DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 11, 2009

Drema M. Kalajian, Esquire
General Motors Acceptance Corporation Financial Services
200 Renaissance Center
MC-B09-B11
Detroit, MI 48265

Re: Proposed Compensation Structures for Certain Executive Officers and Most Highly Compensated Employees ("Covered Employees 26 – 100")

Dear Ms. Kalajian:

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 employees who are either executive officers of General Motors Acceptance Corporation Financial Services ("GMAC") or one of GMAC's 100 most highly compensated employees, excluding those employees subject to Section 30.10 of the Interim Final Rule ("Covered Employees 26 – 100"). 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 structures for Covered Employees 26 – 100. 31 C.F.R. § 30.16(a)(3)(ii).

The compensation review for Covered Employees 26 – 100 differs from the Special Master's review of GMAC's "Top 25" employees, which emphasized the individual "amounts payable" to those employees, *id.* § 30.16(a)(3)(i). For Covered Employees 26 – 100, the Interim Final Rule does not require individual payment determinations; instead, it requires the Special Master to determine only whether the proposed compensation structures "will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or are otherwise contrary to the public interest." *Id.* § 30.16(a)(3)(ii). The Special Master has determined that, to satisfy this standard, the 2009 compensation structures for Covered Employees 26 – 100 generally must comport with the following important standards:

- The compensation structures for Covered Employees 26 – 100 must be consistent with the principles emphasized in the Special Master's previous determinations, including: pay based on individual and Company performance, long-term incentives, avoidance of "guaranteed" bonuses and retention payments, and appropriate levels of compensation compared to compensation for persons in similar positions or roles at similar entities.

- To achieve these principles, Covered Employees 26 – 100 should receive compensation in three primary components: cash salary, stock salary, and incentive compensation. The amounts and conditions of the components for each Covered Employee will be determined by the Company's compensation committee, subject to the structural rules described herein and set forth in detail in the attached Determination Memorandum.

- **Total compensation** must emphasize long-term performance. At least 50% of a Covered Employee's compensation other than cash base salary — whatever the mix of components for that individual — must not be transferable or otherwise redeemable for at least three years. The objective is to promote long-term performance. In addition, the total amount of cash included in any compensation package for an individual who earns $500,000 or more in cash may not exceed 45% of the total compensation for that individual, except in exceptional cases for good cause shown.

  - **Cash salary** should not exceed $500,000 per year, except in exceptional cases for good cause shown.

  - **Stock salary** will immediately vest, but will not be transferable or otherwise redeemable until at least one year after it is earned.

  - **Incentive compensation** may be granted if—and only if—the Covered Employee achieves objective performance metrics determined by the compensation committee of GMAC's Board of Directors ("GMAC's Compensation Committee"), which is comprised solely of independent directors, in consultation with the Office of the Special Master. Incentive compensation may be delivered in a mix of cash and stock, but must be payable over time and subject to "clawback" if the performance assessment resulting in the compensation is later discovered to be inaccurate.

- The total value of all incentive compensation granted to Covered Employees 26 – 100 cannot exceed a specified percentage of GMAC's eligible earnings, which will be determined by GMAC's Compensation Committee and may be reviewed by the Special Master.

- If GMAC reasonably expects that a Covered Employee may become one of the "Top 25" employees in 2010 and therefore subject to "bonus" restrictions under the Emergency Economic Stabilization Act of 2008, as amended, and the Interim Final Rule, the compensation structure for that employee will be subject to additional terms and conditions described in the Determination Memorandum to assure compliance with pertinent statutory and regulatory requirements.

- Cash guarantees payable pursuant to previously existing agreements should be restructured to be consistent with the principles above.

- The restrictions described in the Special Master's "Top 25" determinations pertaining to perquisites, severance benefits and supplemental executive retirement plans shall be extended to Covered Employees 26 – 100.

The Special Master has also determined that, in order for the approved compensation structures to satisfy the standards of 31 C.F.R. § 30.16(a)(3)(ii), GMAC must adopt policies applicable to Covered Employees 26 – 100 as follows:

- The achievement of all performance objectives must be certified by GMAC's Compensation Committee. These performance objectives must be reviewed and approved by the Office of the Special Master.

