January 24, 2007

The Honorable Harry Reid
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
Washington, DC 20510

The Honorable Richard Durbin
Assistant Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Trent Lott
Assistant Minority Leader
U.S. Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable John Boehner
Minority Leader
U.S. House of Representatives
Washington, DC 20515

The Honorable Steny Hoyer
Majority Leader
U.S. House of Representatives
Washington, DC 20515

The Honorable Roy Blunt
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Senators and Members of Congress:

I am writing on behalf of the Committee on Taxation of Financial Executives International ("FEI") to object strongly to legislation recently approved by the Senate Finance Committee that would impose new limits on executive compensation. The tax code is neither an appropriate nor an effective means of regulating excessive compensation. Corporate governance issues such as this are appropriately handled under securities laws by the Securities and Exchange Commission ("SEC").

FEI is a professional association representing the interests of more than 15,000 CFOs, treasurers, controllers, tax directors, and other senior financial executives from over 8,000 major companies throughout the United States and Canada. FEI represents both the providers and users of financial information. The Committee on Taxation formulates tax policy for FEI in line with the views of the membership. This letter represents only the views of the Committee on Taxation.

We are concerned about a provision in the Small Business and Work Opportunity Act of 2007 approved by the Senate Finance Committee that would amend Code section 409A to impose a dollar cap on the aggregate annual amount of compensation that may be deferred by any individual. The cap would be equal to the lesser of $1 million or the individual's average annual compensation over the previous five years. Any deferrals in excess of this limit would be subject to current income taxation as well as a 20-percent penalty. The provision generally would be effective for amounts deferred after 2006.

The proposed limitation on nonqualified deferred compensation was approved by the Finance Committee without the benefit of any hearings or debate but appears to be designed to impose new limits on executive compensation. However, as the staff of the Joint Committee on Taxation noted in its February 2003 Enron report, "It is often difficult for tax laws to have the desired effect on corporate behavior."

Consider the $1 million limit on the employer deduction for compensation of top executives. While the provision was intended to address corporate governance concerns that top executives were receiving excessive compensation, many companies either decided to continue paying the compensation without the benefit of a tax deduction or redesigned their compensation programs to compensate their executives in ways not subject to this limit. The JCT staff, in the Enron report, concluded the $1 million deduction limit is ineffective and should be repealed. The JCT staff also recommended "that any concerns regarding the amount and types of compensation be addressed through laws other than the federal income tax laws." Rather than following the advice of the JCT staff, however, the Finance Committee has included in the pending legislation a separate proposal to expand the base of executives who are subject to this limit. We believe this goes in the wrong direction, and will be equally ineffective (or even counterproductive) at accomplishing the policy objective of Congress.

The proposed $1 million limit on deferrals of executive compensation will be similarly ineffective, while creating administrative and enforcement nightmares for companies and for the IRS. Nonqualified deferred compensation limits and conditions enacted in 2004 are so complicated that final regulations have not yet been issued. A basic requirement that companies simply report the amount deferred each year has not been implemented because the IRS has not yet been able to craft guidance on how to value nonqualified defined benefit plans and other deferrals.

The effectiveness of restrictions on nonqualified deferred compensation under section 409A, which has still not been fully implemented, should be evaluated before further restrictions are enacted. Deferred compensation, if properly structured, actually aligns management interests with those of shareholders because the executives only receive payment to the extent the employer remains solvent and financially healthy after they retire.

In addition, deferral of compensation increases our national savings rate and permits the deferred amounts to be reinvested in the employer's business until it is paid out. One of the "unintended consequences" of the proposal will be to weaken employers financially and to reduce the cash they have available to reinvest in the business.

The SEC, not the IRS, is the appropriate government agency to address corporate governance concerns related to executive compensation. The SEC last year issued new rules that expand executive compensation disclosure requirements in proxy statements, annual reports, and registration statements. The SEC rules are designed to provide transparency so that shareholders and directors have better information with which to determine for themselves the appropriate compensation to pay senior executives. We believe this approach is preferable to attempts by Congress to use the tax laws to regulate compensation levels for executives.

For the reasons stated above, we strongly recommend that Congress reject tax legislation that would limit nonqualified deferred compensation.

We appreciate your consideration of our views on this important issue. We would be pleased to discuss this issue in more detail with you or your staff. Please do not hesitate to contact Mark Prysock, General Counsel, FEI, at (202) 626-7804.

Very truly yours,

/signed/

David A. Heywood
Chairman
FEI Committee on Taxation

cc: The Honorable Max Baucus
The Honorable Charles Grassley
The Honorable Charles Rangel
The Honorable Jim McCrery
Russ Sullivan
Mark Prater
John Buckley
Bob Greenawalt
Brad McConnell
Scott Raab
King Mueller
Arshie Siddiqui
Ed Lorenzen
Margo Klosterman
Neil Bradley