



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 23, 2010

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

Re: *Proposed Compensation Payments and Structures for Senior Executive Officers and Most Highly Compensated Employees (“Covered Employees 1–25”)*

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 2010 compensation submission on behalf of the senior executive officers and next 20 most highly compensated employees (“Covered Employees 1–25”) 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 2010 compensation for those employees. 31 C.F.R. § 30.16(a)(3)(i).

The Interim Final Rule requires the Special Master to determine whether the compensation structure for each Covered Employee 1–25 “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.* On October 22, 2009, the Special Master issued a Determination Memorandum containing principles designed to ensure that 2009 compensation for GMAC’s Covered Employees 1–25 satisfies this public interest standard.

The principles established for 2009 must continue to govern compensation at the five remaining recipients of exceptional assistance in 2010. GMAC’s 2010 submission is largely consistent with these important principles, which are detailed in the attached Determination Memorandum. Generally, these principles require that:

- There can be no guarantee of any “bonus” or “retention” awards among the compensation structures approved by the Special Master.
- Base salary paid in cash should not exceed \$500,000 per year, except in appropriate cases for good cause shown. The majority of each individual’s base salary will be paid in the form of stock that 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 the date stock salary is earned, with each installment redeemable one year early if GMAC repays its TARP obligations.

- Total compensation for each individual must 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.
- If — and only if — grants of incentives are appropriate in light of GMAC's circumstances at the end of 2010 *and* a particular Covered Employee achieves objective performance metrics developed and reviewed in consultation with the Office of the Special Master, the employee may be eligible for a long-term incentive grant. These incentives must be granted in 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% of GMAC's TARP obligations that are repaid. Long-term incentive grants must not exceed one third of a Covered Employee's annual compensation.
- Any and all incentive compensation paid to these employees will be subject to recovery or "clawback" if the payments are based on materially inaccurate financial statements, any other materially inaccurate performance metrics, or due to the employee's misconduct.
- "Other" compensation and perquisites, and supplemental executive retirement plans, must remain subject to the limitations described in the 2009 determinations.

Although GMAC's submissions are generally consistent with these important principles, some modifications are required to make certain that compensation for GMAC's Covered Employees 1–25 satisfies the public interest standard. Accordingly, the compensation structures approved by the Special Master vary in the following respects from GMAC's proposals:

- The CEO's compensation package will be restructured, with a greater allocation to stock salary and no cash salary. As a result of this restructuring, and an additional voluntary restructuring, no Covered Employee will receive a cash salary exceeding \$500,000.
- Stock salaries for certain employees who are new to the Covered Employees 1–25 group will be reduced to levels more appropriate in light of their historical overall compensation levels and in comparison with total compensation of comparable employees at similarly situated companies.
- Cash salaries and stock salaries for other employees who remained in the Covered Employees 1–25 group from 2009 will be frozen at the levels previously approved by the Special Master.
- The approved aggregate amount of incentives payable to Covered Employees will be reduced from the Company's proposal of \$29,445,000 to \$12,500,000. Approval of

additional incentive grants, if any, will be determined, subject to Special Master approval, at the conclusion of the year based on the Company's overall 2010 performance.

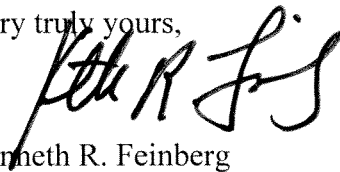
As described in the attached Determination Memorandum, GMAC must also continue to observe the following prescriptions described in the Special Master's 2009 determinations:

- The achievement of any performance objectives must be certified by the compensation 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 or derivative transactions involving GMAC 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.

These requirements are described in detail in the attached Determination Memorandum.

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 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,



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

Enclosures

cc: Mr. Kim Fennebresque
William B. Solomon, Jr., 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 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”) responsibility for reviewing compensation structures of certain employees at institutions that received exceptional financial assistance under 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...otherwise contrary to the public interest.” *Id.* § 30.16(a)(3)(i).