- Each Covered Employee will be prohibited from engaging in any hedging, derivative or other transactions that have an equivalent economic effect 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 any Covered Employee.

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 majority of compensation payable under the approved structures depends on GMAC and individual performance, and ties the financial incentives of GMAC employees to the overall performance of the Company. A significant portion of the total compensation paid to employees under these structures will be redeemable over a period of not less than three years. The ultimate value realized by each Covered Employee therefore will depend on GMAC's performance over the long term. Guaranteed amounts payable in cash, in contrast, are 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 these approved compensation structures are competitive when compared with persons in similar positions or roles at similar entities. *Id.* § 30.16(b)(1)(ii).

- *Appropriate allocation.* The total compensation payable to GMAC employees is weighted heavily toward long-term structures that are tied to GMAC's performance. As a general principle, guaranteed income is rejected. Fixed compensation payable to GMAC employees should consist only of cash base salaries and stock salary at sufficient levels to attract and retain employees and provide them a reasonable level of liquidity. *Id.* § 30.16(b)(1)(iii).

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 ***Annex A***. If GMAC does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,

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

Attachments

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

ANNEX A
DETERMINATION MEMORANDUM

I. INTRODUCTION

Under the Emergency Economic Stabilization Act of 2008, as amended ("EESA") and the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the "Rule"), the Office of the Special Master for TARP Executive Compensation (the "Office of the Special Master," or the "Office") is responsible for reviewing compensation structures for the executive officers and 100 most highly employees, excluding those employees subject to Section 30.10 of the Rule ("Covered Employees 26 – 100"), at financial institutions receiving exceptional financial assistance ("Exceptional Assistance Recipients") under the Troubled Asset Relief Program (the "TARP"). 31 C.F.R. § 30.16(a)(3)(ii). The compensation review for Covered Employees 26 – 100 differs from the Special Master's review for the "Top 25" employees, which emphasized the individual "amounts payable" to those employees, *id.* § 30.16(a)(3)(i). For Covered Employees 26 – 100, the Rule does not require individual payment determinations; instead, it requires the Special Master to determine only whether the proposed compensation structures "will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest." *Id.* § 30.16(a)(3)(ii).

General Motors Acceptance Corporation Financial Services ("GMAC," or the "Company"), one of six remaining Exceptional Assistance Recipients, has submitted to the Special Master proposed 2009 compensation structures for review pursuant to Section 30.16(a)(3)(ii) of the Rule. The Special Master has completed the review of the Company's proposed compensation structures for Covered Employees 26 – 100 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)(ii) of the Rule, with respect to Covered Employees 26 – 100.

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. Since that date, the Special Master, and Treasury employees working in the Office of the Special Master, have 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 Covered Employees 26 – 100.

The Rule requires that each Exceptional Assistance Recipient submit proposed compensation structures for the Covered Employees 26 – 100. 31 C.F.R. § 30.16(a)(3)(ii). On October 5, 2009, the Office of the Special Master requested from each Exceptional Assistance Recipient, including GMAC, certain data and documentary information necessary to facilitate the Office of the Special Master's review of the Company's proposed compensation structures. The request required GMAC to submit data describing its proposed 2009 compensation structures, as well as the historical compensation structures for Covered Employees 26 – 100.

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 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 October 13, 2009. Following a preliminary review of the submission, and the provision by GMAC of certain additional information requested by the Office of the Special Master, on October 30, 2009, the Special Master determined that GMAC's submission was substantially complete for purposes of the Rule. *Id.* § 30.16(a)(3)(ii). The Office of the Special Master then commenced a formal review of GMAC's proposed compensation structures for Covered Employees 26 – 100. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of a substantially complete submission. *Id.*

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 executive compensation and corporate governance;

- 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 Kevin J. Murphy, a world-renowned expert in executive compensation and the Kenneth L. Trefftzs 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 III below, when evaluating the Company's proposed compensation structures for the Covered Employees 26 – 100 for 2009.

