

110TH CONGRESS
2D SESSION

H. R. 7321

AN ACT

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,*

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

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

4 (b) TABLE OF CONTENTS.—The table of contents for
5 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.

6 **SEC. 2. FINDINGS AND PURPOSES.**

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

8 (1) A combination of factors, including errors
9 in the business model of domestic automobile manu-
10 facturers, and emergency economic circumstances,
11 has prevented the domestic automobile industry from
12 securing credit from other sources, and has led to
13 the possibility of the failure of the domestic auto-

1 mobile industry, which failure would have a systemic
2 adverse effect on the economy.

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

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

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

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

12 (A) results in a viable and competitive do-
13 mestic automobile industry that minimizes ad-
14 verse effects on the environment;

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

19 (C) preserves and promotes the jobs of
20 American workers employed directly by the do-
21 mestic automobile industry and in related in-
22 dustries;

23 (D) safeguards the ability of the domestic
24 automobile industry to provide retirement and

1 health care benefits for the industry's retirees
2 and their dependents; and

3 (E) stimulates manufacturing and sales of
4 automobiles produced by automobile manufac-
5 turers in the United States.

6 **SEC. 3. PRESIDENTIAL DESIGNATION.**

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

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

23 (c) PARTICIPATION BY OTHER AGENCY PER-
24 SONNEL.—Other Federal agencies may provide, at the re-

1 quest of the President’s designee, staff on detail from such
2 agencies for purposes of carrying out this Act.

3 **SEC. 4. BRIDGE FINANCING.**

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

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

21 (c) AMOUNT OF ASSISTANCE.—The President’s des-
22 ignee shall authorize bridge loans or commitments for
23 lines of credit to each eligible automobile manufacturer in
24 an amount that is intended to facilitate the continued op-
25 erations of the eligible automobile manufacturer and to

1 prevent the failure of the eligible automobile manufac-
2 turer, consistent with the plan submitted on December 2,
3 2008, and subject to available funds.

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

8 **SEC. 5. RESTRUCTURING PROGRESS ASSESSMENT.**

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

16 (b) EVALUATION OF PROGRESS ON BASIS OF RE-
17 STRUCTURING PROGRESS ASSESSMENT MEASURES.—

18 (1) IN GENERAL.—The President’s designee
19 shall evaluate the progress of each eligible auto-
20 mobile manufacturer toward the development of a
21 restructuring plan, on the basis of the restructuring
22 progress assessment measures established under this
23 section for such manufacturer.

24 (2) TIMING.—Each evaluation required under
25 paragraph (1) for any eligible automobile manufac-

1 turer shall be conducted at the end of the 45-day pe-
2 riod beginning on the date on which the restruc-
3 turing progress assessment measures were estab-
4 lished by the President’s designee for such eligible
5 automobile manufacturer.

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

7 (a) NEGOTIATED PLANS.—

8 (1) FACILITATION.—

9 (A) IN GENERAL.—Beginning on the date
10 of the enactment of this Act, the President’s
11 designee shall seek to facilitate agreement on
12 any restructuring plan to achieve and sustain
13 the long-term viability, international competi-
14 tiveness, and energy efficiency of an eligible
15 automobile manufacturer, negotiated and
16 agreed to by representatives of interested par-
17 ties (in this Act referred to as a “negotiated
18 plan”) with respect to any eligible automobile
19 manufacturer.

20 (B) INTERESTED PARTIES.—For purposes
21 of this section, the term “interested party”
22 shall be construed broadly so as to include all
23 persons who have a direct financial interest in
24 a particular automobile manufacturer, includ-
25 ing—

- 1 (i) employees and retirees of the eligi-
2 ble automobile manufacturer;
3 (ii) trade unions;
4 (iii) creditors;
5 (iv) suppliers;
6 (v) automobile dealers; and
7 (vi) shareholders.

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

10 (A) IN GENERAL.—For the purpose of
11 achieving a negotiated plan, the President's
12 designee may convene, chair, and conduct for-
13 mal and informal meetings, discussions, and
14 consultations, as appropriate, with interested
15 parties of an eligible automobile manufacturer.