General Motors Acceptance Corporation Financial Services (“GMAC” or the “Company”), one of five remaining Exceptional Assistance Recipients, has submitted to the Special Master proposed 2010 compensation structures (the “Proposed Structures”) for review pursuant to Section 30.16(a)(3)(i) of the Rule. These compensation structures apply to five employees that the Company has identified for 2010 as senior executive officers (the “Senior Executive Officers,” or “SEOs”) for purposes of the Rule, and 20 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 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)(i) 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. The Rule requires that each Exceptional Assistance Recipient submit proposed compensation structures for each Senior Executive Officer and Most Highly Compensated Employee. 31 C.F.R. § 30.16(a)(3)(i).

On October 22, 2009, after reviewing submissions of proposed compensation structures from the Company, the Special Master issued determinations regarding 2009 compensation structures, and amounts potentially payable thereunder, for GMAC’s senior executive officers and certain most highly compensated employees (the “2009 Determinations”). The 2009 Determinations included principles designed to ensure that 2009 compensation for the applicable employees would not “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). The 2009 Determinations applied only to those individuals identified by the Company as subject to the Special Master’s mandatory jurisdiction to review and approve compensation structures and payments, *see id.*, for 2009 and only with respect to compensation for services provided to GMAC for 2009.¹

On December 14, 2009, the Special Master requested from each remaining Exceptional Assistance Recipient, including GMAC, certain data and documentary information necessary to facilitate the Special Master’s review of the Company’s 2010 compensation structures. The request required GMAC to submit data describing its proposed compensation structures, and the payments that would result from the proposals, 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 January 15, 2010. Following a preliminary review of the submission, the Office of the Special Master requested and received additional information from GMAC. On February 12, 2010, the Special Master determined that GMAC’s submission was substantially complete for purposes of the Rule. *Id.* § 30.16(a)(3)(i). 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 receipt 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 matters related to executive compensation;

¹ On November 16, 2009, GMAC filed a report with the Securities Exchange Commission announcing it had named a new chief executive officer, Mr. Michael Carpenter (the “CEO”). In the report, the company noted that Mr. Carpenter would cease receiving compensation for his service as a GMAC board member, and that GMAC intended to submit a proposed compensation package for Mr. Carpenter to the Office of the Special Master. GMAC did so on December 22, 2009, after discussions on the substance of the proposal with the Office of the Special Master. The Special Master subsequently issued a written determination on December 23, 2009 approving, subject to certain conditions, the proposed compensation structure. *See* Letter to Drema M. Kalajian (December 23, 2009), *available at* <http://www.financialstability.gov/docs/20091223%20GMAC%20Supplemental%20Determination%20Letter.pdf>.

- 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*; and
- 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).

The Special Master considered these sources, 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 for 2010.

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 are 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”). 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, 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 amounts 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 2010 compensation structures for the Covered Employees, including

amounts proposed to be paid 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 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. Of the employees listed as Covered Employees for 2009, 16 remain on the list of Covered Employees for 2010, and 8 employees are new entrants to the group.

1. Cash Salary

GMAC proposed cash salaries in amounts ranging from \$400,000 to \$500,000 for employees new to the Covered Employee group. For employees remaining in the Covered Employee group from 2009, cash salaries were proposed at either the rate approved by the Special Master in 2009, or the 2009 rate plus a \$9,000 increase to replace a portion of the value of a discontinued company car program.

2. Stock Salary

GMAC proposed stock salaries in amounts ranging from \$900,000 to \$4,937,500 for employees new to the Covered Employee group. For employees remaining in the Covered Employee group from 2009, stock salaries were proposed at the rate approved by the Special Master in 2009 for ten employees, and at increased rates for seven employees, with the additional annual amounts ranging from \$86,128 to \$1,968,000. As required by the Rule, the stock units proposed to be used for stock salary would be fully vested upon grant.

Consistent with the 2009 Determinations, GMAC initially proposed that stock would 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. Subsequently, following discussions with the Office of the Special Master in which GMAC described unique difficulties balancing an appropriate allocation of long-term compensation and the delivery of a reasonable amount of liquidity to Covered Employees, GMAC requested consideration for a structure under which stock salary would instead only be redeemable in five, equal annual installments beginning on the first anniversary of grant.

3. Annual Long-Term Incentive Awards

GMAC proposed that most Covered Employees be eligible to receive annual long-term incentive awards representing up to one third of their total 2010 compensation, payable in long-term restricted stock units that generally would vest only if the Covered Employee remains employed by the Company on the third anniversary of the grant date. As required by the Rule, these awards would be paid only 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. These proposed payments varied in value.

