



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

October 22, 2009

Mr. Al de Molina
Chief Executive Officer
General Motors Acceptance
Corporation Financial Services
420 Toringdon Way
Suite 400
Charlotte, NC, 28277

***Re: Proposed Compensation Payments and
Structures for Senior Executive Officers and
Most Highly Compensated Employees***

Dear Mr. de Molina:

Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2009 compensation submission on behalf of the senior executive officers and certain most highly compensated employees of General Motors Acceptance Corporation Financial Services ("GMAC"). Attached as ***Annex A*** is a Determination Memorandum (accompanied by ***Exhibits I*** and ***II***) providing the determinations of the Special Master with respect to 2009 compensation for those employees. *Id.* § 30.16(a)(3).

The Interim Final Rule requires the Special Master to determine whether the compensation structure for each senior executive officer and certain most highly compensated employees "will or may result in payments inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3). The Special Master has determined that, to satisfy this standard, 2009 compensation for GMAC's senior executive officers and certain most highly compensated employees generally must comport with the following standards:

- There can be no guarantee of any "bonus" or "retention" awards among the compensation structures approved by the Special Master.
- Rather than cash, the majority of each individual's base salary will be paid in the form of stock. This stock will immediately vest, in accordance with the Interim Final Rule, but will only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier if GMAC repays its TARP obligations.

- Base salary paid in cash should not exceed \$500,000 per year, except in appropriate cases for good cause shown. Overall, cash compensation must be significantly reduced from cash amounts paid in 2008. In GMAC's case, cash compensation for these employees will decrease 50% from 2008 levels
- Total compensation for each individual must both reflect the individual's value to GMAC and be appropriate when compared with total compensation provided to persons in similar positions or roles at similar entities, and should generally target the 50th percentile of total compensation for such similarly situated employees. Overall, total direct compensation must be significantly reduced from 2008 amounts. In GMAC's case, total direct compensation for these employees will decrease 86% from 2008 levels.
- If—and only if—the employee achieves objective performance metrics developed and reviewed in consultation with the Office of the Special Master, employees may be eligible for long-term incentive awards. These awards, however, must be payable in the form of restricted stock that will be forfeited unless the employee stays with GMAC for at least three years following grant, and may only be redeemed in 25% installments for each 25% installment of GMAC's TARP obligations that are repaid. Such long-term incentive awards may not exceed one third of total annual compensation.
- Any and all incentive compensation paid to employees will be subject to recovery or “clawback” if the payments are based on materially inaccurate financial statements or any other materially inaccurate performance metrics, or if the employee is terminated due to misconduct that occurred during the period in which the incentive was earned.
- Any and all “other” compensation and perquisites will not exceed \$25,000 for each employee (absent exceptional circumstances for good cause shown to the satisfaction of the Special Master).
- No severance benefit to which an employee becomes entitled in the future may take into account a cash salary increase, or any payment of stock salary, that the Special Master has approved for 2009.
- No additional amounts in 2009 may be accrued under supplemental executive retirement plans or credited by the company to other “non-qualified deferred compensation” plans after the date of the Determination Memorandum.

The Special Master has also determined that, in order for the approved compensation structures to satisfy the standards of *Id.* § 30.16(a)(3), GMAC must adopt policies applicable to these employees as follows:

- The achievement of any performance objectives must be certified in the company's securities filings by the Compensation, Nomination and Governance Committee of GMAC's Board of Directors, which is composed solely of

independent directors. These performance objectives must be reviewed and approved by the Office of the Special Master.

- The employees will be prohibited from engaging in any hedging, derivative or other transactions that have an equivalent economic effect involving company stock that would undermine the long-term performance incentives created by the compensation structures.
- GMAC may not provide a tax “gross up” of any kind to these employees.
- At least once every year, GMAC’s compensation committee must provide to the Department of the Treasury a narrative description identifying each compensation plan for its senior executive officers, and explaining how the plan does not encourage the senior executive officers to take unnecessary and excessive risks that threaten GMAC’s value. These requirements are described in further detail in the attached Determination Memorandum.

