

A REPORT TO CONGRESS ON THE

# Automobile Industry Special Binding Arbitration Program

*Administered By The American Arbitration Association  
Under Authority Of Section 747 Of Public Law 111-117*

NOVEMBER, 2010



American Arbitration Association  
*Dispute Resolution Services Worldwide*

*"ECONOMY, SPEED, AND JUSTICE"*





## American Arbitration Association

*Dispute Resolution Services Worldwide*

I am pleased to present this comprehensive report on the Auto Industry Special Binding Arbitration Program.

This remarkable program, established by Congress and administered by the American Arbitration Association, demonstrates the positive potential for the use of alternative dispute resolution. In just seven months, nearly 1,600 businesses were provided recourse to address their concerns.

At the same time, the arbitration program did not add to the burdens of the nation's courts, and not one dollar of direct taxpayer funds was expended.

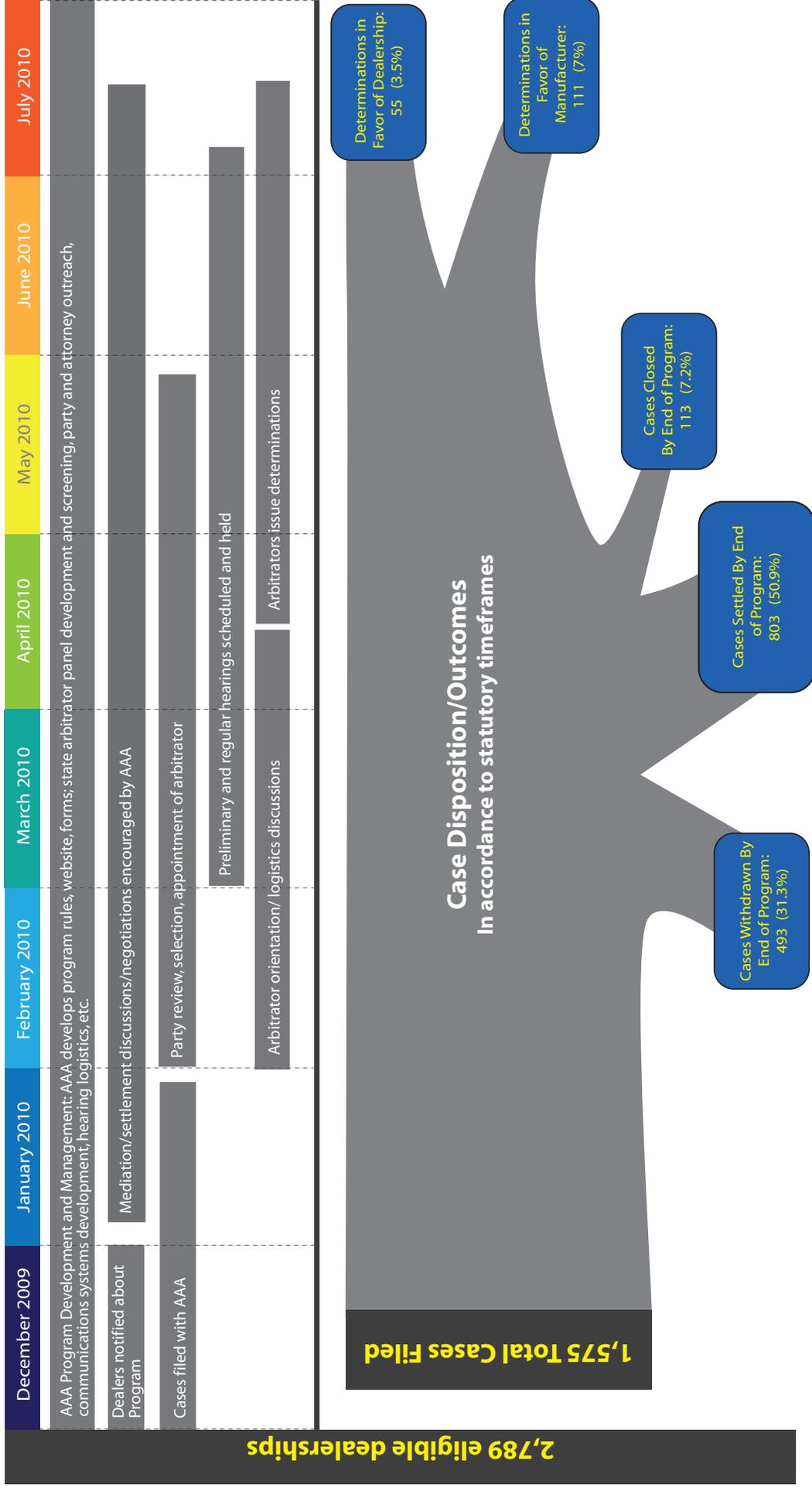
The Association here expresses its profound and continuing thanks to Congress for its trust in choosing the AAA to administer this seminal program.

A handwritten signature in black ink that reads "William K. Slate II" with a stylized flourish at the end.

William K. Slate II  
*President and CEO,*  
*American Arbitration Association*



# Automobile Industry Special Binding Arbitration Program



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## THE AAA, ESTABLISHED...

in 1926, is a not-for-profit public service organization with a long history of assisting government in the design and implementation of alternative dispute resolution and prevention programs.

## CREATION OF PROGRAM

Section 747 of Public Law 111-117 authorized the creation of this program, the Automobile Industry Special Binding Arbitration Program, which provided a successful and efficient forum for the resolution of 1,575 disputes at no direct cost to taxpayers.

## EXECUTIVE SUMMARY

In December 2009, Congress passed and President Barack Obama signed legislation directing the establishment of a legislatively tailored alternative dispute resolution (ADR) mechanism, under the auspices of the American Arbitration Association® (AAA), to resolve disputes related to the termination of thousands of automobile dealerships. Section 747 of Public Law 111-117 authorized the creation of this program, the Automobile Industry Special Binding Arbitration Program, which provided a successful and efficient forum for the resolution of 1,575 disputes at no direct cost to taxpayers.

The genesis of the program lay in the economic downturn and subsequent termination of a large number of dealerships by General Motors (GM) and Chrysler as part of their restructuring under bankruptcy protection. Because the bankruptcy process provides for quick and comprehensive organizational change, the terminated dealerships had no avenue to contest their closures or seek redress. Congress considered several measures to address the concerns of the dealerships and manufacturers, and ultimately developed an innovative compromise, whereby the auto dealerships could appeal the manufacturers' decisions through a process of alternative dispute resolution, including binding arbitration, administered by the Association.

In accordance with the Congressional mandate, and drawing upon its institutional expertise, the AAA® developed and implemented this fair, user-friendly, and efficient ADR program. In the end, 2,789 dealerships, with no recourse prior to Congressional action, were given an opportunity to seek reinstatement, and 1,575 of those availed themselves of that opportunity. Over half of the disputes filed under this program were resolved through negotiation and voluntary settlement. In just over seven months, the AAA provided a forum through which 1,575 claims were resolved without the use of appropriated or direct taxpayer funds.

Program Totals by Case Disposition	
Status	Final Program Total
Total Cases Filed	1,575
Withdrawn	493
Settled	803
Administratively Closed	113
Arbitral Determination	166
• Dealer	55
• Manufacturer	111

## INCEPTION OF THE PROGRAM

### Economic Decline and Bankruptcy

The economic downturn that began in 2007 had global consequences, including a serious impact on a wide range of private industries in the United States. One key domestic industry was hit particularly hard – auto manufacturing.

Two major U.S. auto manufacturers, Chrysler and General Motors, were especially affected. In response to the likely widespread impact on the broader economy which the failure of a major domestic manufacturer could precipitate, the federal government actively sought to address the problems affecting the automotive industry. According to the Department of Treasury's Special Inspector General's report on the Troubled Asset Relief Program (TARP), through the creation of its "Auto Team," the Department of the Treasury sought "to prevent a significant disruption of the American automotive industry that would pose a systemic risk to financial market stability and have a negative effect on the U.S. economy." As a condition of its investment of over \$80 billion in both manufacturers through the Automotive Industry Financing Program (AIFP), a component of TARP, the Treasury Department required the two manufacturers to develop and submit restructuring plans, but it ultimately rejected those plans, in part because the pace of downsizing the dealership networks was deemed to be not quick enough. Having rejected the manufacturers' proposals, the Treasury Department's Auto Team determined that bankruptcy was the only feasible option left to prevent insolvency and protect the ailing economy from further disruption.

Chrysler and General Motors filed for Chapter 11 bankruptcy protection on April 30 and June 1, 2009, respectively, in the United States Bankruptcy Court for the Southern District of New York. As part of their efforts to downsize and reorganize under bankruptcy procedures, both manufacturers terminated a significant number of local dealerships across the U.S. In total, the contracts of 2,789 dealerships, 2,000 from General Motors' network and 789 from Chrysler's, were terminated.

### Congressional Action and Intervention

Following the termination of these franchise agreements, Congress began to explore different proposals related to the dealership closures. Legislation was introduced, for example, that would have restored closed dealerships and required the manufacturers to work through state courts using applicable state laws to cancel dealership agreements, bypassing the federal bankruptcy courts and laws. Other members of Congress argued that the federal government should not involve itself directly in this issue. Nevertheless, leadership in both the House and Senate became actively involved in seeking a compromise that would balance the interests of the government, the public, manufacturers, and terminated dealerships.

After House Majority Leader Steny Hoyer mentioned his desire to find a "credible appeals process" during a September, 2009 press conference, the AAA volunteered to assist with its alternative dispute resolution services and expertise. Over the course of the next several months, lawmakers from all parts of the political spectrum explored various options and mechanisms, ultimately developing legislative provisions to authorize an impartial and

## NOTED

"We want a credible appeals process..."

– House Majority Leader  
Steny Hoyer

## NOTEWORTHY

This was a bipartisan effort. Representative LaTourette observed, for example, that this program would not have been created “...without something good and bipartisan happening in the United States Congress.”

“ We intend that this process provide transparency and avoid the excessive costs and delays of litigation and discovery disputes.”

– *Representative Christopher Van Hollen*

binding process administered by the AAA that balanced the interests of both terminated dealerships and the manufacturers. Eventually, Representative Hoyer in the House and Senator Richard Durbin in the Senate drafted and guided through their respective chambers legislation to establish a process that would “provide transparency and avoid the excessive costs and delays of litigation and discovery disputes,” as described by Representative Christopher Van Hollen on the House floor. Incorporated as Section 747 of H.R. 3288, the Consolidated Appropriations Act of 2010, Congress succeeded in creating the appeals process for which it was searching. Noteworthy, this was also a bipartisan effort. Representative Steven C. LaTourette observed, for example, that this program would not have been created “...without something good and bipartisan happening in the United States Congress.”

In Section 747 and the legislative history, Congress clearly articulated objectives for this new program. The binding arbitration provision was included, according to House Judiciary Committee Chairman John Conyers, because:

“...By providing a process for working out the relationship between automobile manufacturers and dealerships that ensures transparency and review by a neutral arbitrator according to an equitable and balanced standard, taking into account the interests of all affected parties, the property and due process rights of manufacturers and dealerships will be safeguarded.”

Congress also sought to promote ADR’s traditional emphasis on mediation and voluntary settlement. In creating an alternative dispute resolution mechanism, which includes a final step of binding arbitration rendered by an impartial, neutral arbitrator, Congress included provisions intended to facilitate and encourage voluntary settlement. These goals were ultimately successfully achieved, with over half the cases being resolved through voluntary settlement.

## IMPLEMENTATION BY THE AAA

### Fulfilling its Public Service Mission

With President Obama's signing of the Consolidated Appropriations Act of 2010 on December 16, 2009, Section 747 became law. The AAA immediately mobilized to create the Automobile Industry Special Binding Arbitration Program. With nearly 3,000 potential parties and a statutory seven-month timeframe for completion of all cases, the scope of this project was potentially daunting. Senior AAA staff with expertise in case management, legal and procedural issues, legislative affairs, and government ADR system design convened to lay the foundation of this *sui generis* program crafted by Congress in partnership with the AAA.

Although the Automobile Industry Special Binding Arbitration Program incorporated a number of innovative elements, the designation of the AAA to develop and implement it was not unprecedented. The AAA's extensive experience in partnering with government to develop ADR programs, combined with its status as a not-for-profit public service organization, place it in a singular position to design and administer such a program. Governments know of, and rely on, the AAA's strict adherence to principles of independence, neutrality, and integrity, as well as its technical capabilities and capacity to handle a large volume of disputes. As a consequence, the AAA has been named in hundreds of statutes, regulations, ordinances, and orders throughout the United States. The AAA has been specifically written into a number federal statutes, regulations, and orders pertaining to such governmental entities as the Centers for Medicare & Medicaid Services, the Federal Communications Commission, the Federal Reserve System, the Department of the Interior, and the Environmental Protection Agency. The AAA also provides its services at the state and local levels, assisting states, counties, and municipalities to resolve tens of thousands of disputes under government mandate. Furthermore, the AAA has a proven track record in quickly developing and deploying the necessary staff and technological resources to provide large-scale ADR programs, as it did in the aftermath of Hurricanes Katrina and Rita, when the states of Louisiana and Mississippi designated the AAA to provide alternative dispute resolution programs to resolve claims disputes. Because of the flexible nature of ADR, government agencies working with the AAA are able to create equitable and customized programs to allow for the speedy resolution of a wide range of disputes. *See Appendix IV for more extensive information regarding the AAA's government programs.*

### SECTION 747

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## THE LEGISLATION INCLUDED...

specific deadlines. For example, from enactment to final decision, all claims had to be resolved within seven months.

## NOTED

“It is in the national interest to protect the substantial federal investment in automobile manufacturers by assuring the viability of such companies through the maintenance of sufficiently sized dealership networks...”

– House Judiciary Committee Chairman John Conyers

## Program Specifications

The Automobile Industry Special Binding Arbitration Program was based on specific requirements and guidelines included in Section 747 and the pertinent legislative history. The legislation included specific deadlines. For example, from enactment to final decision, all claims had to be resolved within seven months.

Section 747 applied to automobile manufacturers (“covered manufacturers”), that had received government assistance under the Emergency Economic Stabilization Act of 2008 or in which the federal government had an ownership stake—namely, Chrysler and General Motors. Section 747 also clearly defined which terminated dealerships (“covered dealerships”) would be eligible to participate in the program. As House Judiciary Committee Chairman John Conyers noted on the House floor, such a remedy was necessary because “It is in the national interest to protect the substantial federal investment in automobile manufacturers by assuring the viability of such companies through the maintenance of sufficiently sized dealership networks...”

