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Auto Industry Financing and Restructuring Act (AIFRA)

United States: Congress: House of Representatives

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110TH CONGRESS
2^D SESSION

H. R. 7321

IN THE SENATE OF THE UNITED STATES

DECEMBER 11 (legislative day, DECEMBER 10), 2008

Received

AN ACT

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) **TABLE OF CONTENTS.**—The table of contents for 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.](#)

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[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.](#)

SEC. 2. FINDINGS AND PURPOSES.

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

(1) A combination of factors, including errors in the business model of domestic automobile manufacturers, and emergency economic circumstances, has prevented the domestic automobile industry from securing credit from other sources, and has led to the possibility of the failure of the domestic automobile industry, which failure would have a systemic adverse effect on the economy.

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

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

(1) to immediately provide authority and facilities to restore liquidity and stability to the domestic automobile industry in the United States; and

(2) to ensure that such authority and such facilities are used in a manner that—

(A) results in a viable and competitive domestic automobile industry that minimizes adverse effects on the environment;

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

(C) preserves and promotes the jobs of American workers employed directly by the domestic automobile industry and in related industries;

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

(E) stimulates manufacturing and sales of automobiles produced by automobile manufacturers in the United States.

SEC. 3. PRESIDENTIAL DESIGNATION.

(a) **DESIGNATION.**—The President shall designate 1 or more officers from the Executive Branch having appropriate expertise in such areas as economic stabilization, financial aid to commerce and industry, financial restructuring, energy efficiency, and environmental protection (who shall hereinafter in this Act be collectively referred to as the “President’s designee”) to carry out the purposes of this Act, including the facilitation of restructuring necessary to achieve the long-term financial viability of domestic automobile manufacturers, who shall serve at the pleasure of the President.

(b) **ADDITIONAL PERSONS.**—The President or the President's designee may also employ, appoint, or contract with additional persons having such expertise as the President or the President's designee believes will assist the Government in carrying out the purposes of this Act.

(c) **PARTICIPATION BY OTHER AGENCY PERSONNEL.**—Other Federal agencies may provide, at the request of the President's designee, staff on detail from such agencies for purposes of carrying out this Act.

SEC. 4. BRIDGE FINANCING.

(a) **IN GENERAL.**—The President's designee shall authorize and direct the disbursement of bridge loans or enter into commitments for lines of credit to each automobile manufacturer that submitted a plan to the Congress on December 2, 2008 (hereafter in this Act referred to as an “eligible automobile manufacturer”), and has submitted a request for such loan or commitment.

(b) **AVAILABILITY OF FUNDS.**—All funds that are available pursuant to section 10 to provide bridge financing or commitments for lines of credit to eligible automobile manufacturers, after taking into account the reservation of funds under section 10(a)(2), shall be used for the purposes described in section 10(a). No new funds shall be available to any eligible automobile manufacturer for the purposes of this section after the date on which the President's designee has approved restructuring plan under section 6 for such eligible automobile manufacturer.

(c) **AMOUNT OF ASSISTANCE.**—The President's designee shall authorize bridge loans or commitments for lines of credit to each eligible automobile manufacturer in an amount that is intended to facilitate the continued operations of the eligible automobile manufacturer and to prevent the failure of the eligible automobile manufacturer, consistent with the plan submitted on December 2, 2008, and subject to available funds.

(d) **ALLOCATION.**—The President's designee shall authorize the disbursements or commitments under this section in accordance with the allocation priorities set forth in subsections (a) and (b) of section 9.

SEC. 5. RESTRUCTURING PROGRESS ASSESSMENT.

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

(b) **EVALUATION OF PROGRESS ON BASIS OF RESTRUCTURING PROGRESS ASSESSMENT MEASURES.**—

(1) **IN GENERAL.**—The President's designee shall evaluate the progress of each eligible automobile manufacturer toward the development of a restructuring plan, on the basis of the restructuring progress assessment measures established under this section for such manufacturer.