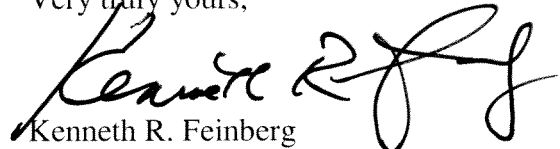
The Special Master’s review has been guided by a number of considerations, including each of the principles articulated in the Interim Final Rule. *Id.* § 30.16(b)(1). The following principles were of particular importance to the Special Master in his determinations with respect to GMAC’s compensation structures:

- *Performance-based compensation.* The overwhelming majority of approved compensation depends on GMAC’s performance, and ties the financial incentives of GMAC employees to the overall performance of the Company. A majority of the salary paid to employees under these structures will be paid in the form of stock units; and, because the stock salary will become transferable only in three equal, annual installments beginning on the second anniversary of the date stock salary is earned (with each installment redeemable one year earlier if GMAC repays its TARP obligations), the ultimate value realized by the executive will depend on GMAC’s performance over the long term. Guaranteed amounts payable in cash, in contrast, are generally rejected. *Id.* § 30.16(b)(1)(iv).
- *Taxpayer return.* The compensation structures approved by the Special Master reflect the need for GMAC to remain a competitive enterprise and, ultimately, to be able to repay TARP obligations. The Special Master has determined that the approved compensation structures are competitive when compared to those provided to persons in similar positions or roles at similar entities. Overall, the compensation structures generally provide for total compensation packages that target the 50th percentile when compared to such other executive officers and employees. *Id.* § 30.16(b)(1)(ii).
- *Appropriate Allocation.* The total compensation payable to GMAC employees is weighted heavily towards long-term structures that are tied to GMAC’s performance and are easily understood by shareholders. As a general principle, guaranteed income is rejected. Fixed compensation payable to GMAC employees

should consist only of cash salaries at sufficient levels to attract and retain employees and provide them a reasonable level of liquidity.

Pursuant to the Interim Final Rule, the Company may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in the Determination Memorandum. If the Company does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kenneth R. Feinberg', with a stylized flourish at the end.

Kenneth R. Feinberg
Office of the Special Master
for TARP Executive Compensation

Attachments

cc: Mr. Kim Fennebresque
William B Solomon, Jr., Esquire
Drema M. Kalajian, Esquire

ANNEX A DETERMINATION MEMORANDUM

I. INTRODUCTION

The Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009 (“EESA”), requires the Secretary of the Treasury to establish standards related to executive compensation and corporate governance for financial institutions receiving financial assistance under the Troubled Asset Relief Program (“TARP”). Through the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Secretary delegated to the Office of the Special Master for TARP Executive Compensation (the “Office of the Special Master” or, the “Office”) responsibility for reviewing compensation structures of certain employees at financial institutions that received exceptional financial assistance under the TARP (“Exceptional Assistance Recipients”). 31 C.F.R. § 30.16(a); *id.* § 30.16(a)(3). For these employees, the Special Master must determine whether the compensation structure will or may result in payments “inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest.” *Id.*

General Motors Acceptance Corporation Financial Services (“GMAC” or the “Company”), one of seven Exceptional Assistance Recipients, has submitted to the Special Master proposed compensation structures for review pursuant to Section 30.16(a)(3) of the Rule. These compensation structures apply to five employees that the Company has identified as senior executive officers (the “Senior Executive Officers,” or “SEOs”) for purposes of the Rule, and 17 employees the Company has identified as among the most highly compensated employees of the Company for purposes of the Rule (the “Most Highly Compensated Employees,” and, together with the SEOs, the “Covered Employees”).

The Special Master has completed the review of the Company’s proposed compensation structures for the Covered Employees pursuant to the principles set forth in the Rule. *Id.* § 30.16(b)(1). This Determination Memorandum sets forth the determinations of the Special Master, pursuant to Section 30.16(a)(3) of the Rule, with respect to the Covered Employees.

II. BACKGROUND

On June 15, 2009, the Department of the Treasury (“Treasury”) promulgated the Rule, creating the Office of the Special Master and delineating its responsibilities. Immediately following that date, the Special Master, and Treasury employees working in the Office of the Special Master, conducted extensive discussions with GMAC officials. During these discussions, the Office of the Special Master informed GMAC about the nature of the Office’s work and the authority of the Special Master under the Rule. These discussions continued for a period of months, during which the Special Master and GMAC explored potential compensation structures for the Covered Employees.

The Rule required that each Exceptional Assistance Recipient submit proposed compensation structures for each senior executive officer and Most Highly Compensated Employee no later than August 14, 2009. 31 C.F.R. § 30.16(a)(3). On July 20, 2009, the Special Master requested from each Exceptional Assistance Recipient, including GMAC, certain data and documentary information necessary to facilitate the Special Master's review of the Company's compensation structures. The request required GMAC to submit data describing its proposed compensation structures, and the payments that would result from the proposed structures, concerning each Covered Employee.

