June 2010. \footnote{289} Nonprofits have resorted to bridge loans, cutting staff, and, in the worst cases, evicting residents from emergency housing. \footnote{290}

The state of Pennsylvania reached a budget impasse which lasted from July 2009 through October 2009. During this 101-day impasse, Pennsylvania’s Human Services Development Fund was unable to pay its contracts with nonprofit agencies. Many of these nonprofits were forced to take loans and to spend from their reserves to stay open. Unfortunately some nonprofits were forced to close their doors. \footnote{291} Many nonprofits are still recovering from the impact in terms of recruiting new staff and reestablishing a community presence.

The nonprofit sector while faced with the fear of declining revenues and restricted government support is scrambling to cut costs in order to avoid disaster. These cuts are being made as follows: limiting or eliminating essential programming, staff reductions, employee pay reductions, delayed vendor payments, delayed maintenance and acquisitions, and limited hours and access. For example, the Boys & Girls Clubs of Newark has closed one of its five sites, reduced program offerings by 30% and has laid off 28% of the workforce. \footnote{292}

Considering nonprofit data, increasing demand on Lifeline Nonprofits and continued, deepening unemployment and underemployment, a plan to assist Lifeline Nonprofits must be developed. Lifeline organizations, 91% of which focus on serving vulnerable populations, simply will not be around to provide critical services if we continue with current practices. \footnote{293}

\footnotesize{287. \textit{Id.}}
\footnotesize{288. \textit{Id.}}
\footnotesize{289. \textit{Id.}}
\footnotesize{290. Nat’l Council of Nonprofits, \textit{supra} note 227, at 5.}
\footnotesize{292. \textit{Nonprofit Finance Fund Survey: America’s Nonprofits in Danger}, \textit{supra} note 225.}
\footnotesize{293. \textit{Id.}}
The Financial Crisis of 2007 resulted in the worst economic conditions since the Great Depression. Although nonprofits historically fare better in recessions than the overall economy, recent studies suggest that they may not be immune to this recession. A failure of the Lifeline Nonprofit sector while the country is struggling with this historic recession poses serious secondary consequences that could eventually lead to widespread social unrest in American cities. The risk of systemic disruption associated with severe poverty, hunger, and homelessness threatens the fabric of American society at the federal, state, and local levels.

Historically, poverty has been concentrated in urban centers and has persisted at about 15 to 20% of the population. During the recent recession poverty has begun to creep into new geographic areas—areas that were once filled with blue-collar workers and their families, small shops, and friendly neighbors. These neighborhoods are now less vibrant because those who have the means to move away do so, while other families are forced out by foreclosures or the search for new employment. Concentrated and persistent poverty has a corrosive effect on those who reside in the same communities but who are not trapped by poverty. What remains is a vulnerable neighborhood where vandalism and other anti-social behavior goes unchecked, abandoned buildings are prevalent, and property values deteriorate. These communities become unattractive to those who could stabilize through investments. Shops close, fresh produce becomes scarce, and city services are restricted. The imprint of persistent and concentrated poverty on neighborhoods and cities is unmistakable.

Another systemic problem created by intense poverty is poor education. The amount of education that an individual has is the best indicator for whether that individual will be unemployed. Inner-city schools are notorious for being overcrowded, underfunded, and violent. A study of graduation rates in 2002 and 2003 found that fourteen urban school districts had on-time graduation rates of less than 50%, compared to 70% nationally. A rising drop-out rate followed by a larger unemployment rate will only deepen the problems in poor communities.

Cities like Detroit, Michigan (33.4% poverty), Cleveland, Ohio (29.5% poverty), Buffalo, New York (28.7% poverty), and El Paso, Texas (27.4% poverty) outpace the national average poverty rate of 14.3%. These cities provide case studies of the negative impact of persistent and concentrated poverty. In 2005, Detroit was in the midst of urban decay. The city’s finances were failing,

294. See supra Part III.A.
297. The author was born and raised in Detroit, Michigan.
the middle class with their property tax dollars were leaving the city proper for suburbs, poverty and crime rates were among the nation's highest, and there were 12,000 abandoned homes.\footnote{Shrinking Detroit has 12,000 Abandoned Homes, Free Republic (Aug. 15, 2005, 12:59 EDT) http://www.freerepublic.com/focus/f-news/1463747/posts.} Since that time, things have worsened in large part due to eighteen months of recession and catastrophic job loss. An examination of Detroit reveals the following:

- Sixty percent of children are in households where no adult has fulltime employment;\footnote{Rhonda Tsoi-A-Fatt, Ctr. for Law & Social Pol'y, Keeping Youth Connected: Focus on Detroit (2009), available at http://www.clasp.org/admin/site/publications/files/Detroit-Profile.pdf.}
- Twenty-nine percent of children are in homes headed by high school drop outs;\footnote{Id.}
- There are approximately 18,000 individuals who are homeless, a 5% increase from the 2008 figure;\footnote{See U.S. Conference of Mayors, supra note 180, at 15.}
- The high school graduation rate is less than 30%;\footnote{Id. at 6; U.S. Conference of Mayors, supra note 180, at 32.}
- More than 80% of youth ages 16-19 are unemployed, with an unemployment rate of 28.3%;\footnote{Leigh Graham, Desperation Reigns In Detroit (Oct. 10, 2009), http://uspoverty.change.org/blog/view/desperation_reigns_in_detroit; U.S. Conference of Mayors, supra note 180, at 32.}
- There are 80,000 vacant homes, with a 5% foreclosure rate;\footnote{Rev. Jesse Jackson, The Fight Begins in Detroit, Detroit Free Press, Sept. 30, 2010, at 13A.}
- There are no national or regional food store chains;\footnote{Rhonda Tsoi-A-Fatt, supra note 299.}

In view of the depth and duration of the most recent recession, it is important to examine the long-term impact of concentrated and persistent poverty on children. The well-being, physical and mental health, and educational attainment of these children are at risk. Children living in poverty are more likely to be involved in anti-social behaviors such as petty crime, teen pregnancy, and educational abandonment. These behaviors are estimated to cost society at least $170 billion annually.\footnote{The State of the American Child: The Impact of Federal Policies on Children, Hearing Before S. Subcomm. on Children and Families, S. Comm. on Health, Educ., Labor and Pension, 111th Cong. (2010) (statement of Cecilia Elena Rouse), available at http://www.whitehouse.gov/administration/eop/cea/speeches-testimony/state-of-the-american-child.} In addition, incidences of poor health in poorer children will result in
direct expenditures on health care of an estimated additional $22 billion a year.\textsuperscript{308} Researchers estimate that the total difference in lifetime earnings between children who lived in persistent poverty and children who did not amounts to about 1.3% of 2008 GDP.\textsuperscript{309}

The destabilization and systemic impact of widespread concentrated and persistent poverty can implicate national concerns. Dominique Strauss-Kahn, managing director of the International Monetary Fund, gave a speech at the Bank of Spain in December 2008. In the last minute of his hour-long presentation he indicated that, in this economic recession, people were moving from surprise to anger and are now fearful of what the future holds. He went further to state that he believed that if humanity and cooperation could not displace individuality and greed in terms of technical and ethical reform that social unrest could happen even in advanced economies.\textsuperscript{310} He referenced recent events in Greece and suggested that the people of Greece did not seem so different than those in France, his home country.

America’s unwillingness or inability to maintain a high level of support for impoverished people in the economic crisis could send panic into the global market place.

Recent civil uprising in other countries has done damage to tourism and reduced the stature of those countries and their leaders. For example, the civil unrest in France between October and November 2005 included series of riots, which primarily involved burning of cars and public buildings at night, beginning on October 27, 2005 in Clichy-sous-Bois.\textsuperscript{311} A state of emergency was declared on November 8, 2005,\textsuperscript{312} and extended for three months on November 16. After twenty nights of rioting, there were more than 8000 burned cars and more than 2000 arrests.\textsuperscript{313} It has been suggested that riots were fueled by preexisting frustration of poor people who were suffering from high rates of unemployment, substandard living conditions, and who were generally ignored and marginalized.

The 2010 Kyrgyzstani uprising was a series of riots and demonstrations across Kyrgyzstan in April 2010 that ultimately led to the ousting of President

\textsuperscript{308} Id.
\textsuperscript{309} Id. (citing Harry J. Holzer et al., The Economic Costs of Childhood Poverty in the United States, 14 J. CHILD. & POVERTY 41-61 (2008)).
\textsuperscript{312} Sahlins, supra note 311.
\textsuperscript{313} Id.
Kurmanbek Bakiyev.\textsuperscript{314} The uprising stemmed from growing anger against Bakiyev’s administration, rising energy prices and the sluggish economy,\textsuperscript{315} and followed the government’s closure of several media outlets.\textsuperscript{316} Protesters took control of a government office in Talas on April 6, and on April 7 clashes between protesters and police in the capital Bishkek turned violent. At least eighty-five deaths were confirmed.\textsuperscript{317} Various states in the region and beyond expressed concern and called for stability in the country. International bodies like the UN, EU and the OSCE also made similar calls.