(2) **TIMING.**—Each evaluation required under paragraph (1) for any eligible automobile manufacturer shall be conducted at the end of the 45-day period beginning on the date on which the restructuring progress assessment measures were established by the President's designee for such eligible automobile manufacturer.

SEC. 6. SUBMISSION OF PLANS.

(a) **NEGOTIATED PLANS.**—

(1) **FACILITATION.**—

(A) **IN GENERAL.**—Beginning on the date of the enactment of this Act, the President's designee shall seek to facilitate agreement on any restructuring plan to achieve and sustain the long-term viability, international competitiveness, and energy efficiency of an eligible automobile manufacturer, negotiated and agreed to by representatives of interested parties (in this Act referred to as a “negotiated plan”) with respect to any eligible automobile manufacturer.

(B) **INTERESTED PARTIES.**—For purposes of this section, the term “interested party” shall be construed broadly so as to include all persons who have a direct financial interest in a particular automobile manufacturer, including—

(i) employees and retirees of the eligible automobile manufacturer;

(ii) trade unions;

- (iii) creditors;
- (iv) suppliers;
- (v) automobile dealers; and
- (vi) shareholders.

(2) ACTIONS OF THE PRESIDENT'S DESIGNEE.—

(A) IN GENERAL.—For the purpose of achieving a negotiated plan, the President's designee may convene, chair, and conduct formal and informal meetings, discussions, and consultations, as appropriate, with interested parties of an eligible automobile manufacturer.

(B) CLARIFICATION.—The Federal Advisory Committee Act shall not apply with respect to any of the activities conducted or taken by the President's designee pursuant to this Act.

(b) RESTRUCTURING PLAN.—Not later than March 31, 2009, each eligible automobile manufacturer shall submit to the President's designee a restructuring plan to achieve and sustain the long-term viability, international competitiveness, and energy efficiency of the eligible automobile manufacturer (in this Act referred to as the “restructuring plan”) in accordance with this section. The President's designee shall approve the restructuring plan if the President's designee determines that the plan will result in—

(1) the repayment of all Government-provided financing, consistent with the terms specified in section 11, or otherwise agreed to;

(2) the ability—

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

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

(C) to produce new and existing products and capacity, as described in section 14;

(3) the achievement of a positive net present value, using reasonable assumptions and taking into account all existing and projected future costs, including repayment of any financial assistance provided pursuant to this Act;

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

(5) proposals to restructure existing debt, including, where appropriate, the conversion of debt to equity, to improve the ability of the eligible automobile manufacturer to raise private capital; and

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

(c) EXTENSION OF NEGOTIATIONS AND PLAN DEADLINE.—

Notwithstanding the time limitations in subsection (b), the President's designee, upon making a determination that the interested parties are negotiating in good faith, are making significant progress, and that an additional period of time would likely facilitate agreement on a negotiated plan, and upon notification of the Congress, may extend for not longer than 30 additional days the negotiation period under subsection (b).

SEC. 7. FINANCING FOR RESTRUCTURING.

Upon approval by the President's designee of a restructuring plan, the President's designee may provide financial assistance to an eligible automobile manufacturer to implement the restructuring plan.

SEC. 8. DISAPPROVAL AND CALL OF LOAN.

If the President's designee has not approved the restructuring plan at the expiration of the period provided in section 6 for submission and approval of the restructuring plan, the President's designee shall call the loan or cancel the commitment within 30 days, unless a restructuring plan is approved within that period.

SEC. 9. ALLOCATION.

(a) PRIORITIZING ALLOCATION.—The President's designee shall prioritize allocation of the provision of financial assistance under this Act to any eligible automobile manufacturer, based on—

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

(2) the potential impact of the failure of the eligible automobile manufacturer on the United States economy; and

(3) the ability to utilize the financial assistance optimally to satisfy the operational and long-term restructuring requirements of the eligible automobile manufacturer.

(b) **ORDER OF PRIORITY; SECTION 4.**—For purposes of allocating bridge loans or commitments pursuant to section 4, the President's designee shall prioritize the considerations set forth in subsection (a) in the following order: paragraph (1), paragraph (2), and paragraph (3).