## GM-National Association of Minority Automobile Dealers Memorandum of Understanding

*Although Section 747 did not allow the awarding of other remedies in arbitration, it did permit manufacturers and dealerships to reach voluntary settlement (through mediation, negotiation, and other mechanisms) satisfactory to all parties. For example, the National Association of Minority Automobile Dealers (NAMAD) and General Motors signed a memorandum of understanding (MOU) which provides for mediation and arbitration of certain issues and disputes for dealers not seeking reinstatement.*

Section 747(c) mandated that the manufacturers provide to covered dealerships, no later than thirty days after enactment of the legislation, a written summary of the criteria used in determining whether a covered dealership’s contract was terminated or not renewed. Within forty days from enactment (ten days later), covered dealerships had to decide whether to file for binding arbitration with the American Arbitration Association. Section 747 further required that the overall arbitration process must be completed within 180 days after enactment of the legislation. The statute did, however, provide the arbitrator discretion to grant an extension of up to thirty days.

## Program Development and Rollout

Because of the program’s unprecedented nature, scope, and time constraints, the American Arbitration Association immediately began to prepare special educational materials for the dealers and manufacturers. Customized resources were created and made available through the AAA’s website, including program information, simplified filing forms, and access to substantial amounts of relevant background material. Additional information—accessible to all parties, counsel, and neutrals—was made available through a secure section of the Association’s website. Concurrently, the AAA began to assemble panels of highly qualified arbitrators for each state affected by the Automobile Industry Special Binding Arbitration Program. Drawing on its pool of over 6,000 neutrals, the AAA’s roster of arbitrators for this program included former judges, members of the Large, Complex Case (LCC) panel, and others with relevant expertise and knowledge to handle these important cases. As part of its program initiation process, the AAA began extensive education efforts to ensure that all of the elements of Section 747 were understood by parties, counsel, AAA staff, and arbitrators. This was done by means of special, program-specific web pages, the secure website area, and administrative webcast conferences for each state. Establishing precise rules, procedures, and methods specific to this program early in the process was a critical element to the program’s success because it allowed parties and counsel to understand and more effectively participate in the program. These resources also set the tone of appropriate transparency for a program of this nature.

With Section 747, Congress succeeded in achieving its goal — the creation of an appeals process for the terminated dealerships. In so doing, Congress provided the equivalent of “steps to the courthouse” that were previously unavailable and upon which a settlement could be reached. Expedited and balanced proceedings, the availability of highly qualified impartial decision-makers empowered to make binding and final determinations, and specific timeframes were key elements of the ADR system. Now dealerships would have the opportunity to have their claims addressed.

Although the program mandated by Congress was based predominantly on the AAA’s standard Commercial Arbitration Rules and Mediation Procedures, Section 747 contained a number of supplemental elements and criteria, including several that proved significant to the program’s efficacy. For example, under the statute, the arbitrators were directed to take into consideration the following specific factors: (1) the dealership’s profitability; (2) the manufacturer’s business plan; (3) the dealership’s economic viability; (4) the dealership’s satisfaction of performance objectives; (5) the demographic and geographic characteristics of the dealership’s market territory; (6) the covered dealership’s performance in relation to the manufacturer’s criteria for termination or non-renewal of franchise agreements; and (7) the dealership’s experience. The law prohibited depositions in the proceedings and discovery beyond documents specific to the covered dealerships and required that all proceedings—conducted in-person, electronically, or telephonically—take place in the state where the covered dealership was located.

## BECAUSE OF THE PROGRAM’S UNPRECEDENTED...

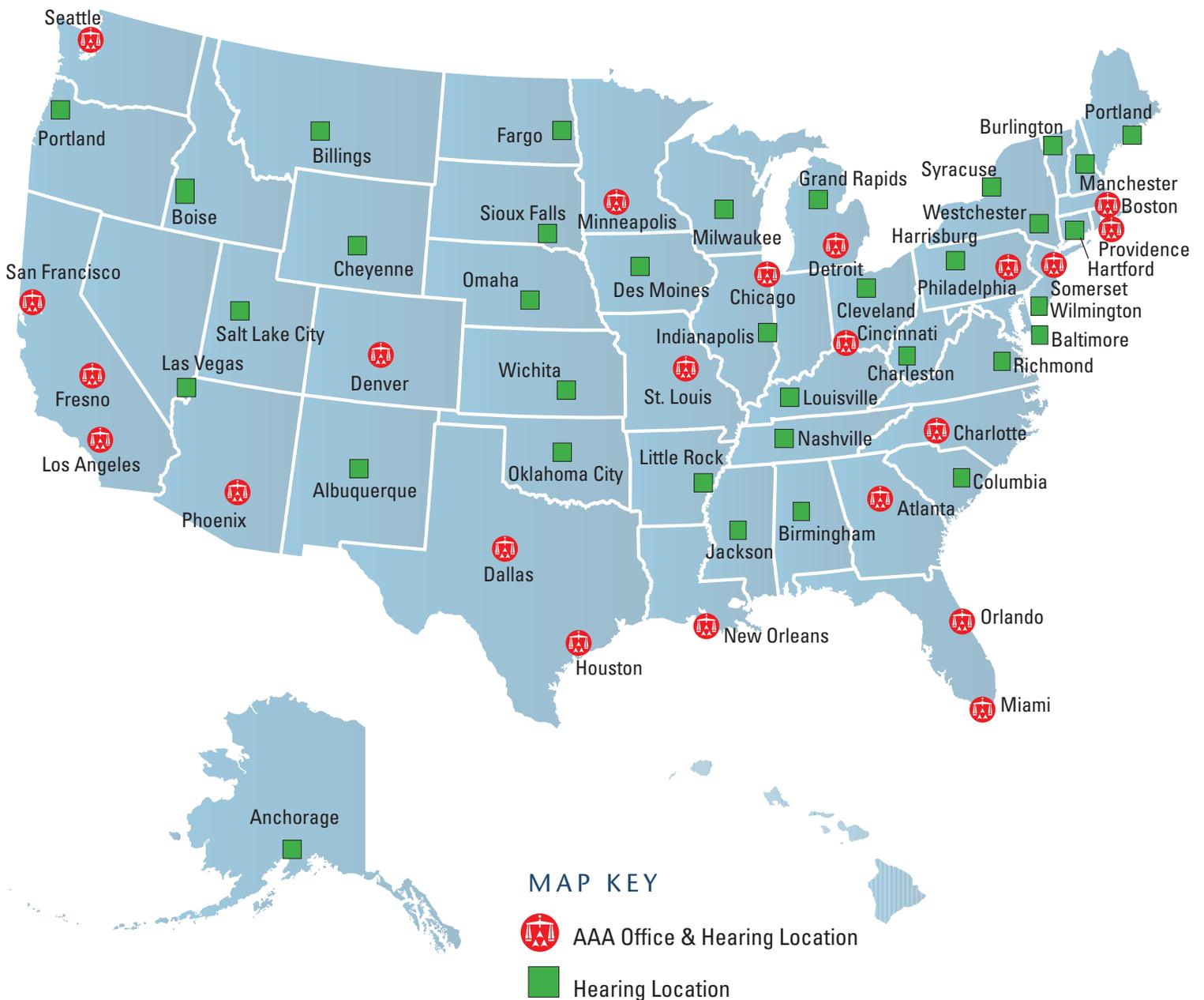
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## CONGRESS SUCCEEDED IN ACHIEVING ITS GOAL

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Although the statute required that the proceedings be conducted in the state where the dealership was located, the AAA had to determine the venues where the cases would be heard. The AAA sought to balance the interests of both the manufacturers and dealerships with respect to the venue selection and determination process. Mindful of these interests, as well as the strict deadlines and its administrative capacity, the AAA chose the venues strategically and in a manner that considered the interests of the parties, arbitrator accessibility, and other logistical factors.

## DESIGNATED HEARING VENUES



Additionally, the overall alternative dispute resolution process implemented by the AAA was made more efficient by extensive use of the AAA's WebFile online resources, which allows parties and counsel to carry out a number of functions electronically, including arbitrator selection, document filing, and final determination transmittal. The efficiencies of this technology benefited parties, counsel, arbitrators, and case managers and were widely utilized by parties. For example, 75% of arbitrators were selected electronically by the parties.

### Responsibilities of the Arbitrators

The legislation specified that the arbitrators were to be selected by mutual consent of the parties using the Association's cadre of arbitrators and, if agreement could not be reached, the AAA would select an arbitrator. While some parties mutually agreed to an arbitrator after having received a state-based list of candidates and their qualifications from the Association, many waited and selected neutrals by means of a more limited strike-and-rank list in accordance with the AAA's Rules. In the end, a total of nearly 350 arbitrators were mobilized and assigned cases under the auspices of this program. Another singular element of Section 747 was the mandate that the arbitrator weigh not only the interests of the directly affected parties (the manufacturer and the dealer) but also the interest of the public. The statute further required the arbitrator to include in his/her determination: (1) a description of the covered dealership; (2) whether the franchise agreement was to be renewed, continued, or assumed by the manufacturer; (3) the key facts used by the arbitrator in making the decision; and (4) an explanation of how the balance of economic interests supported the determination. According to Section 747(e), the arbitrator was unable to award either party "compensatory, punitive, or exemplary damages," limiting the outcome to issuing a determination "indicating whether the franchise agreement at issue is to be renewed, continued, assigned, or assumed" by the manufacturer. Congress further mandated that if the arbitrator found in favor of the dealership, the covered manufacturer had to provide the dealer "a customary and usual letter of intent to enter into a sales and service agreement" within seven days of the decision.

### Costs and Fees

When implementing this program, the AAA was particularly mindful of costs to the parties and sought to minimize them as much as possible. Congress and the AAA created a program that required no direct taxpayer money or Congressional appropriations because all parties were responsible for their own expenses, and the necessary administrative costs and arbitrator compensation were to be split equally between both parties. To provide consistency, streamline the filing process, and limit costs, the AAA applied its fixed filing fee for non-monetary claims to all cases under this program.

In a further effort to minimize expenses to affected parties, the AAA offered parties the option of using its Flexible Fee Payment Schedule (FFPS), a pilot program which allowed parties the opportunity to file for arbitration with the AAA at reduced initial fees and with potentially lower total costs. The FFPS provides more steps in the fee schedule, allowing parties to pay in more increments, thereby saving money if a case does not advance along the ADR continuum, as occurred with many cases that settled in the program.

## THE EFFICIENCIES...

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Perhaps due to the accessible and relatively streamlined nature of the program, a notable proportion of parties chose to represent themselves. Of the 1,575 initial case filings, 18% of dealerships were self-represented while 82% were represented by attorneys. To facilitate hearings and reduce total costs of final resolution of cases, where a party owned multiple dealerships represented by the same counsel, the AAA scheduled consecutive final hearings, and combined correspondence and preliminary orders (for example, related to scheduling) to encompass all of those cases. This allowed for greater efficiency for counsel, witnesses, and the parties.

### Flexible Fee Payment Schedule Encouraged

*In June 2009, the AAA launched a one-year pilot program to potentially reduce the costs of alternative dispute resolution. The Flexible Fee Payment Schedule pilot initiative was designed to alleviate some of the immediate financial strain of resolving a dispute, in part through a “pay as you go” fee schedule. With the FFPS there are three stages at which parties make payments to advance the case through to final arbitration. In implementing the Auto Program, the AAA decided to allow the application of FFPS and encouraged parties to exercise the option.*

*In June 2010, the AAA ended the pilot period and implemented the FFPS as a regular, permanent fee payment option.*

### OF THE 2,789 COVERED DEALERSHIPS...

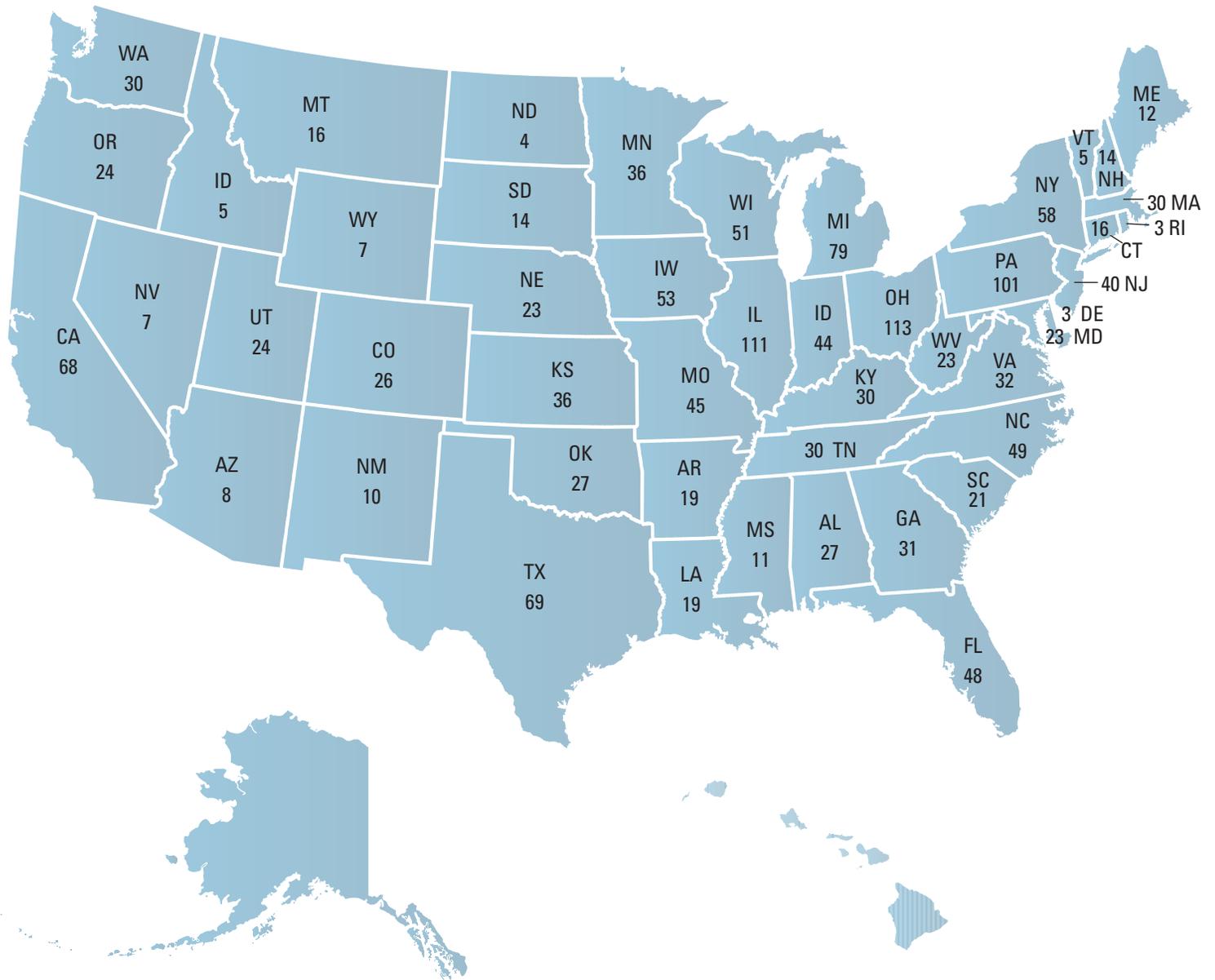
that were eligible to appeal their closure under the standards set forth by Congress, over half of them (1,575) elected to file for binding arbitration

### Program Execution

Having prepared to meet the mandates of Congress with the technological and human resources and infrastructure to carry out the Automobile Industry Special Binding Arbitration Program, the Association launched the program. To facilitate and expedite the filing of cases, the AAA created abridged forms customized for the program and accepted claims through email, fax, delivery, and regular mail.

