

110TH CONGRESS
2D SESSION

S. _____

To authorize financial assistance to eligible automobile manufacturers, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. DODD (for himself and Mr. REID) introduced the following bill; which was
read twice and referred to the Committee on _____

A BILL

To authorize financial assistance to eligible automobile
manufacturers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Auto Industry Financing and Restructuring Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Presidential designation.
- Sec. 4. Bridge financing.
- Sec. 5. Restructuring progress assessment.
- Sec. 6. Submission of plans.
- Sec. 7. Financing for restructuring.

- Sec. 8. Disapproval and call of loan.
- Sec. 9. Allocation.
- Sec. 10. Funding.
- Sec. 11. Terms and conditions.
- Sec. 12. Taxpayer protection.
- Sec. 13. Oversight and audits.
- Sec. 14. Automobile manufacturers' study on potential manufacturing of transit vehicles.
- Sec. 15. Reporting and monitoring.
- Sec. 16. Report to Congress on lack of progress toward achieving an acceptable negotiated plan.
- Sec. 17. Submission of plan to Congress by the President's designee.
- Sec. 18. Guarantee of leases of qualified transportation property.
- Sec. 19. Coordination with other laws.
- Sec. 20. Treatment of restructuring for purposes of applying limitations on net operating loss carryforwards and certain built-in losses.
- Sec. 21. Emergency designation.

1 SEC. 2. FINDINGS AND PURPOSES.

2 (a) FINDINGS.—The Congress finds the following:

3 (1) A combination of factors, including errors
4 in the business model of domestic automobile manu-
5 facturers, and emergency economic circumstances,
6 has prevented the domestic automobile industry from
7 securing credit from other sources, and has led to
8 the possibility of the failure of the domestic auto-
9 mobile industry, which failure would have a systemic
10 adverse effect on the economy.

11 (2) Therefore, action in the form of financial
12 aid to the domestic automobile industry is necessary
13 to stabilize the economy.

14 (b) PURPOSES.—The purposes of this Act are—

15 (1) to immediately provide authority and facili-
16 ties to restore liquidity and stability to the domestic
17 automobile industry in the United States; and

1 (2) to ensure that such authority and such fa-
2 cilities are used in a manner that—

3 (A) results in a viable and competitive do-
4 mestic automobile industry that minimizes ad-
5 verse effects on the environment;

6 (B) enhances the ability and the capacity
7 of the domestic automobile industry to pursue
8 the timely and aggressive production of energy-
9 efficient advanced technology vehicles;

10 (C) preserves and promotes the jobs of
11 American workers employed directly by the do-
12 mestic automobile industry and in related in-
13 dustries;

14 (D) safeguards the ability of the domestic
15 automobile industry to provide retirement and
16 health care benefits for the industry's retirees
17 and their dependents; and

18 (E) stimulates manufacturing and sales of
19 automobiles produced by automobile manufac-
20 turers in the United States.

21 **SEC. 3. PRESIDENTIAL DESIGNATION.**

22 (a) DESIGNATION.—The President shall designate 1
23 or more officers from the Executive Branch having appro-
24 priate expertise in such areas as economic stabilization,
25 financial aid to commerce and industry, financial restruc-

1 turing, energy efficiency, and environmental protection
2 (who shall hereinafter in this Act be collectively referred
3 to as the “President’s designee”) to carry out the purposes
4 of this Act, including the facilitation of restructuring nec-
5 essary to achieve the long-term financial viability of do-
6 mestic automobile manufacturers, who shall serve at the
7 pleasure of the President.

8 (b) **ADDITIONAL PERSONS.**—The President or the
9 President’s designee may also employ, appoint, or contract
10 with additional persons having such expertise as the Presi-
11 dent or the President’s designee believes will assist the
12 Government in carrying out the purposes of this Act.

13 (c) **PARTICIPATION BY OTHER AGENCY PER-**
14 **SONNEL.**—Other Federal agencies may provide, at the re-
15 quest of the President’s designee, staff on detail from such
16 agencies for purposes of carrying out this Act.

17 **SEC. 4. BRIDGE FINANCING.**

18 (a) **IN GENERAL.**—The President’s designee shall au-
19 thorize and direct the disbursement of bridge loans or
20 enter into commitments for lines of credit to each auto-
21 mobile manufacturer that submitted a plan to the Con-
22 gress on December 2, 2008 (hereafter in this Act referred
23 to as an “eligible automobile manufacturer”), and has
24 submitted a request for such loan or commitment.

1 (b) AVAILABILITY OF FUNDS.—All funds that are
2 available pursuant to section 10 to provide bridge financ-
3 ing or commitments for lines of credit to eligible auto-
4 mobile manufacturers, after taking into account the res-
5 ervation of funds under section 10(a)(2), shall be used for
6 the purposes described in section 10(a). No new funds
7 shall be available to any eligible automobile manufacturer
8 for the purposes of this section after the date on which
9 the President’s designee has approved a restructuring plan
10 under section 6 for such eligible automobile manufacturer.

