

112TH CONGRESS
2D SESSION

H. R. 5860

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

MAY 30, 2012

Mr. FRANK of Massachusetts (for himself, Mr. WAXMAN, and Mr. PETERSON) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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, depos-
5 itory 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 anything 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 (B) the Bureau of Consumer Financial
23 Protection;

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

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

3 (E) the Federal Housing Finance Agency;

4 (F) 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 (G) the Office of the Comptroller of the
10 Currency; and

11 (H) 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, deposi-
11 tory 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.

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