AMERICAN BENEFITS COUNCIL

September 23, 2008

The Honorable Christopher Dodd
Chairman,
Senate Banking Committee
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard Shelby
Ranking Member,
Senate Banking Committee
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Dodd and Ranking Member Shelby:

I am writing to express the concerns of the American Benefits Council (the Council) regarding unknown and potentially unforeseen negative implications of the executive compensation restrictions under consideration for inclusion in legislation responding to the current crisis in our financial markets.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

We appreciate that policymakers are concerned about the executive compensation practices at certain distressed financial institutions that are the focus of the current legislation. Yet we urge you not to add broad restrictions on executive compensation to the legislation, at this time, due to the potential to undermine the effectiveness of the critically important asset purchase program that the legislation would establish.

The executive compensation restrictions under consideration are not defined with precision and appear to be extremely broad in their application. The permissibility of executive compensation programs will turn, for example, on judgments regarding what are "excessive" risks and what is "appropriate" severance. Navigating these vaguely worded restrictions, and the multitude of interpretive questions such restrictions will generate, will be extremely difficult.

One need only look to the enactment by Congress of new nonqualified deferred compensation restrictions in 2004 (through establishment of new Internal Revenue Code Section 409A), and to the successive waves of extremely complex implementing guidance from the Treasury Department and IRS, to find an example of the daunting interpretive issues and enormous compliance costs associated with regulation in this area. Indeed, employers are *still* in the process of coming into compliance with the implementing regulations under 409A, and many interpretive issues remain unaddressed.

The Council is concerned about numerous unanswered questions that Congress simply has not had the opportunity to consider given the necessary pace with which it is crafting legislation. For example, how will the proposed restrictions apply to legally binding compensation contracts that companies currently have in place? How will application of the restrictions to current contracts affect companies' relationships with managers who both the companies and the government may believe are important to help persevere through the current crisis? Will the restrictions force companies to make immediate payments under existing contracts prior to entering the asset purchase program, and is this really the best course of action? Given the vagueness of the new standards, how will institutions and both current and prospective executives know with any degree of certainty the range and type of compensation programs that will be permitted. In addition, the vagueness of the provision's terms leaves open questions about the application of the rules in the case of parent/subsidiary relationships, mergers and acquisitions as well as the interrelationship of these rules with existing securities rules addressing corporate governance practices. The Council is concerned that the resulting confusion, contract renegotiation and even litigation will distract from a focus on returning financial institutions to economic health and frustrate the effectiveness of the program.

While we understand the source of concern regarding the executive compensation issues, we urge Congress not to include at this time new executive compensation restrictions as a condition of participation in the asset purchase program.

Thank you for your attention to these issues as you seek to craft balanced legislation that will address the current challenges in the financial markets.

Sincerely,

James A. Klein

James A. Klein
President

CC: Senate Banking Committee