11 (c) AMOUNT OF ASSISTANCE.—The President’s des-
12 ignee shall authorize bridge loans or commitments for
13 lines of credit to each eligible automobile manufacturer in
14 an amount that is intended to facilitate the continued op-
15 erations of the eligible automobile manufacturer and to
16 prevent the failure of the eligible automobile manufac-
17 turer, consistent with the plan submitted on December 2,
18 2008, and subject to available funds.

19 (d) ALLOCATION.—The President’s designee shall au-
20 thorize the disbursements or commitments under this sec-
21 tion in accordance with the allocation priorities set forth
22 in subsections (a) and (b) of section 9.

23 **SEC. 5. RESTRUCTURING PROGRESS ASSESSMENT.**

24 (a) ESTABLISHMENT OF MEASURES FOR ASSESSING
25 PROGRESS.—Not later than January 1, 2009, the Presi-

1 dent's designee shall determine appropriate measures for
2 assessing the progress of each eligible automobile manu-
3 facturer toward transforming the plan submitted by such
4 manufacturer to the Congress on December 2, 2008, into
5 the restructuring plan to be submitted under section 6(b).

6 (b) EVALUATION OF PROGRESS ON BASIS OF RE-
7 STRUCTURING PROGRESS ASSESSMENT MEASURES.—

8 (1) IN GENERAL.—The President's designee
9 shall evaluate the progress of each eligible auto-
10 mobile manufacturer toward the development of a
11 restructuring plan, on the basis of the restructuring
12 progress assessment measures established under this
13 section for such manufacturer.

14 (2) TIMING.—Each evaluation required under
15 paragraph (1) for any eligible automobile manufac-
16 turer shall be conducted at the end of the 45-day pe-
17 riod beginning on the date on which the restruc-
18 turing progress assessment measures were estab-
19 lished by the President's designee for such eligible
20 automobile manufacturer.

21 **SEC. 6. SUBMISSION OF PLANS.**

22 (a) NEGOTIATED PLANS.—

23 (1) FACILITATION.—

24 (A) IN GENERAL.—Beginning on the date
25 of the enactment of this Act, the President's

1 designee shall seek to facilitate agreement on
2 any restructuring plan to achieve and sustain
3 the long-term viability, international competi-
4 tiveness, and energy efficiency of an eligible
5 automobile manufacturer, negotiated and
6 agreed to by representatives of interested par-
7 ties (in this Act referred to as a “negotiated
8 plan”) with respect to any eligible automobile
9 manufacturer.

10 (B) INTERESTED PARTIES.—For purposes
11 of this section, the term “interested party”
12 shall be construed broadly so as to include all
13 persons who have a direct financial interest in
14 a particular automobile manufacturer, includ-
15 ing—

16 (i) employees and retirees of the eligi-
17 ble automobile manufacturer;

18 (ii) trade unions;

19 (iii) creditors;

20 (iv) suppliers;

21 (v) automobile dealers; and

22 (vi) shareholders.

23 (2) ACTIONS OF THE PRESIDENT’S DES-
24 IGNEE.—

1 (A) IN GENERAL.—For the purpose of
2 achieving a negotiated plan, the President’s
3 designee may convene, chair, and conduct for-
4 mal and informal meetings, discussions, and
5 consultations, as appropriate, with interested
6 parties of an eligible automobile manufacturer.

7 (B) CLARIFICATION.—The Federal Advi-
8 sory Committee Act shall not apply with respect
9 to any of the activities conducted or taken by
10 the President’s designee pursuant to this Act.

11 (b) RESTRUCTURING PLAN.—Not later than March
12 31, 2009, each eligible automobile manufacturer shall sub-
13 mit to the President’s designee a restructuring plan to
14 achieve and sustain the long-term viability, international
15 competitiveness, and energy efficiency of the eligible auto-
16 mobile manufacturer (in this Act referred to as the “re-
17 structuring plan”) in accordance with this section. The
18 President’s designee shall approve the restructuring plan
19 if the President’s designee determines that the plan will
20 result in—

21 (1) the repayment of all Government-provided
22 financing, consistent with the terms specified in sec-
23 tion 11, or otherwise agreed to;

24 (2) the ability—

1 (A) to comply with applicable Federal fuel
2 efficiency and emissions requirements;

3 (B) to commence domestic manufacturing
4 of advanced technology vehicles, as described in
5 section 136 of the Energy Independence and
6 Security Act of 2007 (Public Law 110-140; 42
7 U.S.C. 17013); and

8 (C) to produce new and existing products
9 and capacity (including as described in section
10 14);

11 (3) the achievement of a positive net present
12 value, using reasonable assumptions and taking into
13 account all existing and projected future costs, in-
14 cluding repayment of any financial assistance pro-
15 vided pursuant to this Act;

16 (4) efforts to rationalize costs, capitalization,
17 and capacity with respect to the manufacturing
18 workforce, suppliers, and dealerships of the eligible
19 automobile manufacturer;

20 (5) proposals to restructure existing debt, in-
21 cluding, where appropriate, the conversion of debt to
22 equity, to improve the ability of the eligible auto-
23 mobile manufacturer to raise private capital; and

24 (6) a product mix and cost structure that is
25 competitive in the United States marketplace.