On May 5, 2010, a nationwide general strike and demonstrations in major cities took place across Greece.\textsuperscript{318} The protests were sparked by plans to cut public spending, such as wages, and raise taxes as austerity measures in exchange for a €110 billion bailout, aimed at solving the Greek debt crisis of 2010.\textsuperscript{319} On May 5, the unrest led to the deaths of three bank workers, left dozens injured, and resulted in more than twenty arrests.\textsuperscript{320}

The impact of the lengthy economic depression, increasing poverty, and poor social conditions can be viewed as a common thread in the international incidents noted above. Such civil disruption is a sign of systemic failure, which should be avoided. When confronted with the secondary consequences of Lifeline Nonprofit failure, a U.S. government bailout for these agencies is compelling. The lure of enhanced national, regional, and local stability is present. A Lifeline Nonprofit bailout is appropriate because these organizations are essential. They are Too Big to Fail and any threat of failure or underservice threatens a host of national interests.

IV. A PRESCRIPTION FOR LIFELINE NONPROFIT SUPPORT

In spite of the staggering information about the scope of the most recent economic recession, in terms of jobs, poverty, homelessness and hunger, and the disproportionate impact on women and minority men, support for the Lifeline Nonprofit sector is waning. “We must free the entire nonprofit sector from the

\textsuperscript{315} Id.
archaic assumptions and harmful constraints that keep many organizations perpetually on the brink of survival, and especially at risk in times of recession.”

While the federal government has taken some steps to support poor Americans through nonprofits and to include this sector in the economic stimulus and recovery plans, more needs to be done. The current assistance offered to the nonprofit community is shortsighted because the impact of the support is not immediate. Lifeline Nonprofits need assistance now.

A. Federal Efforts to Assist the Nonprofit Sector During the Economic Downturn are Insufficient

The current administration is working toward solutions in the area of poverty, employment, and wellness. These efforts are innovative and perhaps, in time, will yield results. Two direct efforts, the American Recovery and Reinvestment Act of 2009 and the Administration’s proposed FY 2011 Budget, demonstrate concern and compassion for the poor. These efforts are missing the necessary and immediate steps required to stabilize the growing poverty, hunger, and shelter crisis.


President Barack Obama signed the American Recovery and Reinvestment Act of 2009 (“Act”) on February 17, 2009. The $787.2 billion Act’s purpose includes spending to assist those most impacted by the recession through new


322. On June 22, 2010 the Obama Administration announced a comprehensive plan to prevent and end homelessness in ten years. By combining permanent housing with support services, federal, state, and local efforts have reduced the number of people who are chronically homeless by one-third over the last five years. The plan puts the United States on a path to ending veterans’ and chronic homelessness by 2015, and to ending homelessness among children, families, and youths by 2020. While this plan is implemented, some immediate assistance needs to be provided to all people seeking shelter and food.

323. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (West 2010). Perhaps a second effort by the Obama Administration to support nonprofits can be seen embedded in the Edward M. Kennedy Serve America Act signed on April 21, 2009. Serve America Act, Pub. L. No. 111-13, 123 Stat. 1460 (West 2010). The Edward M. Kennedy Serve America Act creates three programs at the Corporation for National and Community Service. This act appropriates $50 million to the Social Innovation Fund. Originally designated by name to support social entrepreneurialism, the name change to social innovation was meant to sidestep the bugaboo about what kinds of organizations are truly entrepreneurial or not. Rick Cohen, Finding Nonprofits in President Obama’s FY2010 Budget, The NONPROFIT Q., http://www.nonprofitquarterly.org/index.php?option=com_content&view=article&id=1288:finding-nonprofits-in-president-obamas-fy2010-budget&catid=149:rick-cohen&Itemid=117 (last visited Sept. 18, 2010). The concept is to find successful models and replicate them across the country. The Fund anticipates making seven to ten large grants to intermediary nonprofits that will then make smaller grants. It is possible that this funding will not reach the Lifeline Nonprofits because other nonprofits are in need as well. Initial grants will range from $1 to $10 million and must be matched with additional funds on a dollar-for-dollar basis.
spending and tax cuts, among other things. Approximately $47.35 billion, or a bit less than 7%, fairly can be seen as relating to the services of Lifeline Nonprofits. $20 billion was appropriated to the USDA to increase the monthly amount of nutrition assistance programs including school lunch and breakfast programs, summer food service, and child and adult care nutrition programs. $140 million was allocated to the Department of Education to support independent living services to persons with significant disabilities. $6.75 billion was allocated to emergency assistance, food and shelter, $20.5 billion was allocated to food and nutrition, and $50 million was allocated for nonprofit capacity building grants. $100 million was specifically marked for emergency food and shelter for the homeless and another $100 million for meals to seniors.

