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January 26, 2009

Chairman Max Baucus  
Senate Finance Committee  
219 Senate Dirksen Office Building  
Washington, DC 20515

Senator Charles Grassley  
Ranking Member, Senate Finance Committee  
219 Senate Dirksen Office Building  
Washington, DC 20515

Dear Chairman Baucus and Ranking Member Grassley:

I am writing on behalf of the members of the American Bankers Association (ABA) to offer our comments regarding the American Recovery and Reinvestment Tax Act, which the Finance Committee will consider this week.

We would like to thank you for including several provisions that will aid the banking industry during the current economic downturn:

### **Extending the NOL Carryback Window**

Extending the net operating loss (NOL) carryback window from two years to five years for 2008 and 2009 would be of great benefit to the banking industry, as well as many other industries, and we applaud your willingness to include this provision in this important legislation.

Allowing banks to carry back losses incurred in tax years 2008 and 2009 is consistent with the existing tax policy goal of smoothing the application of taxes over the long term by allowing companies that would otherwise utilize losses in the future under the current carry forward rules to apply those losses against taxable income over the last five years. The effect of the change is to accelerate the tax use of the losses at a time when they can be of most benefit to companies and the economy, thus providing stimulus to the economy. Extending the NOL carryback window will provide banks with liquidity that will be used to hire employees, reduce debt, increase lending, or invest in capital improvements.

Of additional importance to the banking system is that extending the NOL carryback will improve the capital position of banks, as it relates to the calculation of their Tier 1 capital ratio. This capital ratio is important to regulators, investors, and borrowers because it is used to determine the financial strength of lending institutions. Healthier banks, as measured by Tier 1 capital, will in turn engage in more productive banking activity and generate more confidence in the financial system.

While we appreciate your inclusion of this provision, we encourage you not to exclude companies that have received TARP funds from utilizing the NOL carryback extension. Excluding TARP recipients from the extended NOL carryback window could put banks that choose to accept government funds at a competitive and capital disadvantage, and could create a disincentive for more banks to participate in the TARP program. We urge you to consider removing the TARP recipient exclusion from the final legislation.

#### **Increased Ability for Banks to Hold Municipal Bonds**

The bill also includes a provision that will increase the quantity of tax-exempt bonds that banks can hold without being subject to the interest expense disallowance rules (265(b)) by providing a safe harbor for financial firms to hold up to 2 percent of their total assets in tax-exempt municipal bonds. Additionally, the provision changes the definition of small issuer in the Code from one that issues no more than \$10 million in tax-exempt bonds annually to one that issues no more than \$30 million. It also allows the issuer to elect to apply the \$30 million limitation at the “qualified borrower” level, rather than at the issuer level.

Increasing the amount of municipal bonds that financial institutions can hold will allow banks to better serve our communities and increase the ability of local jurisdictions to receive necessary financing for improvement projects.

#### **Delayed Recognition of Certain Cancellation of Debt Income (CODI)**

The legislation includes a provision that would allow businesses to recognize cancellation of debt income (CODI) over 4 years for certain business debts repurchased between January 1, 2009, and December 31, 2010. Thus, rather than recognizing such income for the taxable year during which such cancellation occurs, as is the case under current law, the taxpayer would be able to spread out the income recognition period over 4 years. This allows the taxpayer to defer the tax that is applicable to the CODI, which would help provide much-needed liquidity for businesses.

#### **Increased New Markets Tax Credits (NMTC)**

The legislation also increases the total amount of NMTCs available to taxpayers in 2008 and 2009 to \$5 billion (an additional \$1.5 billion in credits will be issued for 2008). This program allows banks that participate in the NMTC program to make qualified equity investments in low-income communities. Increasing the tax credits will ensure increased investments by banks in the NMTC program, which would result in more business opportunities, infrastructure improvements and employment in low-income communities.

January 26, 2009

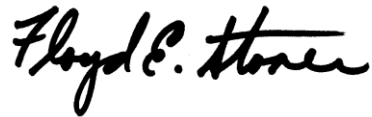
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**Elimination of the Repayment of the First Time Homebuyers Tax Credit**

This legislation also eliminates the repayment obligation of the First Time Homebuyer Tax Credit created last year. Removing this obligation will further increase the likelihood that individuals and families will take advantage of this provision and buy a home which will benefit the individual as well as the economy.

Thank you for your consideration of these comments. If you have any questions please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Floyd E. Stoner". The signature is written in a cursive style with a prominent flourish at the end of the name.

Floyd E. Stoner