1 (c) **EXTENSION OF NEGOTIATIONS AND PLAN DEAD-**
2 **LINE.**—Notwithstanding the time limitations in subsection
3 (b), the President’s designee, upon making a determina-
4 tion that the interested parties are negotiating in good
5 faith, are making significant progress, and that an addi-
6 tional period of time would likely facilitate agreement on
7 a negotiated plan, and upon notification of the Congress,
8 may extend for not longer than 30 additional days the ne-
9 gotiation period under subsection (b).

10 **SEC. 7. FINANCING FOR RESTRUCTURING.**

11 Upon approval by the President’s designee of a re-
12 structuring plan, the President’s designee may provide fi-
13 nancial assistance to an eligible automobile manufacturer
14 to implement the restructuring plan.

15 **SEC. 8. DISAPPROVAL AND CALL OF LOAN.**

16 If the President’s designee has not approved the re-
17 structuring plan at the expiration of the period provided
18 in section 6 for submission and approval of the restruc-
19 turing plan, the President’s designee shall call the loan
20 or cancel the commitment within 30 days, unless a re-
21 structuring plan is approved within that period.

22 **SEC. 9. ALLOCATION.**

23 (a) **PRIORITIZING ALLOCATION.**—The President’s
24 designee shall prioritize allocation of the provision of fi-

1 nancial assistance under this Act to any eligible auto-
2 mobile manufacturer, based on—

3 (1) the necessity of the financial assistance for
4 the continued operation of the eligible automobile
5 manufacturer;

6 (2) the potential impact of the failure of the eli-
7 gible automobile manufacturer on the United States
8 economy; and

9 (3) the ability to utilize the financial assistance
10 optimally to satisfy the operational and long-term re-
11 structuring requirements of the eligible automobile
12 manufacturer.

13 (b) ORDER OF PRIORITY; SECTION 4.—For purposes
14 of allocating bridge loans or commitments pursuant to sec-
15 tion 4, the President’s designee shall prioritize the consid-
16 erations set forth in subsection (a) in the following order:
17 paragraph (1), paragraph (2), and paragraph (3).

18 (c) ORDER OF PRIORITY; SECTION 7.—For purposes
19 of allocating financial assistance for restructuring pursu-
20 ant to section 7, the President’s designee shall prioritize
21 the considerations set forth in subsection (a) in the fol-
22 lowing order: paragraph (3), paragraph (2), and para-
23 graph (1).

24 **SEC. 10. FUNDING.**

25 (a) FINANCIAL ASSISTANCE.—

1 (1) IN GENERAL.—Such sums are appropriated
2 as are necessary for the purpose of providing funds
3 to support up to \$14,000,000,000 in loans under
4 this Act. The Secretary of Energy shall make avail-
5 able to the President’s designee \$7,010,000,000 of
6 funds made available under section 129 of division
7 A of the Consolidated Security, Disaster Assistance,
8 and Continuing Appropriations Act, 2009, relating
9 to funding for the manufacture of advanced tech-
10 nology vehicles, which shall reduce the appropriation
11 under this paragraph.

12 (2) RESERVATION FOR CERTAIN PURPOSES.—
13 The Secretary of Energy shall reserve \$500,000,000
14 of the amounts made available under paragraph (1)
15 for purposes of section 136 of the Energy Independ-
16 ence and Security Act of 2007 (Public Law 110-140;
17 42 U.S.C. 17013).

18 (3) CONTINUING APPLICATION PROCESS.—No
19 provision of this section shall be construed as pro-
20 hibiting or limiting the Secretary of Energy from
21 processing applications for loans under section 136
22 of the Energy Independence and Security Act of
23 2007.

24 (b) AUTHORIZATION.—There are authorized to be ap-
25 propriated to the Secretary of Energy, sums as may be

1 necessary for the purpose of replenishing the funds made
2 available to the President's designee under subsection
3 (a)(1).

4 **SEC. 11. TERMS AND CONDITIONS.**

5 (a) DURATION.—The duration of any loan made
6 under this Act shall be 7 years, or such longer period as
7 the President's designee may determine with respect to
8 such loan.

9 (b) RATE OF INTEREST; TIMING OF PAYMENTS.—

10 (1) RATE OF INTEREST.—The annual rate of
11 interest for a loan under this Act shall be—

12 (A) 5 percent during the 5-year period be-
13 ginning on the date on which the President's
14 designee disburses the loan; and

15 (B) 9 percent after the end of the period
16 described in subparagraph (A).

17 (2) TIMING OF PAYMENTS.—Payments of inter-
18 est on loans under this Act shall be made semiannu-
19 ally.

20 (c) NO PREPAYMENT PENALTY.—A loan made under
21 this Act shall be prepayable without penalty at any time.