III. Statutory and Regulatory Standards

The Rule requires that the Special Master determine for each of the Covered Employees 26 – 100 whether GMAC's proposed compensation structures "will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3)(ii) (as applied to Covered Employees 26

– 100 of Exceptional Assistance Recipients, the "Public Interest Standard"). The Rule requires that the Special Master consider six principles when making these compensation determinations:

(1) *Risk.* The compensation structure should avoid incentives that encourage 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, and 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 granted. *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 structures should be consistent with, and not excessive taking into account, compensation structures 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 structures 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.*

In addition, 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.*

The Rule also provides an exemption where a Covered Employee's annual compensation does not exceed $500,000 (excluding "long-term restricted stock," as that term is defined in the Rule). Compensation structures that fit within this exemption are automatically deemed to meet the requirements of the Rule, and the approval of the Special Master is not required to implement these structures. 31 C.F.R. § 30.16(a)(3)(ii).

IV. COMPENSATION STRUCTURES

A. GMAC Proposals

GMAC provided the Office of the Special Master with detailed information concerning its proposed 2009 compensation structures for Covered Employees 26 – 100 (the "Proposed Structures"). Under the Proposed Structures, Covered Employees 26 – 100 would generally receive a combination of cash salary, cash bonuses and stock-based compensation.

Cash salaries generally would comprise 20% to 50% of each employee's target total direct compensation. Short-term cash bonuses would be administered on a pooled basis, with target incentive pools for each GMAC business unit based on the aggregated individual target bonuses for Covered Employees 26 – 100 in that unit. Actual amounts payable from each pool and to each Covered Employee would be determined by GMAC's Compensation Committee based on business unit and individual performance, respectively. Stock grants were previously made to Covered Employees 26 – 100 in 2009 in the form of restricted stock units that vest in four equal, annual installments.

B. Determinations of the Special Master

The Special Master reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part III above. In light of this review, the Special Master has determined that the Proposed Structures are, on the whole, inconsistent with the Public Interest Standard and require modification.

The Special Master has determined that the compensation structures described in this Part IV.B will not, by virtue of their structural design, result in payments inconsistent with the Public Interest Standard. These compensation structures are described in further detail in ***Exhibits I*** and ***II.***

1. Total Compensation

The Special Master reviewed GMAC's Proposed Structures in light of the principle that an "appropriate portion of the compensation should be performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). In general, the Special Master has concluded that compensation payable no earlier than three years from the date it is earned provides employees with incentives to maximize the long-term value of the Company. Accordingly, the Special Master has concluded that, in order to be consistent with the Public Interest Standard, compensation structures for Covered Employees 26 – 100, whether in the form of cash or stock, must provide that at least 50% of compensation other than cash salary is payable no earlier than three years from the date it is earned.

The Special Master also reviewed the Proposed Structures in light of the principle that "a significant portion of the overall compensation should be long-term compensation that aligns the interest of the employee with the interests of shareholders and taxpayers." *Id.* § 30.16(b)(1)(iii). In general, compensation payable in the form of cash does not align employees' incentives with the interests of shareholders and taxpayers as effectively as compensation payable in the form of Company stock. Accordingly, the Special Master has concluded that, in order to be consistent with the Public Interest Standard, the total amount of cash included in the compensation structure for any Covered Employee who receives more than $500,000 in cash salary and cash incentive compensation should not exceed 45% of total compensation, other than in exceptional cases for good cause shown.[1] Any such exceptions should be individually certified to the Office of the Special Master by GMAC's Compensation Committee. The remaining percentage of total compensation must be payable in the form of Company stock. To provide for reasonable levels of liquidity, a Covered Employee who earns less than $500,000 in cash salary and cash incentive compensation may receive more than 45% of total compensation in cash, but must receive a material portion of total compensation in the form of Company stock.

a. Cash Salary

The Special Master reviewed GMAC's proposed cash salaries in light of the principle that compensation structures should generally be consistent with compensation structures "for persons in similar positions or roles at similar entities that are similarly situated, including entities competing in the same markets." 31 C.F.R. § 30.16(b)(1)(v). The Special Master has