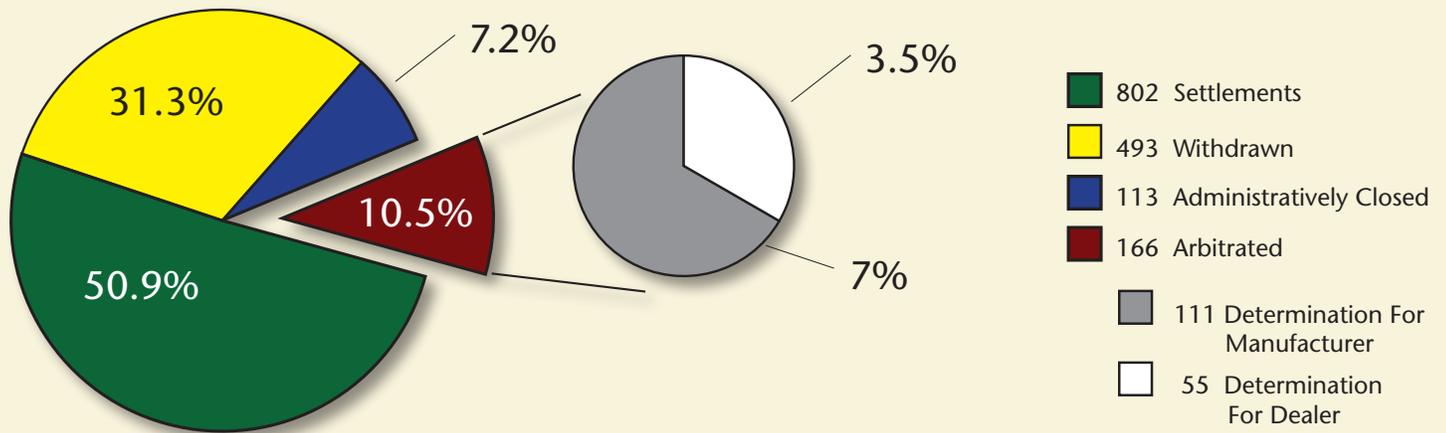
Of the 2,789 covered dealerships that were eligible to appeal their closure under the standards set forth by Congress, over half of them (1,575) elected to file for binding arbitration (1,180 from GM’s dealership network and 395 from Chrysler’s). Although these dealerships were spread across 48 states, some of the states most affected by dealership closings saw the largest number of case filings: Ohio, Illinois, and Pennsylvania each had over one hundred filings.

## FILINGS BY STATE



Consistent with the statute and legislative history clearly encouraging settlement and voluntary resolutions by giving voluntary agreements the full force of a legally binding agreement, the AAA sought to facilitate such settlements prior to the final, binding arbitration phase. The benefit of such resolution is clear: With voluntary settlements, time and money are saved. Moreover, with settlement, parties frequently are more satisfied with the result as they create their own solution. In fact, once the Auto Program was launched, a significant number of dealerships and their respective manufacturers began to enter into settlement negotiations and agreements. In total, over half (803) of all cases filed under the program were settled mutually and voluntarily early in the ADR process, rather than going through full arbitration proceedings.

### FINAL CASE DISPOSITIONS



### THE CREATION OF A MECHANISM

for appeal through binding arbitration for these disputes facilitated a meaningful dialogue between dealerships and manufacturers that would not have occurred otherwise and which resulted in a remarkable number of voluntary settlements.

At one point in the Auto Program, a large number of hearings were scheduled over a limited number days, including weekends and holidays. It is important to note that although cases that settled did not go through the full ADR process to arbitration, the availability of the binding final arbitration element and the prompt forward momentum of the process enabled and encouraged settlement.

In short, the creation of a mechanism for appeal through binding arbitration for these disputes facilitated a meaningful dialogue between dealerships and manufacturers that would not have occurred otherwise and which resulted in a significant number of voluntary settlements.

Throughout this process, a number of dealerships also chose to withdraw their cases. Ultimately, 494 dealerships unilaterally decided to withdraw from the arbitration process. Because parties are not required to inform the AAA of their reasons for withdrawing a case, the Association is unable to provide data or analyze withdrawals in any detail. Anecdotal

information indicated that some decided they no longer wanted to seek reinstatement, some became concerned about the strength of their cases and arguments, and others had moved on to other business ventures. One-hundred thirteen other cases were administratively closed or dismissed for a variety of reasons, including failure to meet deadlines, comply with program or statutory requirements, or pay necessary fees. Other reasons for cases being administratively closed included three in which the filing party was determined by the arbitrator not to be a dealership, and one case in which the arbitrator determined that the filing party was not the owner of a dealership.

Ultimately, 166 cases — those that were not settled voluntarily by the parties, withdrawn, or closed/dismissed — went through the full arbitration process to a binding decision by the arbitrator.

In the interest of efficiency and transparency for the parties, the AAA developed a comprehensive model Preliminary Hearing Order, which provided a roadmap for the arbitration process and hearings, aligned with the statutory timeframes, for reference by the arbitrator, counsel, and parties. Another widely utilized mechanism that enhanced the efficiency of the process was the pre-hearing briefing process, which was utilized in nearly all cases. After the arbitrator was either chosen or appointed, the American Arbitration Association scheduled preliminary conference calls with parties and the arbitrator in order to set the schedule for the duration of the case and to enhance organization of the parties. While parties and arbitrators were free to adopt their own case structuring plans, most chose to adopt the roadmap for future proceedings developed by the AAA. Hearings were then scheduled accordingly, and documents were forwarded to the arbitrators with exchange between the parties. Arbitrators also resolved a number of on-going case-related issues, such as discovery disputes, witness testimony matters, and burden of proof issues. Throughout the process, many parties elected to place their cases on hold while they conducted independent negotiations and conversations regarding possible settlement agreements, which as the final results indicate, were often successful.

For those cases that went through the full ADR process to final, binding arbitration, hearings were held, typically lasting one to four days. Both parties were given appropriate time to present their case before the arbitrator. Parties were also generally permitted to submit post-hearing briefs. Arbitrators were required by Section 747 to issue their decisions within seven days after the close of the hearing, the first ones being rendered in mid-April, just four months after Congress authorized the creation of the program.

Of the 166 cases that were resolved by binding arbitral decision, the arbitrators found in favor of the dealerships in 55 cases (34% of determinations) and in favor of the manufacturers in 111 cases (66% of determinations). A number of factors may have contributed to these figures, including the parties' approaches to settlement decisions. *See Appendix II for further information on case outcomes.*

## ARBITRATORS WERE REQUIRED

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## THE AAA DEVELOPED ...

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**BY  
JULY 23, 2010,**

only seven months after the President signed the legislation, all 1,575 cases were successfully completed.

**IN THE END,**

2,789 dealerships, with no recourse prior to Congressional action, were given an opportunity to seek reinstatement, and 1,575 of those availed themselves of that opportunity.

The Association is unable to quantify exactly how many dealerships were reinstated as a result of all phases of the program. While the AAA does have access to the arbitral decisions, it did not have authority to require parties to disclose the details of any settlements. A comprehensive look at the results of settlements, withdrawals, and arbitral awards would be necessary to give an accurate picture of final overall outcomes.

By July 23, 2010, only seven months after the President signed the legislation, all 1,575 cases filed under this program were successfully completed. The AAA, its arbitrators, and the parties met the statutory deadline, providing a forum for resolution of these disputes through a program that required no appropriated funds.

Throughout the development and implementation of the program, the AAA's senior staff also worked with and briefed Congressional leadership, other members of the House and Senate, and committee staff on the status of the program, issues, and other matters, to maximize compliance with Congressional intent and to keep Congress informed.

## EVALUATION AND CONCLUSIONS

### Program Evaluation

Although the American Arbitration Association has extensive experience administering programs on behalf of government agencies, the Automobile Industry Special Binding Arbitration Program was singular in its nature, scope, and time constraints. The AAA was able to prepare for, process, and administer 1,575 cases within seven months, while adhering to the direction and will of Congress. The AAA created an easily-accessible and clear-cut program for the efficient, transparent, and fair resolution of disputes through binding arbitration, a mechanism through which dealerships were offered an avenue to appeal the manufacturers' decisions and were given an opportunity to be heard in an independent and impartial venue. In the end, 2,789 dealerships, with no recourse prior to Congressional action, were given an opportunity to seek reinstatement, and 1,575 of those availed themselves of that opportunity. Because of the precise mandates Congress included in Section 747, the legislative history, and the AAA's preparation and execution of the program, there were many expressions of satisfaction with both the structure and implementation of the program by the parties involved, despite the contentious nature of these disputes.

In addition, the program required no direct taxpayer funds or appropriations. Parties split the relatively low administrative costs and arbitrator compensation, and each paid for their respective expenses, as directed by Section 747.

The dispute resolution process was also fast. Many cases were resolved in the early phases of the program because a forum was available and settlements were encouraged. Those that went through the full arbitration process were resolved within the time limits set forth by Congress. After enactment, the AAA had 180 days and a discretionary thirty-day extension to resolve the 1,575 cases filed under the program.

By establishing tailored, expeditious, yet fair rules in a special ADR process, Congress was able to ensure that these matters would be addressed and resolved without subjecting parties to all the costs, complexities, and potential for appeals of traditional litigation.

Although a process in which one party prevails and another does not (such as final binding arbitration) generally results in disappointment by one party, even some parties that did not prevail in this program expressed appreciation for the opportunity to have their case heard in a neutral and fair venue. At the conclusion of the program, the American Arbitration Association solicited feedback through a survey from parties involved in the program.

According to AAA customer survey responses, overall party satisfaction with the process was very positive. Over two-thirds (67%) of the parties responding to the survey were likely, very likely, or extremely likely to recommend the AAA for arbitration in the future. It is worth noting that the survey sampling included parties with all case resolution outcomes (settlement, arbitral determination, withdrawn, etc.). Survey respondents rated the overall case management of the program a 3.76 (on a scale of 1 to 5).

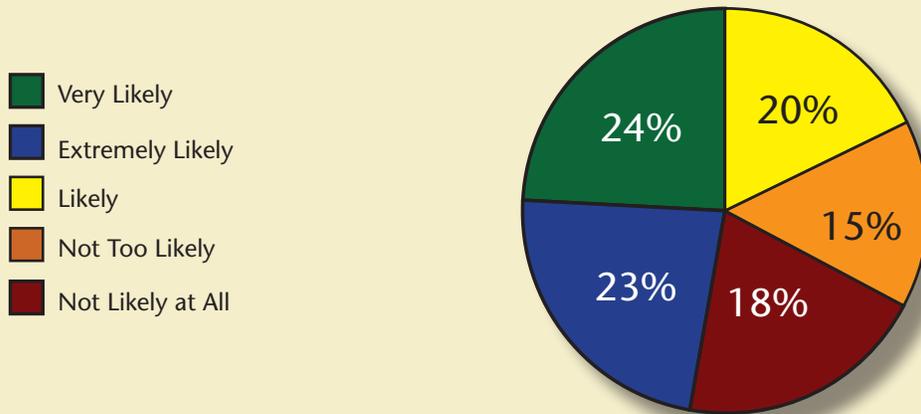
## NOTED

" I believe all parties will agree that we [the arbitrators and AAA] completed our Congressional mandate to give fair, expeditious, and economical hearings on extremely complicated issues. Some parties may have not liked the result, but no one faulted the process."

– *One of the Program's arbitrators, a former Ohio state judge of over 30 years.*

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## LIKELIHOOD OF RECOMMENDING AAA FOR ARBITRATION IN THE FUTURE



### THIS PROGRAM

highlights the flexibility ADR can provide in developing a mechanism for fast, efficient, and effective dispute resolution.

### Lessons Learned

Standard commercial arbitration has well-established practices and legal foundations, but an entirely new and innovative program such as this one required ongoing monitoring, evaluation, analysis, and response throughout development and implementation. To the extent it was able to do so within the legislative framework mandated by Congress, the AAA continually sought to make improvements and refinements to ensure the efficacy and efficiency of the program. The lessons learned from this program, which could be applicable to future government programs, include:

- The Congressional articulation of specific legal standards created a coherent and fair process outside of litigation. Having specific statutory guidelines enabled the AAA, arbitrators, and the parties to have a clear mandate and direction, in addition to ensuring an equitable process.
- Mandating a relatively short time frame ensured fast resolutions. Additionally, the time constraints provided the parties with an incentive to negotiate and, in many cases, resolve their disputes through voluntary settlement. In large measure, a significant portion, of the cases, over half, were resolved through settlements, a primary goal of Congress and the AAA.
- Requiring manufacturers, as a preliminary step, to provide information upon which termination decisions had been based provided dealerships with useful data and criteria, and may have allowed dealerships to make better-informed decisions on whether they wanted to appeal by participating in the program.

## A Model for Future Program Development

Because of its cost-effectiveness, efficiency, and fairness, the AAA's Automobile Industry Special Binding Arbitration Program may serve as a model for other government programs. Although the AAA already had significant experience working with government in resolving tens of thousands of disputes, the Automobile Industry Special Binding Arbitration Program incorporated some original elements potentially adaptable to other areas, disputes, and administrative backlogs. While future programs may not require similar timeframes, parameters, or procedural limitations, this program highlights the flexibility ADR can provide in developing a mechanism for fast, efficient, and effective dispute resolution.

For the purpose of developing similar programs in the future, the Association has evaluated various elements of the Automobile Industry Special Binding Arbitration Program, including those that facilitated the program and those that may have impeded it. In designing ADR systems under statutory or regulatory authority in the future, the inclusion of the following should be considered:

- Authority to appoint interim arbitrators to issue rulings in the early stages of the program, as issues arise.
- Clear guidance regarding the privacy and confidentiality of the proceedings, filings, hearings, and arbitral determinations.
- Possible inclusion of an internal procedural mechanism, such as through a special three-arbitrator panel, where issues such as discovery could be addressed and resolved.
- Unequivocal administrative authority of the administering organization (AAA) to ensure timeliness and balance.
- Requiring parties to report outcomes of settlements.