In addition, the Rule authorizes the Special Master to request information from an Exceptional Assistance Recipient "under such procedures as the Special Master may determine." *Id.* § 30.16(d). GMAC was required to submit competitive market data indicating how the amounts payable under GMAC's proposed compensation structures relate to the amounts paid to persons in similar positions or roles at similar entities. GMAC was also required to submit a range of documentation, including information related to proposed performance metrics, internal policies designed to curb excessive risk, and certain previously existing compensation plans and agreements.

GMAC submitted this information to the Office of the Special Master on August 14, 2009. Following a preliminary review of the submission, and the submission of certain additional information, on August 31, 2009, the Special Master determined that GMAC's submission was substantially complete for purposes of the Rule. *Id.* The Office of the Special Master then commenced a formal review of GMAC's proposed compensation structures for the Covered Employees. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of a substantially complete submission. *Id.* § 30.16(a)(3).

The Office of the Special Master's review of the Company's proposals was aided by analysis from a number of internal and external sources, including:

- Treasury personnel detailed to the Office of the Special Master, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in matters related to executive compensation;
- Competitive market data provided by the Company in connection with its submission to the Office of the Special Master;
- External information on comparable compensation structures extracted from the U.S. Mercer Benchmark Database-Executive;
- External information on comparable compensation structures extracted from Equilar's ExecutiveInsight database (which includes information drawn from publicly filed proxy statements) and Equilar's Top 25 Survey Summary Report (which includes information from a survey on the pay of highly compensated employees);

- Consultation with Lucian A. Bebchuk, a world-renowned expert in executive compensation and the William J. Friedman and Alicia Townsend Friedman Professor of Law, Economics, and Finance and Director of the Program on Corporate Governance at Harvard Law School; and
- Consultation with of Kevin J. Murphy, a world-renowned expert in executive compensation and the Kenneth L. Trefftz Chair in Finance in the department of finance and business economics at the University of Southern California's Marshall School of Business.

The Special Master considered these views, in light of the statutory and regulatory standards described in Part II below, when evaluating the Company's proposed compensation structures for the Covered Employees for 2009.

III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees whether GMAC's proposed compensation structure, including amounts payable or potentially payable under the compensation structure, "will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3) (as applied to Covered Employees of Exceptional Assistance Recipients, the "Public Interest Standard"). Regulations promulgated pursuant to the Rule require that the Special Master consider six principles when making these compensation determinations:

- (1) *Risk*. The compensation structure should avoid incentives which encourage executive officers and employees to take unnecessary or excessive risks that could threaten the value of the exceptional assistance recipient, including incentives that reward employees for short-term or temporary increases in value or performance; or similar measures that may undercut the long-term value of the exceptional assistance recipient. Compensation packages should be aligned with sound risk management. *Id.* § 30.16(b)(1)(i).
- (2) *Taxpayer return*. The compensation structure and amount payable should reflect the need for the exceptional assistance recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the recipient's future success, so that the Company will ultimately be able to repay its TARP obligations. *Id.* § 30.16(b)(1)(ii).
- (3) *Appropriate allocation*. The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation,

deferred compensation, or other compensation and benefits previously paid or awarded. *Id.* § 30.16(b)(1)(iii).

- (4) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the Exceptional Assistance Recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. *Id.* § 30.16(b)(1)(iv).
- (5) *Comparable structures and payments.* The compensation structure, and amount payable where applicable, should be consistent with, and not excessive, taking into account compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization. *Id.* § 30.16(b)(1)(v).
- (6) *Employee contribution to TARP recipient value.* The compensation structure and amount payable should reflect the current or prospective contributions of an employee to the value of the Exceptional Assistance Recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient. *Id.* § 30.16(b)(1)(vi).

The Rule provides that the Special Master shall have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular employee. *Id.* § 30.16(b). To the extent two or more principles may appear inconsistent in a particular situation, the Rule requires that the Special Master exercise his discretion in determining the relative weight to be accorded to each principle. *Id.*

The Rule provides that the Special Master may, in the course of applying these principles, take into account other compensation structures and other compensation earned, accrued, or paid, including compensation and compensation structures that are not subject to the restrictions of section 111 of EESA. For example, the Special Master may consider payments obligated to be made by the Company pursuant to certain legally binding rights under valid written employment contracts entered into prior to enactment of the statute and the accompanying Rule. *Id.* § 30.16(a)(3).