(c) **ORDER OF PRIORITY; SECTION 7.**—For purposes of allocating financial assistance for restructuring pursuant to section 7, the President's designee shall prioritize the considerations set forth in subsection (a) in the following order: paragraph (3), paragraph (2), and paragraph (1).

SEC. 10. FUNDING.

(a) **FINANCIAL ASSISTANCE.**—

(1) **IN GENERAL.**—Such sums are appropriated as are necessary for the purpose of providing funds to support up to \$14,000,000,000 in loans under this Act. The Secretary of Energy shall make available to the President's designee \$7,010,000,000 of funds made available under section 129 of division A of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, relating to funding for the manufacture of advanced technology vehicles, which shall reduce the appropriation under this paragraph.

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

(3) **CONTINUING APPLICATION PROCESS.**—No provision of this section shall be construed as prohibiting or limiting the Secretary of Energy from processing applications for loans under section 136 of the Energy Independence and Security Act of 2007.

(b) **AUTHORIZATION.**—There are authorized to be appropriated to the Secretary of Energy, sums as may be necessary for the purpose of replenishing the funds made available to the President's designee under subsection (a)(1).

SEC. 11. TERMS AND CONDITIONS.

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

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

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

(A) 5 percent during the 5-year period beginning on the date on which the President's designee disburses the loan; and

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

(2) TIMING OF PAYMENTS.—Payments of interest on loans under this Act shall be made semiannually.

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

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

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

(2) to provide in a timely manner any information requested by the President's designee, including requiring any officer or employee of the eligible automobile manufacturer, any subsidiary, affiliate, or entity referred to in paragraph (1) with respect to such manufacturer, or any person having possession, custody, or care of the reports and records required under paragraph (1), to appear before the President's designee at a time and place requested and to provide such books, papers, records, or other data, as requested, as may be relevant or material.

(e) OVERSIGHT OF TRANSACTIONS AND FINANCIAL CONDITION.—

(1) DUTY TO INFORM.—During the period in which any loan extended under this Act remains outstanding, the eligible automobile manufacturer which received such loan shall promptly inform the President's designee of—

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

(B) any other material change in the financial condition of such eligible automobile manufacturer.

(2) **AUTHORITY OF THE PRESIDENT'S DESIGNEE.**—During the period in which any loan extended under this Act remains outstanding, the President's designee may—

(A) review any asset sale, investment, contract, commitment, or other transaction described in paragraph (1); and

(B) prohibit the eligible automobile manufacturer which received the loan from consummating any such proposed sale, investment, contract, commitment, or other transaction, if the President's designee determines that consummation of such transaction would be inconsistent with or detrimental to the long-term viability of the eligible automobile manufacturer.

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

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

(1) an evaluation by the President's designee under section 5(b) demonstrates that the eligible automobile manufacturer which received the financial assistance has failed to make adequate progress towards meeting the restructuring progress assessment measures established by the President's designee under section 5(a) with respect to such recipient;

(2) after March 31, 2009, the eligible automobile manufacturer which received the financial assistance fails to submit an acceptable restructuring plan under section 6(b), or fails to comply with any conditions or requirement applicable under this Act or applicable fuel efficiency and emissions requirements; or

(3) after a restructuring plan of an eligible automobile manufacturer has been approved by the President's designee, the auto manufacturer fails to make adequate progress in the implementation of the plan, as determined by the President's designee,

the repayment of any loan may be accelerated to such earlier date or dates as the President's designee may determine and any other financial assistance may be cancelled by the President's designee.

SEC. 12. TAXPAYER PROTECTION.

(a) WARRANTS.—

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

(A) in the case of an eligible automobile manufacturer, the securities of which are traded on a national securities exchange, a warrant giving the right to the President's designee to receive nonvoting common stock or preferred stock in such eligible automobile manufacturer, or voting stock, with respect to which the President's designee agrees not to exercise voting power, as the President's designee determines appropriate; or

(B) in the case of an eligible automobile manufacturer other than one described in subparagraph (A), a warrant for common or preferred stock, or an instrument that is the economic equivalent of such a warrant in the holding company of the eligible automobile manufacturer, or any company that controls a majority stake in the eligible automobile manufacturer, as determined by the President's designee.

