


(Original Signature of Member)

110TH CONGRESS
2^D SESSION

H. R. 7321

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

IN THE HOUSE OF REPRESENTATIVES

Mr. FRANK of Massachusetts introduced the following bill; which was 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—

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 aggregate
7 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

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.