

Reg-Relief Bill to Put Boards on Capital Hook *Agencies like idea, but some see chilling effect on start-ups*

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By [Luke Mullins](#)

WASHINGTON - A provision in regulatory-relief legislation could hold directors responsible for bailing out troubled banks.

The provision would give federal regulators more authority to force directors to reach into their own pockets to recapitalize their banks if their capital fell below specific levels.

The new regulatory authority would expand on current law, under which bank directors can be forced to use their own assets to recapitalize their banks only if they had been "unjustly enriched" by violating laws or regulations.

The Federal Deposit Insurance Corp. and the Office of the Comptroller of the Currency support the new provision as a way to maintain the safety and soundness of the banking industry.

But bank directors oppose it, arguing that in many cases they have already invested a good chunk of their assets in their banks. Moreover, they say, it could make director recruitment difficult.

"This additional burden will significantly reduce the number of qualified bank directors willing to serve on boards," said Ron Paul, the chairman of EagleBank and the president of its parent company, the \$663 million-asset Eagle Bancorp Inc. in Bethesda, Md.

The provision was in the regulatory-relief bill - which would loosen regulations on banks, credit unions, and thrifts - that the House passed on March 8. A Senate version of the bill includes a similar provision and was reported out of the Senate Banking Committee on May 4.

Banking regulators point out that they could not require directors to recapitalize their banks unless the directors agreed to do so in writing.

But bank directors say they are worried about other possible ramifications. Should the provision become law, an agency could, for example, make its approval of a charter conditional upon a written agreement with organizing bank directors to maintain a specific capital level.

If directors did not sign the agreement, regulators could decide to reject the charter, which could restrict the formation of new banks, said David Baris, the executive director of the American Association of Bank Directors.

Mr. Paul said that bank organizers could have an especially tough time recruiting qualified directors if they had to agree to use their personal assets to guarantee that the bank maintains adequate capital levels.

He added that if EagleBank's directors had been in that position when the bank was being organized eight years ago, "it would have been extremely difficult to get EagleBank off the ground."

Douglas Jones, the FDIC's acting general counsel, said directors have nothing to worry about if their banks stay out of trouble; the provision would typically affect banks with deteriorating financial conditions, he said.

"I don't expect it to have any impact on the average institution," Mr. Jones said.

He added that the provision would have little impact on the formation of new banks, because start-ups would typically not be subject to such agreements.

The FDIC could, however, require directors of a start-up to enter into that type of agreement if the start-up had an "aggressive business plan" that regulators found discomfiting, Mr. Jones said.

Julie L. Williams, the OCC's chief counsel and senior deputy comptroller, supported the provision in congressional testimony on Sept. 22, 2005.

"We believe that this amendment would enhance the safety and soundness of depository institutions and protect the deposit insurance funds from unnecessary losses," Ms. Williams said in her written testimony.

The Independent Community Bankers of America and America's Community Bankers have not taken positions on this provision; they have said they are focusing their energy on other provisions in the regulatory-relief bill.

Mr. Baris said bank directors often voluntarily use their own money to boost their banks' capital levels, but they do not want to be told to do so.

"It's not part of my job description as a bank director to guarantee the financial success of the bank in which I serve," he said.

"If I act in accordance with my fiduciary duties and the bank does not do well or even fails, I should no be held responsible for what happened," Mr. Baris said. "That is not the American way."

Charles Thayer, a former director of Republic Bank in St. Petersburg, Fla., which was sold to BB&T Corp. in 2004, said troubled banks often recruit new directors to help with a turnaround.

If the regulatory-relief bill is passed as is, he said, banks could struggle to attract new directors because the candidates might not want to risk their personal assets.

"I think a provision like this makes it difficult for a bank to bring in new talent, and new people are usually [needed] to come into a difficult situation and make it a more successful one," Mr. Thayer said.