(2) AMOUNT.—

(A) IN GENERAL.—The warrants or instruments described in paragraph (1) shall have a value equal to 20 percent of the aggregate amount of all loans provided to the eligible automobile manufacturer under this Act. Such warrants or instruments shall entitle the Government to purchase—

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

(I) the eligible automobile manufacturer; or

(II) in the case of an eligible automobile manufacturer, the securities of which are not traded on a national securities exchange, a holding company or company that controls a majority of the stock thereof (in this section referred to as the “warrant common”); and

(ii) preferred stock having an aggregate liquidation preference equal to 20 percent of such aggregate loan amount, less the value of common stock available for purchase under the warrant common (in this section referred to as the “warrant preferred”).

(B) COMMON STOCK WARRANT PRICE.—The exercise price on a warrant or instrument described in paragraph (1) shall be—

(i) the 15-day moving average, as of December 2, 2008, of the market price of the common stock of the eligible automobile manufacturer which received any loan under this Act; or

(ii) in the case of an eligible automobile manufacturer, the securities of which are not traded on a national securities exchange, the economic equivalent of the market price described in clause (i), as determined by the President's designee.

(C) TERMS OF PREFERRED STOCK WARRANT.—

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

(ii) REDEMPTION.—The warrant preferred may be redeemed at any time after exercise of the preferred stock warrant at 100 percent of its issue price, plus any accrued and unpaid dividends.

(iii) OTHER TERMS AND CONDITIONS.—Other terms and conditions of the warrant preferred shall be determined by the President's designee to protect the interests of taxpayers.

(3) APPLICATION OF OTHER PROVISIONS OF LAW.—Except as otherwise provided in this section, the requirements for the purchase of warrants under section 113(d)(2) of the Emergency Economic Stabilization Act of 2008 (division A of Public Law 110–343) shall apply to any warrant or instrument described in paragraph (1), including the antidilution protection provisions therein.

(b) EXECUTIVE COMPENSATION AND CORPORATE GOVERNANCE.—

(1) IN GENERAL.—During the period in which any financial assistance under this Act remains outstanding, the eligible automobile manufacturer which received such assistance shall be subject to—

(A) the standards established by the President's designee under paragraph (2); and

(B) the provisions of section 162(m)(5) of the Internal Revenue Code of 1986, as applicable.

(2) STANDARDS REQUIRED.—The President's designee shall require any eligible automobile manufacturer which received any financial assistance under this Act to meet appropriate standards for executive compensation and corporate governance.

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

(A) limits on compensation that exclude incentives for senior executive officers of an eligible automobile manufacturer which received assistance under this Act to take unnecessary and excessive risks that threaten the value of such manufacturer during the period that the loan is outstanding;

(B) a provision for the recovery by such automobile manufacturer of any bonus or incentive compensation paid to a senior executive officer based on statements of earnings, gains, or other criteria that are later found to be materially inaccurate;

(C) a prohibition on such automobile manufacturer making any golden parachute payment to a senior executive officer during the period that the loan is outstanding;

(D) a prohibition on such automobile manufacturer paying or accruing any bonus or incentive compensation during the period that the loan is outstanding to the 25 most highly-compensated employees; and

(E) a prohibition on any compensation plan that would encourage manipulation of such automobile manufacturer's reported earnings to enhance the compensation of any of its employees.

(4) DIVESTITURE.—During the period in which any financial assistance provided under this Act to any eligible automobile manufacturer is outstanding, the eligible automobile manufacturer may not own or lease any private passenger aircraft, or have any interest in such aircraft, except that such eligible automobile manufacturer shall not be treated as being in violation of this provision with respect to any aircraft or interest in any aircraft that was owned or held by the manufacturer immediately before receiving such assistance, as long as the recipient demonstrates to the satisfaction of the President's designee that all reasonable steps are being taken to sell or divest such aircraft or interest.