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

20 (b) RESTRUCTURING PLAN.—Not later than March
21 31, 2009, each eligible automobile manufacturer shall sub-
22 mit to the President's designee a restructuring plan to
23 achieve and sustain the long-term viability, international
24 competitiveness, and energy efficiency of the eligible auto-
25 mobile manufacturer (in this Act referred to as the “re-

1 structuring plan”) in accordance with this section. The
2 President’s designee shall approve the restructuring plan
3 if the President’s designee determines that the plan will
4 result in—

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

8 (2) the ability—

9 (A) to comply with applicable fuel effi-
10 ciency and emissions requirements;

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

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

18 (3) the achievement of a positive net present
19 value, using reasonable assumptions and taking into
20 account all existing and projected future costs, in-
21 cluding repayment of any financial assistance pro-
22 vided pursuant to this Act;

23 (4) efforts to rationalize costs, capitalization,
24 and capacity with respect to the manufacturing

1 workforce, suppliers, and dealerships of the eligible
2 automobile manufacturer;

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

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

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

18 **SEC. 7. FINANCING FOR RESTRUCTURING.**

19 Upon approval by the President’s designee of a re-
20 structuring plan, the President’s designee may provide fi-
21 nancial assistance to an eligible automobile manufacturer
22 to implement the restructuring plan.

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

24 If the President’s designee has not approved the re-
25 structuring plan at the expiration of the period provided

1 in section 6 for submission and approval of the restruc-
2 turing plan, the President's designee shall call the loan
3 or cancel the commitment within 30 days, unless a re-
4 structuring plan is approved within that period.

5 **SEC. 9. ALLOCATION.**

6 (a) **PRIORITIZING ALLOCATION.**—The President's
7 designee shall prioritize allocation of the provision of fi-
8 nancial assistance under this Act to any eligible auto-
9 mobile manufacturer, based on—

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

13 (2) the potential impact of the failure of the eli-
14 gible automobile manufacturer on the United States
15 economy; and

16 (3) the ability to utilize the financial assistance
17 optimally to satisfy the operational and long-term re-
18 structuring requirements of the eligible automobile
19 manufacturer.

20 (b) **ORDER OF PRIORITY; SECTION 4.**—For purposes
21 of allocating bridge loans or commitments pursuant to sec-
22 tion 4, the President's designee shall prioritize the consid-
23 erations set forth in subsection (a) in the following order:
24 paragraph (1), paragraph (2), and paragraph (3).

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

7 **SEC. 10. FUNDING.**

8 (a) FINANCIAL ASSISTANCE.—

9 (1) IN GENERAL.—Such sums are appropriated
10 as are necessary for the purpose of providing funds
11 to support up to \$14,000,000,000 in loans under
12 this Act. The Secretary of Energy shall make avail-
13 able to the President’s designee \$7,010,000,000 of
14 funds made available under section 129 of division
15 A 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, which shall reduce the appropriation
19 under this paragraph.

20 (2) RESERVATION FOR CERTAIN PURPOSES.—

21 The Secretary of Energy shall reserve \$500,000,000
22 of the amounts made available under paragraph (1)
23 for purposes of section 136 of the Energy Independ-
24 ence and Security Act of 2007 (Public Law 110-140;
25 42 U.S.C. 17013).

1 (3) CONTINUING APPLICATION PROCESS.—No
2 provision of this section shall be construed as pro-
3 hibiting or limiting the Secretary of Energy from
4 processing applications for loans under section 136
5 of the Energy Independence and Security Act of
6 2007.

7 (b) AUTHORIZATION.—There are authorized to be ap-
8 propriated to the Secretary of Energy, sums as may be
9 necessary for the purpose of replenishing the funds made
10 available to the President’s designee under subsection
11 (a)(1).

12 **SEC. 11. TERMS AND CONDITIONS.**

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

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

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

20 (A) 5 percent during the 5-year period be-
21 ginning on the date on which the President’s
22 designee disburses the loan; and

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

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

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

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

9 (1) to allow the President’s designee to examine
10 any books, papers, records, or other data of the eli-
11 gible automobile manufacturer, and those of any
12 subsidiary, affiliate, or entity holding an ownership
13 interest of 50 percent or more of such automobile
14 manufacturer, that may be relevant to the financial
15 assistance, including compliance with the terms of a
16 loan or any conditions imposed under this Act; and

17 (2) to provide in a timely manner any informa-
18 tion requested by the President’s designee, including
19 requiring any officer or employee of the eligible
20 automobile manufacturer, any subsidiary, affiliate,
21 or entity referred to in paragraph (1) with respect
22 to such manufacturer, or any person having posses-
23 sion, custody, or care of the reports and records re-
24 quired under paragraph (1), to appear before the
25 President’s designee at a time and place requested

1 and to provide such books, papers, records, or other
2 data, as requested, as may be relevant or material.

