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(Original Signature of Member)

110TH CONGRESS  
2D SESSION

# H. R.

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

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## IN THE HOUSE OF REPRESENTATIVES

Mr. FRANK of Massachusetts introduced the following bill; which was referred  
to the Committee on \_\_\_\_\_

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# 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—

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

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

6                   (A) results in a viable and competitive do-  
7                   mestic automobile industry that minimizes ad-  
8                   verse effects on the environment;

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

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

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

21                  (E) stimulates manufacturing and sales of  
22                  automobiles produced by automobile manufac-  
23                  turers in the United States.

1 **SEC. 3. PRESIDENTIAL DESIGNATION.**

2 (a) DESIGNATION.—The President shall designate 1  
3 or more officers from the Executive Branch having appro-  
4 priate expertise in such areas as economic stabilization,  
5 financial aid to commerce and industry, financial restruc-  
6 turing, energy efficiency, and environmental protection  
7 (who shall hereinafter in this Act be collectively referred  
8 to as the “President’s designee”) to carry out the purposes  
9 of this Act, including the facilitation of restructuring nec-  
10 essary to achieve the long-term financial viability of do-  
11 mestic automobile manufacturers, who shall serve at the  
12 pleasure of the President.

13 (b) ADDITIONAL PERSONS.—The President or the  
14 President’s designee may also employ, appoint, or contract  
15 with additional persons having such expertise as the Presi-  
16 dent or the President’s designee believes will assist the  
17 Government in carrying out the purposes of this Act.

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

22 **SEC. 4. BRIDGE FINANCING.**

23 (a) IN GENERAL.—The President’s designee shall au-  
24 thorize and direct the disbursement of bridge loans or  
25 enter into commitments for lines of credit to each auto-  
26 mobile manufacturer that submitted a plan to the Con-

1 gress on December 2, 2008 (hereafter in this Act referred  
2 to as an “eligible automobile manufacturer”), and has  
3 submitted a request for such loan or commitment.

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

14 (c) AMOUNT OF ASSISTANCE.—The President’s des-  
15 ignee shall authorize bridge loans or commitments for  
16 lines of credit to each eligible automobile manufacturer in  
17 an amount that is intended to facilitate the continued op-  
18 erations of the eligible automobile manufacturer and to  
19 prevent the failure of the eligible automobile manufac-  
20 turer, consistent with the plan submitted on December 2,  
21 2008, and subject to available funds.

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

1 **SEC. 5. RESTRUCTURING PROGRESS ASSESSMENT.**

2 (a) ESTABLISHMENT OF MEASURES FOR ASSESSING  
3 PROGRESS.—Not later than January 1, 2009, the Presi-  
4 dent's designee shall determine appropriate measures for  
5 assessing the progress of each eligible automobile manu-  
6 facturer toward transforming the plan submitted by such  
7 manufacturer to the Congress on December 2, 2008, into  
8 the restructuring plan to be submitted under section 6(b).

9 (b) EVALUATION OF PROGRESS ON BASIS OF RE-  
10 STRUCTURING PROGRESS ASSESSMENT MEASURES.—

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

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

24 **SEC. 6. SUBMISSION OF PLANS.**

25 (a) NEGOTIATED PLANS.—

26 (1) FACILITATION.—

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

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

- 18                   (i) employees and retirees of the eligi-  
19 ble automobile manufacturer;  
20                   (ii) trade unions;  
21                   (iii) creditors;  
22                   (iv) suppliers;  
23                   (v) automobile dealers; and  
24                   (vi) shareholders.

1           (2) ACTIONS OF THE PRESIDENT'S DES-  
2           IGNEE.—

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

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

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

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



1 (2) the ability—

2 (A) to comply with applicable fuel effi-  
3 ciency and emissions requirements;

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

9 (C) to produce new and existing products  
10 and capacity, as described in section 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 fuel efficiency and emissions require-  
21          ments; 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 —

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

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

1                    tional securities exchange, a holding  
2                    company or company that controls a  
3                    majority of the stock thereof (in this  
4                    section referred to as the “warrant  
5                    common”); and

6                    (ii) preferred stock having an aggre-  
7                    gate liquidation preference equal to 20 per-  
8                    cent of such aggregate loan amount, less  
9                    the value of common stock available for  
10                   purchase under the warrant common (in  
11                   this section referred to as the “warrant  
12                   preferred”).