(5) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) SENIOR EXECUTIVE OFFICER.—The term “senior executive officer” means an individual who is 1 of the top 5 most highly paid executives of a public company, whose compensation is required to be disclosed pursuant to the Securities Exchange Act of 1934, and any regulations issued thereunder, and non-public company counterparts.

(B) GOLDEN PARACHUTE PAYMENT.—The term “golden parachute payment” means any payment to a senior executive officer for departure from a company for any reason, except for payments for services performed or benefits accrued.

(C) PROHIBITION ON PAYMENT OF DIVIDENDS.—Except with respect to obligations owed pursuant to law to any nonaffiliated party or any existing contract with any nonaffiliated party in effect as of December 2, 2008, no dividends or distributions of any kind, or the economic equivalent thereof (as determined by the President's designee), may be paid by any eligible automobile manufacturer which receives financial assistance under this Act, or any holding company or company that controls a majority stake in the eligible automobile manufacturer, while such financial assistance is outstanding.

(d) OTHER INTERESTS SUBORDINATED.—

(1) IN GENERAL.—In the case of an eligible automobile manufacturer which received a loan under this Act, to the extent permitted by the terms of any obligation, liability, or debt of the eligible automobile manufacturer in effect as of December 2, 2008, any other obligation of such eligible automobile manufacturer shall be subordinate to such loan, and such loan shall be senior and prior to all obligations, liabilities, and debts of the eligible automobile manufacturer, and such eligible automobile manufacturer shall provide to the Government, all available security and collateral against which the loans under this Act shall be secured.

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

(A) be treated as a loan to any holding company of, or company that controls a majority stake in, the eligible automobile manufacturer; and

(B) be senior and prior to all obligations, liabilities, and debts of any such holding company or company that controls a majority stake in the

eligible automobile manufacturer.

(e) **ADDITIONAL TAXPAYER PROTECTIONS.—**

(1) **DISCHARGE.**—A discharge under title 11, United States Code, shall not discharge an eligible automobile manufacturer, or any successor in interest thereto, from any debt for financial assistance received pursuant to this Act.

(2) **EXEMPTION.**—Any financial assistance provided to an eligible automobile manufacturer under this Act shall be exempt from the automatic stay established by section 362 of title 11, United States Code.

(3) **INTERESTED PARTIES.**—Notwithstanding any provision of title 11, United States Code, any interest in property or equity rights of the United States arising from financial assistance provided to an eligible automobile manufacturer under this Act shall remain unaffected by any plan of reorganization, except as the United States may agree to in writing.

SEC. 13. OVERSIGHT AND AUDITS.

(a) **COMPTROLLER GENERAL OVERSIGHT.—**

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

(2) **CONDUCT AND ADMINISTRATION OF OVERSIGHT.—**

(A) **GAO PRESENCE.**—The President's designee shall provide to the Comptroller General appropriate space and facilities for purposes of this subsection.

(B) **ACCESS TO RECORDS.**—To the extent otherwise consistent with law, the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by the President's designee, at such reasonable time as the Comptroller General may request. The Comptroller General shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. The Comptroller General may make and retain copies of such books, accounts, and other records as the Comptroller General deems appropriate.

(3) **REPORTING.**—The Comptroller General shall submit reports of findings under this section to Congress, regularly and not less frequently than

once every 60 days. The Comptroller General may also submit special reports under this subsection, as warranted by the findings of its oversight activities.

(b) **SPECIAL INSPECTOR GENERAL.**—It shall be the duty of the Special Inspector General established under section 121 of Public Law 110-343 to conduct, supervise, and coordinate audits and investigations of the President's designee in addition to the duties of the Special Inspector General under such section and for such purposes. The Special Inspector General shall also have the duties, responsibilities, and authorities of inspectors general under the Inspector General Act of 1978, including section 6 of such Act. In the event that the Office of the Special Inspector General is terminated, the Inspector General of the Department of the Treasury shall assume the responsibilities of the Special Inspector General under this subsection.