IV. COMPENSATION STRUCTURES AND PAYMENTS

A. GMAC Proposals

GMAC has provided the Office of the Special Master with detailed information concerning its proposed 2009 compensation structures for the Covered Employees, including amounts potentially payable under the compensation structure for each Covered Employee (the “Proposed Structures”).

GMAC supported its proposal with detailed assessments of each Covered Employee’s tenure and responsibilities at the Company (or its applicable subsidiary) and historical compensation structure. The submission also included market data that, according to the Company, indicated that the amounts potentially payable to each employee were comparable to the compensation payable to persons in similar positions or roles at a “peer group” of entities selected by the Company.

1. Cash Salary

GMAC proposed increasing the cash salary of each Covered Employee to annualized amounts ranging from \$380,000 to \$1,000,000. The Company’s proposal asserted that cash salaries at such levels could be justified by reference to the compensation of persons in similar positions or roles at similar entities.

2. Stock Salary

GMAC proposed that Covered Employees receive substantial stock salary, in annualized amounts ranging from \$400,000 to \$5,330,000. On each regular payroll date, Covered Employees would earn fully vested stock units, which would then settle in two tranches of 50% each on March 15, 2011, and March 15, 2012, respectively.

3. Annual Long-Term Incentive Awards

GMAC proposed that the Covered Employees be eligible in 2009 for substantial grants of annual long-term incentive awards, with total potential values ranging from \$400,000 to \$3,170,000. Under the proposal, the amount of an employee’s award would be calculated based on achievement of individual performance goals, as assessed by the GMAC’s compensation committee in consultation with the Company’s chief executive officer. Awards would be paid in the form of long-term restricted stock with 50% vesting after two years of service and 50% vesting after three years of service. Actual payment would be made in 25% installments for each 25% repayment of GMAC’s TARP obligations.

4. “Other” Compensation and Perquisites

GMAC proposed payments of “other” compensation, as well as perquisites, to the Covered Employees. These proposed payments varied in value.

5. Non-Qualified Deferred Compensation

GMAC proposed that certain Covered Employees receive substantial compensation in the form of accruals under a “non-qualified deferred compensation” plan.

6. Severance Arrangements

GMAC’s submission to the Office of the Special Master indicated that, in some cases, the proposed compensation structures would result in increases in amounts payable to these employees pursuant to existing severance arrangements. These arrangements generally provide for cash amounts payable upon termination of employment, including termination in light of the employee’s performance.

B. Determinations of the Special Master

The Special Master has reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part II above. In light of this review and analysis, the Special Master has determined that both the structural design of GMAC’s proposals and the amounts potentially payable to Covered Employees under the proposals would be inconsistent with the Public Interest Standard and, therefore, require modification.

The Special Master has determined, in light of the considerations that follow, that the compensation structures described in *Exhibits I* and *II* to this Determination Memorandum will not, by virtue of either their structural design or the amounts potentially payable under them, result in payments inconsistent with the Public Interest Standard.

1. Cash Salary

The Special Master reviewed the cash salary proposals in light of the principle that compensation structures should generally be comparable to “compensation structures and amounts for persons in similar positions or roles at similar entities.” 31 C.F.R. § 30.16(b)(1)(v). The Special Master has concluded that, for Covered Employees at Exceptional Assistance Recipients, cash salaries generally should target the 50th percentile as compared to persons in similar positions or roles at similar entities because such levels of cash salaries balance the need to attract and retain talented employees with the need for compensation structures that reflect the circumstances of Exceptional Assistance Recipients

In conducting this review, the Special Master made use of the resources described in Part II. Based on this review, the Special Master has concluded that GMAC’s proposed cash salaries would be inconsistent with the Public Interest Standard because the amounts potentially payable to certain Covered Employees cannot be supported by comparison to cash salaries provided to persons in similar positions or roles at similar entities.

..

In addition, because they do not create incentives for employees to pursue long-term value creation or financial stability, the amount of cash salary provided to a Covered Employee must be considered in comparison to the portion of compensation that is “performance-based over a relevant performance period.” *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that the cash portion of the Covered Employee’s compensation should in most cases not exceed \$500,000. See *Id.* § 30.16(b)(1)(iii).