3 (e) OVERSIGHT OF TRANSACTIONS AND FINANCIAL
4 CONDITION.—

5 (1) DUTY TO INFORM.—During the period in
6 which any loan extended under this Act remains out-
7 standing, the eligible automobile manufacturer which
8 received such loan shall promptly inform the Presi-
9 dent's designee of—

10 (A) any asset sale, investment, contract,
11 commitment, or other transaction proposed to
12 be entered into by such eligible automobile
13 manufacturer that has a value in excess of
14 \$100,000,000; and

15 (B) any other material change in the fi-
16 nancial condition of such eligible automobile
17 manufacturer.

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

22 (A) review any asset sale, investment, con-
23 tract, commitment, or other transaction de-
24 scribed in paragraph (1); and

1 (B) prohibit the eligible automobile manu-
2 facturer which received the loan from consum-
3 mating any such proposed sale, investment,
4 contract, commitment, or other transaction, if
5 the President's designee determines that con-
6 summation of such transaction would be incon-
7 sistent with or detrimental to the long-term via-
8 bility of the eligible automobile manufacturer.

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

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

15 (1) an evaluation by the President's designee
16 under section 5(b) demonstrates that the eligible
17 automobile manufacturer which received the finan-
18 cial assistance has failed to make adequate progress
19 towards meeting the restructuring progress assess-
20 ment measures established by the President's des-
21 ignee under section 5(a) with respect to such recipi-
22 ent;

23 (2) after March 31, 2009, the eligible auto-
24 mobile manufacturer which received the financial as-
25 sistance fails to submit an acceptable restructuring

1 plan under section 6(b), or fails to comply with any
2 conditions or requirement applicable under this Act
3 or applicable fuel efficiency and emissions require-
4 ments; or

5 (3) after a restructuring plan of an eligible
6 automobile manufacturer has been approved by the
7 President's designee, the auto manufacturer fails to
8 make adequate progress in the implementation of
9 the plan, as determined by the President's designee,
10 the repayment of any loan may be accelerated to such ear-
11 lier date or dates as the President's designee may deter-
12 mine and any other financial assistance may be cancelled
13 by the President's designee.

14 **SEC. 12. TAXPAYER PROTECTION.**

15 (a) WARRANTS.—

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

21 (A) in the case of an eligible automobile
22 manufacturer, the securities of which are traded
23 on a national securities exchange, a warrant
24 giving the right to the President's designee to
25 receive nonvoting common stock or preferred

1 stock in such eligible automobile manufacturer,
2 or voting stock, with respect to which the Presi-
3 dent's designee agrees not to exercise voting
4 power, as the President's designee determines
5 appropriate; or

6 (B) in the case of an eligible automobile
7 manufacturer other than one described in sub-
8 paragraph (A), a warrant for common or pre-
9 ferred stock, or an instrument that is the eco-
10 nomic equivalent of such a warrant in the hold-
11 ing company of the eligible automobile manu-
12 facturer, or any company that controls a major-
13 ity stake in the eligible automobile manufac-
14 turer, as determined by the President's des-
15 ignee.

16 (2) AMOUNT.—

17 (A) IN GENERAL.—The warrants or instru-
18 ments described in paragraph (1) shall have a
19 value equal to 20 percent of the aggregate
20 amount of all loans provided to the eligible
21 automobile manufacturer under this Act. Such
22 warrants or instruments shall entitle the Gov-
23 ernment to purchase—

24 (i) nonvoting common stock, up to a
25 maximum amount of 20 percent of the

1 issued and outstanding common stock of

2 —

3 (I) the eligible automobile manu-
4 facturer; or

5 (II) in the case of an eligible
6 automobile manufacturer, the securi-
7 ties of which are not traded on a na-
8 tional securities exchange, a holding
9 company or company that controls a
10 majority of the stock thereof (in this
11 section referred to as the “warrant
12 common”); and

13 (ii) preferred stock having an aggre-
14 gate liquidation preference equal to 20 per-
15 cent of such aggregate loan amount, less
16 the value of common stock available for
17 purchase under the warrant common (in
18 this section referred to as the “warrant
19 preferred”).