(c) **ACCESS TO RECORDS OF BORROWERS BY GAO.**—Notwithstanding any other provision of law, during the period in which any financial assistance provided under this Act is outstanding, the Comptroller General of the United States shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by the eligible automobile manufacturer, and any subsidiary, affiliate, or entity holding an ownership interest of 50 percent or more of such eligible automobile manufacturer (collectively referred to in this section as “related entities”), and to any officer, director, or other agent or representative of the eligible automobile manufacturer and its related entities, at such reasonable times as the Comptroller General may request. The Comptroller General may make and retain copies of such books, accounts, and other records as the Comptroller General deems appropriate.

SEC. 14. AUTOMOBILE MANUFACTURERS' STUDY ON POTENTIAL MANUFACTURING OF TRANSIT VEHICLES.

(a) **IN GENERAL.**—Each eligible automobile manufacturer which receives financial assistance under this Act shall conduct an analysis of potential uses of any excess production capacity (especially those of former sport utility vehicle producers) to make vehicles for sale to public transit agencies, including—

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

(2) the potential growth for both sales and supplies to such agencies in the short, medium, and long term;

(3) a description of existing “Buy America” provisions, and data provided by the Federal Transit Administration regarding the use or request of waivers from such provisions; and

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

(b) GAO REVIEW AND REPORT.—The Comptroller General of the United States shall review the analyses conducted under this section, and shall provide reports thereon to the Congress and the President's designee.

SEC. 15. REPORTING AND MONITORING.

(a) REPORTING ON CONSUMMATION OF LOANS.—The President's designee shall submit a report to the Congress on each bridge loan made under section 4 not later than 5 days after the date of the consummation of such loan.

(b) REPORTING ON RESTRUCTURING PROGRESS ASSESSMENT MEASURES.—The President's designee shall submit a report to the Congress on the restructuring progress assessment measures established for each manufacturer under section 5(a) not later than 10 days after establishing the restructuring progress assessment measures.

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

(d) REPORTING ON CONSEQUENCES FOR FAILURE TO COMPLY.—The President's designee shall submit a report to the Congress on the exercise of a right under section 11(f) to accelerate indebtedness of an eligible automobile manufacturer under this Act or to cancel any other financial assistance provided to such eligible automobile manufacturer, and the facts and circumstances on which such exercise was based, before the end of the 10-day period beginning on the date of the exercise of the right.

(e) MONITORING.—The President's designee shall monitor the use of loan funds received by eligible automobile manufacturers under this Act, and shall report to Congress once every 90 days (beginning 30 days after the date of enactment of this Act) on the progress of the ability of the recipient of the loan to continue operations and proceed with restructuring processes that restore the financial viability of the recipient and promote environmental sustainability.

SEC. 16. REPORT TO CONGRESS ON LACK OF PROGRESS TOWARD ACHIEVING AN ACCEPTABLE NEGOTIATED PLAN.

(a) AUTHORITY TO FACILITATE A NEGOTIATED PLAN.—At any such time as the President's designee determines that action is necessary to avoid disruption to the economy or to achieve a negotiated plan, the President's designee

shall submit to Congress a report outlining any additional powers and authorities necessary to facilitate the completion of a negotiated plan required under section 6.

(b) **IMPEDIMENTS TO ACHIEVING NEGOTIATED PLANS.**—If the President's designee determines, on the basis of an evaluation by the President's designee of the progress being made by an eligible automobile manufacturer toward meeting the restructuring progress assessment measures established under section 5, that adequate progress is not being made toward achieving a negotiated plan by March 31, 2009, the President's designee shall submit to Congress a report detailing the impediments to achievement of a negotiated plan by the eligible automobile manufacturer.

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

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

SEC. 18. GUARANTEE OF LEASES OF QUALIFIED TRANSPORTATION PROPERTY.

(a) **GUARANTEE.**—Upon the request of a lessee of qualified transportation property, the President's designee shall serve as a guarantor with respect to all obligations of such lessee with respect to leases of such qualified transportation property. Such guarantee shall be on such terms and conditions as are determined by the President's designee, not later than 14 days after the date of enactment of this section.