The AAA stands ready to continue working with legislators, regulators, and policy makers to apply the benefits of ADR to issues facing government at the federal, state, and local levels as an extension of its public service mission.

## APPENDIX I

### TIMELINE AND KEY DATES

2009	
April 30	Chrysler files for bankruptcy protection.
May 14	Chrysler indicates it wants to eliminate 789 of its 3,200 dealerships in a motion filed with the U.S. Bankruptcy Court in New York.
May 15	As it heads toward bankruptcy protection, GM notifies 1,100 of its 6,150 dealers that it will not renew their franchises in the fall of 2010.
June 1	GM enters bankruptcy protection.
June 9	Chrysler exits bankruptcy protection.
July 10	GM exits bankruptcy protection.
December 3	GM and Chrysler announce they will reconsider dealership closures as part of an effort to stave off federal legislation requiring them to keep dealerships.
December 10	A binding arbitration appeal process, administered by the AAA, available to the 2,789 GM and Chrysler dealers designated for closure, is included as part of a \$1.1 trillion spending bill.
December 16	President Obama signs a spending bill, the Consolidated Appropriations Act of 2010, which becomes Public Law 111-117.

2010	
January 25	Statutory deadline for filing – 1,575 GM and Chrysler dealers file for binding arbitration to appeal their closures.
Late February	Arbitrators appointed, settlement/mediation continue to be encouraged through AAA program, preliminary hearings/conferences begin.
March 5	GM announces it will reinstate 661 dealers with pending arbitration cases.
March 26	Chrysler announces it will reinstate 80 dealers with pending arbitration cases.
June 14	Original statutory deadline for hearings to end. A number of hearings are extended for another month, pursuant to authority granted in the federal statute.
July 14	Extended arbitration hearings are scheduled to end.
July 23	Final due date for arbitrator determinations (7 business days).

*Adapted from the Associated Press and other sources.*

## APPENDIX II

### ADDITIONAL STATISTICAL DATA

End-Of-Month And Final Program Totals <i>By Case Disposition</i>								
Status	January	February	March	April	May	June	July	Final Program Totals
Withdrawn	2	40	179	163	67	29	14	493
Settled		1	66	254	263	163	55	803
Administratively Closed			2	45	6	35	25	113
Arbitral Determination				1	30	81	54	166
• Dealer					9	24	22	55
• Manufacturer				1	21	57	32	111
Monthly Closure Total	2	41	247	463	366	308	148	1,575
Cumulative Closed	2	43	290	753	1,119	1,427	1,575	1,575
Total Active Cases	1,573	1,532	1,285	822	456	148	0	0

## APPENDIX II (CONTINUED)

### ADDITIONAL STATISTICAL DATA

Final Case Numbers By State						
State	Total Cases Filed	Cases Withdrawn	Cases Settled	Cases Closed, Dismissed or Other	Determinations For Dealership	Determinations For Manufacturer
Alabama	27	6	17	2	1	1
Alaska	0	0	0	0	0	0
Arizona	8	2	5	1	0	0
Arkansas	19	5	8	1	1	4
California	68	29	27	2	4	6
Colorado	26	9	11	1	2	3
Connecticut	16	8	5	0	0	3
Delaware	3	0	2	1	0	0
District of Columbia	0	0	0	0	0	0
Florida	48	18	18	5	3	4
Georgia	31	4	24	3	0	0
Hawaii	0	0	0	0	0	0
Idaho	5	2	2	0	1	0
Illinois	111	29	61	7	4	10
Indiana	44	22	16	1	0	5
Iowa	53	9	36	4	0	4
Kansas	36	4	30	2	0	0
Kentucky	30	14	13	2	1	0
Louisiana	19	1	16	0	1	1
Maine	12	7	3	0	0	2
Maryland	23	14	3	1	0	5
Massachusetts	30	5	14	6	1	4
Michigan	79	17	43	8	7	4
Minnesota	36	6	28	0	2	0
Mississippi	11	2	9	0	0	0
Missouri	45	15	21	4	3	2
Montana	16	3	10	2	1	0
Nebraska	23	9	14	0	0	0
Nevada	7	0	6	0	1	0
New Hampshire	14	4	6	2	0	2
New Jersey	40	10	19	3	3	5
New Mexico	10	2	7	0	1	0
New York	58	23	21	9	2	3
North Carolina	49	21	25	3	0	0
North Dakota	4	0	3	1	0	0
Ohio	113	54	39	8	3	9
Oklahoma	27	9	16	2	0	0
Oregon	24	6	17	1	0	0
Pennsylvania	101	31	45	19	0	6
Rhode Island	3	2	1	0	0	0

APPENDIX II (CONTINUED)

ADDITIONAL STATISTICAL DATA

Final Case Numbers <i>By State</i> Continued						
State	Total Cases Filed	Cases Withdrawn	Cases Settled	Cases Closed, Dismissed or Other	Determinations For Dealership	Determinations For Manufacturer
South Carolina	21	7	11	2	0	1
South Dakota	14	4	10	0	0	0
Tennessee	30	6	20	1	1	2
Texas	69	16	38	2	3	10
Utah	24	1	19	0	1	3
Vermont	5	2	2	0	0	1
Virginia	32	15	13	1	1	2
Washington	30	11	14	2	0	3
West Virginia	23	10	5	4	1	3
Wisconsin	51	18	25	0	5	3
Wyoming	7	2	4	0	1	0
TOTALS	1575	494	802	113	55	111

## APPENDIX II (CONTINUED)

### ADDITIONAL STATISTICAL DATA

Final Case Numbers By <i>Initial Filings</i>						
State	Total Cases Filed	Cases Withdrawn	Cases Settled	Cases Closed, Dismissed or Other	Determinations For Dealership	Determinations For Manufacturer
Ohio	113	54	39	8	3	9
Illinois	111	29	61	7	4	10
Pennsylvania	101	31	45	19	0	6
Michigan	79	17	43	8	7	4
Texas	69	16	38	2	3	10
California	68	29	27	2	4	6
New York	58	23	21	9	2	3
Iowa	53	9	36	4	0	4
Wisconsin	51	18	25	0	5	3
North Carolina	49	21	25	3	0	0
Florida	48	18	18	5	3	4
Missouri	45	15	21	4	3	2
Indiana	44	22	16	1	0	5
New Jersey	40	10	19	3	3	5
Kansas	36	4	30	2	0	0
Minnesota	36	6	28	0	2	0
Virginia	32	15	13	1	1	2
Georgia	31	4	24	3	0	0
Kentucky	30	14	13	2	1	0
Massachusetts	30	5	14	6	1	4
Tennessee	30	6	20	1	1	2
Washington	30	11	14	2	0	3
Alabama	27	6	17	2	1	1
Oklahoma	27	9	16	2	0	0
Colorado	26	9	11	1	2	3
Oregon	24	6	17	1	0	0
Utah	24	1	19	0	1	3
Maryland	23	14	3	1	0	5
Nebraska	23	9	14	0	0	0
West Virginia	23	10	5	4	1	3
South Carolina	21	7	11	2	0	1
Arkansas	19	5	8	1	1	4
Louisiana	19	1	16	0	1	1
Connecticut	16	8	5	0	0	3
Montana	16	3	10	2	1	0
New Hampshire	14	4	6	2	0	2
South Dakota	14	4	10	0	0	0
Maine	12	7	3	0	0	2

**APPENDIX II (CONTINUED)**

**ADDITIONAL STATISTICAL DATA**

Final Case Numbers By <i>Initial Filings</i> Continued						
State	Total Cases Filed	Cases Withdrawn	Cases Settled	Cases Closed, Dismissed or Other	Determinations For Dealership	Determinations For Manufacturer
Mississippi	11	2	9	0	0	0
New Mexico	10	2	7	0	1	0
Arizona	8	2	5	1	0	0
Nevada	7	0	6	0	1	0
Wyoming	7	2	4	0	1	0
Idaho	5	2	2	0	1	0
Vermont	5	2	2	0	0	1
North Dakota	4	0	3	1	0	0
Delaware	3	0	2	1	0	0
Rhode Island	3	2	1	0	0	0
Alaska	0	0	0	0	0	0
District of Columbia	0	0	0	0	0	0
Hawaii	0	0	0	0	0	0
<b>TOTALS</b>	<b>1575</b>	<b>494</b>	<b>802</b>	<b>113</b>	<b>55</b>	<b>111</b>

## APPENDIX III: SECTION 747 AND LEGISLATIVE HISTORY

### BILL PASSED BY US HOUSE OF REPRESENTATIVES AND THE US SENATE



H. R. 3288

# One Hundred Eleventh Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday,  
the sixth day of January, two thousand and nine*

## An Act

Making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

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

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Consolidated Appropriations Act, 2010”.

### SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. References.
- Sec. 4. Statement of appropriations.

#### DIVISION A—TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

- Title I—Department of Transportation
- Title II—Department of Housing and Urban Development
- Title III—Related agencies
- Title IV—General provisions—This Act

#### DIVISION B—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

- Title I—Department of Commerce
- Title II—Department of Justice
- Title III—Science
- Title IV—Related agencies
- Title V—General provisions

#### DIVISION C—FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2010

- Title I—Department of the Treasury
- Title II—Executive Office of the President and funds appropriated to the President
- Title III—The judiciary
- Title IV—District of Columbia
- Title V—Independent agencies
- Title VI—General provisions—This Act
- Title VII—General provisions—Government-wide
- Title VIII—General provisions—District of Columbia

#### DIVISION D—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

- Title I—Department of Labor
- Title II—Department of Health and Human Services
- Title III—Department of Education
- Title IV—Related agencies

APPENDIX III: SECTION 747 AND LEGISLATIVE HISTORY (CONTINUED)

EXCERPT FROM THE BILL – TEXT PERTAINING TO AAA ARBITRATION (H. R. 3288—186)

H. R. 3288—186

(i) EXECUTIVE AGENCY DEFINED.—In this section, the term “executive agency” has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

SEC. 744. (a) The adjustment in rates of basic pay for employees under the statutory pay systems that takes effect in fiscal year 2010 under section 5303 of title 5, United States Code, shall be an increase of 1.5 percent, and the overall average percentage of the adjustments taking effect in such fiscal year under sections 5304–5304a of such title 5 shall be an increase of 0.5 percent (with comparability payments to be determined and allocated among pay localities by the President). Adjustments under the preceding sentence shall also apply to civilian employees in the Department of Homeland Security and in the Department of Defense. All adjustments under this subsection shall be effective as of the first day of the first applicable pay period beginning on or after January 1, 2010.

(b) Notwithstanding section 710, the adjustment in rates of basic pay for the statutory pay systems that take place in fiscal year 2010 under sections 5344 and 5348 of title 5, United States Code, shall be no less than the percentages in subsection (a) as employees in the same location whose rates of basic pay are adjusted pursuant to the statutory pay systems under section 5303 and 5304–5304a of title 5, United States Code. Prevailing rate employees at locations where there are no employees whose pay is increased pursuant to sections 5303 and 5304–5304a of such title 5 and prevailing rate employees described in section 5343(a)(5) of such title 5 shall be considered to be located in the pay locality designated as “Rest of U.S.” pursuant to section 5304 of such title 5 for purposes of this subsection.

(c) Funds used to carry out this section shall be paid from appropriations, which are made to each applicable department or agency for salaries and expenses for fiscal year 2010.

SEC. 745. (a) Section 5538 of title 5, United States Code, is amended by striking subsection (b) and inserting the following:

“(b) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee’s civilian employment had not been interrupted)—

“(1) during which such employee is entitled to re-employment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and

“(2) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee’s civilian employment with the Government.”.

(b) The amendments made by this section shall take effect on the first day of the first applicable pay period beginning on or after the date of the enactment of this Act.

SEC. 746. Except as expressly provided otherwise, any reference to “this Act” contained in any title other than title IV or VIII shall not apply to such title IV or VIII.

SEC. 747. (a) DEFINITIONS.—For purposes of this section the following definitions apply:

(1) The term “covered manufacturer” means—

(A) an automobile manufacturer in which the United States Government has an ownership interest, or to which the Government has provided financial assistance under

APPENDIX III: SECTION 747 AND LEGISLATIVE HISTORY (CONTINUED)

EXCERPT FROM THE BILL – TEXT PERTAINING TO AAA ARBITRATION (H. R. 3288—186)

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title I of the Emergency Economic Stabilization Act of 2008; or

(B) an automobile manufacturer which acquired more than half of the assets of an automobile manufacturer in which the United States Government has an ownership interest, or to which the Government has provided financial assistance under title I of the Emergency Economic Stabilization Act of 2008.

(2) The term “covered dealership” means an automobile dealership that had a franchise agreement for the sale and service of vehicles of a brand or brands with a covered manufacturer in effect as of October 3, 2008, and such agreement was terminated, not assigned in the form existing on October 3, 2008 to another covered manufacturer in connection with an acquisition of assets related to the manufacture of that vehicle brand or brands, not renewed, or not continued during the period beginning on October 3, 2008, and ending on December 31, 2010.

(b) A covered dealership that was not lawfully terminated under applicable State law on or before April 29, 2009, shall have the right to seek, through binding arbitration, continuation, or reinstatement of a franchise agreement, or to be added as a franchisee to the dealer network of the covered manufacturer in the geographical area where the covered dealership was located when its franchise agreement was terminated, not assigned, not renewed, or not continued. Such continuation, reinstatement, or addition shall be limited to each brand owned and manufactured by the covered manufacturer at the time the arbitration commences, to the extent that the covered dealership had been a dealer for such brand at the time such dealer’s franchise agreement was terminated, not assigned, not renewed, or not continued.

(c) Before the end of the 30-day period beginning on the date of the enactment of this Act, a covered manufacturer shall provide to each covered dealership related to such covered manufacturer a summary of the terms and the rights accorded under this section to a covered dealership and the specific criteria pursuant to which such dealer was terminated, was not renewed, or was not assumed and assigned to a covered manufacturer.