20 (B) COMMON STOCK WARRANT PRICE.—

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

23 (i) the 15-day moving average, as of
24 December 2, 2008, of the market price of
25 the common stock of the eligible auto-

1 mobile manufacturer which received any
2 loan under this Act; or

3 (ii) in the case of an eligible auto-
4 mobile manufacturer, the securities of
5 which are not traded on a national securi-
6 ties exchange, the economic equivalent of
7 the market price described in clause (i), as
8 determined by the President's designee.

9 (C) TERMS OF PREFERRED STOCK WAR-
10 RANT.—

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

18 (ii) REDEMPTION.—The warrant pre-
19 ferred may be redeemed at any time after
20 exercise of the preferred stock warrant at
21 100 percent of its issue price, plus any ac-
22 crued and unpaid dividends.

23 (iii) OTHER TERMS AND CONDI-
24 TIONS.—Other terms and conditions of the
25 warrant preferred shall be determined by

1 the President's designee to protect the in-
2 terests of taxpayers.

3 (3) APPLICATION OF OTHER PROVISIONS OF
4 LAW.—Except as otherwise provided in this section,
5 the requirements for the purchase of warrants under
6 section 113(d)(2) of the Emergency Economic Sta-
7 bilization Act of 2008 (division A of Public Law
8 110–343) shall apply to any warrant or instrument
9 described in paragraph (1), including the
10 antidilution protection provisions therein.

11 (b) EXECUTIVE COMPENSATION AND CORPORATE
12 GOVERNANCE.—

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

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

19 (B) the provisions of section 162(m)(5) of
20 the Internal Revenue Code of 1986, as applica-
21 ble.

22 (2) STANDARDS REQUIRED.—The President's
23 designee shall require any eligible automobile manu-
24 facturer which received any financial assistance

1 under this Act to meet appropriate standards for ex-
2 ecutive compensation and corporate governance.

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

5 (A) limits on compensation that exclude in-
6 centives for senior executive officers of an eligi-
7 ble automobile manufacturer which received as-
8 sistance under this Act to take unnecessary and
9 excessive risks that threaten the value of such
10 manufacturer during the period that the loan is
11 outstanding;

12 (B) a provision for the recovery by such
13 automobile manufacturer of any bonus or incen-
14 tive compensation paid to a senior executive of-
15 ficer based on statements of earnings, gains, or
16 other criteria that are later found to be materi-
17 ally inaccurate;

18 (C) a prohibition on such automobile man-
19 ufacturer making any golden parachute pay-
20 ment to a senior executive officer during the pe-
21 riod that the loan is outstanding;

22 (D) a prohibition on such automobile man-
23 ufacturer paying or accruing any bonus or in-
24 centive compensation during the period that the

1 loan is outstanding to the 25 most highly-com-
2 pensated employees; and

3 (E) a prohibition on any compensation
4 plan that would encourage manipulation of such
5 automobile manufacturer's reported earnings to
6 enhance the compensation of any of its employ-
7 ees.

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

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

24 (A) SENIOR EXECUTIVE OFFICER.—The
25 term “senior executive officer” means an indi-

vidual 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 (1) IN GENERAL.—In the case of an eligible
2 automobile manufacturer which received a loan
3 under this Act, to the extent permitted by the terms
4 of any obligation, liability, or debt of the eligible
5 automobile manufacturer in effect as of December 2,
6 2008, any other obligation of such eligible auto-
7 mobile manufacturer shall be subordinate to such
8 loan, and such loan shall be senior and prior to all
9 obligations, liabilities, and debts of the eligible auto-
10 mobile manufacturer, and such eligible automobile
11 manufacturer shall provide to the Government, all
12 available security and collateral against which the
13 loans under this Act shall be secured.

