

118TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To amend the Federal Deposit Insurance Act to improve financial stability,  
and for other purposes.

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IN THE SENATE OF THE UNITED STATES

Mr. REED (for himself and Mr. GRASSLEY) introduced the following bill;  
which was read twice and referred to the Committee on

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**A BILL**

To amend the Federal Deposit Insurance Act to improve  
financial stability, 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 “Bank Management Ac-  
5 countability Act”.

6 **SEC. 2. SYSTEMIC RISK DETERMINATION.**

7 (a) IN GENERAL.—Section 13(c)(4)(G) of the Fed-  
8 eral Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)) is  
9 amended by adding at the end the following:

1                   “(vi) RECOUPMENT OF COMPENSA-  
2                   TION FROM SENIOR EXECUTIVES AND DI-  
3                   RECTORS.—

4                   “(I) IN GENERAL.—The Corpora-  
5                   tion, as receiver or conservator of an  
6                   insured depository institution under  
7                   clause (i), may recover from any cur-  
8                   rent or former senior executive or di-  
9                   rector of the insured depository insti-  
10                  tution, or of a covered affiliate with  
11                  respect to the insured depository insti-  
12                  tution, who is substantially respon-  
13                  sible for the failed condition of the in-  
14                  sured depository institution, any com-  
15                  pensation received during the 2-year  
16                  period preceding the date on which  
17                  the Corporation was appointed as the  
18                  receiver or conservator of the insured  
19                  depository institution, except that, in  
20                  the case of fraud, no time limit shall  
21                  apply.

22                  “(II) COST CONSIDERATIONS.—  
23                  In seeking to recover any compensa-  
24                  tion under subclause (I), the Corpora-  
25                  tion shall weigh the financial and de-

1           terrent benefits of that recovery  
2           against the cost of executing the re-  
3           covery.

4                   “(III) PERSONAL LIABILITY.—  
5           Any liability insurance policy for a  
6           senior executive or director described  
7           in subclause (I) shall exclude from  
8           coverage any liability under this  
9           clause.

10                   “(vii) PROHIBITION AUTHORITY.—

11                   “(I) IN GENERAL.—The Corpora-  
12           tion may take any action authorized  
13           by subclause (II), if the Corporation  
14           determines that—

15                   “(aa) a senior executive or a  
16           director of an insured depository  
17           institution with respect to which  
18           the Corporation has taken action  
19           or provided assistance under  
20           clause (i), or of a covered affiliate  
21           with respect to such an insured  
22           depository institution, before the  
23           appointment of the Corporation  
24           as receiver or conservator, has,  
25           directly or indirectly—

1                   “(AA) violated any law  
2 or regulation;

3                   “(BB) violated any  
4 cease-and-desist order that  
5 has become final;

6                   “(CC) violated any con-  
7 dition imposed in writing by  
8 a Federal agency in connec-  
9 tion with any action on any  
10 application, notice, or re-  
11 quest by the insured deposi-  
12 tory institution or covered  
13 affiliate (as applicable) or  
14 the senior executive or direc-  
15 tor (as applicable);

16                   “(DD) violated any  
17 written agreement between  
18 the insured depository insti-  
19 tution or covered affiliate  
20 (as applicable) and the Fed-  
21 eral agency described in  
22 subitem (CC);

23                   “(EE) engaged or par-  
24 ticipated in any unsafe or  
25 unsound practice; or

1                   “(FF) committed or en-  
2                   gaged in any act, omission,  
3                   or practice that constitutes a  
4                   breach of the fiduciary duty  
5                   of that senior executive or  
6                   director; and

7                   “(bb) by reason of the viola-  
8                   tion, practice, or breach de-  
9                   scribed in any subitem of item  
10                  (aa), that senior executive or di-  
11                  rector has received financial gain  
12                  or other benefit, and that viola-  
13                  tion, practice, or breach contrib-  
14                  uted to the failure of the insured  
15                  depository institution.

16                  “(II) AUTHORIZED ACTIONS.—  
17                  The Corporation may serve upon a  
18                  senior executive or director with re-  
19                  spect to whom the Corporation has  
20                  made a determination under subclause  
21                  (I) a written notice of the intention of  
22                  the Corporation to prohibit any fur-  
23                  ther participation by that individual,  
24                  in any manner, in the conduct of the  
25                  affairs of any financial company for a

1 period of time determined by the Cor-  
2 poration to be commensurate with  
3 that violation, practice, or breach, ex-  
4 cept that such period shall be not less  
5 than 2 years.