5. Non-Qualified Deferred Compensation

GMAC also proposed, consistent with the 2009 Determinations, that Covered Employees would not accrue additional amounts under “non-qualified deferred compensation” plans for 2010 (with the exception of employee-funded elective deferrals).

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 III above. The Special Master’s review also made use of the resources described in Part II. In light of this review, the Special Master has determined that the principles established for 2009, which reflect the Public Interest Standard and are set forth in the 2009 Determinations, must continue to govern compensation in 2010.

After reviewing the Proposed Structures, the Special Master has concluded that they are consistent with the general principles established in the 2009 Determinations; however, certain aspects of the Proposed Structures and amounts potentially payable under the Proposed Structures require modification to ensure that they are consistent with the Public Interest Standard.

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 GMAC’s proposal with respect to cash salary 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). Based in part upon this principle, the Special Master concluded in 2009 that cash salaries generally should not target a level above 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 talent with the need for compensation structures that reflect the circumstances of Exceptional Assistance Recipients.

The Special Master also reviewed GMAC’s proposal with respect to cash salary in light of the principle that compensation structures should be “performance-based over a relevant performance period,” *id.* § 30.16(b)(1)(iv). Based in part upon this principle, the 2009 Determinations concluded that cash salary generally should not exceed \$500,000, other than in exceptional cases for good cause shown. Subsequent to its initial submission, GMAC proposed reducing the salaries of the two Covered Employees with cash salaries exceeding \$500,000.

Accordingly, the Proposed Structures generally conformed to the requirements provided in the 2009 Determinations and set forth above.

The Proposed Structures for certain Covered Employees also included a \$9,000 benefit to partially replace the benefits under a company car program that was discontinued by GMAC as a cost-saving measure. GMAC characterized this benefit as cash salary. Although the restructuring of the benefit constitutes an overall compensation decrease for the affected employees, the Special Master has concluded that a fixed, \$9,000 increase to cash salary based on historical participation in the plan does not satisfy the principle that a “compensation structure, and amount payable...should reflect the current or prospective contributions of an employee to the value of the [Company],” *id.* § 30.16(b)(1)(vi), and that such a payment is more appropriately considered a perquisite. See *id.* § 30.16(b)(1)(iii). As a result, the cash salaries that the Special Master has determined to be consistent with the Public Interest Standard, as set forth in **Exhibit I**, do not include the \$9,000 replacement benefit. GMAC’s payment of any such amount to a Covered Employee will be consistent with the Public Interest Standard only to the extent it does not exceed the limit on perquisites set forth in Part IV.B.4. below.

2. Stock Salary

The Special Master reviewed the amount of stock salary GMAC proposed to pay the Covered Employees in light of the principles that compensation structures should generally be comparable to “compensation structures and amounts for persons in similar positions or roles at similar entities,” *id.* § 30.16(b)(1)(v), and that a “compensation structure, and amount payable...should reflect the current or prospective contributions of an employee to the value of the [Company],” *id.* § 30.16(b)(1)(vi). For employees who were covered by the 2009 Determinations, the Special Master has concluded that stock salary rates approved therein continue to satisfy the principles described in the previous sentence. As a result, (with the exception of the CEO, who is covered separately in Part IV.B.7. below) the stock salaries that the Special Master has determined are consistent with the Public Interest Standard for such employees for 2010, as set forth in **Exhibit I**, do not include GMAC’s proposed increases.

For employees who were not covered by the 2009 Determinations, the Special Master found that the amounts of stock salary proposed by GMAC were excessive in comparison to payments provided to persons in similar positions or roles at similar entities, and that such payments would be inconsistent with the Public Interest Standard. The stock salaries that the Special Master has determined are consistent with the Public Interest Standard for such employees for 2010 are set forth in **Exhibit I**.

The Special Master also reviewed the structure of GMAC’s stock salary proposal in light of the principles that compensation structures should align performance incentives with long-term value creation rather than short-term profits, *see id.* § 30.16(b)(1)(i), and that an appropriate portion of compensation should be “performance-based over a relevant performance period,” *id.* § 30.16(b)(1)(iv). The Special Master has concluded that GMAC’s proposal to allow stock salary to become redeemable only in five equal, annual installments beginning on the first anniversary of grant provides a sufficient alignment with long-term value creation, extended over a period designed to reflect performance. Accordingly, the Special Master has determined that the structure of stock salary described in **Exhibit II** will not result in payments that would be

inconsistent with the Public Interest Standard, provided that GMAC also restructures the stock salary approved for each Covered Employee in 2009 under the 2009 Determinations to the structure set forth in *Exhibit II*.