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

(1) **IN GENERAL.**—Any claims under this section in excess of collateral held for the benefit of the President's designee shall be paid from the General Fund of the Treasury out of funds not otherwise appropriated.

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

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

(1) the term “qualified transportation property” means domestic property subject to a lease that was approved by the Federal Transit Administration prior to January 1, 2006; and

(2) the term “guarantor” includes, without limitation, any guarantor, surety, and payment undertaker.

SEC. 19. COORDINATION WITH OTHER LAWS.

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

(1) the provisions of section 129 of division A of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, relating to funding for the manufacture of advanced technology vehicles;

(2) any existing authority to provide financial assistance or liquidity for purposes of the day-to-day operations in the ordinary course of business or research and development.

(b) **LIMITATION.**—Except to provide bridge financing or to implement a restructuring plan pursuant to this Act, no funds from the United States Treasury may be used for the purpose of assisting an eligible automobile manufacturer to achieve financial viability or otherwise to avoid bankruptcy.

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

(d) **ANTITRUST PROVISIONS.**—

(1) **IN GENERAL.**—Subject to paragraphs (2) and (4), the antitrust laws shall not apply to meetings, discussions, or consultations among an eligible automobile manufacturer and its interested parties for the purpose of achieving a negotiated plan pursuant to section (6)(a)(2).

(2) **EXCLUSIONS.**—Paragraph (1) shall not apply with respect to price-fixing, allocating a market between competitors, monopolizing (or attempting to monopolize) a market, or boycotting.

(3) **ANTITRUST AGENCY PARTICIPATION.**—The Attorney General of the United States and the Federal Trade Commission shall, to the extent practicable, receive reasonable advance notice of, and be permitted to

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

(4) **PRESERVATION OF ENFORCEMENT AUTHORITY.**—Paragraph (1) shall not be construed to preclude the Attorney General of the United States or the Federal Trade Commission from bringing an enforcement action under the antitrust laws for injunctive relief.

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

(6) **DEFINITION.**—For purposes of this subsection, the term “antitrust laws”—

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

(B) includes any provision of State law that is similar to the laws referred to in subparagraph (A).

SEC. 20. TREATMENT OF RESTRUCTURING FOR PURPOSES OF APPLYING LIMITATIONS ON NET OPERATING LOSS CARRYFORWARDS AND CERTAIN BUILT-IN LOSSES.

Section 382 of the Internal Revenue Code of 1986 shall not apply in the case of an ownership change resulting from this Act or pursuant to a restructuring plan approved under this Act.

SEC. 21. EMERGENCY DESIGNATION.

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

SEC. __. NEW LENDING THAT IS ATTRIBUTABLE TO TARP INVESTMENTS AND ASSISTANCE.

Section 7(a) of the Federal Deposit Insurance Act (U.S.C. 1817(a)) is amended by adding at the end the following new paragraph:

“(12) **LENDING INCREASES ATTRIBUTABLE TO INVESTMENT OR OTHER ASSISTANCE UNDER THE TROUBLED ASSETS RELIEF PROGRAM.**—

“(A) IN GENERAL.—Each report of condition filed pursuant to this subsection by an insured depository institution which received an investment or other assistance under the Troubled Assets Relief Program established by the Emergency Economic Stabilization Act of 2008 or section 136(d) of the Energy Independence and Security Act of 2007 shall report the amount of any increase in new lending in the period covered by such report (or the amount of any reduction in any decrease in new lending) that is attributable to such investment or assistance, to the extent possible.

“(B) ALTERNATIVE MEASURE.—If an insured depository institution that is subject to subparagraph (A) cannot accurately quantify the effect that an investment or other assistance under such Troubled Assets Relief Program has had on new lending by the institution, the insured depository institution shall report the total amount of the increase in new lending, if any, in the period covered by such report.”.

Passed the House of Representatives December 10, 2008.

Attest:

LORRAINE C. MILLER,
Clerk