13                   (B) COMMON STOCK WARRANT PRICE.—

14                   The exercise price on a warrant or instrument  
15                   described in paragraph (1) shall be—

16                   (i) the 15-day moving average, as of  
17                   December 2, 2008, of the market price of  
18                   the common stock of the eligible auto-  
19                   mobile manufacturer which received any  
20                   loan under this Act; or

21                   (ii) in the case of an eligible auto-  
22                   mobile manufacturer, the securities of  
23                   which are not traded on a national securi-  
24                   ties exchange, the economic equivalent of

1 the market price described in clause (i), as  
2 determined by the President's designee.

3 (C) TERMS OF PREFERRED STOCK WAR-  
4 RANT.—

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

12 (ii) REDEMPTION.—The warrant pre-  
13 ferred may be redeemed at any time after  
14 exercise of the preferred stock warrant at  
15 100 percent of its issue price, plus any ac-  
16 crued and unpaid dividends.

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

22 (3) APPLICATION OF OTHER PROVISIONS OF  
23 LAW.—Except as otherwise provided in this section,  
24 the requirements for the purchase of warrants under  
25 section 113(d)(2) of the Emergency Economic Sta-

1       bilization Act of 2008 (division A of Public Law  
2       110–343) shall apply to any warrant or instrument  
3       described in paragraph (1), including the  
4       antidilution protection provisions therein.

5       (b) EXECUTIVE COMPENSATION AND CORPORATE  
6 GOVERNANCE.—

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

11           (A) the standards established by the Presi-  
12      dent’s designee under paragraph (2); and

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

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

21           (3) SPECIFIC REQUIREMENTS.—The standards  
22      established under paragraph (2) shall include—

23           (A) limits on compensation that exclude in-  
24      centives for senior executive officers of an eligi-  
25      ble automobile manufacturer which received as-

1           sistance under this Act to take unnecessary and  
2           excessive risks that threaten the value of such  
3           manufacturer during the period that the loan is  
4           outstanding;

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

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

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

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

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

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

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

1 (B) GOLDEN PARACHUTE PAYMENT.—The  
2 term “golden parachute payment” means any  
3 payment to a senior executive officer for depart-  
4 ture from a company for any reason, except for  
5 payments for services performed or benefits ac-  
6 crued.

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

18 (d) OTHER INTERESTS SUBORDINATED.—

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



1 loan, and such loan shall be senior and prior to all  
2 obligations, liabilities, and debts of the eligible auto-  
3 mobile manufacturer, and such eligible automobile  
4 manufacturer shall provide to the Government, all  
5 available security and collateral against which the  
6 loans under this Act shall be secured.

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

13 (A) be treated as a loan to any holding  
14 company of, or company that controls a major-  
15 ity stake in, the eligible automobile manufac-  
16 turer; and

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

21 (e) ADDITIONAL TAXPAYER PROTECTIONS.—

22 (1) DISCHARGE.—A discharge under title 11,  
23 United States Code, shall not discharge an eligible  
24 automobile manufacturer, or any successor in inter-

1 est thereto, from any debt for financial assistance  
2 received pursuant to this Act.

3 (2) EXEMPTION.—Any financial assistance pro-  
4 vided to an eligible automobile manufacturer under  
5 this Act shall be exempt from the automatic stay es-  
6 tablished by section 362 of title 11, United States  
7 Code.

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

16 **SEC. 13. OVERSIGHT AND AUDITS.**

17 (a) COMPTROLLER GENERAL OVERSIGHT.—

18 (1) SCOPE OF OVERSIGHT.—The Comptroller  
19 General of the United States shall conduct ongoing  
20 oversight of the activities and performance of the  
21 President's designee.