(d) A covered dealership may elect to pursue the right to binding arbitration with the appropriate covered manufacturer. Such election must occur within 40 days of the date of enactment. The arbitration process must commence as soon as practicable thereafter with the selection of the arbitrator and conclude with the case being submitted to the arbitrator for deliberation within 180 days of the date of enactment of this Act. The arbitrator may extend the time periods in this subsection for up to 30 days for good cause. The covered manufacturer and the covered dealership may present any relevant information during the arbitration. The arbitrator shall balance the economic interest of the covered dealership, the economic interest of the covered manufacturer, and the economic interest of the public at large and shall decide, based on that balancing, whether or not the covered dealership should be added to the dealer network of the covered manufacturer. The factors considered by the arbitrator shall include (1) the covered dealership’s profitability in 2006, 2007, 2008, and 2009, (2) the

## APPENDIX III: SECTION 747 AND LEGISLATIVE HISTORY (CONTINUED)

### EXCERPT FROM THE BILL – TEXT PERTAINING TO AAA ARBITRATION (H. R. 3288—186)

#### H. R. 3288—188

covered manufacturer's overall business plan, (3) the covered dealership's current economic viability, (4) the covered dealership's satisfaction of the performance objectives established pursuant to the applicable franchise agreement, (5) the demographic and geographic characteristics of the covered dealership's market territory, (6) the covered dealership's performance in relation to the criteria used by the covered manufacturer to terminate, not renew, not assume or not assign the covered dealership's franchise agreement, and (7) the length of experience of the covered dealership. The arbitrator shall issue a written determination no later than 7 business days after the arbitrator determines that case has been fully submitted. At a minimum, the written determination shall include (1) a description of the covered dealership, (2) a clear statement indicating whether the franchise agreement at issue is to be renewed, continued, assigned or assumed by the covered manufacturer, (3) the key facts relied upon by the arbitrator in making the determination, and (4) an explanation of how the balance of economic interests supports the arbitrator's determination.

(e) The arbitrator shall be selected from the list of qualified arbitrators maintained by the Regional Office of the American Arbitration Association (AAA), in the Region where the dealership is located, by mutual agreement of the covered dealership and covered manufacturer. If agreement cannot be reached on a suitable arbitrator, the parties shall request AAA to select the arbitrator. There will be no depositions in the proceedings, and discovery shall be limited to requests for documents specific to the covered dealership. The parties shall be responsible for their own expenses, fees, and costs, and shall share equally all other costs associated with the arbitration, such as arbitrator fees, meeting room charges, and administrative costs. The arbitration shall be conducted in the State where the covered dealership is located. Parties will have the option of conducting arbitration electronically and telephonically, by mutual agreement of both parties. The arbitrator shall not award compensatory, punitive, or exemplary damages to any party. If the arbitrator finds in favor of a covered dealership, the covered manufacturer shall as soon as practicable, but not later than 7 business days after receipt of the arbitrator's determination, provide the dealer a customary and usual letter of intent to enter into a sales and service agreement. After executing the sales and service agreement and successfully completing the operational prerequisites set forth therein, a covered dealership shall return to the covered manufacturer any financial compensation provided by the covered manufacturer in consideration of the covered manufacturer's initial determination to terminate, not renew, not assign or not assume the covered dealership's applicable franchise agreement.

(f) Any legally binding agreement resulting from a voluntary negotiation between a covered manufacturer and covered dealership(s) shall not be considered inconsistent with this provision and any covered dealership that is a party to such agreement shall forfeit the right to arbitration established by this provision.

(g) Notwithstanding the requirements of this provision, nothing herein shall prevent a covered manufacturer from lawfully terminating a covered dealership in accordance with applicable State law.

## APPENDIX III: SECTION 747 AND LEGISLATIVE HISTORY (CONTINUED)

### US HOUSE OF REPRESENTATIVES FLOOR DEBATE ON SECTION 747 (H14475-H14479)

December 10, 2009

CONGRESSIONAL RECORD—HOUSE

H14475

seem to think that three convictions by military tribunals in the entire period of their existence is an impressive record. One of those was for a guilty plea. This isn't an impressive record; it's a dismal record. By contrast, recent analysis of the 119 terrorism cases involving 289 defendants tried over the last 30 years in U.S. courts shows a 91 percent conviction rate for the cases that had been resolved as of June 2.

I can't tell you whether one option or the other is better for any given case, but that's not the call we have to make in an appropriations bill. With current law, we can leave that decision to the experts in the administration who can best decide on a case-by-case basis who should be prosecuted in the U.S. and what mitigation plans are necessary to address any risks that may result from those trials.

The purpose of the Republican amendment, which was rightly rejected in the conference committee, was to shut off access to U.S. courts for terrorism prosecution. That is a proposition that is patently absurd and that, I dare say, our Republican colleagues would not be putting forward if there were a Republican President.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. OLIVER. I yield the gentleman 1 additional minute.

Mr. PRICE of North Carolina. Is criminal prosecution an option we simply summarily want to close off? Of course, the answer is "no."

□ III

We should be using these carefully selected prosecutions to send a message to the world that we will not be intimidated by the prospect of bringing terrorists to justice or allow terrorism to undermine the rule of law in our country.

Mr. LATHAM. At this time, it is my privilege to yield 3 minutes to the gentleman from Texas (Mr. GRANGER).

Ms. GRANGER. Mr. Speaker, I rise to speak briefly about the State-Foreign Operations division of this omnibus package.

As the ranking member of the subcommittee, I am pleased that I have been able to work closely with Chairwoman LOWEY this year. She and her staff have worked to address concerns by committee Republicans and by me, and I thank her for her commitment to bipartisanship.

I also thank our Senate colleagues and our staff for working together to achieve common ground in the conference agreement. In the end, many priorities were preserved: funding a new compact for the Millennium Challenge Corporation; fighting drug trafficking in Mexico, Central America, and Colombia; and continuing security assistance to key allies like Israel, Egypt, and Jordan.

Funds provided in this bill will allow State and USAID to hire more than 1,000 new staff, which will help balance the three D's of smart power, the ap-

proach to national security. The increase for development and diplomacy will, in turn, support our Nation's defense and allow our military men and women to refocus on their core mission.

As the Congress provides additional staff and increases foreign assistance funding, the level of commitment to reform must be equal to funding commitment made. Oversight must be a priority. For that reason, the bill provides \$140 million for inspectors general, and many oversight provisions and reporting requirements are also included.

The conference agreement retains language that prevents U.S. tax dollars from going to organizations that support or participate in involuntary or coercive methods of family planning. There are legitimate plans about family planning funding that goes abroad, and legislative safeguards will remain in place the next fiscal year.

I regret that this package lumps six bills together in a package of close to half a trillion dollars and does not allow this body to address appropriations bills individually and fully vet them so that I could support them. I support the many programs in this bill. However, we must be aware of the tremendous debt held by this country and work competently, being aware of this issue.

Again, I thank Chairman LOWEY, our excellent committee staff, and our Senate colleagues for working together to address shared priorities.

Mr. OLIVER. I yield 3 minutes to the gentleman from Wisconsin (Mr. OBEY).

Mr. OBEY. Mr. Speaker, I would like to comment very briefly on the comments of the gentleman from Tennessee, who a few moments ago criticized us because we were some 70 days late in passing the Military Construction-VA appropriation bill.

Let me simply point out that we may be 70 days late, but we are getting the job done. In addition to passing the basic bill, we are, for the first time in history, providing advance funding for VA activities. That is something that the veterans community has wanted for years and years, and it has been this Congress that delivered.

That stands in contrast to the performance of the minority party when they chaired this institution with respect to what they produced on the Military Construction-VA bill. They complain about the fact that we were 70 days late. They never passed that bill at all. They didn't pass it in October. They didn't pass it in November, which would have been 30 days late. They didn't pass it in December, which would have been 60 days late. They never passed it. When a new Congress took over, we had to pass all of those domestic appropriation bills and the Military Construction bill. I think it is quaint, indeed, when they attack us on the question of performance on, of all bills, the Military Construction bill. I think they need to go back and take a

look at the record when they chaired this place.

With respect to the funding overall levels in this overall bill, let me simply repeat what I said earlier. When you take into account the necessary increases for veterans disability, for the vetans, for the war costs which are not being hidden in a supplemental as they were under the stewardship of our friends on the other side of the aisle, when you take into account the infrastructure change to funding and the \$6 billion that we needed to prepare the health care system for the legislation which is about to pass, the rest of the increases in the bill before us amount to 1 percent. I hardly think that that's excessive, given the economic crisis that we face.

Mr. LATHAM. Mr. Speaker, just one comment. I think it's interesting to note the gentleman talked about that we are finally getting the Military Construction bill done, VA funding. The last two bills that we are funding are Defense, which will be 80 days out from the start of the new fiscal year, the Military Construction-VA bill.

But if you remember back with the schedule, the very first bill that was passed and signed into law was to fund Congress itself. We took care of ourselves here first and the military was the very, very last. I think that is very unfortunate.

I am now pleased to yield 2 minutes to the gentleman from Ohio (Mr. LATOURETTE).

Mr. LATOURETTE. I thank the gentleman for yielding. I am going to break the mold here and say something nice about five pages of the bill, this bill in front of me—I think those pages are right here—and say something nice about Mr. OBEY as well, and Mr. SERRANO is waving in the back.

By way of history, people know that the auto industry in this country got into trouble, and this administration made a decision to use leftover TARP funds to bail out Chrysler and General Motors. Both car companies submitted reorganization plans in February of this year and both were rejected by the auto task force.

The auto task force was kind of a strange collection of people that didn't have any experience in the auto industry at all. Most of them didn't own cars. Those that did own cars owned foreign cars, but they determined that the car companies had to be more aggressive when it came to dealerships. As a result, about 800 Chrysler dealers were closed and about 2,000 GM dealers. The problem with that is, with rampant unemployment, about 60 people work at each car dealership across this country. Car dealerships don't cost the car companies any money, and it was a strange way to do business and potentially take 200,000 people and put them on the street.

A couple of young, fresh-faced Democrats, Mr. MAFFEI of New York and Mr. KRATOVIL of Maryland, launched a legislative effort. But as a grizzled veteran, having been here for the last 15

## APPENDIX III: SECTION 747 AND LEGISLATIVE HISTORY (CONTINUED)

### US HOUSE OF REPRESENTATIVES FLOOR DEBATE ON SECTION 747 (H14475-H14479)

H14476

CONGRESSIONAL RECORD—HOUSE

December 10, 2009

years. I know that the one piece of legislation or pieces of legislation that have to leave town are the appropriations bills. We drafted some language and put it in Mr. SERRANO's bill, and Mr. OBEY took it. They didn't have to—they probably got in trouble for taking it—but that became the 800-pound gorilla that had to be dealt with as General Motors and Chrysler have moved forward on how to deal with this dealer situation.

I also want to say something nice about the majority leader, Mr. HOYER. He took up the mantle and said we are going to solve this problem. As a result, the five pages that are here in the bill indicate that those aggrieved dealers now have the opportunity for binding arbitration, and the facts need to be brought forward, and hopefully fairness will prevail. But that wouldn't happen without something good and bipartisan happening in the United States Congress.

Mr. LATHAM. Mr. Speaker, it is my honor to yield 1 minute to the minority leader of the House, the gentleman from Ohio (Mr. BOEHNER).

Mr. BOEHNER. We're broke. We're broke. America is broke. All year long our friends across the aisle have been on this massive spending spree that our Nation can't afford.

We had a trillion dollar stimulus bill that was supposed to create jobs immediately, and yet unemployment is now 10 percent in America. Three million people have lost their jobs since the bill was signed into law.

We passed a budget that's going to double the national debt in 3 years, triple it in 10 years. We have got a \$12 trillion national debt.

We brought a national energy tax bill to the floor that's going to cost a trillion dollars, passed it. We had a health care bill here several weeks ago, another trillion dollars, passed it.

When are we going to say enough is enough? Here we are today. We are wrapping six appropriation bills together. We are going to spend a half a trillion dollars, and it has got over 3,000 earmarks in the bill, you know, things like \$202,000 for the elimination of alum and blight in Scranton, Pennsylvania; \$38,000 for music and education programs at New York City's Carnegie Hall, where they pay the employee who runs this program \$30,000 a year in salary and benefits. There is plenty in here for Washington as well: \$150,000 for the National Building Museum; \$250,000 for the Wolf Trap Foundation for the Performing Arts, a concert venue.

Listen, I don't know how worthy any of these projects are, but I do have to ask the question, are they more important than our kids and our grandkids who have to pay the debt, because we don't have the money to spend on this. It's our kids and grandkids who are going to pay for it. Yet we can't find ways to cut spending.

Before the President took office, he said that he must go through the bud-

get and these bills line by line and page by page. Well, after Congress passed the \$410 billion omnibus spending bill earlier this year, with 9,000 earmarks, the President signed it and he said, well, that was last year's business. Now the President says reducing the deficit is next year's business and that we need to spend our way out of this economic recession that we are in.

Well, I think the President ought to go through this bill line by line and page by page, all 2,500 pages of it, then maybe he will figure out that we don't need to be spending this money that we don't have and piling more and more debt on the backs of our kids and grandkids. Instead, our bond rating, our AAA bond rating is in jeopardy and our Democrat friends want to raise the debt limit next week by \$1.8 trillion.

Let's stop the madness and vote "no."

□ 1230

Mr. OLVER. Mr. Speaker, how much time does each side now have?

The SPEAKER pro tempore. The gentleman from Massachusetts has 7 minutes remaining, and the gentleman from Iowa has 3 minutes remaining.

Mr. OLVER. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin (Mr. OBEY).

Mr. OBEY. Mr. Speaker, I regret that this has become another typical "Who Shot John" debate, but since it has, let me respond to the distinguished minority leader. Let's compare what President Obama inherited with what President Bush inherited. When President Bush walked into the White House, he inherited \$6 trillion in projected surpluses. He inherited 3 years in a row of budget surpluses under President Clinton. And he inherited an economy in which all income groups saw their income rise by roughly the same percentage.

In contrast, when Mr. Obama walked into the White House, he inherited a \$1 trillion deficit. He inherited two wars that were paid for on the cuff, with borrowed money. He inherited \$6 trillion in projected deficits. And he inherited an economy in which, for six straight years, 94 percent of the income growth went to the wealthiest 10 percent of people, and everybody else got table scraps. In addition, he inherited an economy that was projected to have a \$1.3 trillion hole because of the biggest collapse of the economy in 75 years.

And so, indeed, Mr. Obama and the majority party in this Congress spent money to try to prime the pump, to keep the economy going, because we were losing 700,000 jobs a month the last 3 months of the Bush administration. We have now got that down to an 11,000 job loss last month. That's not good enough, but it's certainly a lot better than the situation was when we inherited it.

The gentleman squawks about the debt ceiling. The debt has already been rung up, and now the question is, when

the bill comes in the mail, is it going to be paid or not. The fact is, out of that \$1.8 trillion debt increase, \$1.4 trillion of that is directly traceable to policy actions that were taken by the previous administration and the previous Republican Congress. And \$400 billion of it are directly traceable to the actions we've had to take to try to bail the economy out of the mess that you folks got us into.

So if you want to start comparing records, I'd be happy to. I'd much prefer to talk about the contents of this bill and the individual programs of this bill. But since some the gentlemen on that side of the aisle prefer to politicize everything, I guess we're going to have to have the debate at that level. That's too bad, but I've come to expect very little but that from the other side. I regret to say.

I do want to thank the gentleman from Ohio for trying to insert a bit of bipartisanship into the debate.

Mr. LATHAM. Mr. Speaker, I yield myself as much times as I may consume.