As described in further detail in ***Exhibits I*** and ***II***, the cash salaries that the Special Master has determined to be consistent with the Public Interest Standard compare appropriately to those paid to persons in similar positions or roles at similar entities, and are generally less than \$500,000.

2. Stock Salary

The Special Master reviewed the amounts of stock salary proposed by GMAC and found that they were not comparable to payments provided to persons in similar positions or roles at similar entities. The Special Master has concluded that the amounts of stock salary GMAC proposed paying to certain Covered Employees is excessive and that such payments would be inconsistent with the Public Interest Standard. The compensation structures that the Special Master has determined are consistent with the Public Interest Standard provide lesser amounts of stock salary, as described in further detail in ***Exhibits I*** and ***II***.

The Special Master also reviewed the structure of GMAC’s stock salary proposal. The Rule requires that the Special Master consider whether an appropriate portion of an employee’s compensation is allocated to long-term incentives *Id.* § 30.16(b)(1)(iii). Stock salary that can be liquidated too soon could incentivize employees to pursue short-term results instead of long-term value creation by paying excessive benefits to employees for short-term increases in share price. See *Id.* § 30.16(b)(1)(i). Under the Company’s proposal, 50% of stock salary would be redeemable slightly more than one year after being granted, and 100% of stock salary would be redeemable slightly more than two years. The Special Master has concluded that one year is an insufficient holding period to provide an appropriate long-term incentive.

As described in ***Exhibits I*** and ***II***, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard require that, at a minimum, stock salary only become redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier if GMAC repays its TARP obligations.

In addition, GMAC proposed that certain restricted stock unit awards granted to Covered Employees in 2009 would be canceled in consideration of compensation provided to such employees under the Proposed Structures. The Special Master has concluded that the cancellation of such employees’ restricted stock unit awards in consideration of eligibility to receive stock salary is consistent with the Public Interest

Standard, and that the determination that payment of stock salary to such employees is consistent with the Public Interest Standard is conditioned upon such cancellation.

3. Annual Long-Term Incentive Awards

The Special Master reviewed GMAC's proposed annual long-term incentive awards in light of the principle that performance-based compensation should be based on "performance metrics [that are] measurable, enforceable, and actually enforced if not met." *Id.* § 30.16(b)(1)(iv). The Special Master also evaluated GMAC's proposed awards by application of recently adopted international standards that provide that incentive compensation should generally be payable over a period of three years as well as the Rule's principle that performance-based compensation should be payable "over a relevant performance period," *id.*

Although GMAC proposed individually tailored performance metrics to calculate the size of long-term restricted stock awards, once awarded the restricted stock would partially vest after only two years of service. In addition, the restricted stock would vest immediately upon a Covered Employee's involuntary employment termination without "cause" either between the second and third anniversary of the grant date, or in the year following a change in control of GMAC. Accordingly, the Special Master has concluded that GMAC's proposed annual long-term incentive awards would be inconsistent with the Public Interest Standard because they may vest over a period too short to be relevant to the long-term performance of the Company.

As described in *Exhibits I* and *II*, the structures the Special Master has determined to be consistent with the Public Interest Standard include an annual long-term incentive award payable only upon the achievement of specified, objective performance criteria that have been developed and reviewed in consultation with the Office of the Special Master, and that will not vest unless the employee remains employed until the third anniversary of grant. In addition, as required by the Rule, these awards may only be redeemed in 25% installments for each 25% of GMAC's TARP obligations that are repaid.

4. "Other" Compensation and Perquisites

GMAC proposed payments of "other" compensation, as well as perquisites, to the Covered Employees. The Special Master has concluded that, absent special justification, employees—not the Company—generally should be responsible for paying personal expenses, and that significant portions of compensation structures should not be allocated to such perquisites and "other" compensation. *See id.* §30.16(b)(1)(iii).

The Rule requires that each Exceptional Assistance Recipient annually disclose to Treasury any perquisites where the total value for any Senior Executive Officer or Most Highly Compensated Employee exceeds \$25,000. An express justification for offering these benefits must also be disclosed. Accordingly, as described in *Exhibits I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard provide no more than \$25,000 in "other" compensation and

perquisites to each of these employees. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master. To the extent that payments exceeding this limitation have already been made to a Covered Employee in 2009, those amounts should be promptly returned to the Company.