6 “(viii) DEFINITIONS.—In this sub-  
7 paragraph:

8 “(I) COMPENSATION.—The term  
9 ‘compensation’ means any direct or  
10 indirect financial remuneration re-  
11 ceived from an insured depository in-  
12 stitution, or from a covered affiliate  
13 with respect to an insured depository  
14 institution, including salary, bonuses,  
15 incentives, benefits, severance pay, de-  
16 ferred compensation, golden parachute  
17 benefits, benefits derived from an em-  
18 ployment contract or other compensa-  
19 tion or benefit arrangement, per-  
20 quisites, stock option plans, post-em-  
21 ployment benefits, profits realized  
22 from a sale of securities in the insured  
23 depository institution or the covered  
24 affiliate (as applicable), or any cash or  
25 noncash payments or benefits granted

1 to or for the benefit of a senior execu-  
2 tive or director.

3 “(II) COVERED AFFILIATE.—The  
4 term ‘covered affiliate’ means, with  
5 respect to an insured depository insti-  
6 tution, any—

7 “(aa) bank holding company  
8 (as defined in section 2(a) of the  
9 Bank Holding Company Act of  
10 1956 (12 U.S.C. 1841(a))) that  
11 controls the insured depository  
12 institution;

13 “(bb) savings and loan hold-  
14 ing company (as defined in sec-  
15 tion 10(a) of the Home Owners’  
16 Loan Act (12 U.S.C. 1467a(a)))  
17 that directly or indirectly controls  
18 the insured depository institu-  
19 tion;

20 “(cc) subsidiary of the in-  
21 sured depository institution; or

22 “(dd) affiliate (as defined in  
23 section 2 of the Bank Holding  
24 Company Act of 1956 (12 U.S.C.

1 1841(k)) of the insured deposi-  
2 tory institution.

3 “(III) DIRECTOR.—The term ‘di-  
4 rector’ means a member of the board  
5 of directors of a company, or of a  
6 board or committee performing a  
7 similar function to a board of direc-  
8 tors, who has authority to vote on  
9 matters before the board or com-  
10 mittee.

11 “(IV) FINANCIAL COMPANY.—  
12 The term ‘financial company’ has the  
13 meaning given the term in section  
14 201(a) of the Dodd-Frank Wall Street  
15 Reform and Consumer Protection Act  
16 (12 U.S.C. 5381(a)).

17 “(V) SENIOR EXECUTIVE.—The  
18 term ‘senior executive’—

19 “(aa) means any individual  
20 who participates or has authority  
21 to participate (other than in the  
22 capacity of a director) in major  
23 policymaking functions of a com-  
24 pany, regardless of whether the  
25 individual has an official title or

1 the title of the individual des-  
2 ignates the individual as an as-  
3 sistant; and

4 “(bb) includes the chairman  
5 of the board, the president, any  
6 vice president, the secretary, the  
7 treasurer or chief financial offi-  
8 cer, the general partner, and any  
9 manager of a company, unless  
10 the individual—

11 “(AA) is excluded, by  
12 resolution of the board of di-  
13 rectors, the bylaws, the op-  
14 erating agreement, or the  
15 partnership agreement of  
16 the company, from partici-  
17 pation (other than in the ca-  
18 pacity of a director) in  
19 major policymaking func-  
20 tions of the company; and

21 “(BB) does not actually  
22 participate in major policy-  
23 making functions of the  
24 company.”.

1 (b) REGULATIONS.—The Federal Deposit Insurance  
2 Corporation shall promulgate regulations to administer  
3 and carry out this section, in a manner that is not less  
4 stringent than the manner set forth in section 380.7 of  
5 title 12, Code of Federal Regulations (as in effect on the  
6 date of enactment of this Act).

7 **SEC. 3. ORDERLY LIQUIDATION AUTHORITY.**

8 Title II of the Dodd-Frank Wall Street Reform and  
9 Consumer Protection Act (12 U.S.C. 5381 et seq.) is  
10 amended—

11 (1) in section 210(s) (12 U.S.C. 5390(s)), by  
12 adding at the end the following:

13 “(4) PERSONAL LIABILITY.—Any liability insur-  
14 ance policy for a senior executive or director de-  
15 scribed in paragraph (1) shall exclude from coverage  
16 any liability under this subsection.”; and

17 (2) in section 213(b) (12 U.S.C. 5393(b))—

18 (A) in paragraph (1)(C), by inserting  
19 “and” at the end;

20 (B) in paragraph (2), by striking “; and”  
21 and inserting a period; and

22 (C) by striking paragraph (3).