22 (d) INFORMATION ACCESS.—As a condition for the
23 receipt of any financial assistance made under this Act,
24 an eligible automobile manufacturer shall agree—

1 (1) to allow the President's designee to examine
2 any books, papers, records, or other data of the eli-
3 gible automobile manufacturer, and those of any
4 subsidiary, affiliate, or entity holding an ownership
5 interest of 50 percent or more of such automobile
6 manufacturer, that may be relevant to the financial
7 assistance, including compliance with the terms of a
8 loan or any conditions imposed under this Act; and

9 (2) to provide in a timely manner any informa-
10 tion requested by the President's designee, including
11 requiring any officer or employee of the eligible
12 automobile manufacturer, any subsidiary, affiliate,
13 or entity referred to in paragraph (1) with respect
14 to such manufacturer, or any person having posses-
15 sion, custody, or care of the reports and records re-
16 quired under paragraph (1), to appear before the
17 President's designee at a time and place requested
18 and to provide such books, papers, records, or other
19 data, as requested, as may be relevant or material.

20 (e) OVERSIGHT OF TRANSACTIONS AND FINANCIAL
21 CONDITION.—

22 (1) DUTY TO INFORM.—During the period in
23 which any loan extended under this Act remains out-
24 standing, the eligible automobile manufacturer which

1 received such loan shall promptly inform the Presi-
2 dent's designee of—

3 (A) any asset sale, investment, contract,
4 commitment, or other transaction proposed to
5 be entered into by such eligible automobile
6 manufacturer that has a value in excess of
7 \$100,000,000; and

8 (B) any other material change in the fi-
9 nancial condition of such eligible automobile
10 manufacturer.

11 (2) AUTHORITY OF THE PRESIDENT'S DES-
12 IGNEE.—During the period in which any loan ex-
13 tended under this Act remains outstanding, the
14 President's designee may—

15 (A) review any asset sale, investment, con-
16 tract, commitment, or other transaction de-
17 scribed in paragraph (1); and

18 (B) prohibit the eligible automobile manu-
19 facturer which received the loan from consum-
20 mating any such proposed sale, investment,
21 contract, commitment, or other transaction, if
22 the President's designee determines that con-
23 summation of such transaction would be incon-
24 sistent with or detrimental to the long-term via-
25 bility of the eligible automobile manufacturer.

1 (3) PROCEDURES.—The President’s designee
2 may establish procedures for conducting any review
3 under this subsection.

4 (f) CONSEQUENCES FOR FAILURE TO COMPLY.—The
5 terms of any financial assistance made under this Act
6 shall provide that if—

7 (1) an evaluation by the President’s designee
8 under section 5(b) demonstrates that the eligible
9 automobile manufacturer which received the finan-
10 cial assistance has failed to make adequate progress
11 towards meeting the restructuring progress assess-
12 ment measures established by the President’s des-
13 ignee under section 5(a) with respect to such recipi-
14 ent;

15 (2) after March 31, 2009, the eligible auto-
16 mobile manufacturer which received the financial as-
17 sistance fails to submit an acceptable restructuring
18 plan under section 6(b), or fails to comply with any
19 conditions or requirement applicable under this Act
20 or applicable Federal fuel efficiency and emissions
21 requirements; or

22 (3) after a restructuring plan of an eligible
23 automobile manufacturer has been approved by the
24 President’s designee, the auto manufacturer fails to

1 make adequate progress in the implementation of
2 the plan, as determined by the President's designee,
3 the repayment of any loan may be accelerated to such ear-
4 lier date or dates as the President's designee may deter-
5 mine and any other financial assistance may be cancelled
6 by the President's designee.

7 **SEC. 12. TAXPAYER PROTECTION.**

8 (a) WARRANTS.—

9 (1) IN GENERAL.—The President's designee
10 may not provide any loan under this Act, unless the
11 President's designee, or such department or agency
12 as is designated for such purpose by the President,
13 receives from the eligible automobile manufacturer—

14 (A) in the case of an eligible automobile
15 manufacturer, the securities of which are traded
16 on a national securities exchange, a warrant
17 giving the right to the President's designee to
18 receive nonvoting common stock or preferred
19 stock in such eligible automobile manufacturer,
20 or voting stock, with respect to which the Presi-
21 dent's designee agrees not to exercise voting
22 power, as the President's designee determines
23 appropriate; or

24 (B) in the case of an eligible automobile
25 manufacturer other than one described in sub-

1 paragraph (A), a warrant for common or pre-
2 ferred stock, or an instrument that is the eco-
3 nomic equivalent of such a warrant in the hold-
4 ing company of the eligible automobile manu-
5 facturer, or any company that controls a major-
6 ity stake in the eligible automobile manufac-
7 turer, as determined by the President's des-
8 ignee.

9 (2) AMOUNT.—

10 (A) IN GENERAL.—The warrants or instru-
11 ments described in paragraph (1) shall have a
12 value equal to 20 percent of the aggregate
13 amount of all loans provided to the eligible
14 automobile manufacturer under this Act. Such
15 warrants or instruments shall entitle the Gov-
16 ernment to purchase—

17 (i) nonvoting common stock, up to a
18 maximum amount of 20 percent of the
19 issued and outstanding common stock of—

20 (I) the eligible automobile manu-
21 facturer; or

22 (II) in the case of an eligible
23 automobile manufacturer, the securi-
24 ties of which are not traded on a na-
25 tional securities exchange, a holding

1 (C) TERMS OF PREFERRED STOCK WAR-
2 RANT.—

3 (i) IN GENERAL.—The initial exercise
4 price for the preferred stock warrant shall
5 be \$0.01 per share or such greater amount
6 as the corporate charter may require as
7 the par value per share of the warrant pre-
8 ferred. The Government shall have the
9 right to immediately exercise the warrants.

