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# Some banks think late CEO-pay amendments are unfair

Philadelphia Business Journal - by [Jeff Blumenthal](#) Staff Writer

Just when banks thought they had the Troubled Asset Relief Program all figured out, U.S. Sen. Chris Dodd added some late amendments that place restrictions on executive compensation. The banks are still waiting on details to determine how it will affect them.

Nine days before the second version of the legislation was passed on Feb. 13, the U.S. Department of Treasury issued new rules for those taking TARP funds, including a \$500,000 limit on executive compensation for TARP participants. But Treasury's plan was not retroactive to banks that had already applied for TARP funds.

Dodd, though he didn't tackle compensation caps, tightened the screws on executive compensation, with two specific amendments of the most immediate concern for banks as they prepare their annual proxy statements that usually are filed in early spring.

A say-on-pay provision gives shareholders a nonbinding vote to say if they agree with the company's executive compensation plan.

**Stradley Ronon Stevens & Young** banking lawyer David Scranton said management might be afraid because even though it is nonbinding, executives don't want to appear to be doing something over the objections of stockholders. The Securities and Exchange Commission clarified on Wednesday that say-on-pay will go into effect this year, which means the shareholder votes begin next month.

The other item involves prohibiting payments of bonuses and other incentive compensation to senior executives — save for some restricted, deferred vesting stock — until after the TARP money is returned.

A look at the 2008 proxy statements for local TARP recipients that includes 2007 compensation for their five highest-paid executives, shows the potential dilemma of this amendment. PNC Financial Services Group Chairman and CEO Jim Rohr earned \$18 million with \$950,000 of that in salary. The other four top PNC executives also received only a minority percentage of their compensation from salary. Top executives from **National Penn Bancorp**, **Fulton Financial Corp.** and **Susquehanna Bancorp** have the same set up.

There was also some concern late last year when **Royal Bancshares of Pennsylvania** paid outgoing CEO Joseph Campbell a retirement package of \$2 million in cash and \$347,000 in annual payments for life despite his \$403,520 2007 salary.

Of less immediate, but still significant, concern is the restriction on golden parachutes. The Internal Revenue Code has defined a golden parachute as any payment to a departing executive that exceeds three times their annual salary. But Dodd defined it as any payment given post-employment. The question banks and their lawyers have is whether that applies to existing contracts or only those banks that attempt to include post-employment payments going forward.

David Swartz, a banking lawyer with **Stevens & Lee**, said one positive in the Dodd amendments is that it gives banks the opportunity to pay back the government's TARP investment earlier than the original legislation allowed. Banks can now pay it back at any time.

"[Dodd's amendments] might induce banks to pay it down faster than they would have," Swartz said. "The first chance banks can get rid of the money, they'll do it and seek another source of capital."

A quick scan of some local TARP recipients shows that Swartz might be onto something.

**Meridian Bank** CEO Chris Annas, **Parke Bancorp** CEO Vito Pantilione and **Penn Liberty Bank** CEO Patrick Ward all said they would most likely hold onto the money until another capital source pops up.

"I'm complaining, but I'm taking the money," said Annas, whose Devon-based bank received \$6.2 million earlier this month. "Capital markets have shut down. The purpose of the plan was to put capital in the hands of banks so they would feel free to lend. They are doing this to clamp down on the big guys but it's hurting the rest of us when we were never part of that problem. So when the capital markets improve, we'll pay it back."

Pantilione called the Dodd amendments a "typical government bait and switch." He said the bank is meeting with investors and consultants to decide whether it can get through 2009 without the \$16.2 million it received in January.

"We won't give it back unless we know we can replace it through the private sector," Pantilione said. "It's just a matter of time and cost."

Pantilione does not have a problem following any of Dodd's amendments.

"I just don't like the bad publicity," he said. "When we took the money, it was with the agreement that we were viewed as a well-capitalized bank. But now they are treating us like one of the big banks that caused all this trouble."