5. Non-Qualified Deferred Compensation

GMAC also proposed that certain Covered Employees receive compensation in the form of accruals under a “non-qualified deferred compensation” plan. In such plans, employers periodically credit employees with an entitlement to post-retirement payments. Over time, these credits accumulate and employees may become entitled to substantial cash guarantees payable on retirement—in addition to any payments provided under retirement plans maintained for employees generally.

The Special Master has concluded that the primary portion of a Covered Employee’s compensation package should be allocated to compensation structures that are “performance-based over a relevant performance period.” *Id.* § 30.16(b)(1)(iv). Payments under the Company’s “non-qualified deferred compensation” plans do not depend upon “individual performance and/or the performance of the [Company] or a relevant business unit,” *id.*; instead, such accruals are simply guaranteed cash payments from the Company in the future. In addition, these payments can make it more difficult for shareholders to readily ascertain the full amount of pay due a top executive upon leaving the firm.

Covered Employees should fund their retirements using wealth accumulated based on Company performance while they are employed, rather than being guaranteed substantial retirement benefits by the Company regardless of Company performance during and after their tenures. Accordingly, as described in ***Exhibits I and II***, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard prohibit further 2009 accruals for Covered Employees under supplemental retirement plans or Company credits to other “non-qualified deferred compensation” plans following the date of this Determination Memorandum..

6. Severance Arrangements

GMAC’s submission to the Office of the Special Master indicated that, in some cases, the proposed compensation structures would result in increases in amounts payable to these employees pursuant to existing severance arrangements. These arrangements generally provide for cash amounts payable upon termination of employment, including termination in light of the employee’s performance.

The Special Master has concluded that an increase in the amounts payable under these arrangements would be inconsistent with the principle that compensation should be performance-based, *id.* § 30.16(b)(1)(iv), and that payments should be appropriately allocated among the elements of compensation, *id.* § 30.16(b)(1)(iii). Accordingly, for the compensation structures described in ***Exhibits I and II*** to be consistent with the

Public Interest Standard, the Company must ensure that 2009 compensation structures for these employees do not result in an increase in the amounts payable pursuant to these arrangements.

7. Departed Employees

In addition, three employees that would have been Covered Employees had they remained employed are no longer employed by the Company. With respect to these employees, the Special Master has determined that cash salaries through the date of the termination of employment, and payment of up to \$25,000 in perquisites and “other” compensation are consistent with the Public Interest Standard. No other payments to these employees of any kind would be consistent with the Public Interest Standard. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master.

V. CORPORATE GOVERNANCE

As noted in Part III above, the Rule requires the Special Master to consider the extent to which compensation structures are “performance-based over a relevant performance period,” 31 C.F.R. § 30.16(b)(1)(iv). In light of the importance of this principle, GMAC must take certain additional corporate governance steps, including those required by the Rule, to ensure that the compensation structures for the Covered Employees, and the amounts payable or potentially payable under those structures, are consistent with the Public Interest Standard.

A. Requirements Relating to Compensation Structures

In order to ensure that objective compensation performance criteria are “measurable, enforceable, and actually enforced if not met,” *id.* § 30.16(b)(1)(iv), long-term incentive awards may not be granted unless the Company’s compensation committee determines to grant such an award in light of the employee’s performance as measured against objective performance criteria that the Committee has developed and reviewed in consultation with the Office of the Special Master. This evaluation must be disclosed in, and certified by the committee as part of, the Company’s securities filings. In addition, the committee must retain discretion with respect to each executive to reduce (but not to increase) the amount of any incentive award on the basis of its overall evaluation of the executive’s or the Company’s performance (notwithstanding full or partial satisfaction of the performance criteria).

In addition, as noted in Part III, above and described in *Exhibits I* and *II*, the structures determined by the Special Master to be consistent with the Public Interest Standard include grants of stock in GMAC. It is critical that these compensation structures achieve the Rule’s objective of “appropriate[ly] allocat[ing] the components of compensation [including] long-term incentives, as well as the extent to which compensation is provided in...equity,” *id.* § 30.16(b)(iii).

The Company must have in effect a policy that would prohibit an employee from engaging in hedging, derivative or other transactions that have an economically similar effect that would undermine the incentives created by the compensation structures set forth in *Exhibits I* and *II*. Such transactions would be contrary to the principles set forth in the Rule.