10 (ii) REDEMPTION.—The warrant pre-
11 ferred may be redeemed at any time after
12 exercise of the preferred stock warrant at
13 100 percent of its issue price, plus any ac-
14 crued and unpaid dividends.

15 (iii) OTHER TERMS AND CONDI-
16 TIONS.—Other terms and conditions of the
17 warrant preferred shall be determined by
18 the President's designee to protect the in-
19 terests of taxpayers.

20 (3) APPLICATION OF OTHER PROVISIONS OF
21 LAW.—Except as otherwise provided in this section,
22 the requirements for the purchase of warrants under
23 section 113(d)(2) of the Emergency Economic Sta-
24 bilization Act of 2008 (division A of Public Law
25 110-343) shall apply to any warrant or instrument

1 described in paragraph (1), including the
2 antidilution protection provisions therein.

3 (b) EXECUTIVE COMPENSATION AND CORPORATE
4 GOVERNANCE.—

5 (1) IN GENERAL.—During the period in which
6 any financial assistance under this Act remains out-
7 standing, the eligible automobile manufacturer which
8 received such assistance shall be subject to—

9 (A) the standards established by the Presi-
10 dent's designee under paragraph (2); and

11 (B) the provisions of section 162(m)(5) of
12 the Internal Revenue Code of 1986, as applica-
13 ble.

14 (2) STANDARDS REQUIRED.—The President's
15 designee shall require any eligible automobile manu-
16 facturer which received any financial assistance
17 under this Act to meet appropriate standards for ex-
18 ecutive compensation and corporate governance.

19 (3) SPECIFIC REQUIREMENTS.—The standards
20 established under paragraph (2) shall include—

21 (A) limits on compensation that exclude in-
22 centives for senior executive officers of an eligi-
23 ble automobile manufacturer which received as-
24 sistance under this Act to take unnecessary and
25 excessive risks that threaten the value of such

1 manufacturer during the period that the loan is
2 outstanding;

3 (B) a provision for the recovery by such
4 automobile manufacturer of any bonus or incen-
5 tive compensation paid to a senior executive of-
6 ficer based on statements of earnings, gains, or
7 other criteria that are later found to be materi-
8 ally inaccurate;

9 (C) a prohibition on such automobile man-
10 ufacturer making any golden parachute pay-
11 ment to a senior executive officer during the pe-
12 riod that the loan is outstanding;

13 (D) a prohibition on such automobile man-
14 ufacturer paying or accruing any bonus or in-
15 centive compensation during the period that the
16 loan is outstanding to the 25 most highly-com-
17 pensated employees; and

18 (E) a prohibition on any compensation
19 plan that would encourage manipulation of such
20 automobile manufacturer's reported earnings to
21 enhance the compensation of any of its employ-
22 ees.

23 (4) DIVESTITURE.—During the period in which
24 any financial assistance provided under this Act to
25 any eligible automobile manufacturer is outstanding,

1 the eligible automobile manufacturer may not own or
2 lease any private passenger aircraft, or have any in-
3 terest in such aircraft, except that such eligible auto-
4 mobile manufacturer shall not be treated as being in
5 violation of this provision with respect to any air-
6 craft or interest in any aircraft that was owned or
7 held by the manufacturer immediately before receiv-
8 ing such assistance, as long as the recipient dem-
9 onstrates to the satisfaction of the President's des-
10 ignee that all reasonable steps are being taken to
11 sell or divest such aircraft or interest.

12 (5) DEFINITIONS.—For purposes of this sub-
13 section, the following definitions shall apply:

14 (A) SENIOR EXECUTIVE OFFICER.—The
15 term “senior executive officer” means an indi-
16 vidual who is 1 of the top 5 most highly paid
17 executives of a public company, whose com-
18 pensation is required to be disclosed pursuant
19 to the Securities Exchange Act of 1934, and
20 any regulations issued thereunder, and non-
21 public company counterparts.

22 (B) GOLDEN PARACHUTE PAYMENT.—The
23 term “golden parachute payment” means any
24 payment to a senior executive officer for depar-
25 ture from a company for any reason, except for

1 payments for services performed or benefits ac-
2 crued.

3 (c) PROHIBITION ON PAYMENT OF DIVIDENDS.—Ex-
4 cept with respect to obligations owed pursuant to law to
5 any nonaffiliated party or any existing contract with any
6 nonaffiliated party in effect as of December 2, 2008, no
7 dividends or distributions of any kind, or the economic
8 equivalent thereof (as determined by the President’s des-
9 ignee), may be paid by any eligible automobile manufac-
10 turer which receives financial assistance under this Act,
11 or any holding company or company that controls a major-
12 ity stake in the eligible automobile manufacturer, while
13 such financial assistance is outstanding.