22 (2) CONDUCT AND ADMINISTRATION OF OVER-  
23 SIGHT.—

24 (A) GAO PRESENCE.—The President's  
25 designee shall provide to the Comptroller Gen-

1           eral appropriate space and facilities for pur-  
2           poses of this subsection.

3           (B) ACCESS TO RECORDS.—To the extent  
4           otherwise consistent with law, the Comptroller  
5           General shall have access, upon request, to any  
6           information, data, schedules, books, accounts,  
7           financial records, reports, files, electronic com-  
8           munications, or other papers, things, or prop-  
9           erty belonging to or in use by the President's  
10          designee, at such reasonable time as the Comp-  
11          troller General may request. The Comptroller  
12          General shall be afforded full facilities for  
13          verifying transactions with the balances or secu-  
14          rities held by depositaries, fiscal agents, and  
15          custodians. The Comptroller General may make  
16          and retain copies of such books, accounts, and  
17          other records as the Comptroller General deems  
18          appropriate.

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

1           (b) SPECIAL INSPECTOR GENERAL.—It shall be the  
2 duty of the Special Inspector General established under  
3 section 121 of Public Law 110-343 to conduct, supervise,  
4 and coordinate audits and investigations of the President’s  
5 designee in addition to the duties of the Special Inspector  
6 General under such section and for such purposes. The  
7 Special Inspector General shall also have the duties, re-  
8 sponsibilities, and authorities of inspectors general under  
9 the Inspector General Act of 1978, including section 6 of  
10 such Act. In the event that the Office of the Special In-  
11 spector General is terminated, the Inspector General of  
12 the Department of the Treasury shall assume the respon-  
13 sibilities of the Special Inspector General under this sub-  
14 section.

15           (c) ACCESS TO RECORDS OF BORROWERS BY GAO.—  
16 Notwithstanding any other provision of law, during the pe-  
17 riod in which any financial assistance provided under this  
18 Act is outstanding, the Comptroller General of the United  
19 States shall have access, upon request, to any information,  
20 data, schedules, books, accounts, financial records, re-  
21 ports, files, electronic communications, or other papers,  
22 things, or property belonging to or in use by the eligible  
23 automobile manufacturer, and any subsidiary, affiliate, or  
24 entity holding an ownership interest of 50 percent or more  
25 of such eligible automobile manufacturer (collectively re-

1 ferred to in this section as “related entities”), and to any  
2 officer, director, or other agent or representative of the  
3 eligible automobile manufacturer and its related entities,  
4 at such reasonable times as the Comptroller General may  
5 request. The Comptroller General may make and retain  
6 copies of such books, accounts, and other records as the  
7 Comptroller General deems appropriate.

8 **SEC. 14. AUTOMOBILE MANUFACTURERS’ STUDY ON PO-**  
9 **TENTIAL MANUFACTURING OF TRANSIT VE-**  
10 **HICLES.**

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

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

19 (2) the potential growth for both sales and sup-  
20 plies to such agencies in the short, medium, and  
21 long term;

22 (3) a description of existing “Buy America”  
23 provisions, and data provided by the Federal Transit  
24 Administration regarding the use or request of waiv-  
25 ers from such provisions; and

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

4           (b) GAO REVIEW AND REPORT.—The Comptroller  
5           General of the United States shall review the analyses con-  
6           ducted under this section, and shall provide reports there-  
7           on to the Congress and the President’s designee.

8           **SEC. 15. REPORTING AND MONITORING.**

9           (a) REPORTING ON CONSUMMATION OF LOANS.—  
10          The President’s designee shall submit a report to the Con-  
11          gress on each bridge loan made under section 4 not later  
12          than 5 days after the date of the consummation of such  
13          loan.

