

# United States Senate

WASHINGTON, DC 20510-3005

March 3, 2009

The Honorable Timothy F. Geithner  
Secretary  
Department of Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

Dear Secretary Geithner:

I am writing to express my concern regarding reports of financial firms that have accepted government loans adopting compensation policies that may circumvent restrictions on executive compensation. I urge you to investigate these reports and ensure that companies accepting taxpayer dollars comply with both the letter and spirit of the law.

As you know, Section 111(b)(3)(D)(i) of the American Recovery and Reinvestment Act (ARRA) (P.L. 111-5) prohibits any "...TARP recipient [from] paying or accruing any bonus, retention award, or incentive compensation during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding..." This provision was enacted in order to stop firms from using taxpayer funds to pad their executives' wallets and ensures that government assistance is being used to stimulate lending to families and businesses to restart our economy.

Despite this clear statutory mandate, I have read news reports of firms that receive TARP funds devising alternative plans to distribute bonuses, which might circumvent these restrictions and deserve examination.

According to the *Financial Times*, Bank of America has decided to defer bonuses awarded for 2008, to be paid out over the next several years ("BofA Bonus Deferral Anger," January 28, 2009). It seems that this practice would be prohibited by ARRA which bans the *accrual* of any bonus, retention award, or incentive compensation while TARP funds are still owed to the government. Any work that was done in 2008 or anytime when the firm had taxpayer funds cannot be used to justify bonuses, regardless of when they are paid.

Furthermore, I anticipate that a bank may argue that by deferring these reward payments, they are ensuring the bonuses will be paid out only after they have stopped receiving taxpayer money. However, I am concerned that it may be impossible to differentiate taxpayer money that the bank receives today from money that will be used to pay bonuses in the future. By essentially guaranteeing those bonuses now, the bank may be, in essence, committing taxpayer money for those bonuses and detracting from its ability to jumpstart lending. I believe it is important to examine whether these bonus deferrals embody both the letter and spirit of the law.

In addition, according to the *Huffington Post*, Morgan Stanley and Citigroup's Smith Barney – which have received at least \$60 billion in TARP funds – still plan to hand out exorbitant bonuses to their top executives and will attempt to circumvent the law by simply not calling the payments “bonuses” (“Bailed-Out Firms Distributing Cash Rewards: ‘Please Do Not Call It A Bonus’, February 11, 2009). As the title states, these reports also indicate that employees receiving these bonuses are being told not to call them bonuses. In an excerpt taken from a conference call to employees, James Gorman, co-president of Morgan Stanley said: "There will be a retention award. Please do not call it a bonus."

Awarding excessive bonuses to executives who have driven their companies to the brink of collapse would seem to be fundamentally backwards. Using taxpayer funds to make these payments would be offensive and illegal. This game of semantics has no place in our financial markets and is unacceptable – I urge you to examine whether this action is in fact an attempt to circumvent the law and public scrutiny. The intent of Congress on behalf of the American people was to use TARP funds to free up lending, prevent foreclosures, and stimulate the economy. If used correctly, they will help students pay for college, families get auto loans, homeowners modify mortgages, and small businesses stay open and keep their employees on the payroll. On the other hand, if the money is used for the personal comfort and financial well-being of executives, then this rescue package will be transformed into merely a give-away to banks, to the detriment of taxpayers.

I urge you to investigate these troubling reports and ensure that firms receiving government assistance comply with both the letter and spirit of the law.

Sincerely,



ROBERT MENENDEZ  
United States Senator