14 (d) OTHER INTERESTS SUBORDINATED.—

15 (1) IN GENERAL.—In the case of an eligible
16 automobile manufacturer which received a loan
17 under this Act, to the extent permitted by the terms
18 of any obligation, liability, or debt of the eligible
19 automobile manufacturer in effect as of December 2,
20 2008, any other obligation of such eligible auto-
21 mobile manufacturer shall be subordinate to such
22 loan, and such loan shall be senior and prior to all
23 obligations, liabilities, and debts of the eligible auto-
24 mobile manufacturer, and such eligible automobile
25 manufacturer shall provide to the Government, all

1 available security and collateral against which the
2 loans under this Act shall be secured.

3 (2) APPLICABILITY IN CERTAIN CASES.—In the
4 case of an eligible automobile manufacturer referred
5 to in paragraph (1), the securities of which are not
6 traded on a national securities exchange, a loan
7 under this Act to the eligible automobile manufac-
8 turer shall—

9 (A) be treated as a loan to any holding
10 company of, or company that controls a major-
11 ity stake in, the eligible automobile manufac-
12 turer; and

13 (B) be senior and prior to all obligations,
14 liabilities, and debts of any such holding com-
15 pany or company that controls a majority stake
16 in the eligible automobile manufacturer.

17 (e) ADDITIONAL TAXPAYER PROTECTIONS.—

18 (1) DISCHARGE.—A discharge under title 11,
19 United States Code, shall not discharge an eligible
20 automobile manufacturer, or any successor in inter-
21 est thereto, from any debt for financial assistance
22 received pursuant to this Act.

23 (2) EXEMPTION.—Any financial assistance pro-
24 vided to an eligible automobile manufacturer under
25 this Act shall be exempt from the automatic stay es-

1 established by section 362 of title 11, United States
2 Code.

3 (3) INTERESTED PARTIES.—Notwithstanding
4 any provision of title 11, United States Code, any
5 interest in property or equity rights of the United
6 States arising from financial assistance provided to
7 an eligible automobile manufacturer under this Act
8 shall remain unaffected by any plan of reorganiza-
9 tion, except as the United States may agree to in
10 writing.

11 **SEC. 13. OVERSIGHT AND AUDITS.**

12 (a) COMPTROLLER GENERAL OVERSIGHT.—

13 (1) SCOPE OF OVERSIGHT.—The Comptroller
14 General of the United States shall conduct ongoing
15 oversight of the activities and performance of the
16 President’s designee.

17 (2) CONDUCT AND ADMINISTRATION OF OVER-
18 SIGHT.—

19 (A) GAO PRESENCE.—The President’s
20 designee shall provide to the Comptroller Gen-
21 eral appropriate space and facilities for pur-
22 poses of this subsection.

23 (B) ACCESS TO RECORDS.—To the extent
24 otherwise consistent with law, the Comptroller
25 General shall have access, upon request, to any

1 information, data, schedules, books, accounts,
2 financial records, reports, files, electronic com-
3 munications, or other papers, things, or prop-
4 erty belonging to or in use by the President's
5 designee, at such reasonable time as the Comp-
6 troller General may request. The Comptroller
7 General shall be afforded full facilities for
8 verifying transactions with the balances or secu-
9 rities held by depositaries, fiscal agents, and
10 custodians. The Comptroller General may make
11 and retain copies of such books, accounts, and
12 other records as the Comptroller General deems
13 appropriate.

14 (3) REPORTING.—The Comptroller General
15 shall submit reports of findings under this section to
16 Congress, regularly and not less frequently than
17 once every 60 days. The Comptroller General may
18 also submit special reports under this subsection, as
19 warranted by the findings of its oversight activities.

20 (b) SPECIAL INSPECTOR GENERAL.—It shall be the
21 duty of the Special Inspector General established under
22 section 121 of Public Law 110-343 to conduct, supervise,
23 and coordinate audits and investigations of the President's
24 designee in addition to the duties of the Special Inspector
25 General under such section and for such purposes. The

1 Special Inspector General shall also have the duties, re-
2 sponsibilities, and authorities of inspectors general under
3 the Inspector General Act of 1978, including section 6 of
4 such Act. In the event that the Office of the Special In-
5 spector General is terminated, the Inspector General of
6 the Department of the Treasury shall assume the respon-
7 sibilities of the Special Inspector General under this sub-
8 section.

9 (c) ACCESS TO RECORDS OF BORROWERS BY GAO.—
10 Notwithstanding any other provision of law, during the pe-
11 riod in which any financial assistance provided under this
12 Act is outstanding, the Comptroller General of the United
13 States shall have access, upon request, to any information,
14 data, schedules, books, accounts, financial records, re-
15 ports, files, electronic communications, or other papers,
16 things, or property belonging to or in use by the eligible
17 automobile manufacturer, and any subsidiary, affiliate, or
18 entity holding an ownership interest of 50 percent or more
19 of such eligible automobile manufacturer (collectively re-
20 ferred to in this section as “related entities”), and to any
21 officer, director, or other agent or representative of the
22 eligible automobile manufacturer and its related entities,
23 at such reasonable times as the Comptroller General may
24 request. The Comptroller General may make and retain

1 copies of such books, accounts, and other records as the
2 Comptroller General deems appropriate.