14          (b) REPORTING ON RESTRUCTURING PROGRESS AS-  
15          SESSMENT MEASURES.—The President’s designee shall  
16          submit a report to the Congress on the restructuring  
17          progress assessment measures established for each manu-  
18          facturer under section 5(a) not later than 10 days after  
19          establishing the restructuring progress assessment meas-  
20          ures.

21          (c) REPORTING ON EVALUATIONS.—The President’s  
22          designee shall submit a report to the Congress containing  
23          the detailed findings and conclusions of the President’s  
24          designee in connection with the evaluation of an eligible  
25          automobile manufacturer under section 5(b).

1 (d) REPORTING ON CONSEQUENCES FOR FAILURE  
2 TO COMPLY.—The President’s designee shall submit a re-  
3 port to the Congress on the exercise of a right under sec-  
4 tion 11(f) to accelerate indebtedness of an eligible auto-  
5 mobile manufacturer under this Act or to cancel any other  
6 financial assistance provided to such eligible automobile  
7 manufacturer, and the facts and circumstances on which  
8 such exercise was based, before the end of the 10-day pe-  
9 riod beginning on the date of the exercise of the right.

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

19 **SEC. 16. REPORT TO CONGRESS ON LACK OF PROGRESS**  
20 **TOWARD ACHIEVING AN ACCEPTABLE NEGOTIATED PLAN.**  
21 **TIATED PLAN.**

22 (a) AUTHORITY TO FACILITATE A NEGOTIATED  
23 PLAN.—At any such time as the President’s designee de-  
24 termines that action is necessary to avoid disruption to  
25 the economy or to achieve a negotiated plan, the Presi-

1 dent's designee shall submit to Congress a report outlining  
2 any additional powers and authorities necessary to facili-  
3 tate the completion of a negotiated plan required under  
4 section 6.

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

16 **SEC. 17. SUBMISSION OF PLAN TO CONGRESS BY THE**  
17 **PRESIDENT'S DESIGNEE.**

18 Upon submission of a report pursuant to section  
19 16(b), the President's designee shall provide to Congress  
20 a plan that represents the judgement of the President's  
21 designee as to the steps necessary to achieve the long-term  
22 viability, international competitiveness, and energy effi-  
23 ciency of the eligible automobile manufacturer, consistent  
24 with the factors set forth in section 6(b), including  
25 through a negotiated plan, a plan to be implemented by



1 legislation, or a reorganization pursuant to chapter 11 of  
2 title 11, United States Code.

3 **SEC. 18. GUARANTEE OF LEASES OF QUALIFIED TRANS-**  
4 **PORTATION PROPERTY.**

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

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

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

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

1 lessee or guarantor for whom the claim was paid or  
2 for whom a guarantee was issued.

3 (c) DEFINITIONS.—For purposes of this section—

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

8 (2) the term “guarantor” includes, without lim-  
9 itation, any guarantor, surety, and payment under-  
10 taker.

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

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

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

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

23 (b) LIMITATION.—Except to provide bridge financing  
24 or to implement a restructuring plan pursuant to this Act,  
25 no funds from the United States Treasury may be used

1 for the purpose of assisting an eligible automobile manu-  
2 facturer to achieve financial viability or otherwise to avoid  
3 bankruptcy.

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

11 (d) ANTITRUST PROVISIONS.—

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

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

22 (3) ANTITRUST AGENCY PARTICIPATION.—The  
23 Attorney General of the United States and the Fed-  
24 eral Trade Commission shall, to the extent prac-  
25 ticable, receive reasonable advance notice of, and be

1 permitted to participate in, each meeting, discussion,  
2 or consultation described in paragraph (1).

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

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

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

15 (A) has the same meaning as in subsection  
16 (a) of the first section of the Clayton Act (15  
17 U.S.C. 12(a)), except that such term includes  
18 section 5 of the Federal Trade Commission Act  
19 (15 U.S.C. 45), to the extent that such section  
20 5 applies to unfair methods of competition; and

21 (B) includes any provision of State law  
22 that is similar to the laws referred to in sub-  
23 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.