[1] In some cases, a Covered Employee may have received cash compensation prior to the date of this Determination Memorandum that prohibits the Company from complying with the prescriptions of Part IV.B.1. if the Company provides such Covered Employee with the total 2009 compensation described in the Proposed Structures. The Special Master has determined that, with respect to any such Covered Employee, in order for the compensation structure to be consistent with the Public Interest Standard, GMAC must provide any additional 2009 compensation, except for continued payment of a level of cash base salary consistent with the principles set forth in Part IV.B.1.a., in the form of Company stock.

determined that, to be consistent with the Public Interest Standard, compensation structures for Covered Employees 26 – 100 may not provide for cash salaries in excess of $500,000, other than in exceptional circumstances for good cause shown. Any such exceptions must be individually certified to the Office of the Special Master by GMAC's Compensation Committee.

b. Stock Salary

The Special Master reviewed the Proposed Structures in light of the principle that compensation structures should "appropriately allocate the components of compensation such as salary . . . as well as the extent to which compensation is provided in cash, equity, or other types of compensation," *id.* § 30.16(b)(1)(iii). The Proposed Structures generally provide for payment of base salary only in the form of cash. The Special Master has concluded that, to be consistent with the Public Interest Standard, compensation structures should permit the payment of base compensation in the form of vested stock salary, which facilitates an appropriate allocation of fixed, annual compensation to stock.

The Special Master also reviewed the Proposed Structures in light of the principle that compensation structures should provide compensation that is "performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that, to provide compensation that is performance-based over a relevant period, stock salary may not be transferred or otherwise redeemed prior to the first anniversary of the date such stock salary is earned, except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes.

c. Incentive Compensation

The Special Master reviewed GMAC's proposed incentive compensation for Covered Employees 26 – 100 in light of the principle that compensation structures should provide performance-based compensation based on "performance metrics [that are] measurable, enforceable, and actually enforced if not met," *id.* § 30.16(b)(1)(iv). In general, incentive compensation should not be granted unless the achievement of performance metrics is reviewed and certified on an independent basis. Accordingly, the Special Master has concluded that, to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must provide that no incentive compensation may be granted to a Covered Employee unless the employee achieves objective performance metrics developed by appropriate GMAC officials and reviewed and approved by GMAC's Compensation Committee (which is composed solely of independent directors) in consultation with the Office of the Special Master. As described below, incentive compensation may be delivered in a mix of cash and stock, but must be payable over time and subject to "clawback" if the performance assessment resulting in the grant is later discovered to be inaccurate.

i. <u>Cash Incentives</u>

The Special Master reviewed GMAC's proposed incentive compensation in light of the principle that compensation structures should provide performance-based compensation based on "performance metrics [that are] measurable, enforceable, and actually enforced if not met." *Id.* § 30.16(b)(iv). In general, the Special Master has concluded that cash incentives should be deferred over a period of time designed to ensure that the performance metrics giving rise to the payment accurately measured performance. Accordingly, the Special Master has concluded that, to be consistent with the Public Interest Standard, the compensation structure for any Covered Employee who receives more than $500,000 in cash salary and cash incentive compensation must provide that at least 50% of incentive compensation granted after the date of this Determination Memorandum and paid in cash be deferred for at least one year after the date the grant is made, in order to assure compliance with the performance metrics upon which the incentive compensation was based.

ii. Stock Incentives

The Special Master reviewed GMAC's proposed incentive compensation in light of recently adopted international standards providing that incentive compensation should generally be payable over a period of three years, as well as the principle that compensation structures should ensure that "an appropriate portion of the compensation should be performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that a significant amount of the compensation paid as an incentive should reflect the Company's performance over the long term. Accordingly, to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must provide that at least 50% of incentive compensation be paid in the form of stock or stock equivalents that cannot be transferred or otherwise redeemed until at least three years from the date of grant and cannot be transferred or otherwise redeemed until one year following vesting, except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes. The remaining 50% of incentive compensation may be paid in a form, and at a time, determined by GMAC's compensation committee, subject to the principles set forth in Part IV.B. of this Determination Memorandum. The Special Master has determined that the restructuring of any equity grants previously made in 2009 to conform to the three-year requirement would be consistent with the Public Interest Standard.