The Obama Administration recognized that capacity building fund is a priority for efficient nonprofits. The American Recovery and Reinvestments Act of 2009 allocated $50 million to nonprofit and government capacity building through the Strengthening Communities Fund and administered it through the U.S. Department of Health and Human Services’ Administration for Children and Families and its Office of Community Services.

The $50 million is split between two distinct programs: $16 million for local, state, and tribal government capacity building and $34 million for nonprofit capacity building. The Nonprofit Capacity-Building Program provides grants to eligible non-profit and faith-based organizations whose mission is to assist families in communities experiencing economic distress. One-time, two-year awards of up to $1 million will be granted to experienced lead organizations, which must provide a 20% match (cash or in-kind) to their projects. Lead organizations will assist project partner ability to assist communities through capacity-building training, technical assistance, and competitive financial assistance. A minimum of 55% of the Federal funds awarded must be provided to project partners through a competitive process. The grant period for this award is twenty-four months.

While helpful, these programs do not go far enough in providing capacity building, meals and emergency shelter. The $100 million for food and shelter for the homeless is only a starting point in terms of the necessary assistance for this needy and growing segment of the population.

324. $4.42 billion is allocate to employment and job training targeted at low-income workers, unemployed people and older Americans. $13.1 billion is allocated to housing and community development.

325. These funds go to assist state governments, which may contract with nonprofits for these services.


327. Id.
2. The Obama Administration’s FY 2011 Budget

The administration’s FY 2011 Budget includes an 11.5% increase for targeted homeless programs. There are two primary initiatives that will enhance housing choice and service availability. Another program would stabilize homeless families through additional housing vouchers and other services. In the proposed budget, there is a new initiative that is aimed at stemming the growing number of chronic homeless individuals and families. If passed, HUD and HHS would combine housing vouchers with funding from mainstream programs to serve homeless or at-risk families with children. HUD, HHS, and the Department of Education are working together to implement a housing and services program for 6000 families who are homeless or at risk of homelessness. 328 HUD will provide Section 8 Housing Choice Vouchers targeted to communities with high concentrations of families experiencing homelessness.329

Each of these efforts from the administration is desirable and admirable; however, the Lifeline Nonprofit sector needs immediate assistance. The mission of Lifeline Nonprofits cannot wait on the budgeting process or the development of site location plans and architectural drawings. Funding is necessary now and a federal bailout is an appropriate response.

B. Missing Pieces of the Nonprofit Support Puzzle

Federal, state and local governments must band together to support Lifeline Nonprofits with a $100 billion bailout.330 This level of monetary support directed at hunger and homelessness can begin to stabilize Lifeline Nonprofits, which can in turn continue and further assist the poorest Americans by providing consistent and reliable nutrition and shelter through traditional and innovative delivery systems.

Federal grant money, administered by the USDA and HUD, should be made available immediately to fund the grant programs listed below. The application process and criteria for the various funding should be simple and clear. The selection process should be transparent. Additionally each grant recipient must report of the use of the grant no later than twelve months after receipt.

