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Submitted via Internet: executivecompensationcomments@do.treas.gov

December 12, 2008

Executive Compensation Comments
Office of Financial Institutions Policy
Room 1418
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Ladies and Gentlemen:

As a follow-up to our letter of November 19, 2008, the American Bankers Association wishes to bring to your attention an issue regarding deferred compensation as it affects financial institutions participating in the Capital Purchase Program. The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$13.6 trillion in assets and employ over 2 million men and women.

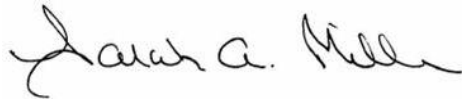
Under the Capital Purchase Program, a participating institution must agree not to deduct for tax purposes executive compensation in excess of \$500,000 for each of its top five senior executives. We are concerned that the intersection of this provision with the requirements of Internal Revenue Code Section 409A regarding the payment of deferred compensation for prior service could deter banks from participating in the Capital Purchase Program, or negatively affect those who have already entered into agreements with the Treasury.

Companies – including financial institutions – must amend their deferred compensation plans by December 31, 2008, to comply with Internal Revenue Code Section 409A (a provision of the American Jobs Creation Act that becomes effective January 1, 2009). Moreover, financial institutions must obtain executives' elections before year-end 2008 regarding form and timing of deferred compensation earned for prior service. The process of amending these deferred compensation plans and obtaining executives' elections may make the amount of deferred compensation reportable in 2008 as FICA wages for payroll tax

purposes. The deferred compensation would be reportable for income tax purposes in the year(s) in which actually paid. Financial institutions are concerned that when deferred compensation is eventually paid in future years under the executives' Section 409A elections, the IRS may view deferred compensation earned for service prior to December 31, 2008 as compensation that must be included when calculating the limited amount of executive compensation that an institution may deduct. Financial institutions are also concerned that the Treasury may use 2008 FICA wages when considering the deductibility of Capital Purchase Program participants' 2008 executive compensation.

Because the deferred compensation subject to the 409A elections made prior to December 31, 2008 was earned in years that either completely or substantially preceded when the financial institution became a CPP participant, ABA believes that deferred compensation earned before December 31, 2008 should be fully deductible to the extent allowed by law irrespective of the financial institution's participation in the CPP, and that in no event should the tax deductibility of executive compensation be measured by FICA wages. We respectfully request confirmation of our position.

Sincerely yours,

A handwritten signature in black ink that reads "Sarah A. Miller". The signature is written in a cursive style with a large initial 'S' and a long, sweeping underline.

Sarah A. Miller