iii. Total Incentives

Finally, the Special Master reviewed GMAC's proposed incentive compensation in light of the principle that compensation structures "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." *Id.* § 30.16(b)(1)(v). The Special Master has determined that safeguards with respect to the aggregate amount of incentive compensation payable to Covered Employees 26 – 100 are necessary to ensure that compensation structures for Covered Employees 26 – 100 are generally comparable to those for persons in similar positions or roles at similar entities that are similarly situated. Accordingly, the Special Master has determined that, in order to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 may not provide for incentive compensation that, in the aggregate, exceeds a specified percentage of GMAC's eligible earnings. Such eligible earnings will be determined by GMAC's Compensation Committee and may be reviewed by the Office of the Special Master.

2. Covered Employees 26 – 100 Entering the "Top 25"

If a Covered Employee becomes a "Top 25" employee in 2010, several complications arise with respect to that Covered Employee's compensation structure. In particular, Section 111 of EESA, and Section 30.10 of the Rule, impose restrictions on the accrual or payment of cash "bonuses" in 2010 for any Covered Employee who becomes a "Top 25" employee in 2010, even if the compensation relates to performance prior to the employee joining the "Top 25." The Special Master has considered these issues and has determined that, if GMAC reasonably expects that a Covered Employee may become one of the "Top 25" employees in 2010, the compensation structure for that Covered Employee will be subject to the following additional terms and conditions to assure compliance with pertinent statutory and regulatory requirements. The Special Master has determined that the restructuring of such a Covered Employee's 2009 compensation structure to conform to the following terms and conditions, including with respect to stock-based compensation previously granted in 2009, is consistent with the Public Interest Standard.

First, in accordance with the Special Master's October 22, 2009, determinations for the "Top 25," additional stock salary may be granted to the Covered Employee on a *nunc pro tunc* basis, provided that the stock vests immediately and is only redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if TARP obligations are repaid (except stock withheld or transferred immediately upon vesting to enable the employee to pay taxes).

Second, any incentive compensation for performance in 2009 that would be payable to the Covered Employee in cash in the first quarter of 2010 (consistent with the principles set forth in Part IV.B.1.c.i) may be paid on or before December 31, 2009.

Third, notwithstanding the other requirements of this Part IV.B., up to one-third of the Covered Employee's "annual compensation" may be paid in the form of "long-term restricted stock," as those terms are defined in the Rule.

3. "Other" Compensation and Perquisites

GMAC's proposals provide for limited payments of "other" compensation, as well as perquisites, to Covered Employees 26 – 100. 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 the compensation structures should not be allocated to such perquisites and "other" compensation. *See id.* §30.16(b)(1)(iii).

Accordingly, to be consistent with the Public Interest Standard, the compensation structure for each Covered Employee generally must provide no more than $25,000 in "other" compensation and perquisites. 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.

4. Supplemental Executive Retirement Plans and Non-Qualified Deferred Compensation

GMAC also proposed that certain Covered Employees receive limited 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 employee upon leaving the Company.

Covered Employees 26 – 100 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, in order to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must not provide for further 2009 accruals under supplemental retirement plans or Company credits to other "non-qualified deferred compensation" plans (with the exception of employee-funded elective deferrals) following the date of this Determination Memorandum.

5. Severance Plans

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)(i)(iv), and that payments should be appropriately allocated among the elements of compensation, *id.* § 30.16(b)(1)(iii). Accordingly, in order to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must ensure that 2009 compensation structures do not result in an increase in the amounts payable pursuant to these arrangements.

6. Exemption for Certain Covered Employees 26 – 100

The Proposed Structures for certain Covered Employees would result in annual compensation (other than long-term restricted stock) not exceeding $500,000. If the Proposed Structure for a Covered Employee satisfies the exemption set forth in Section 30.16(a)(3)(ii) of the Rule and described in Part III above, the structure is automatically deemed to meet the requirements of the Rule.