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 payable "over a relevant performance period," *id.* Based in part upon this principle, the 2009 Determinations require long-term incentives to be paid in the form of long-term restricted stock, and permit such awards to be paid if, and only if, objective performance metrics are achieved and the employee continues to provide services to the company for three years following the date of grant.

The structure of GMAC's proposed annual long-term incentives is generally consistent with the 2009 Determinations. Under the Proposed Structures, annual long-term incentives for 2010 would be granted only upon the achievement of specified, objective performance criteria that have been provided to the Office of the Special Master. GMAC's proposed target amounts were equal to approximately, but not more than, one third of total direct compensation, with the exception of the CEO, whose target amount is covered separately in Part IV.B.7., and two Covered Employees for whom no long-term incentives were proposed. 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.

The Special Master reviewed the proposed amounts of long-term restricted stock grants in light of the principle that the criteria for such incentives should "encompass individual performance and/or the performance of the TARP recipient..." *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that for 2010, in addition to the achievement of individual objective performance measures, a portion of the aggregate amount of incentives available for allocation to the Covered Employees should depend on Company-wide performance over the course of 2010. Accordingly, the Special Master has determined that an aggregate amount of \$12,500,000 of long-term restricted stock may be granted to the Covered Employees based solely upon the achievement of specified, objective performance criteria—with the amount granted to any individual Covered Employee not to exceed the lesser of one third of such employee's annual compensation (as defined in the Rule) and the target incentive proposed for such employee under the Proposed Structures. No additional amount of long-term restricted stock may be granted without GMAC's achievement of overall performance goals.

Following additional discussion with the Office of the Special Master, GMAC proposed that the remainder of the aggregate target incentives for Covered Employees be approved for 2010 only if the Company achieves positive income from continuing operations (before taxes and certain other items). The Special Master has concluded in principle that the grant incentives to Covered Employees following GMAC's achievement of its proposed performance goal—in addition to each individual employee's objective performance metrics—would not result in payments inconsistent with the Public Interest Standard. However, the Special Master's final determination regarding 2010 incentive grants to Covered Employees will not be made prior to the certification by GMAC's compensation committee that the proposed company-wide performance goal has been achieved, and that the compensation committee has allocated

incentives based on its assessments of individual employee performance, with the amount granted to any individual Covered Employee not to exceed the lesser of one third of such employee's annual compensation and the target incentive proposed for such employee under the Proposed Structures. Thus, any additional incentives will require subsequent review prior to the final approval of the the Special Master. The structure and amount of grants of long-term restricted stock that the Special Master has determined, as of the date hereof, to be consistent with the Public Interest Standard are set forth in *Exhibits I* and *II*.

4. "Other" Compensation and Perquisites

The 2009 Determinations generally require that perquisites and "other" compensation provided to a Covered Employee be limited to \$25,000 on an annual basis, and the Proposed Structures are consistent with this requirement. For the reasons provided in the 2009 Determinations, and as described in *Exhibit II*, 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 2010, those amounts should be promptly returned to the Company.

5. Non-Qualified Deferred Compensation

For the reasons provided in the 2009 Determinations, and as proposed by GMAC, Covered Employees will not accrue in 2010 additional amounts under supplemental executive retirement plans and other "non-qualified deferred compensation" plans, as described in *Exhibit II*.

6. Severance Plans

For the reasons provided in the 2009 Determinations, the Company must ensure that 2010 compensation structures for these employees do not result in an increase in the amounts payable pursuant to these arrangements.

7. CEO Compensation

In a December 23, 2009, Supplemental Determination, the Special Master approved a compensation package for GMAC's newly hired CEO. See *supra* note 1. In its 2010 submission, GMAC proposed an increase to the CEO's stock salary rate and 2010 annual long-term incentive opportunity. As described with respect to other Covered Employees in Part IV.B.2. above, the Special Master has concluded that increases to the rates of stock-based compensation approved in the 2009 are unwarranted. Following discussions between the Office of the Special Master and GMAC regarding the foregoing conclusion, GMAC proposed a restructured compensation package for the CEO, with the same overall amount approved by the Special Master in 2009 provided solely in a combination of stock salary and an annual long-term incentive award. The terms and conditions of the stock salary and annual long-term incentive award proposed for the CEO are the same as for other Covered Employees.

