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(Original Signature of Member)

112TH CONGRESS
2D SESSION

H. R. _____

To prohibit individuals from insuring against possible losses from having to repay illegally-received compensation or from having to pay civil penalties, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. FRANK of Massachusetts introduced the following bill; which was referred to the Committee on _____

A BILL

To prohibit individuals from insuring against possible losses from having to repay illegally-received compensation or from having to pay civil penalties, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Executive Compensa-
5 tion Clawback Full Enforcement Act”.

1 **SEC. 2. NO AVOIDANCE OF PERSONAL LIABILITY.**

2 (a) IN GENERAL.—An officer, director, employee, or
3 other institution-affiliated party of a depository institu-
4 tion, depository institution holding company, or nonbank
5 financial company who is required by a Federal financial
6 regulatory law that provides for personal liability, or any
7 rule or order promulgated by a Federal financial regu-
8 latory agency thereunder, to repay previously earned com-
9 pensation or pay a civil money penalty—

10 (1) shall be personally liable for the amounts so
11 owed; and

12 (2) may not, directly or indirectly, insure or
13 hedge against, or otherwise transfer the risks associ-
14 ated with, personal liability for the amounts so owed.

15 (b) RULE OF CONSTRUCTION.—Subsection (a) shall
16 not preclude a person from—

17 (1) being provided funds necessary to defend
18 against a previously earned compensation recovery
19 or civil money penalty described under subsection
20 (a)—

21 (A) from the relevant depository institu-
22 tion, depository institution holding company, or
23 nonbank financial company;

24 (B) under an insurance policy; or

25 (C) pursuant to court order; or

1 (2) obtaining insurance that protects such per-
2 son from being held personally liable for—

3 (A) penalties, judgments, or other amounts
4 assessed against a depository institution, deposi-
5 tory institution holding company, or nonbank
6 financial company at the company level; or

7 (B) unintentional outcomes associated with
8 the ordinary exercise of trade or business judg-
9 ment, unless the effects of such judgment result
10 in personal liability under a Federal financial
11 regulatory law that provides for personal liabil-
12 ity.

13 (c) APPLICATION TO FOREIGN NONBANK FINANCIAL
14 COMPANIES.—Subsection (a) shall only apply to an offi-
15 cer, director, employee, or other institution-affiliated party
16 of a foreign nonbank financial company to the extent that
17 such officer, director, employee, or other institution-affili-
18 ated party is based in the United States.

19 (d) DEFINITIONS.—For purposes of this Act:

20 (1) COMPENSATION.—The term “compensa-
21 tion” means any thing of value, regardless of the
22 form in which provided, that is given by a depository
23 institution, depository institution holding company,
24 or nonbank financial company to an officer, director,

1 employee, or other institution-affiliated party in re-
2 turn for that individual's service to such entity.

3 (2) DEPOSITORY INSTITUTION.—The term “de-
4 pository institution” has the meaning given such
5 term under section 3 of the Federal Deposit Insur-
6 ance Act (12 U.S.C. 1813).

7 (3) DEPOSITORY INSTITUTION HOLDING COM-
8 PANY.—The term “depository institution holding
9 company” means—

10 (A) a bank holding company, as defined
11 under section 102 of the Dodd-Frank Wall
12 Street Reform and Consumer Protection Act
13 (12 U.S.C. 5311); and

14 (B) a savings and loan holding company,
15 as defined under section 10 of the Home Own-
16 ers' Loan Act (12 U.S.C. 1467a).

17 (4) FEDERAL FINANCIAL REGULATORY AGEN-
18 CY.—The term “Federal financial regulatory agen-
19 cy” means—

20 (A) the Board of Governors of the Federal
21 Reserve System;

22 (D) the Bureau of Consumer Financial
23 Protection;

24 (F) the Commodity Futures Trading Com-
25 mission;

1 (B) the Federal Deposit Insurance Cor-
2 poration;

3 (G) the Federal Housing Finance Agency;

4 (H) the Federal Trade Commission, to the
5 extent the Commission exercises authority over
6 a depository institution, depository institution
7 holding company, or nonbank financial com-
8 pany;

9 (C) the Office of the Comptroller of the
10 Currency; and

11 (E) the Securities and Exchange Commis-
12 sion.

13 (5) FEDERAL FINANCIAL REGULATORY LAW.—

14 The term “Federal financial regulatory law”
15 means—

16 (A) the Bank Holding Company Act of
17 1956;

18 (B) the Commodity Exchange Act;

19 (C) the Dodd-Frank Wall Street Reform
20 and Consumer Protection Act;

21 (D) section 111 of the Emergency Eco-
22 nomic Stabilization Act of 2008;

23 (E) the Federal Deposit Insurance Act;

24 (F) the Federal Home Loan Bank Act;

1 (G) the Federal Home Loan Mortgage
2 Corporation Act;

3 (H) the Federal Housing Enterprises Fi-
4 nancial Safety and Soundness Act of 1992;

5 (I) the Federal National Mortgage Associa-
6 tion Charter Act;

7 (J) the Federal Trade Commission Act, to
8 the extent such Act applies to depository insti-
9 tutions, depository institution holding compa-
10 nies, or nonbank financial companies;

11 (K) the Gramm-Leach-Bliley Act;

12 (L) the Home Owners' Loan Act;

13 (M) the Housing and Economic Recovery
14 Act of 2008;

15 (N) the International Banking Act of
16 1978;

17 (O) the International Lending Supervision
18 Act of 1983;

19 (P) title LXII of the Revised Statutes of
20 the United States; and

21 (Q) the securities laws (as defined under
22 section 3(a) of the Securities Exchange Act of
23 1934), to the extent such laws apply to deposi-
24 tory institutions, depository institution holding
25 companies, or nonbank financial companies.

1 (6) FEDERAL FINANCIAL REGULATORY LAW
2 THAT PROVIDES FOR PERSONAL LIABILITY.—The
3 term “Federal financial regulatory law that provides
4 for personal liability” means any provision of a Fed-
5 eral financial regulatory law that—

6 (A) directly requires recovery of compensa-
7 tion previously paid to, or directly requires as-
8 sessment of a civil money penalty against, a di-
9 rector, officer, employee, or other institution-af-
10 filiated party of a depository institution, depository
11 institution holding company, or nonbank fi-
12 nancial company; or

13 (B) authorizes a Federal financial regu-
14 latory agency to require, by rule or order, recov-
15 ery of compensation previously paid to, or as-
16 sess a civil money penalty against, a director,
17 officer, employee, or other institution-affiliated
18 party of a depository institution, depository in-
19 stitution holding company, or nonbank financial
20 company.

21 (7) INSTITUTION-AFFILIATED PARTY.—The
22 term “institution-affiliated party”—

23 (A) has the meaning given such term
24 under subsection (u) of section 3 of the Federal
25 Deposit Insurance Act (12 U.S.C. 1813); and

1 (B) shall apply with respect to a depository
2 institution, depository institution holding com-
3 pany, and nonbank financial company to the
4 same extent as such subsection applies to an in-
5 sured depository institution.

6 (8) NONBANK FINANCIAL COMPANY.—The term
7 “nonbank financial company” means—

8 (A) a nonbank financial company, as de-
9 fined under section 102 of the Dodd-Frank
10 Wall Street Reform and Consumer Protection
11 Act (12 U.S.C. 5311);

12 (B) the Federal National Mortgage Asso-
13 ciation;

14 (C) the Federal Home Loan Mortgage
15 Corporation; and

16 (D) the Federal Home Loan Banks.