I don't know if the gentleman has more speakers, but I'm planning on closing. I just want to thank the staff, on both sides. Our subcommittee does an outstanding job working together, and I'm just very, very proud of the work that they've done and the kind of commitment they've shown, and just want to say thank you for the professionalism that they have exhibited throughout this whole process.

Mr. Speaker, I'm going to oppose this for various reasons. Number one, the fact that this \$450 billion bill is a 14 percent increase in spending over last year. At a time when people are hurting, we cannot afford this kind of additional debt that's being put on the taxpayers, on the families at home. Realizing that in the last 2 years, discretionary spending in this House of Representatives has increased now, 45 percent; 45 percent more money, discretionary money, being spent today than just 2 years ago. Does anybody at home have 45 percent more money today than what they had 2 years ago? Is it responsible in any way, shape or form to have that kind of an increase?

The gentleman from Massachusetts—and I appreciate his professionalism—made the case, basically, for me before. We held down spending previously. And this explosion that we've seen just throughout the budget is simply wrong. We cannot sustain it, and it is about the next generations. I've got four grandchildren. They're going to pay this bill, and their children are going to pay this bill, and it simply is not fair. It's generational theft, and we've got to finally hold the line as far as spending in this Congress and find some kind of sanity around here.

With that, again, I would hope that everyone would vote "no." We could get some reality. We could separate these bills, have them done correctly and in a responsible way. And just one other thing in closing. I want to, again,

# APPENDIX III: SECTION 747 AND LEGISLATIVE HISTORY (CONTINUED)

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Thank Chairman OLVER for being a very good friend, the professional, and someone that I would admire.

Mr. Speaker, I yield back the balance of my time.

Mr. OLVER. I yield again to the gentleman from Massachusetts.

The SPEAKER pro tempore. The gentleman from Massachusetts is recognized for 1 minute.

Mr. OLVER. Mr. Speaker, my counterpart, the ranking member from Iowa, has graciously thanked the people on both sides who have taken all of the work that our representatives do all week. Actually, when there's six different bills here, I would like to extend that thanks to the people on the staff of each of the six committees on each side of the aisle who put countless hours into the work that has brought this bill to the floor at this time.

But particularly, let me just personally let each side say, on our side, my staff, Kevin Mahoney, and on the Republican side, they work, Dana Burns, and the people who work under them, for them and with them, and for us and for the people of the country. They have done an incredible job in the THIS committee, so I think each of the other groups have done for their own, particular committees. We should all be very grateful for that.

With the passage of this bill—and I am going to stop passage as I think we will on our side have completed the work on 11 of the 12 bills, and therefore we will be a mere steps away from the Chair of the legislative process necessary to provide for the year 2010. And so I am very optimistic today, in fact, a great deal from that the members of all the House and Senate members of the committees.

With that, we are just going to "pass" now on this budget bill in order to be able to reach that goal next time to the completion of our work.

Mr. VAN HOLLEN. Mr. Speaker, I rise in support of the Consolidated Appropriations Act of 2010 and urge its swift consideration by our colleagues in the Senate.

This legislation includes final conference reports for the FY 2010 Transportation-HUD, Commerce-Justice-Science, Financial Services, Labor-HHS-Education, Military Construction-VA and State-Foreign Operations bills. Its total funding of \$446.8 billion makes priority investments in infrastructure, health care, and education, while supporting our veterans, funding the upcoming census and honestly accounting for war costs previously left to supplementals. Remaining items in the bill are limited to a 1% funding increase.

The \$50 billion in infrastructure spending in this bill—including \$150 million for the Washington Metropolitan Area Transit Authority—will enable us to modernize our aging infrastructure, ease congestion, facilitate commerce and create good-paying, homegrown American jobs. To further bolster our economic recovery, HR 3288 provides \$824 million to the Small Business Administration for its work helping our job-generating small businesses succeed. This investment will help facilitate an additional \$28 billion in new lending to small businesses. I am delighted that the

National Institutes of Health is funded at \$31 billion so that it can continue driving scientific innovation and health system reform. Finally, I am especially pleased that the Financial Services division of this consolidated legislation sets up a fair and reasonable process by which profitable auto dealers can have an opportunity to get back into business so that they and their employees can play their part in supporting our ongoing economic recovery. In that regard, I ask that the full text of the attached statement be entered into the legislative RECORD.

Mr. Speaker, I rise today to express my appreciation that language has been included in the Financial Services Appropriations Conference Report that will give automobile dealers around the nation a fair and reasonable shot at getting back into business. For the past several months, I have been pleased to join with Majority Leader HOYER, Congressmen KRATOVL and MAFFEI, and others to ensure that profitable car dealers have every opportunity to contribute to our economic recovery and put their employees back to work.

Profitable and viable dealers should have never been terminated in the first place, and I was proud to join the fight to have these short-sighted decisions reversed. Automobile manufacturers won't be able to get back on their feet without a strong dealer network, and Congress is committed to ensuring that such a network exists. I salute the tenacity and determination of these small business owners, many of whom have been selling cars and supporting the American auto industry for decades. Under the provision we are approving today, these terminated dealers will have an opportunity, once again, to do what they do best—sell and service cars. And that is good for our economy, for job creation and for the American car industry.

It would have been my preference that we would not need to legislate on this matter. We convened talks with the auto dealer groups and the manufacturers and while both sides offered significant concessions, efforts to achieve a non-legislative solution failed when auto manufacturers offered plans that fell short of what was needed to add dealers to their dealer networks and put their employees back to work.

As 2009 comes to a close, the federal government still maintains a substantial financial stake in Chrysler and General Motors and therefore in the United States automobile industry. Clearly, it is in the national interest to have the domestic automobile industry regain profitability and maintain sufficient dealerships to meet consumer demand.

Section 747 of the Financial Services Appropriations division of this bill recognizes the valuable role that dealers play in the auto industry and our local economies. Automobile dealers are essential to the success of automobile manufacturers because at no material cost to the manufacturers, they facilitate distribution, sales, and servicing of hundreds of millions of vehicles annually. This legislation is premised on the notion that it is in the best interest of automobile manufacturers, the automotive industry, dealers and the public to have an extensive and competitive automobile distribution network throughout the country, including in urban, suburban and rural areas.

Section 747 mandates that manufacturers promptly provide covered auto dealers in writing the specific criteria and supporting data re-

lied upon by a manufacturer in its decision to end or wind down the dealership relationship. In the spirit of cooperation and to ensure an efficient process as this legislation is implemented, we expect that the manufacturers will provide the information in a format that is user friendly, clearly identifies facts, readily accessible, and understandable by the dealer and that the data may be transmitted either by mail or electronically. We intend that this process provide transparency and avoid the excessive costs and delays of litigation and discovery disputes. The manufacturers should provide their respective covered dealers with each and every detail and criterion related to the evaluations of the dealership and the decisions to terminate, not assign, not renew or discontinue. It is anticipated that the manufacturers will be cooperative and forthcoming and that all relevant information will be provided promptly.

It further provides such dealers with the opportunity to participate in a neutral arbitration process designed for the dealer to make the case for being added to the manufacturer's dealer network. Congress has included specific timeliness for this process and we expect both parties to the arbitration to act in good faith and expeditiously so that added dealers can return to full-fledged operations quickly.

Section 747 expressly permits the manufacturer and dealer to present any kind of relevant information during the arbitration and provides that the arbitrator shall decide whether the dealer should be added to the manufacturer's dealer network based on a balancing of the interests of the dealer, the manufacturer, and the general public. The public interest includes reasonably convenient access for consumers to a dealer who can service their vehicles, which is of particular concern in rural areas where many dealers were terminated in 2009. It has been well-reported that more and more individuals have to drive substantial distances to obtain service from an authorized dealer of a specific brand because of a dealer termination.

Congress has provided seven enumerated factors for the arbitrator to consider, but this list is not exhaustive because the legislation provides that the parties can introduce "any relevant information." For example, we expect that arbitrators should consider relevant State laws, which provide a context for analyzing franchise agreements and the obligations of dealers and manufacturers.

A couple of these enumerated criteria merit additional explanation. For example, Congress has directed that the demographic and geographic characteristics of the market are taken into account. This reflects our intention that the arbitrator should pay special attention to the concerns expressed by some terminated dealers that there are factors in their market areas or States that affect their performance and render some measurements, such as State averages, less than accurate in portraying the true picture of a dealer's operations.

Another one of the factors involves the dealer's performance under the franchise agreement terminated in 2009. In considering this factor and related factors, it is important for arbitrators to recognize that state law is part and parcel of and modifies auto dealer franchise agreements. To look only at a franchise agreement, in other words, misses an important contextual element. Accordingly, it is anticipated that the arbitrators will consider State

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law elements of good faith and fair dealing in this process and that, for example, the franchise agreement's performance standards and a dealer's performance under the original agreement will be evaluated in accordance with State law.

Another factor is the historic profitability of the dealership. During the legislative process, Congress learned that some dealers, for tax planning reasons or other reasons use a variety of legitimate, widely recognized accounting conventions, such as LIFO, that could, depending on the date a snapshot is taken, affect materially whether the dealership appears profitable. It is important that arbitrators recognize such accounting conventions when considering the profitability of a dealership so a fair and accurate picture is obtained.

With respect to being added back to a dealer network, it is the intent of Congress that notwithstanding the preference of a manufacturer to have several brands in the same dealership, in the case of a dealer seeking to be added to a dealer network but with fewer than all of the preferred brands, the dealer nonetheless will be eligible to be added.

It is worth noting that pursuant to subsection (f), manufacturers and dealers may, of their own volition, decide to enter into legally binding agreements with one another instead of going through the arbitration process. It is the intent of Congress that for this subsection to apply, the legally binding agreements shall be consensual, non-coercive resolutions of the issue between the dealer and the manufacturer entered into or ratified after the date of enactment. Coercive agreements should not be upheld.

In conclusion, I want to recognize the tireless efforts of dealers from around the Nation who worked to develop and implement a truly historic grassroots effort over the past seven months. Groups such as the Committee to Restore Dealer Rights, the Automobile Trade Association Executives, National Automobile Dealers Association and the National Association of Minority Auto Dealers, were instrumental in bringing about the legislation we are approving today.

Mrs. BACHMANN. Mr. Speaker, today, the House of Representatives once again sidestepped its constitutional obligation to fund our Nation's Federal priorities in a responsible manner and railroaded a massive spending bill through the House without allowing an open and honest debate that American taxpayers deserve. While I believe this legislation contains important funding for many programs administered by Federal agencies, spending bills and the projects they fund must be considered individually on their merits, and not obscured by being tucked into a giant "omnibus" spending package.

Right now, the national debt has already ballooned to a whopping \$12.1 trillion and Democrats are ready to increase the debt limit by another \$1.8 billion to accommodate their rabid spending habits. But at a time when American families are struggling to make ends meet and Federal deficits are skyrocketing at a record pace, it is absolutely necessary for Congress to fully commit to fiscal responsibility and scrutinize how every tax dollar is spent. While I understand the difficulty associated with such a large task, I, like so many of my colleagues, believed the Democrat majority when they pledged to "create the most honest, most open, and most ethical Congress in

history." I was hopeful that their stated commitment to open government would entail the individual consideration of each of the 12 annual appropriations bills, setting a path towards restoring the confidence and trust of the American people.

Unfortunately, the actions taken today indicate that our leadership is content with the status quo, and will avoid difficult decisions that should be made in order to prevent saddling future generations with debilitating debt. By combining half of the total appropriations bills into one measure, this majority has shown that it has no interest in real transparency and is more focused on growing government to accommodate their tax-and-spend agenda than being good stewards of the taxpayers' money.

Congress should show the American people that it is serious about making the same tough choices American families make every month. But this bill's 24 percent increase in government spending ignores the realities of our limited budget and assumes the taxpayers will just pick up the tab in future years. While the bill includes some of Minnesota's local priorities, it strays far from representing anything but a big government spending bill that lacks any consideration of our massive budget deficit.

Indeed, in the same manner as households across America set a budget, Washington needs to set a budget, and stick to it. However, the tax and spend approach to government being exhibited this year serves as a haunting indication that no amount of spending or government control is too much for the Democrats. That said, it is my sincere hope that as Congress moves forward with next year's budget and spending priorities, strict attention will be paid to protecting the American taxpayer and fostering an atmosphere of bipartisan cooperation and fiscal responsibility.

Mr. CONYERS. Mr. Speaker, I would like to thank the Conferees for including section 747, which regulates the relationship between automobile manufacturers and automobile dealerships. I, along with Majority Leader STENY HOYER, and Representatives CHRIS VAN HOLLEN, DANIEL MAFFEI, FRANK KRATOVIL, STEVEN LATOURETTE, JACKIE SPEIER, ROBERT BRADY, BETTY SUTTON, and BOB ETHERIDGE have worked together to create legislation that will best serve the interests of the automobile industry, including manufacturers and dealerships, and the citizens who have a significant portion of their tax dollars invested in the success of this critical industry. The following is a description of the legislation.

Section 747 of the Conference Agreement includes language establishing an arbitration process to determine whether previously terminated, non-assigned, non-renewed, or non-continued auto dealerships should be added to dealership networks of automobile manufacturers that received federal assistance under the TARP program, or that are partially owned by the Federal Government. This provision replaces Section 745 of the House bill, which also addressed concerns regarding terminated auto dealerships.

It is in the national interest to protect the substantial federal investment in automobile manufacturers by assuring the viability of such companies through the maintenance of sufficiently sized dealership networks to meet consumer demand for sales and servicing nationally. In addition to facilitating the maintenance

and growth of industry market share among manufacturers that benefited from TARP funds, and in which the taxpayers have a significant financial investment, it is in the national interest to ensure that dealerships and manufacturers are each treated fairly in their business relationships based on their respective economic interests.

Evidence obtained over the course of numerous Congressional hearings in 2009 demonstrates that the automobile industry is integral to the health of the United States economy as a whole. Automobile manufacturers have been among the largest and most successful corporations in the United States, providing significant numbers of jobs and producing valuable goods for consumers. Automobile dealerships are also essential businesses in most communities nationally, providing many jobs to local residents and facilitating the distribution, sales, and servicing of millions of vehicles annually. Our investigations have made clear that it is in the best interest of the automobile industry, automobile manufacturers, dealerships and the public to have a competitive and economically viable domestic automobile distribution network throughout the country, including urban, suburban, and rural areas.

This provision was included because we also believe that by providing a process for working out the relationship between automobile manufacturers and dealerships that ensures transparency and review by a neutral arbitrator according to an equitable and balanced standard, taking into account the interests of all affected parties, the property and due process rights of manufacturers and dealerships will be safeguarded.