The Special Master assessed the revised proposal for the CEO in light of the principle that "in the case of an executive or other senior level position 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). Although the revised proposal included an increased rate of stock salary, the Special Master has concluded that a compensation structure in which the CEO’s opportunity for wealth accumulation depends entirely on the long-term equity value of the Company best aligns his interests with those of the taxpayers, and such a structure, as described in *Exhibits I* and *II*, is consistent with the Public Interest Standard.

8. Departing Employee

Following its submission, GMAC informed the Office of the Special Master that one Senior Executive Officer announced his intent to depart the Company. With respect to this employee, the Special Master has determined that the payment of stock salary and cash salary at the rate in effect on January 1, 2010, 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 this employee 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, the Special Master required as part of the 2009 Determinations that GMAC take certain corporate governance steps 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.

The Special Master has determined that these same corporate governance requirements, which are detailed in Section V of the 2009 Determinations, must continue to apply in 2010. Among other requirements, GMAC must:

- Ensure that employees are prohibited from engaging in any derivative or similar transaction with respect to GMAC stock that would undermine the long-term performance incentives created by the compensation structures set forth in *Exhibits I* and *II*.
- Maintain a compensation committee comprised exclusively of independent directors, which must discuss, evaluate, and review with GMAC’s senior risk officers any risks that could threaten the value of GMAC. *Id.* § 30.4; *id.* § 30.5.
- Ensure that the compensation committee discloses 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; and, if so, the types of services provided by the compensation consultant or any affiliate, including any “benchmarking” or comparisons employed to identify certain percentile levels of pay. *Id.* § 30.11(c).

- 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, as well as 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).
- 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.
- GMAC was required to adopt an excessive or luxury expenditures policy, provide that policy to the Treasury, and post it on GMAC'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 its Internet website. *Id.* § 30.12.
- 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).
- GMAC's chief executive officer and chief financial officer must provide written certification of the Company'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. B.

VI. CONCLUSION

The Special Master has reviewed the Proposed Structures for the Covered Employees for 2010 in light of the principles described in the 2009 Determinations, which in turn reflect the Public Interest Standard. On the basis of that review, the Special Master has determined that the Proposed Structures submitted by GMAC are largely consistent with the 2009 Determinations but require certain modifications 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 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. *Id.* § 30.16(c)(1).

The foregoing determinations are limited to the compensation structures and employees 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)(i) 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
COVERED EMPLOYEES
2010 Compensation

Company Name: GMAC Financial Services

Employee ID	Cash Salary	Stock Salary (Performance based: The stock vests at grant and is redeemable in five equal, annual installments beginning on the 1st anniversary of grant.)	Long-Term Restricted Stock (Performance based: Awarded based on achievement of objective performance goals. Generally vests after 3 years of service. Transferability dependent on TARP repayment.)	Total Direct Compensation (Cash salary + stock salary; excluding potential long-term restricted stock.)
280677	\$0	\$8,000,000		\$8,000,000
151695	\$500,000	\$1,858,333		\$2,358,333
166144	\$500,000	\$900,000		\$1,400,000
197253	\$500,000	\$1,941,667		\$2,441,667
250095	\$500,000	\$4,437,500		\$4,937,500
265967	\$500,000	\$2,350,000		\$2,850,000
339212	\$500,000	\$4,437,500		\$4,937,500
354392	\$450,000	\$1,000,000		\$1,450,000
391076	\$450,000	\$1,133,333		\$1,583,333
501828	\$450,000	\$1,850,000		\$2,300,000
509014	\$400,000	\$852,278		\$1,252,278
513416	\$450,000	\$880,000		\$1,330,000
546145	\$500,000	\$1,641,667		\$2,141,667
555076	\$480,000	\$1,029,167		\$1,509,167
567303	\$400,000	\$1,300,000		\$1,700,000
682168	\$500,000	\$3,183,333		\$3,683,333
707713	\$400,000	\$1,000,000		\$1,400,000
710047	\$500,000	\$1,300,000		\$1,800,000
725547	\$450,000	\$1,220,833		\$1,670,833
746382	\$400,000	\$1,000,000		\$1,400,000
805106	\$500,000	\$2,208,333		\$2,708,333
921597	\$400,000	\$1,149,872		\$1,549,872
936790	\$400,000	\$1,141,667		\$1,541,667
964006	\$450,000	\$2,391,667		\$2,841,667