Lifeline Nonprofits should apply for the proposed grant funding in writing through a web-based system designed specifically to receive such applications. The application should require proof of need or increase in demand for services, program history, financial statements for the last four years, a proposed budget,

329. Id.
330. $100 billion, 1% of the $1.1 trillion spent by the entire nonprofit sector. There would be no expectation of bailout repayment but private action would be encouraged through tax incentives and any nonprofit would be required to apply for the proposed assistance.
description of planned uses for the grant funds, proof of status as a Lifeline Nonprofit, and an explanation of the percentage of each dollar going toward program services. A board resolution should be attached to the application. These grants would not be available to new or start-up Lifeline Nonprofits.\footnote{The proposed grant program benefits from the assumption that government entry into the Lifeline Nonprofit sector is not efficient and that those entities with experience in providing food and shelter are providing adequate services. Similar assumptions were at work in the Auto Industry bailouts and other similar measures.}

Once an application is received it should be reviewed by a joint committee of USDA and HUD. The committee would review completed applications and make awards based on effectiveness of programs and other factors including scope of programming, geographic need, and other articulated criteria.

1. Capacity Building or Organizational Development Grants

As Lifeline Nonprofits continue to play an increasingly significant role in our society, capacity building is necessary. High-performing organizations make quality programming more successful. Excellent nonprofits must go beyond mission-based management and must explore ways and means to expand and enhance the efficient organizational operations. This sort of enhancement is capacity building that aids an organization in meeting its mission. Examples of capacity building are board training, identifying and adopting a communications strategy, improving volunteer recruitment, learning about new regulatory requirements and responding to them by adopting new governance practices, developing a leadership-succession plan, identifying more efficient uses of technology, implementing performance-management systems, and engaging in collaborations with community partners.

Funding for nonprofit capacity building has always been scarce. Evidence can be seen particularly in the technology area in terms of acquisition, training, and usage.\footnote{Carol J. De Vita et al., \textit{Building Nonprofit Capacity: A Framework for Addressing the Problem}, in \textit{Building Capacity in Nonprofit Organizations} 5, 12 (2001), \textit{available at} http://www.urban.org/uploadedpdf/building_capacity.pdf.} Efforts directed toward capacity building are expensive but the benefit in terms of long-term mission achievement and community service impact are very high. To increase the capacity and delivery mechanisms of Lifeline Nonprofits will take a major financial commitment. Federal grants for capacity building for Lifeline Nonprofits should be made available on a one-time basis.

2. Debt Repayment Grants

Lifeline Nonprofits that have borrowed funds, opened lines of credit, and withheld payments from vendors for more than ninety days and find themselves facing property foreclosures and debt collections will be eligible to apply and receive a debt repayment grant.
Applicants must make a case that their indebtedness is due in large part to the economic crisis. Debts counting toward the grant cannot predate December 2007, the start of the economic crisis. Applicants must make a case that at the time the debt was a viable way to continue—and even expand—food or shelter to the community, based on demand. The applicant must also be able to classify the debt as short term at the time it was incurred. The applicant would need to submit proof of debt.

Grants to repay Lifeline Nonprofit debt is a good investment of government resources because these borrowed funds were expended in great portion to support the poorest Americans. These funds would be made payable to the nonprofit and must be disbursed to creditors in full within ninety days of receipt. Undisbursed funds will be drawn back into the program after the ninety days.

3. Fundraising Match Grants

Lifeline Nonprofits able to quantify fundraising shortages that are a result of the economic crisis will be eligible to apply for Fundraising Match Grants. This grant program will require applicants to assess their fundraising levels for the three fiscal years prior to the start of the economic crisis. This average will be deemed the fundraising benchmark. Applicants must make the case that since the economic crisis they have been unable to meet their fundraising benchmark. The applicant must demonstrate similar fundraising efforts and then quantify the shortfall. The Fundraising Match Grants will be available to applicants who have raised a percentage of their fundraising benchmark but are unable to successfully raise the entire amount. The grant will match the amount that the organization was able to raise on a dollar-for-dollar basis not to exceed the fundraising benchmark.

For example, the local homeless shelter’s fundraising benchmark is $50,000, but this year, because of the economic crisis, with similar effort the shelter was only able to raise $20,000. The shelter could apply for a Fundraising Match Grant of $20,000. The shelter would not have its fundraising benchmark but it would have considerably more. Assume that a local soup kitchen’s fundraising benchmark is $15,000, but this year, because of the economic crisis, with similar effort the shelter was only able to raise $10,000. The shelter could apply for a Fundraising Match Grant of $5,000. The shelter would have its fundraising benchmark.

This grant funding will encourage Lifeline Nonprofits to continue to raise funds and provide services without penalizing the organizations for the economic downturn.

