I

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘Executive Compensation Clawback Full Enforcement Act’’.

SEC. 2. NO AVOIDANCE OF PERSONAL LIABILITY.

(a) IN GENERAL.—An officer, director, employee, or other institution-affiliated party of a depository institution, depository institution holding company, or nonbank financial company who is required by a Federal financial regulatory law that provides for personal liability, or any rule or order promulgated by a Federal financial regulatory agency thereunder, to repay previously earned compensation or pay a civil money penalty—

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

(2) may not, directly or indirectly, insure or hedge against, or otherwise transfer the risks associated with, personal liability for the amounts so owed.

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

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

(A) from the relevant depository institution, depository institution holding company, or nonbank financial company;

(B) under an insurance policy; or

(C) pursuant to court order; or

(2) obtaining insurance that protects such person from being held personally liable for—

(A) penalties, judgments, or other amounts assessed against a depository institution, depository institution holding company, or nonbank financial company at the company level; or

(B) unintentional outcomes associated with the ordinary exercise of trade or business judgment, unless the effects of such judgment result in personal liability under a Federal financial regulatory law that provides for personal liability.

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

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

(1) COMPENSATION.—The term ''compensation'' means anything of value, regardless of the form in which provided, that is given by a depository institution, depository institution holding company, or nonbank financial company to an officer, director,

employee, or other institution-affiliated party in return for that individual's service to such entity.

(2) DEPOSITORY INSTITUTION.—The term "depository institution" has the meaning given such term under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(3) DEPOSITORY INSTITUTION HOLDING COMPANY.—The term "depository institution holding company" means—

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

(B) a savings and loan holding company, as defined under section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

(4) FEDERAL FINANCIAL REGULATORY AGENCY.—The term "Federal financial regulatory agency" means—

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

(B) the Bureau of Consumer Financial Protection;

(C) the Commodity Futures Trading Commission;

(D) the Federal Deposit Insurance Corporation;

(E) the Federal Housing Finance Agency;

(F) the Federal Trade Commission, to the extent the Commission exercises authority over a depository institution, depository institution holding company, or nonbank financial company;

(G) the Office of the Comptroller of the Currency; and

(H) the Securities and Exchange Commission.

(5) FEDERAL FINANCIAL REGULATORY LAW.—The term ‘‘Federal financial regulatory law’’ means—

(A) the Bank Holding Company Act of 1956;

(B) the Commodity Exchange Act;

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

(D) section 111 of the Emergency Economic Stabilization Act of 2008;

(E) the Federal Deposit Insurance Act;

(F) the Federal Home Loan Bank Act;

(G) the Federal Home Loan Mortgage Corporation Act;

(H) the Federal Housing Enterprises Financial Safety and Soundness Act of 1992;

(I) the Federal National Mortgage Association Charter Act;

(J) the Federal Trade Commission Act, to the extent such Act applies to depository institutions, depository institution holding companies, or nonbank financial companies;

(K) the Gramm-Leach-Bliley Act;

(L) the Home Owners' Loan Act;

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

(N) the International Banking Act of 1978;

(O) the International Lending Supervision Act of 1983;

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

(Q) the securities laws (as defined under section 3(a) of the Securities Exchange Act of 1934), to the extent such laws apply to depository institutions, depository institution holding companies, or nonbank financial companies.

(6) FEDERAL FINANCIAL REGULATORY LAW THAT PROVIDES FOR PERSONAL LIABILITY.—The term ''Federal financial regulatory law that provides for personal liability'' means any provision of a Federal financial regulatory law that—

(A) directly requires recovery of compensation previously paid to, or directly requires assessment of a civil money penalty against, a director, officer, employee, or other institution-affiliated party of a depository institution, depository institution holding company, or nonbank financial company; or

(B) authorizes a Federal financial regulatory agency to require, by rule or order, recovery of compensation previously paid to, or assess a civil money penalty against, a director, officer, employee, or other institution-affiliated party of a depository institution, depository institution holding company, or nonbank financial company.

(7) INSTITUTION-AFFILIATED PARTY.—The term ''institution-affiliated party''—

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

(B) shall apply with respect to a depository institution, depository institution holding company, and nonbank financial company to the same extent as such subsection applies to an insured depository institution.

(8) NONBANK FINANCIAL COMPANY.—The term "nonbank financial company" means—

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

(B) the Federal National Mortgage Association;

(C) the Federal Home Loan Mortgage Corporation; and

(D) the Federal Home Loan Banks.

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