B. Additional Requirements

In addition to the requirements set forth above, pursuant to the requirements of the Rule, GMAC is required to institute the following corporate governance reforms:

- (1) *Compensation Committee; Risk Review.* GMAC must maintain a compensation committee comprised exclusively of independent directors. Every six months, the committee must discuss, evaluate, and review with GMAC's senior risk officers any risks that could threaten the value of GMAC. In particular, the committee must meet every six months to discuss, evaluate, and review the terms of each employee compensation plan to identify and limit the features in (1) SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that threaten the value of GMAC; (2) the SEO or other employee compensation plans that could encourage behavior focused on short-term results and not on long-term value creation; and (3) the employees' compensation plans that could encourage the manipulation of GMAC's reported earnings to enhance the compensation of any of the employees. *id.* § 30.4; *id.* § 30.5.
- (2) *Disclosure with Respect to Compensation Consultants.* The compensation committee must disclose to Treasury an annual narrative description of whether GMAC, its Board of Directors, or the committee has engaged a compensation consultant during the past three years. If so, the compensation committee must detail the types of services provided by the compensation consultant or any affiliate, including any "benchmarking" or comparisons employed to identify certain percentile levels of compensation. *Id.* § 30.11(c).
- (3) *Disclosure of Perquisites.* As noted in Part III, GMAC must provide to Treasury an annual disclosure of any perquisite whose total value for GMAC's fiscal year exceeds \$25,000 for each of the Covered Employees. GMAC must provide a narrative description of the amount and nature of these perquisites, the recipient of these perquisites, and a justification for offering these perquisites (including a justification for offering the perquisite, and not only for offering the perquisite with a value that exceeds \$25,000). *Id.* § 30.11(b).
- (4) *Clawback.* GMAC must ensure that any incentive award paid to a Covered Employee is subject to a clawback if the award was based on materially inaccurate financial statements (which includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria. GMAC must exercise its clawback rights except to the extent that it is unreasonable to do so. *Id.* § 30.8.

- (5) *Policy Addressing Excessive or Luxury Expenditures.* GMAC was required to adopt an excessive or luxury expenditures policy, provide that policy to Treasury, and post it on the Company's website. If GMAC's board of directors makes any material amendments to this policy, within ninety days of the adoption of the amended policy, the board of directors must provide the amended policy to Treasury and post the amended policy on GMAC's Internet website. *Id.* § 30.12.
- (6) *Prohibition on Tax Gross-Ups.* Except as explicitly permitted under the Rule, GMAC is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees. *Id.* § 30.11(d).
- (7) *CEO and CFO Certification.* GMAC's chief executive officer and chief financial officer must provide to the Securities and Exchange Commission written certification of GMAC's compliance with the various requirements of section 111 of EESA. The precise nature of the required certification is identified in the Rule. *Id.* § 30.15 Appx. A.

VI. CONCLUSION

The Special Master has reviewed the Proposed Structures for the Covered Employees for 2009 in light of the principles set forth at 31 C.F.R. § 30.16(b). On the basis of that review, the Special Master has determined that the Proposed Structures submitted by GMAC require modification in order to meet the Public Interest Standard.

The Special Master has separately reviewed the compensation structures set forth in *Exhibits I* and *II* in light of the principles set forth at 31 C.F.R. § 30.16(b). Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3) thereof, the Special Master hereby determines that the compensation structures set forth in *Exhibits I* and *II*, including the amounts payable or potentially payable under such compensation structures, will not result in payments that are inconsistent with the purposes of section 111 of EESA or the TARP, and will not otherwise be contrary to the public interest.

Pursuant to the Interim Final Rule, GMAC may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in this Determination Memorandum. The request for reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determinations. If GMAC does not request reconsideration within 30 days, the determinations set forth herein will be treated as final determinations. 31 C.F.R. § 30.16(c)(1).

The foregoing determinations are limited to the compensation structures described in *Exhibits I* and *II*, and shall not be relied upon with respect to any other employee. The determinations are limited to the authority vested in the Special Master by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or Treasury with respect to the compliance

of any compensation structure with any other provision of the Rule. Moreover, this Determination Memorandum has relied upon, and is qualified in its entirety by, the accuracy of the materials submitted by GMAC to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