3 **SEC. 14. AUTOMOBILE MANUFACTURERS' STUDY ON PO-**
4 **TENTIAL MANUFACTURING OF TRANSIT VE-**
5 **HICLES.**

6 (a) IN GENERAL.—Each eligible automobile manu-
7 facturer which receives financial assistance under this Act
8 shall conduct an analysis of potential uses of any excess
9 production capacity (especially those of former sport util-
10 ity vehicle producers) to make vehicles for sale to public
11 transit agencies, including—

12 (1) the current and projected demand for bus
13 and rail cars by American public transit agencies;

14 (2) the potential growth for both sales and sup-
15 plies to such agencies in the short, medium, and
16 long term;

17 (3) a description of existing “Buy America”
18 provisions, and data provided by the Federal Transit
19 Administration regarding the use or request of waiv-
20 ers from such provisions; and

21 (4) any recommendations as to whether such
22 actions would result in a business line that makes
23 sense for the automobile manufacturer.

24 (b) GAO REVIEW AND REPORT.—The Comptroller
25 General of the United States shall review the analyses con-

1 ducted under this section, and shall provide reports there-
2 on to the Congress and the President's designee.

3 **SEC. 15. REPORTING AND MONITORING.**

4 (a) REPORTING ON CONSUMMATION OF LOANS.—

5 The President's designee shall submit a report to the Con-
6 gress on each bridge loan made under section 4 not later
7 than 5 days after the date of the consummation of such
8 loan.

9 (b) REPORTING ON RESTRUCTURING PROGRESS AS-

10 SSESSMENT MEASURES.—The President's designee shall
11 submit a report to the Congress on the restructuring
12 progress assessment measures established for each manu-
13 facturer under section 5(a) not later than 10 days after
14 establishing the restructuring progress assessment meas-
15 ures.

16 (c) REPORTING ON EVALUATIONS.—The President's

17 designee shall submit a report to the Congress containing
18 the detailed findings and conclusions of the President's
19 designee in connection with the evaluation of an eligible
20 automobile manufacturer under section 5(b).

21 (d) REPORTING ON CONSEQUENCES FOR FAILURE

22 TO COMPLY.—The President's designee shall submit a re-
23 port to the Congress on the exercise of a right under sec-
24 tion 11(f) to accelerate indebtedness of an eligible auto-
25 mobile manufacturer under this Act or to cancel any other

1 financial assistance provided to such eligible automobile
2 manufacturer, and the facts and circumstances on which
3 such exercise was based, before the end of the 10-day pe-
4 riod beginning on the date of the exercise of the right.

5 (e) MONITORING.—The President’s designee shall
6 monitor the use of loan funds received by eligible auto-
7 mobile manufacturers under this Act, and shall report to
8 Congress once every 90 days (beginning 30 days after the
9 date of enactment of this Act) on the progress of the abil-
10 ity of the recipient of the loan to continue operations and
11 proceed with restructuring processes that restore the fi-
12 nancial viability of the recipient and promote environ-
13 mental sustainability.

14 **SEC. 16. REPORT TO CONGRESS ON LACK OF PROGRESS**

15 **TOWARD ACHIEVING AN ACCEPTABLE NEGOTIATED PLAN.**

17 (a) AUTHORITY TO FACILITATE A NEGOTIATED
18 PLAN.—At any such time as the President’s designee de-
19 termines that action is necessary to avoid disruption to
20 the economy or to achieve a negotiated plan, the Presi-
21 dent’s designee shall submit to Congress a report outlining
22 any additional powers and authorities necessary to facili-
23 tate the completion of a negotiated plan required under
24 section 6.

1 (b) IMPEDIMENTS TO ACHIEVING NEGOTIATED
2 PLANS.—If the President’s designee determines, on the
3 basis of an evaluation by the President’s designee of the
4 progress being made by an eligible automobile manufac-
5 turer toward meeting the restructuring progress assess-
6 ment measures established under section 5, that adequate
7 progress is not being made toward achieving a negotiated
8 plan by March 31, 2009, the President’s designee shall
9 submit to Congress a report detailing the impediments to
10 achievement of a negotiated plan by the eligible automobile
11 manufacturer.

12 **SEC. 17. SUBMISSION OF PLAN TO CONGRESS BY THE**
13 **PRESIDENT’S DESIGNEE.**

14 Upon submission of a report pursuant to section
15 16(b), the President’s designee shall provide to Congress
16 a plan that represents the judgement of the President’s
17 designee as to the steps necessary to achieve the long-term
18 viability, international competitiveness, and energy effi-
19 ciency of the eligible automobile manufacturer, consistent
20 with the factors set forth in section 6(b), including
21 through a negotiated plan, a plan to be implemented by
22 legislation, or a reorganization pursuant to chapter 11 of
23 title 11, United States Code.

1 **SEC. 18. GUARANTEE OF LEASES OF QUALIFIED TRANS-**
2 **PORTATION PROPERTY.**

3 (a) **GUARANTEE.**—Upon the request of a lessee of
4 qualified transportation property, the President’s designee
5 shall serve as a guarantor with respect to all obligations
6 of such lessee with respect to leases of such qualified
7 transportation property. Such guarantee shall be on such
8 terms and conditions as are determined by the President’s
9 designee, not later than 14 days after the date of enact-
10 ment of this section.