Comparison of 2010 Compensation to Prior Year Compensation

- **Long-term Restricted Stock:** The compensation committee may grant up to \$12.5M of incentives to employees for achievement of objective individual performance goals. Additional long-term restricted stock for incentive grants, if any, will be determined at the conclusion of the year based on Company performance, subject to Special Master approval.
- **Overall:** Annualized overall cash compensation decreased by \$8.8M or 45%. Approved total direct compensation, including the \$12.5M long-term restricted stock pool, decreased by 14% from 2009.
- **The 16 executives remaining in the Top 25 from 2009:** Annualized overall cash compensation decreased by \$1,050,000 or 13%. Currently allocated total direct compensation decreased by at least 30% from 2009 levels. Depending on Company and individual performance, these employees could earn up to the entire long-term restricted stock pool.
- **The 8 executives new to the Top 25 in 2010:** Annualized overall cash compensation decreased by \$7.8M or 68%. Currently allocated total direct compensation decreased by 28% from 2009 levels. Depending on Company and individual performance, these employees could earn up to \$8.5M of the long-term restricted stock pool.

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 separations from service since January 1, 2010.

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.

- **Salary payments.** Cash and stock base salaries reflect the annual rate for the employee and are effective as of January 1, 2010, and in the case of stock salary are payable on a *nunc pro tunc* basis from that date. To the extent the Special Master's determinations for 2010 reduce an employee's previous cash or stock salary rate, payments in excess of that rate prior to the date hereof must be offset by reductions to prospective 2010 cash salary payments or to any stock salary payable with respect to 2010.
- **Stock compensation generally.** For purposes of the Determination Memorandum, "stock" compensation includes common stock and stock units. Notwithstanding any transferability restrictions applicable to any stock compensation described in the Determination Memorandum, (1) an amount of stock sufficient to cover an employee's tax withholding obligations may become immediately transferable to the extent necessary to satisfy the employee's obligations, and (2) to the extent permitted by the Rule, stock may become immediately transferable upon an employee's death or separation from service resulting from disability, as defined in the Company's broad-based long-term disability plan.
- **Stock salary.** 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 award. Stock granted as stock salary may only be redeemed in five equal, annual installments as described in the Determination Memorandum. Whether a *nunc pro tunc* grant or payment that is labeled stock salary is considered salary or a bonus for purposes of the Rule is determined based on all the facts and circumstances.
- **Long-term restricted stock.** Long-term restricted stock may only be granted upon the achievement of, as applicable, individual and company-wide objective performance criteria developed and reviewed in consultation with the Office of the Special Master, and, for amounts in excess of the \$12,500,000 long-term restricted stock pool, upon subsequent Special Master approval. The compensation committee must certify (1) the achievement of such criteria, and (2) that the grant of incentives is appropriate in light of GMAC's overall circumstances at the time. Such stock must be forfeited unless conditioned upon the employee's continued employment through the third anniversary of grant, unless a termination of employment results from death or disability; provided, however, that all or a portion of such stock (or similar stock granted with respect to 2009 service) may, for good cause certified by the Company's compensation committee, continue to vest if the employee retires on or after the second anniversary of the grant date. The term "retirement" must meet an objective standard established in consultation with the Office of the Special Master.
- **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.** No 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, for 2010. For the avoidance of doubt, neither the foregoing limitation nor the corresponding limitation in the 2009 Determinations (1) applies to employee-funded elective deferral arrangements, or (2) precludes continuing recognition of age and service credit for Company employees for the purposes of vesting in previously accrued benefits under any plans referred to in this paragraph.
- **Qualified Plans.** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees in broad-based, tax-qualified retirement and health and welfare plans is consistent with the Public Interest Standard, and amounts payable under such plans are not counted against the \$25,000 limit on other compensation and perquisites.