EXHIBIT I
COVERED EMPLOYEES

2009 Compensation

Company Name: GMAC Financial Services

Employee ID	Cash Salary (Rate going forward.)	Stock Salary (Performance based: The stock vests at grant and is redeemable in three equal, annual installments beginning on the 2nd anniversary of grant.)	Long-Term Restricted Stock (Performance based: Awarded based on achievement of objective performance goals. Vests after 3 years of service. Transferability dependent on TARP repayment.)	Total Direct Compensation (Cash salary paid to date plus two months at new run rate + stock salary + long-term restricted stock.)
582903	\$850,000	\$4,491,667	\$2,816,667	\$8,450,000
129881	\$400,000	\$588,333	\$415,000	\$1,320,000
151695	\$500,000	\$1,858,333	\$1,088,000	\$3,363,000
172265	\$500,000	\$2,730,000	\$1,615,000	\$4,845,000
197253	\$500,000	\$1,941,667	\$1,050,000	\$3,325,000
250095	\$500,000	\$4,437,500	\$2,500,000	\$7,500,000
265383	\$375,000	\$445,833	\$400,000	\$1,200,000
353403	\$365,000	\$646,111	\$500,000	\$1,500,000
391076	\$450,000	\$1,133,333	\$725,000	\$2,225,000
398005	\$450,000	\$625,833	\$500,000	\$1,530,000
501828	\$450,000	\$1,850,000	\$1,150,000	\$3,450,000
509014	\$400,000	\$852,278	\$618,000	\$1,855,000
513416	\$450,000	\$880,000	\$665,000	\$1,995,000
546145	\$500,000	\$1,641,667	\$1,216,667	\$3,650,000
555076	\$480,000	\$1,029,167	\$750,000	\$2,255,000
682168	\$600,000	\$3,083,333	\$1,716,667	\$5,150,000
699403	\$380,000	\$483,783	\$420,000	\$1,270,000
725547	\$450,000	\$1,220,833	\$825,000	\$2,475,000
805106	\$500,000	\$2,208,333	\$1,300,000	\$3,925,000
921597	\$400,000	\$1,149,872	\$665,000	\$2,070,000
936790	\$400,000	\$1,141,667	\$725,000	\$2,225,000
964006	\$450,000	\$2,391,667	\$1,400,000	\$4,200,000

Comparison of 2009 Compensation to Prior Years: 2007 & 2008 Compensation

2008 Cash decreased by \$10.4M or 50.2%
Total Direct Compensation decreased by \$413.3M or 85.6%

2007 Cash decreased by \$5.0M or 42.5%
Total Direct Compensation decreased by \$185.9M or 78.2%

Note: 1: Amounts reflected in this Exhibit do not include amounts the Company has asserted to be payable pursuant to legally binding rights under valid employment contracts, see 31 C.F.R. § 30.10(e)(2).

Note: 2: The total number of Covered Employees may be less than 25 because of terminations, departures and retirements after January 1, 2009.

EXHIBIT II

TERMS AND CONDITIONS OF PAYMENTS AND STRUCTURES CONSISTENT WITH THE PUBLIC INTEREST STANDARD

The following general terms and conditions shall govern the compensation structures described in *Exhibit I*. The Special Master's determination that those structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- **Cash base salary.** Cash base salaries reflect the go-forward rate for the employee effective as of November 1, 2009. Compensation paid in the form of cash base salary prior to that date in accordance with the terms of employment as of June 14, 2009 shall be permitted unless otherwise noted. 31 C.F.R. § 30.16(a)(3)(iii).
- **Stock salary.** Rates of stock salary grants reflect full-year values. Because this is a new compensation element, the amounts are payable on a *nunc pro tunc* basis effective January 1, 2009. Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of shares or units based on the fair market value or a share on the date of award. Stock or stock units granted as stock salary may only be redeemed in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if TARP obligations are repaid.
- **Long-term restricted stock.** Long-term restricted stock may be granted upon the achievement of specified, objective performance criteria that have been developed and reviewed in consultation with the Office of the Special Master and certified by the Company's compensation committee. Any such stock may vest only if the employee remains employed by the Company on the third anniversary of grant (or, if earlier, upon death or disability). The stock shall be transferable only in 25% increments for each 25% of TARP obligations repaid by the Company.
- **Other compensation and perquisites.** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.
- **Supplemental executive retirement plans and non-qualified deferred compensation plans.** Following the date of the Determination Memorandum, no additional amounts may be accrued under supplemental executive retirement plans, and no Company contributions may be made to other "non-qualified deferred compensation" plans, as defined by pertinent SEC regulations.
- **Qualified Plans.** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees in tax-qualified retirement, health and welfare, and similar plans is consistent with the Public Interest Standard.