11 (b) **RECOUPMENT OF PAYMENT OF CLAIMS.**—

12 (1) **IN GENERAL.**—Any claims under this sec-
13 tion in excess of collateral held for the benefit of the
14 President’s designee shall be paid from the General
15 Fund of the Treasury out of funds not otherwise ap-
16 propriated.

17 (2) **RECOUPMENT FEE.**—Subsequent to any
18 payment made under paragraph (1), the President’s
19 designee shall recoup amounts paid under paragraph
20 (1) by establishing a fee that is sufficient to recoup
21 the amount of the claim payment not later than 3
22 years after the date of such claim payment from any
23 lessee or guarantor for whom the claim was paid or
24 for whom a guarantee was issued.

25 (c) **DEFINITIONS.**—For purposes of this section—

1 (1) the term “qualified transportation prop-
2 erty” means domestic property subject to a lease
3 that was approved by the Federal Transit Adminis-
4 tration prior to January 1, 2006; and

5 (2) the term “guarantor” includes, without lim-
6 itation, any guarantor, surety, and payment under-
7 taker.

8 **SEC. 19. COORDINATION WITH OTHER LAWS.**

9 (a) IN GENERAL.—No provision of this Act may be
10 construed as altering, affecting, or superseding—

11 (1) the provisions of section 129 of division A
12 of the Consolidated Security, Disaster Assistance,
13 and Continuing Appropriations Act, 2009, relating
14 to funding for the manufacture of advanced tech-
15 nology vehicles; or

16 (2) any existing authority to provide financial
17 assistance or liquidity for purposes of the day-to-day
18 operations in the ordinary course of business or re-
19 search and development.

20 (b) LIMITATION.—Except to provide bridge financing
21 or to implement a restructuring plan pursuant to this Act,
22 no funds from the United States Treasury may be used
23 for the purpose of assisting an eligible automobile manu-
24 facturer to achieve financial viability or otherwise to avoid
25 bankruptcy.

1 (c) AUTHORIZATION OF FISCAL YEAR 2009 COST OF
2 LIVING SALARY ADJUSTMENT FOR JUSTICES AND
3 JUDGES.—Pursuant to section 140 of Public Law 97–92,
4 justices and judges of the United States are authorized
5 during fiscal year 2009 to receive a salary adjustment in
6 accordance with section 461 of title 28, United States
7 Code.

8 (d) ANTITRUST PROVISIONS.—

9 (1) IN GENERAL.—Subject to paragraphs (2)
10 and (4), the antitrust laws shall not apply to meet-
11 ings, discussions, or consultations among an eligible
12 automobile manufacturer and its interested parties
13 for the purpose of achieving a negotiated plan pur-
14 suant to section (6)(a)(2).

15 (2) EXCLUSIONS.—Paragraph (1) shall not
16 apply with respect to price-fixing, allocating a mar-
17 ket between competitors, monopolizing (or attempt-
18 ing to monopolize) a market, or boycotting.

19 (3) ANTITRUST AGENCY PARTICIPATION.—The
20 Attorney General of the United States and the Fed-
21 eral Trade Commission shall, to the extent prac-
22 ticable, receive reasonable advance notice of, and be
23 permitted to participate in, each meeting, discussion,
24 or consultation described in paragraph (1).

1 (4) PRESERVATION OF ENFORCEMENT AUTHOR-
2 ITY.—Paragraph (1) shall not be construed to pre-
3 clude the Attorney General of the United States or
4 the Federal Trade Commission from bringing an en-
5 forcement action under the antitrust laws for injunc-
6 tive relief.

7 (5) SUNSET.—Paragraph (1) shall apply only
8 with respect to meetings, discussions, or consulta-
9 tions that occur within the 3-year period beginning
10 on the date of the enactment of this Act.

11 (6) DEFINITION.—For purposes of this sub-
12 section, the term “antitrust laws”—

13 (A) has the same meaning as in subsection
14 (a) of the first section of the Clayton Act (15
15 U.S.C. 12(a)), except that such term includes
16 section 5 of the Federal Trade Commission Act
17 (15 U.S.C. 45), to the extent that such section
18 5 applies to unfair methods of competition; and

19 (B) includes any provision of State law
20 that is similar to the laws referred to in sub-
21 paragraph (A).

1 **SEC. 20. TREATMENT OF RESTRUCTURING FOR PURPOSES**
2 **OF APPLYING LIMITATIONS ON NET OPER-**
3 **ATING LOSS CARRYFORWARDS AND CERTAIN**
4 **BUILT-IN LOSSES.**

5 Section 382 of the Internal Revenue Code of 1986
6 shall not apply in the case of an ownership change result-
7 ing from this Act or pursuant to a restructuring plan ap-
8 proved under this Act.

9 **SEC. 21. EMERGENCY DESIGNATION.**

10 Amounts provided by this Act are designated as an
11 emergency requirement and necessary to meet emergency
12 needs pursuant to section 204(a) of S. Con. Res. 21
13 (110th Congress), the concurrent resolution on the budget
14 for fiscal year 2008.