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 Covered Employees 26 – 100, 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), incentive compensation may not be granted unless GMAC's Compensation Committee determines to grant such compensation 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 to shareholders in, and certified by the Committee as part of, GMAC's securities filings. In addition, the Committee must retain discretion with respect to each employee to reduce (but not to increase) the amount of incentive compensation on the basis of its overall evaluation of the employee's or GMAC's performance (notwithstanding full or partial satisfaction of the performance criteria).

In addition, as noted in Part IV above, the structures determined by the Special Master to be consistent with the Public Interest Standard, include grants of stock or stock units 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)(1)(iii). Accordingly, the Company must have in effect a policy that would prohibit a Covered 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 Part IV above. Such transactions would be contrary to the principles set forth in the Rule.

Finally, because the compensation structures determined by the Special Master to be consistent with the Public Interest Standard include grants of stock or stock units in GMAC, it is particularly important that stock acquired pursuant to these grants provide "compensation [that is] performance-based over a relevant performance period," *id.* § 30.16(b)(1)(iv). Accordingly, GMAC's Compensation Committee must ensure that each Covered Employee is subject to holding requirements set forth in stock ownership commitment rules to be adopted by GMAC's Compensation Committee in consultation with the Office of the Special Master.

B. Additional Requirements

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

(1) *Compensation Committee; Risk Review.* Under the Rule, 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 Rule requires that 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) employee compensation plans that could encourage behavior focused on short-term results and not on long-term value creation; and (2) employee compensation plans that could encourage the manipulation of GMAC's reported earnings to enhance the compensation of any of the employees. 31 C.F.R. § 30.4; *id.* § 30.5.

(2) *Disclosure with Respect to Compensation Consultants.* The Rule requires that the compensation committee 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) *Clawback.* The Rule requires that any bonus payment made to a senior executive officer or one of the next twenty most highly compensated employees of GMAC be subject to a provision for recovery or "clawback." *Id.* § 30.8. The Special Master has determined that this important requirement should also apply to each of GMAC's Covered Employees 26 – 100. Accordingly, any incentive compensation must be subject to forfeiture if it is later determined to be 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 compensation was earned.

(4) *Prohibition on Tax Gross-Ups.* The Rule prohibits GMAC from providing (formally or informally) a tax "gross-up," as defined in the Rule, to any senior executive officer or most highly compensated employee. *Id.* § 30.11(d). The Special Master has determined that this important requirement should also apply to each of GMAC's Covered Employees 26 – 100. Accordingly, GMAC must not provide (formally or informally) a tax "gross-up," as defined in the Rule, to any Covered Employee following the date of this Determination Memorandum.

VI. Conclusion

The Special Master has reviewed GMAC's Proposed Structures 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.

Part IV.B sets forth structures that the Special Master has concluded comport with the Rule's principles. Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3)(ii) thereof, the Special Master hereby determines that the compensation structures set forth in Part IV.B, 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 TARP, and will not otherwise be contrary to the public interest.

Pursuant to the 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. *Id.* § 30.16(c)(1).

The foregoing determinations are limited to the compensation structures described in Part IV.B, 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)(ii) 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 the Company to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

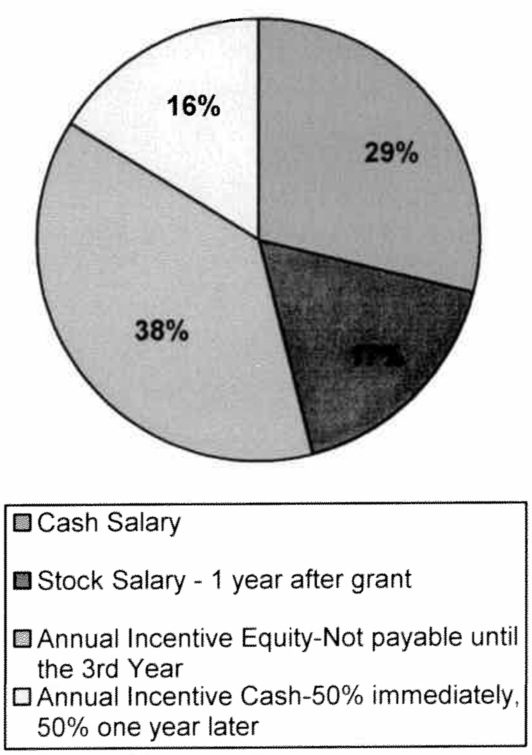
Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