4. Wind Down Funding Grants

Nonprofits need to maintain a healthy reserve fund equaling 90 to 120 days of expenses in order to manage a worst-case scenario. These funds ensure that a
nonprofit, when faced with a decision to close, will have enough funding to design a smooth transition for employees and most importantly for the clients that it serves. Nonprofits with appropriate reserves can find open beds and food sources, create comfort zones, and collaborate toward successful closure. The alternative is disruptive to those most vulnerable people who rely on Lifeline Nonprofits. To maintain operations, 43% of nonprofits are dipping into their reserves. As of January 2009, 14% of the surveyed nonprofits had no cash reserves, 17% had enough operating cash on hand to cover one month of expenses, and another 31% had less than three months’ worth.

As described earlier, Lifeline Nonprofits and other nonprofits have used their reserves to maintain operations during the economic downturn. Lifeline Nonprofits that have used their reserve funds in an effort to maintain their food and shelter services will be eligible for wind down grants in the event that they find it necessary to close. Wind down grants will be available to those Lifeline Nonprofits forced to close due to the economic crisis. These grants will be awarded to those Lifeline Nonprofits who make a case that they need funding to conduct an orderly transition for their food and shelter clients. This grant is a one-time grant and will not exceed 120 days of the organization’s operating expenses. Lifeline Nonprofits applying for this grant should expect their application to be reviewed and processed on an expedited basis.

5. Endowment Creation Grants

Endowment creation grants will help Lifeline Nonprofits become self-supporting and less dependent on charitable giving and at the mercy of economic downturns. In 1968, the Ford Foundation began a method of supporting organizations with large upfront grant and investments advice resulting in long-term revenue. Over time, the Ford Foundation has committed some $400 million for such investments, known in the foundation sector as “program-related investments” (PRIs). Ford-funded PRIs have helped finance the work of over 360 organizations in the United States and around the world. This type of assistance can assist a nonprofit in income generation, establishing loan-repayment histories that can translate into other funding streams.

Examples of Ford Foundation program-related investments include the following: The New York City Affordable Housing Acquisition Fund ($4 million). In 2005, the Ford Foundation joined forces with the City of New York, leading financial institutions and other national foundations to launch a $200 million collaborative fund to boost affordable housing in New York City. The fund now provides local nonprofit and for-profit developers with financing to acquire private property for the construction and preservation of affordable

334. Id.
housing units throughout the city. As the developers pay back their loans, the fund is reimbursed. At the end of its loan term, the fund will repay the foundation for its investment.335

The Ford Foundation currently sets aside $25 million a year for use in new PRIs.336 The federal government could use this model to support the economic growth and stability of Lifeline Nonprofits.

6. Tax Incentives for Supporters of Lifeline Nonprofits

In addition to support for Lifeline Nonprofits, measures should be taken to stimulate charitable giving to the Lifeline Nonprofit sector.

The IRS should make special allowances for the support of Lifeline Nonprofits by individuals and foundations. Individuals who make contributions to Lifeline Nonprofits should receive a tax credit. For example, a couple that gives $400 to a Lifeline Nonprofit should receive a 50% tax credit, so $200 comes back at tax time. A taxpayer would have a tax savings whether or not the total itemized deductions (mortgage interest, charitable contributions, state and local taxes, etc.) exceeded the standard deduction. In addition, limits on charitable contributions should be expanded for taxpayers who donate 50% or more of their charitable contributions to Lifeline Nonprofits. Generally, a taxpayer can deduct cash contributions in full up to 50% of her adjusted gross income. Tax measures to encourage and enhance charitable giving to Lifeline Nonprofits could extend the limit on cash contributions to Lifeline Nonprofits. The IRS should also allow tax-exempt withdrawals from retirement accounts for contributions to Lifeline Nonprofits. This action by the government would stimulate giving to Lifeline Nonprofits.

CONCLUSION

An acceptance that Lifeline Nonprofits are essential to the security and welfare of the United States and its people is overdue. Lifeline Nonprofits are essential to American society and steps should be taken to bail out, support, and strengthen these agencies.

The proposed bailout measures, while expensive, are proactive and risk adverse. Modern incidents of riots and civil disobedience in nations facing economic crisis should serve as cautionary tales to America. Speedy action is necessary to avoid despair and violence during the recession. Populations of particular concern are impoverished minorities and young men of all races.

336. Id.