

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

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January 13, 2009

The Honorable Barney Frank
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Spencer Bachus
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Frank and Ranking Member Bachus:

The U.S. Chamber of Commerce strongly supports the goal of H.R. 384 the "TARP Reform and Accountability Act," which is expected to be marked up by the Committee this week. This legislation is an important step, which follows on the important work of the Emergency Economic Stabilization Act (EESA) and the creation of the Troubled Asset Relief Program (TARP), both of which the Chamber strongly supported. However, the Chamber has several concerns with the proposal.

Specifically, the Chamber urges the Committee to address the following issues:

1. Extension of prohibition on bonuses or incentive compensation to the 25 most highly compensated employees.

Sections 102 (e) (2) (d) and 409 (b) (3) (d) of H.R. 384 expand the prohibition on bonuses and incentive compensation to the 25 most highly compensated employees of companies participating in TARP. **The Chamber opposes these sections of the bill because they would not promote accountability and may lead to a loss of talent.**

The Chamber believes accountability is an important component of TARP. However, certain sections of H.R. 384 would establish an arbitrary number of employees to be subject to compensation restrictions without regard to the policy or decision making aspects of the covered positions. This requirement fails to promote accountability and could in fact shield certain decision and policy making employees from accountability. Furthermore, these provisions may also severely impact those non-decision making employees who generate the sales and income of an entity. Such employees may decide to leave employment and pursue opportunities with non-TARP entities or in other jurisdictions to escape these restrictions. By taking this shotgun approach, H.R. 384 fails to increase accountability and may adversely impact these business entities through the loss of talent. Accordingly, this section should either be reworked or removed all together.

2. Divestiture of private passenger aircraft.

Sections 102 (e) (3) and 409 (b) (4) of H.R. 384 require covered institutions to divest themselves of any private passenger aircraft. **The Chamber opposes these sections of the bill. Forcing a wholesale and massive divestiture of private passenger aircraft could jeopardize the employment of tens of thousands of workers and imperil billions of dollars of economic activity.**

The state of commercial airspace congestion is well-documented. Private passenger aircraft allow companies to transport workers and goods more efficiently and quickly. Additionally, this sector employs tens of thousands of workers who build, maintain, fuel, and dispatch the aircraft. It is estimated that the general aviation industry contributes \$150 billion dollars to the economy, while directly or indirectly employing more than a million people. The impact of such a divestiture would be nationwide; there are 5,000 public use airports, 500 of which provide commercial service.

3. Prohibition on any compensation plan that would encourage manipulation of such institutions' reported earnings to enhance the compensation of its employees.

Sections 102 (e) (2) (e) and 409 (b) (3) (e) prohibit any compensation plan that would encourage the manipulation of reported earnings. **While the Chamber supports these provisions, the report text should include provisions to avoid unintended interference with the resolution of fair value accounting issues.**

During the recent debate on fair value accounting, the Securities and Exchange Commission (SEC) and the Financial Accounting Standards Board (FASB) issued clarification and guidance under FAS 157. These actions by the SEC and FASB allowed for management and preparers to use judgment in the valuation of assets when the market for such an asset is inactive. The recent report by the SEC on fair value accounting, conducted and released pursuant to EESA noted that industries have a large number of assets that must be valued under FAS 157. For instance, the insurance industry holds portfolios that require, on average, 70% of assets to be assessed at fair value.

With the continued number of inactive financial markets, an increasing number of companies will have to use judgment in the valuation of assets. Because these actions may impact earnings and income, the Chamber urges the Financial Services Committee to include report language excluding asset valuations conducted through the SEC and FASB clarification and guidance of FAS 157 from the scope of matters affected by this section.

4. Recovery by a covered institution of any bonus or incentive compensation paid to a senior executive based on statement of earnings, gains or other criteria that are later found to be materially inaccurate.

Sections 102 (e) (2) (b) and 409 (b) (3) (b) allow for the recovery of compensation based on financial information later found to be materially inaccurate. **While the Chamber supports these provisions of H.R. 384, the specific provisions of the legislation need to be improved, along with report language to reflect the recommendations made to the SEC in the CIFIr report on material restatements of financial statements.**

On August 1, 2008, the SEC received recommendations to improve financial reporting for investors through the Advisory Committee on Improvements to Financial Reporting (CIFIr). Chapter 3 of the report recommended immediate correction and disclosure of errors, but provided that prior financial records are only restated for material errors. In defining the concept of materiality, the CIFIr report stated:

- Those who evaluate the materiality of an error should make the decision based upon the perspective of a reasonable investor; and
- Materiality should be judged based on how an error affects the total mix on information available to a reasonable investor, including through a consideration of qualitative and quantitative factors.

Including Chapter 3 of the CIFIr report in H.R. 384 would provide a definition of materiality and lay a firm foundation for actions by institutions. It would also give guidance for investors and an understanding of appropriate actions.

5. Extension of the Treasury Secretary's explicit authority to establish or support facilities to support the availability of commercial real estate loans and proposed expansion of the Commercial Paper Funding Facility (CPFF).

The Chamber supports Section 403 of Title IV to provide explicit authority to the Treasury Secretary with regard to commercial real estate loans and commercial mortgage backed securities, and further proposes an expansion of existing facilities available to commercial paper. The Chamber has consistently urged the establishment of a funding facility for commercial mortgaged backed securities. Similarly, as Congress develops priorities for the use of TARP funds, the Chamber urges expanding the CPFF to include commercial paper rated A-2/P-2/F-2.

The Chamber applauds action to aid the struggling commercial mortgage backed securities market and urges the Committee to create a funding facility to service that industry. Likewise, the Chamber urges that TARP funds be made available to expand access to the CPFF for "Tier 2" commercial paper. The CPFF, introduced by the Federal Reserve Board (FRB) on October 7, 2008, and administered by the FRB of New York, has helped restore liquidity to the market for "Tier 1" commercial paper—or paper rated A-1/P-1/F-1. The markets for "Tier 2" commercial paper—that rated A-2/P-2/F-2—continue to be stressed.

The Chamber urges that a facility be created for commercial mortgage backed securities and that TARP funds be made available to expand access to the CPFF for "Tier 2" commercial paper. Such facilities would help ease liquidity problems, thereby thwarting

unnecessary job loss and work stoppages and enabling companies to better meet their working capital needs. The Chamber believes the creation and expansion of these facilities would provide much needed access to affordable funding for these key economic drivers.

The U.S. Chamber, the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region, urges the Committee to include these recommendations in H.R. 384, and looks forward to working with the Committee and Congress on these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten", written in a cursive style.

R. Bruce Josten

Cc: The Members of the United States Congress