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

20 (A) be treated as a loan to any holding
21 company of, or company that controls a major-
22 ity stake in, the eligible automobile manufac-
23 turer; and

24 (B) be senior and prior to all obligations,
25 liabilities, and debts of any such holding com-

1 pany or company that controls a majority stake
2 in the eligible automobile manufacturer.

3 (e) ADDITIONAL TAXPAYER PROTECTIONS.—

4 (1) DISCHARGE.—A discharge under title 11,
5 United States Code, shall not discharge an eligible
6 automobile manufacturer, or any successor in inter-
7 est thereto, from any debt for financial assistance
8 received pursuant to this Act.

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

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

22 **SEC. 13. OVERSIGHT AND AUDITS.**

23 (a) COMPTROLLER GENERAL OVERSIGHT.—

24 (1) SCOPE OF OVERSIGHT.—The Comptroller
25 General of the United States shall conduct ongoing

1 oversight of the activities and performance of the
2 President's designee.

3 (2) CONDUCT AND ADMINISTRATION OF OVER-
4 SIGHT.—

5 (A) GAO PRESENCE.—The President's
6 designee shall provide to the Comptroller Gen-
7 eral appropriate space and facilities for pur-
8 poses of this subsection.

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

1 (3) REPORTING.—The Comptroller General
2 shall submit reports of findings under this section to
3 Congress, regularly and not less frequently than
4 once every 60 days. The Comptroller General may
5 also submit special reports under this subsection, as
6 warranted by the findings of its oversight activities.

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

21 (c) ACCESS TO RECORDS OF BORROWERS BY GAO.—
22 Notwithstanding any other provision of law, during the pe-
23 riod in which any financial assistance provided under this
24 Act is outstanding, the Comptroller General of the United
25 States shall have access, upon request, to any information,

1 data, schedules, books, accounts, financial records, re-
2 ports, files, electronic communications, or other papers,
3 things, or property belonging to or in use by the eligible
4 automobile manufacturer, and any subsidiary, affiliate, or
5 entity holding an ownership interest of 50 percent or more
6 of such eligible automobile manufacturer (collectively re-
7 ferred to in this section as “related entities”), and to any
8 officer, director, or other agent or representative of the
9 eligible automobile manufacturer and its related entities,
10 at such reasonable times as the Comptroller General may
11 request. The Comptroller General may make and retain
12 copies of such books, accounts, and other records as the
13 Comptroller General deems appropriate.

14 **SEC. 14. AUTOMOBILE MANUFACTURERS’ STUDY ON PO-**
15 **TENTIAL MANUFACTURING OF TRANSIT VE-**
16 **HICLES.**

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

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

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

4 (3) a description of existing “Buy America”
 5 provisions, and data provided by the Federal Transit
 6 Administration regarding the use or request of waiv-
 7 ers from such provisions; and

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

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

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

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

21 (b) REPORTING ON RESTRUCTURING PROGRESS AS-
 22 SESSMENT MEASURES.—The President’s designee shall
 23 submit a report to the Congress on the restructuring
 24 progress assessment measures established for each manu-
 25 facturer under section 5(a) not later than 10 days after

1 establishing the restructuring progress assessment meas-
2 ures.

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

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

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

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

4 (a) **AUTHORITY TO FACILITATE A NEGOTIATED**
5 **PLAN.**—At any such time as the President’s designee de-
6 termines that action is necessary to avoid disruption to
7 the economy or to achieve a negotiated plan, the Presi-
8 dent’s designee shall submit to Congress a report outlining
9 any additional powers and authorities necessary to facili-
10 tate the completion of a negotiated plan required under
11 section 6.

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

23 **SEC. 17. SUBMISSION OF PLAN TO CONGRESS BY THE**
24 **PRESIDENT’S DESIGNEE.**

25 Upon submission of a report pursuant to section
26 16(b), the President’s designee shall provide to Congress

1 a plan that represents the judgement of the President's
 2 designee as to the steps necessary to achieve the long-term
 3 viability, international competitiveness, and energy effi-
 4 ciency of the eligible automobile manufacturer, consistent
 5 with the factors set forth in section 6(b), including
 6 through a negotiated plan, a plan to be implemented by
 7 legislation, or a reorganization pursuant to chapter 11 of
 8 title 11, United States Code.