EXHIBIT I
<u>SAMPLE</u> COMPENSATION STRUCTURE
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

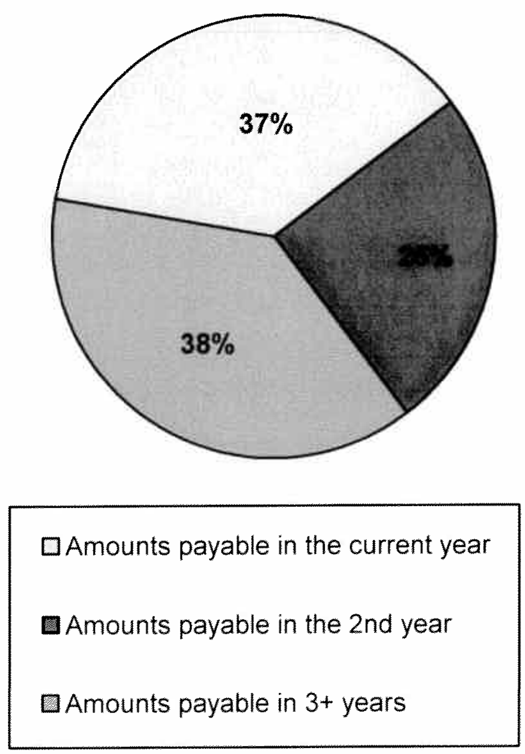
Example: Covered Employee with total compensation package of **$1,190,000**.

- ***Base salary.***
  - **Cash**: The Covered Employee receives a total of **$350,000** in cash salary.
  - **Stock Salary**: The covered Employee receives **$200,000** in Stock Salary, which vests immediately but may not be transferred prior to the first anniversary of the date it is earned.
- ***Incentive Compensation***. The Covered Employee may also receive **$640,000** in incentive compensation as follows:
  - **Cash Incentive**: **$190,000**
    - **$95,000** immediately payable
    - **$95,000** paid at least one year from grant date
  - **Stock incentive**: **$450,000**
    - The entire amount may not be transferred or otherwise redeemed prior to the third anniversary of the grant date.
- ***Total compensation***. The Covered Employee's total compensation is **$1,190,000**, with 45% of the total delivered in cash and 55% delivered in stock (62% of delivered short term and 38% delivered long term).

Breakdown of Total Direct Compensation



Short Term vs. Long Term



Note 1: This Exhibit does not include amounts payable pursuant to legally binding rights under valid employment contracts, see 31 C.F.R. § 30.10(e)(2).

EXHIBIT II
TERMS AND CONDITIONS OF COMPENSATION STRUCTURES CONSISTENT WITH THE PUBLIC INTEREST STANDARD

The following general terms and conditions shall govern the compensation structures described in Part IV.B of the Determination Memorandum. 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.

- ***Stock salary***. Because this is a new compensation element, stock salary may be granted 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 based on the fair market value on the date of grant. Unless otherwise provided in the Determination Memorandum, stock or stock equivalents granted as stock salary may not be redeemable during the one-year period immediately following the date it is earned, except for stock salary withheld or transferred immediately upon vesting to enable the employee to pay taxes. Whether a *nunc pro tunc* grant or payment that is labeled stock salary is salary or a bonus for purposes of the Rule is determined based on all the facts and circumstances.

- ***Prior compensation***. In accordance with the Rule, unless otherwise noted compensation paid to Covered Employees 26 – 100 during the period from June 15, 2009, to the date of the Determination Memorandum will be treated as complying with the Rule, provided that such compensation was paid under a compensation structure established by the Company as of June 14, 2009, and provided further that the Company promptly complies with the modifications set forth in the Determination Memorandum. 31 C.F.R. § 30.16(a)(3)(iii).

- ***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 (with the exception of employee-funded elective deferrals) 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 26 – 100 in tax-qualified retirement, broad-based employee health and welfare plans, and similar plans is consistent with the Public Interest Standard.