Section 747 establishes a procedure by which an automobile dealership that had a franchise agreement for a vehicle brand that was not assigned to a covered manufacturer, or that was terminated in a manner not consistent with applicable state law, on or before April 29, 2009, may seek continuation or reinstatement of the franchise agreement, or seek to be added as a franchisee to a dealership network of the covered manufacturer who manufactures the vehicle brand of the covered dealership, with such franchisee being located in the geographic area where the covered dealership was located when its franchise agreement was terminated, not assigned, not renewed, or not continued. Absent such election by the covered dealership, no such binding arbitration would occur.

In order to provide a covered automobile dealership with the information useful to determine whether to elect to enter into binding arbitration, the dealership will receive in writing notice from the covered manufacturer detailing the specific criteria pursuant to which such dealership's franchise agreement was terminated, was not renewed, or was not assumed and assigned to a covered manufacturer. This notice must be provided within the 30-day period beginning on the date of the enactment of this Section. This transparency is a vital step in giving dealerships the opportunity to understand why their franchise agreements were terminated, not renewed, or were not assumed and assigned to a covered manufacturer. It is our expectation that this transparency will obviate the need for unnecessary arbitration. It is also our expectation that this transparency will encourage informal agreements between covered dealerships and manufacturers without

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recourse to the more formal procedures provided in this Section. We expect that the written transmittal letter will also provide appropriate contact information, including an e-mail address, to enable the dealership to contact the manufacturer should the dealership have specific questions about the dealership's information and individual criteria contained in such letter.

The Conference Agreement provides such dealerships with the opportunity to elect to participate in a neutral arbitration process designed to permit the dealership to present information in support of its addition to the manufacturer's dealership network, and for the manufacturer to present information against such addition based on its business plan and future economic viability. The arbitrator in each case shall balance the interests of the covered dealership, the covered manufacturer, and the public and will decide based on that balancing whether or not the covered dealership should be added to the dealership network of the covered manufacturer. These are the only remedies the arbitrator may provide. The Conference Agreement specifically prohibits the awarding of compensatory, punitive, or exemplary damages to any party.

The Conference Agreement sets out seven specific factors that the arbitrator should consider in ruling on each case. The list is not exclusive, and the arbitrator would have the discretion to consider all the relevant facts on a case-by-case basis. In considering whether adding the covered dealership to the covered manufacturer's dealership network is in the public interest, the arbitrator should consider, among other factors, the need for reasonable access for consumers to a dealership that can service their vehicles, which is of particular concern in rural areas. The arbitrator should also consider the impact on the viability of the manufacturer of adding the dealership to the manufacturer's network, the length of experience of the dealership, the dealership's historical profitability and current economic viability, and demographic and geographic characteristics of the market.

It is our understanding that the General Commercial Rules of the American Arbitration Association shall apply to the arbitration proceeding, except to the extent that a rule is inconsistent with any provision of this Section.

Subsection (f) addresses negotiations between a covered manufacturer and a covered dealership, whether acting individually, as a group, or through an organization acting on behalf of one or more covered dealerships. The provision is intended to ensure that any legally binding agreement, such as a memorandum of understanding, resulting from a voluntary negotiation between a covered manufacturer and a covered dealership, a group of covered dealerships, or an organization acting on behalf of one or more covered dealerships will not be disturbed by this section. It also makes clear that once a covered dealership is party to such an agreement, such covered dealership would not be eligible for the arbitration remedy in this section.

It is not the intent of Congress to bar a covered dealership from the provisions of this section if the covered dealership accepted a standard form contract prepared by the covered manufacturer and offered on a "take-it-or-leave-it" basis, even if the agreement was entered into voluntarily. As a consequence, a covered dealership that accepted a "wind-

down" agreement drafted by a covered manufacturer would be able to avail itself of the provisions of this section. An agreement between a covered manufacturer and a covered dealership, whether acting individually, as a group, or as part of a group of dealerships acting through an organization, will be considered voluntarily negotiated if the agreement between the parties reflects a compromise based on written or oral discussions, even if one party to the negotiation is the principal or primary drafter of the agreement.

We chose this approach because binding arbitration by a neutral arbitrator is the most appropriate means of resolving the differences between covered dealerships and manufacturers, and to protect the taxpayers, and the broader economy. For this reason, the Conference Agreement sets out a procedure for ensuring that a neutral arbitrator conducts the arbitration according to a clear standard with factors the arbitrator must weigh.

Due to the time sensitive nature of this situation, the Conference Agreement provides that a covered dealership must elect to pursue arbitration no later than 40 days of the date of enactment of this section, that such arbitration must commence as soon as practicable and must be submitted to the arbitrator for deliberation not later than 180 days of such date. The arbitrator is given the flexibility to extend that period for up to 30 days for good cause. The arbitrator then has seven business days after the arbitrator determines that the case has been fully submitted to issue a written opinion.

Section 747 expressly permits the manufacturer and dealership to present any kind of relevant information during the arbitration. As an additional means of ensuring efficiency and economy in the arbitration process, the provision prohibits depositions and limits discovery to documents specific to the covered dealership.

Section 747 also makes clear that a manufacturer may terminate a covered dealership in accordance with applicable state law.

I yield back the balance of my time. The SPEAKER pro tempore. All time for debate has expired.

Under the rule, the previous question is ordered.

The question is on the conference report.

Pursuant to clause 10 of rule XX, the yeas and nays are ordered.

Pursuant to clause 8 of rule XX, this 15-minute vote on adoption of the conference report will be followed by a 5-minute vote on suspending the rules and passing H.R. 4017.

The vote was taken by electronic device, and there were—yeas 221, nays 202, answered "present" 1, not voting 10, as follows:

[Roll No. 949]

YEAS—221

Abercrombie	Bishop (GA)	Cardoza
Ackerman	Bishop (NY)	Carnahan
Almire	Blumenauer	Carson (IN)
Andrews	Bocieri	Castor (FL)
Arcuri	Boswell	Chandler
Bass	Boucher	Chui
Barrow	Boyd	Clarke
Bean	Brady (PA)	Clay
Becerra	Bradley (IA)	Cleaver
Berkley	Butterfield	Clyburn
Berman	Capps	Cohen
Berry	Capuano	Connolly (VA)

Conyers	Kagen	Priest (NC)
Costa	Kanjorski	Quigley
Courtney	Kaptur	Rahall
Crowley	Kennedy	Rangel
Cuellar	Kildee	Reyes
Cummings	Kilpatrick (MI)	Richardson
Davis (AL)	Kilroy	Rodriguez
Davis (CA)	Kirkpatrick (AZ)	Ross
Davis (IL)	Kissell	Rothman (NJ)
Davis (TN)	Klein (FL)	Roybal-Allard
DeFazio	Kosmas	Ruppersberger
DeGette	Langevin	Rush
DeLahunt	Larson (WA)	Ryan (OH)
DeLauro	Larson (CT)	Salazar
Dicks	Lee (CA)	Sanchez, Linda T.
Dingell	Levin	Sanchez, Loretta
Doggett	Lewis (GA)	Sarbanes
Doyle	Loebuck	Schakowsky
Edwards (MD)	Lofgren, Zoe	Schauer
Edwards (TX)	Lowey	Lujan
Ellison	Lujan	Lynch
Engel	Maloney	Maffei
Eshoo	Maloney	Malone
Etheridge	Farr	Markey (CO)
Farr	Fattah	Markey (MA)
Fattah	Filner	Massa
Filner	Foster	Matsui
Foster	Fudge	McCarthy (NY)
Garamendi	Garamendi	McCollum
Giffords	Giffords	McDermott
Gonzalez	Gonzalez	McGovern
Grayson	Grayson	McIntyre
Green, Al	Green, Gene	McMahon
Green, Gene	Griffith	McNerney
Griffith	Grijalva	Meek (FL)
Grijalva	Gutierrez	Meeks (NY)
Gutierrez	Hall (NY)	Michaud
Hall (NY)	Rahverson	Miller (NC)
Rahverson	Rave	Miller, George
Rave	Reardon	Molohan
Reardon	Reardon	Moore (KS)
Reardon	Reardon	Moore (WI)
Reardon	Reardon	Murphy (CT)
Reardon	Reardon	Murphy (NY)
Reardon	Reardon	Murphy, Patrick
Reardon	Reardon	Nadler (NY)
Reardon	Reardon	Napolitano
Reardon	Reardon	Neal (MA)
Reardon	Reardon	Nye
Reardon	Reardon	Oberstar
Reardon	Reardon	Obey
Reardon	Reardon	Oliver
Reardon	Reardon	Ortiz
Reardon	Reardon	Pallone
Reardon	Reardon	Pascarella
Reardon	Reardon	Pastor (AZ)
Reardon	Reardon	Payne
Reardon	Reardon	Perlmutter
Reardon	Reardon	Perrinello
Reardon	Reardon	Peters
Reardon	Reardon	Pingree (ME)
Reardon	Reardon	Pomroy

NAYS—202

Aderholt	Cantor	Foxx
Adler (NJ)	Cao	Franks (AZ)
Akin	Capito	Frelinghuysen
Alexander	Carney	Gallagher
Austria	Carter	Garrett (NJ)
Bachmann	Cassidy	Gerlach
Bachus	Castle	Gingrey (GA)
Baird	Chaffetz	Gohmert
Barthlett	Childers	Goodlatte
Barton (TX)	Coble	Gordon (TN)
Biggert	Coffman (CO)	Granger
Bilbray	Cole	Graves
Bilirakis	Comaway	Guthrie
Bishop (UT)	Costello	Hall (TX)
Blackburn	Crenshaw	Harper
Blunt	Culberson	Haestings (WA)
Boehner	Dahlkemper	Heller
Bonner	Davis (KY)	Hensarling
Bono Mack	Deal (GA)	Herget
Boozman	Dent	Hoekstra
Boren	Diaz-Balart, L.	Hunter
Bonstony	Diaz-Balart, M.	Inglis
Brady (TX)	Drenth	Issa
Bright	Drobnik	Jenkins
Brown (GA)	Driehaus	Johnson (IL)
Brown (SC)	Duncan	Johnson, Sam
Brown-Walke	Ehlers	Jones
Burns	Ellsworth	Jordan (OH)
Burr	Emerson	King (IA)
Burton (IN)	Fallon	King (LA)
Calvert	Flake	King (NY)
Camp	Fleming	Kingston
Campbell	Forbes	Kirk
	Fortenberry	Kline (MN)

APPENDIX III: SECTION 747 AND LEGISLATIVE HISTORY (CONTINUED)

US SENATE FLOOR DEBATE ON SECTION 747 (S13130-S13131)

S13130

CONGRESSIONAL RECORD—SENATE

December 13, 2009

Asks from the Missouri Commission's portion of the condition. I also realize I cannot exclude my support for certain parts of the State. Fresh Operations appropriations bill. I have a number of provisions in the latter bill including funding for level support for our cities in the war on terror and funding for Bureau reform.

Finally, there are requests of the other that bills in this package that reflect Kentucky priorities that were included at my request and that I am important of.

In closing, it is unfortunate that the majority continues to avoid repeal when I am hopeful that the majority's effort in this regard does not prevent further legislative attention on matters of national importance.

The ACTING PRESIDENT pro tempore. Who yields time?

Time will be observed equally.

Mr. BENNET. Mr. President, I will continue to insist that the time during the session can be divided equally and I support the passage of a report.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. LEVIN. Mr. President, if the Senator will withdraw that.

Mr. BENNET. I will.

ARBITRATION PROCESS

Ms. STABENOW. Mr. President, I would like to discuss with the chairman of the Financial Services and General Government Appropriations Subcommittee, Senator DURBIN, as manager of the Financial Services Subcommittee section of the bill before the Senate, language included in the bill that creates a binding arbitration process for auto dealers associated with General Motors and Chrysler whose contracts were terminated as part of the manufacturers' restructuring efforts this year.

The difficult decisions made during the last year have highlighted the interconnectedness of the industry and have shown the impact that these companies have in every State in the country. I particularly understand how difficult this situation has been for Michigan auto dealers. My father and grandfather ran the Oldsmobile dealership in Clare, MI, where I grew up. My very first job was washing cars on that lot.

Thousands of employees, either directly employed by the companies or through the thousands of dealerships and suppliers, depend on the viability of the auto manufacturers. Without the manufacturers, there is no dealer network, and small businesses across the country would close, adding more devastating job losses as our economy is trying to recover. What we do here must continue to ensure a healthy future for the auto companies as they work towards a profitable future. When negotiating an agreement for arbitration was it the Chairman's intent that the dealers entitled to this arbitration process would only be the dealers that were terminated as a result of the bankruptcy?

Mr. DURBIN. Yes, it is my understanding that the only dealerships en-

titled to arbitration are those dealerships that were terminated as a result of the manufacturers' bankruptcy, rather than those that may have closed for other business reasons.

Ms. STABENOW. The statutory language for the arbitration process provides criteria that will be used to review each case. Is it the Chairman's goal that by considering the economic interest of the public at large the arbitrator should focus on maximizing the return of taxpayer dollars that have been invested in the company?

Mr. DURBIN. Yes, the economic interest of the public at large must be considered to ensure that the investments will be recovered as quickly as possible.

Ms. STABENOW. Additionally, when reviewing the cases, does the statutory language ensure arbitrators take into consideration the stability and protection of the existing dealer network?

Mr. DURBIN. Yes, the statutory language will allow arbitrators to review the potential impact of reinstating a dealership on the existing dealer network for the covered manufacturer, as well as on any dealer retained by the covered manufacturer in a given market territory.

Ms. STABENOW. I thank the Chairman for these clarifications and for his ongoing efforts to ensure a fair process for all stakeholders as the auto industry continues to restructure.

Mr. LEVIN. Mr. President, I would like to discuss with the chairman of the Financial Services and General Government Appropriations Subcommittee, Senator DURBIN, as manager of the Financial Services Subcommittee section of the bill before the Senate, two aspects of the provision included in that bill that establishes an arbitration process for review of decisions made by Chrysler and GM to terminate or wind down auto dealerships earlier this year. Under the process laid out in this provision, an arbitrator is to balance the economic interests of the covered dealership, the covered manufacturer, and the public at large by considering a number of factors. Those factors include the covered dealership's profitability, the covered manufacturer's overall business plan, the covered dealership's satisfaction of the performance objectives of the franchise agreement, and the covered dealership's performance in relation to the criteria used to terminate the dealership.

Is it the chairman's understanding that in looking at these factors, and in particular in looking at the dealership's profitability and the manufacturer's overall business plan, that the arbitrator will consider the profitability of the dealership with respect to the new vehicles sales of the covered manufacturer?

Mr. DURBIN. Yes, that is my understanding. In making decisions about the makeup of the dealership network, profitability in terms of new vehicles sales for that manufacturer is what is

critically important to the long-term financial health of the manufacturer. That manufacturer's long-term health is also vitally important to the Federal Government because of the significant taxpayer investment in these companies.

Mr. LEVIN. I thank the chairman for his assurances and his clarification.