9 **SEC. 18. GUARANTEE OF LEASES OF QUALIFIED TRANS-**
 10 **PORTATION PROPERTY.**

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

19 (b) RECOUPMENT OF PAYMENT OF CLAIMS.—

20 (1) IN GENERAL.—Any claims under this sec-
 21 tion in excess of collateral held for the benefit of the
 22 President's designee shall be paid from the General
 23 Fund of the Treasury out of funds not otherwise ap-
 24 propriated.

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

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

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

14 (2) the term “guarantor” includes, without lim-
15 itation, any guarantor, surety, and payment under-
16 taker.

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

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

20 (1) the provisions of section 129 of division A
21 of the Consolidated Security, Disaster Assistance,
22 and Continuing Appropriations Act, 2009, relating
23 to funding for the manufacture of advanced tech-
24 nology vehicles;

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

5 (b) LIMITATION.—Except to provide bridge financing
6 or to implement a restructuring plan pursuant to this Act,
7 no funds from the United States Treasury may be used
8 for the purpose of assisting an eligible automobile manu-
9 facturer to achieve financial viability or otherwise to avoid
10 bankruptcy.

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

18 (d) ANTITRUST PROVISIONS.—

19 (1) IN GENERAL.—Subject to paragraphs (2)
20 and (4), the antitrust laws shall not apply to meet-
21 ings, discussions, or consultations among an eligible
22 automobile manufacturer and its interested parties
23 for the purpose of achieving a negotiated plan pur-
24 suant to section (6)(a)(2).

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

5 (3) ANTITRUST AGENCY PARTICIPATION.—The
6 Attorney General of the United States and the Fed-
7 eral Trade Commission shall, to the extent prac-
8 ticable, receive reasonable advance notice of, and be
9 permitted to participate in, each meeting, discussion,
10 or consultation described in paragraph (1).

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

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

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

23 (A) has the same meaning as in subsection
24 (a) of the first section of the Clayton Act (15
25 U.S.C. 12(a)), except that such term includes

1 section 5 of the Federal Trade Commission Act
 2 (15 U.S.C. 45), to the extent that such section
 3 5 applies to unfair methods of competition; and
 4 (B) includes any provision of State law
 5 that is similar to the laws referred to in sub-
 6 paragraph (A).

7 **SEC. 20. TREATMENT OF RESTRUCTURING FOR PURPOSES**
 8 **OF APPLYING LIMITATIONS ON NET OPER-**
 9 **ATING LOSS CARRYFORWARDS AND CERTAIN**
 10 **BUILT-IN LOSSES.**

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

15 **SEC. 21. EMERGENCY DESIGNATION.**

16 Amounts provided by this Act are designated as an
 17 emergency requirement and necessary to meet emergency
 18 needs pursuant to section 204(a) of S. Con. Res. 21
 19 (110th Congress), the concurrent resolution on the budget
 20 for fiscal year 2008.

21 **SEC. ____ . NEW LENDING THAT IS ATTRIBUTABLE TO TARP**
 22 **INVESTMENTS AND ASSISTANCE.**

23 Section 7(a) of the Federal Deposit Insurance Act (
 24 U.S.C. 1817(a)) is amended by adding at the end the fol-
 25 lowing new paragraph:

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

4 “(A) IN GENERAL.—Each report of condi-
5 tion filed pursuant to this subsection by an in-
6 sured depository institution which received an
7 investment or other assistance under the Trou-
8 bled Assets Relief Program established by the
9 Emergency Economic Stabilization Act of 2008
10 or section 136(d) of the Energy Independence
11 and Security Act of 2007 shall report the
12 amount of any increase in new lending in the
13 period covered by such report (or the amount of
14 any reduction in any decrease in new lending)
15 that is attributable to such investment or as-
16 sistance, to the extent possible.

17 “(B) ALTERNATIVE MEASURE.—If an in-
18 sured depository institution that is subject to
19 subparagraph (A) cannot accurately quantify
20 the effect that an investment or other assist-
21 ance under such Troubled Assets Relief Pro-
22 gram has had on new lending by the institution,
23 the insured depository institution shall report

- 1 the total amount of the increase in new lending,
- 2 if any, in the period covered by such report.”.

Passed the House of Representatives December 10,
2008.

Attest:

Clerk.

110TH CONGRESS
2^D SESSION

H. R. 7321

AN ACT

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