I would also like to raise a question about the arbitration process established in this bill. The statutory language could be interpreted to allow for potentially as many as hundreds or thousands of arbitrators each involved in individual reviews of dealership decisions. I am concerned that a very large number of arbitrators would be unduly burdensome and impractical to the point of being unworkable. The statutory language requires that arbitrations be conducted in the State where the covered dealerships are located. It is my hope that the arbitration process could be managed in a given State so that there would be one arbitrator or a small manageable panel of arbitrators within any given State. Does the chairman believe that the statutory language would allow for management of arbitration in this way?

Mr. DURBIN. Yes, the statutory language would allow for that. The primary intent of this provision is to ensure that covered dealerships have a fair and impartial review of the termination decision. I agree with the Senator from Michigan that we should try to avoid a situation where there would be hundreds or even thousands of individual arbitrators.

Mr. LEVIN. Mr. President, I want to highlight several provisions of the legislation now before us that I believe will provide important benefits to Michigan and the Nation, and one that I think does not serve the Nation's interests.

The Consolidated Appropriations Act of 2010 contains provisions that will improve our health care system, ensure that contracting dollars do not flow to companies avoiding income taxes by incorporating overseas, improve Federal oversight of our financial system, and improve educational opportunity for our citizens.

I am especially pleased to see an increase in funding for health information technology, HIT. This bill will provide \$61 million to the Office of the National Coordinator for Health Information Technology. These funds will help increase administrative efficiency and move our current system away from paper-based organization. This will help ensure that doctors and patients have the necessary information easily accessible when working together to make important health care decisions and ensure that health records of individuals remain confidential. Improving the interoperability of our HIT systems will not only enhance the quality of care, experts believe that improved HIT will reduce health care costs for all Americans, streamlining

# APPENDIX III: SECTION 747 AND LEGISLATIVE HISTORY (CONTINUED)

## US SENATE FLOOR DEBATE ON SECTION 747 (S13130-S13131)

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S13131

billing practices and reducing administrative costs that waste so many billions of dollars.

I strongly support the bill's language continuing the prohibition on Federal contracts with "inverted" corporations. Corporate inversions—the practice of incorporating some or all of a U.S.-based company's businesses overseas—are transparent tax-avoidance schemes. There is no reason we should provide taxpayer dollars to firms that dodge their tax obligations, and I am pleased that we will continue to bar such companies from Federal contracting unless doing so would damage national security.

The bill also includes an increase of \$151 million in funding for the Securities and Exchange Commission. This increased funding will support enhanced enforcement, capital market oversight, and investor protection activities, including investigations of accounting fraud, market manipulation, insider trading, and investment scams that target seniors and low-income communities. This is a wise investment in protecting our citizens and our economy from those who seek to profit by fraud or from taking excessive risks that endanger the financial system.

Also included are a number of important education provisions. The legislation would increase the maximum Pell grant award by \$200, to \$5,500; provide funding for disadvantaged, disabled and first-generation college students; and restore \$1.5 billion in title I funding for disadvantaged public school students. Of particular importance is \$11.5 billion in funding for Individuals with Disabilities Education Act programs, which marks a historic Federal commitment to education of those with disabilities.

There are also important measures that will help boost Michigan's economy and its future. I am pleased that this bill includes \$1 million I requested for the Thunder Bay National Marine Sanctuary and Underwater Preserve in Alpena. Part of the National Oceanic and Atmospheric Administration's sanctuary system, the Thunder Bay Sanctuary protects well-preserved shipwrecks that are a valuable piece of Michigan's history and our Nation's. The funding provided in this bill will allow for expansion of the Great Lakes Maritime Heritage Center to include a Science Hall and other facilities that will allow more people to explore and learn about Michigan's maritime history.

The bill also includes important language that will bring the Woodward Avenue Light Rail Project closer to reality, an important economic development project in the heart of metropolitan Detroit. The conferees retained language regarding the Woodward Avenue project similar to language I authored for the Senate bill.

These all are important provisions worthy of support. But I am disappointed that the legislation includes a provision requiring General Motors and Chrysler to submit to binding,

third-party arbitration in disputes with auto dealerships closed as part of those companies' restructuring efforts.

There is widespread agreement among auto industry analysts that GM and Chrysler needed to consolidate their dealer structure in order to compete. The Federal Government has made a substantial—and wise—investment in these companies, which are key components of our manufacturing sector. Submitting to arbitration of decisions already approved in bankruptcy court risks hampering the recoveries these companies and their workers are fighting so hard to achieve. My vote in favor of this act follows reassurances I received from the chairman of the Financial Services and General Government Appropriations Subcommittee, Senator DURBIN, in response to my concerns about a number of provisions in the arbitration language.

Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be divided equally.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BURRIS). Without objection, it is so ordered.

All time has expired.

The question is on agreeing to the conference report.

Mr. HARKIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. DORGAN), the Senator from Oregon (Mr. MERKLEY), and the Senator from Washington (Mrs. MURRAY) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Kentucky (Mr. BUNNING), the Senator from Oklahoma (Mr. COBURN), the Senator from Oklahoma (Mr. INHOFE), and the Senator from Ohio (Mr. VOINOVICH).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 35, as follows:

[Rollcall Vote No. 374 Leg.]

YEAS—57

Akaka	Burr	Collins
Baucus	Byrd	Conrad
Beahm	Cantwell	Dodd
Bennet	Cardin	Durbin
Bingaman	Carpenter	Feinstein
Boxer	Casey	Franken
Brown	Cochran	Gillibrand

Hagan	Levin	Schumer
Harkin	Lieberman	Shaheen
Inouye	Lincoln	Shelby
Johnson	Menendez	Specter
Kaufman	Mikulski	Stabenow
Kerry	Nelson (NE)	Tester
Kirk	Nelson (FL)	Udall (CO)
Klobuchar	Pryor	Udall (NM)
Kohl	Reed	Warner
Landrieu	Reid	Webb
Lautenberg	Rockefeller	Whitehouse
Leahy	Sanders	Wyden

NAYS—35

Alexander	Enzi	McCain
Barrasso	Feingold	McCaskill
Bayh	Graham	McConnell
Bennett	Grassley	Murkowski
Brownback	Gregg	Risch
Burr	Hatch	Roberts
Chambliss	Hutchison	Sesions
Corker	Isakson	Shoemaker
Cornyn	Johanns	Thune
Crapo	Kyl	Vitter
DeMint	LeMieux	Wicker
Ensign	Lugar	

NOT VOTING—8

Bond	Dorgan	Murray
Bunning	Inhofe	Voinovich
Coburn	Merkley	

The conference report was agreed to. Mr. DURBIN. Mr. President, I move to reconsider the vote and I move to lay that motion on the table. The motion to lay on the table was agreed to. The PRESIDING OFFICER. The Republican leader is recognized.

### SERVICE MEMBERS HOME OWNERSHIP TAX ACT OF 2008

Mr. MCCONNELL. Mr. President, I think you are about to reject the bill. Regular order.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MCCONNELL. Mr. President, is not the regular order to return to the health care bill?

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows: A bill (H. R. 2986) to amend the Internal Revenue Code of 1986 to modify the deductibility of interest on the use of proceeds of the Armed Forces and certain other Federal employees and to make technical corrections.

Reading:

Read and announced the title of the bill.

Organized modified amendments to the amendments to the bill, to provide for the purposes of paragraph 4.

Organized amendments to the bill as the Committee on Finance will consider.

The PRESIDING OFFICER. The Republican leader is recognized.

YEAS—57

Mr. MCCONNELL. Mr. President, we have been trying for days to get an agreement to have votes on the health care measure, which our friends on the other side have said is so important to the American people and need to be acted upon before Christmas. Specifically, the pending House amendment has been there since last Tuesday. It now remains clear to me the majority simply does not want to have any more votes, presumably pending those discussions that are going on behind closed doors on a bill that almost nobody in the Senate has seen.

## APPENDIX IV

### THE AAA: A HISTORY OF WORKING WITH GOVERNMENT

As the nation's leading authority on the use of alternative dispute resolution (ADR), the AAA has a number of roles. Because of its capabilities, coupled with its strong history of neutrality, independence, and integrity, the AAA has often been of service to local, state, and federal governments. The Association has assisted Congress and a number of federal, state, and local departments and agencies with advice, information, and alternative dispute resolution services. Recognizing the AAA's independence, neutrality and its status as a public service organization, a number of federal statutes, regulations, and orders delegate specific functions to the Association. Illustrative examples include:

#### Centers for Medicare & Medicaid Service (CMS)

The AAA worked with the federal Centers for Medicare & Medicaid Services (CMS) and representatives of the states of Connecticut, Massachusetts, and New York with the design and implementation of a specialized arbitration mechanism to resolve disputes between CMS and the states related to healthcare reimbursement. This demonstration project is underway and cases will be decided by an expert panel of neutrals under the AAA Medicare Demonstration Project Rules.

*Authority:* 42 U.S.C. §1395(b)1

#### Federal Communications Commission (FCC)

The AAA was designated by the FCC to resolve certain disputes arising from a major media merger (the purchase by News Corporation of a controlling interest in Hughes Electronics Corporation, which owns the direct satellite broadcaster DirecTV). In the Order approving the merger, the FCC required the arbitration of certain disputes that could arise over a six-year period under the AAA's expedited Commercial Rules, with some modifications. The AAA assembled a panel, in coordination with the FCC, of highly qualified neutrals with experience in media programming contract dispute resolution and knowledge of retransmission consent disputes and regional sports network programming contract disputes.

*Authority:* Federal Communications Commission Memorandum Opinion and Order FCC 03-330 (MB Docket No. 03-124)

#### Federal Reserve System

Since 1970, the AAA has been the designated provider to the Federal Reserve System's Labor Relations Panel of several services, including providing neutrals to serve as investigators and hearing officers.

*Authority:* 12 CFR 269(b)

#### Department of the Interior

Disputes between the Department of Interior and private land owners arising from land valuation claims are to be resolved by arbitrators provided by the AAA and in accordance with AAA rules.

*Authority:* 43 U.S.C. §1716(d)(2)

## APPENDIX IV (CONTINUED)

### THE AAA: A HISTORY OF WORKING WITH GOVERNMENT

#### Environmental Protection Agency

Since 1978, the AAA, through a regulation issued by the Federal Mediation and Conciliation Service, provides arbitration services to resolve disputes among pesticide producers.

*Authority:* 29 CFR 1440.1

#### Disaster Recovery Claims / Hurricanes Katrina and Rita

The AAA was selected by the state governments of Louisiana and Mississippi to provide ADR to assist in quickly, fairly, and efficiently resolving claims disputes arising from these major natural disasters. Previously, the AAA has worked with Florida to assist with large-scale post-disaster claims disputes.

*Authority:* State Regulatory Authority

#### U.S. Olympic Committee (USOC)

The AAA is designated to resolve disputes arising from USOC decisions. Also, to be recognized by the USOC, amateur sports organizations must require the use of arbitration under the American Arbitration Association. The Association also provides specialized arbitrators to resolve disputes arising at the various Olympic events throughout the world.

*Authority:* 36 U.S.C. §391(b)(3)

## APPENDIX V

### ABOUT THE AAA

The American Arbitration Association, founded in 1926, is an independent, non-partisan, not-for-profit public service organization that provides alternative dispute resolution services throughout the United States and internationally. The cornerstones of the Association's mission are independence, neutrality, and integrity. As the nation's foremost authority on the use of alternative dispute resolution (ADR), the AAA continues to take a leading role in the development of ethical and fairness standards, provides expertise in program development and ADR system design, and provides guidance on public policy related to the use of ADR. The AAA is not an industry trade association.

The AAA has over 6,000 trained and qualified neutral arbitrators and mediators, and provides professional, independent case administration and state-of-the-art technology. It also provides impartial and independent administration and oversight of nongovernmental elections. With offices throughout the United States, several international offices, and cooperative agreements in 43 countries, the AAA is the leading organization in domestic and international ADR.

### Contact

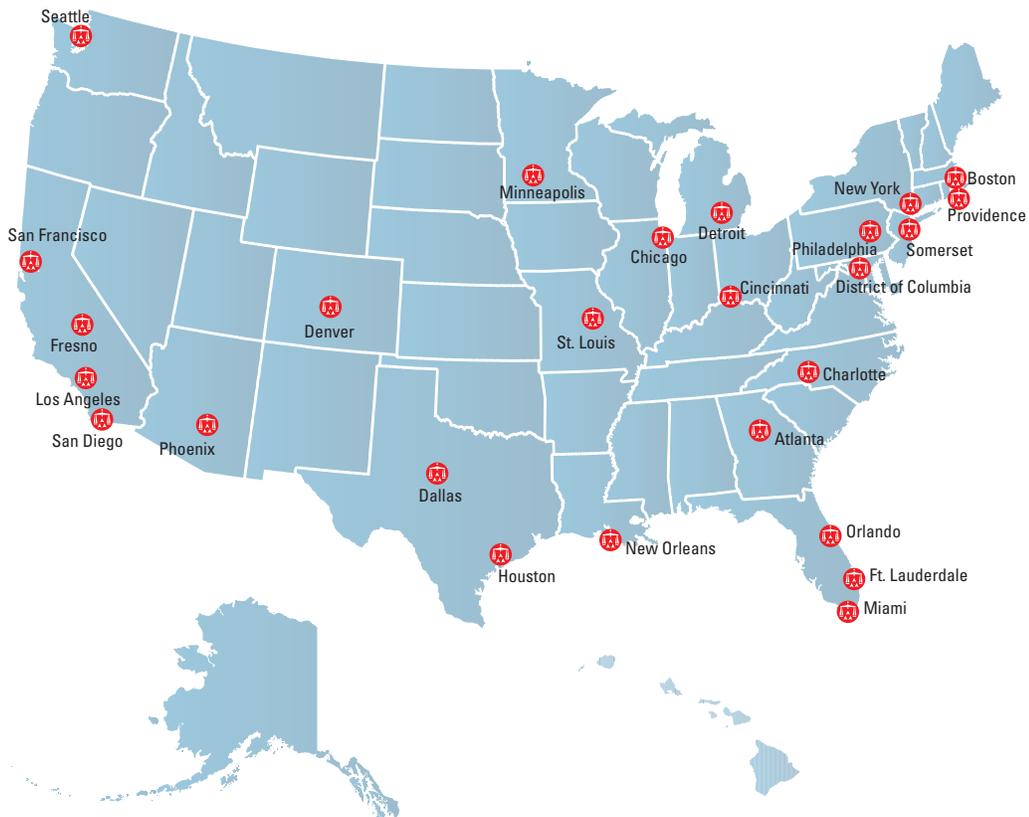
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## NOTES

## ACKNOWLEDGMENTS

The American Arbitration Association would like to recognize the following for their contributions to this program.

### The AAA's Panel of Neutrals

The arbitrators and mediators who served under this program.

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