[DISCUSSION DRAFT]

116TH CONGRESS 2D SESSION

H. R. ______

To require the written attestation of senior megabank officers to ensure they and their banks comply with the law, to enhance individual penalties for violations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. ______ introduced the following bill; which was referred to the Committee on ________________

A BILL

To require the written attestation of senior megabank officers to ensure they and their banks comply with the law, to enhance individual penalties for violations, 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 “Megabank Board and
5 Management Accountability Act”.

6 SEC. 2. DEFINITIONS.

7 For purposes of this Act:
(1) AFFILIATED BANKING ORGANIZATION.—

The term “affiliated banking organization” means—

(A) any depository institution subsidiary or affiliate of a megabank that has an appropriate Federal banking agency; and

(B) any agency, branch, commercial lending company, or representative office of a foreign bank that—

(i) is federally licensed;

(ii) is a subsidiary or affiliate of a megabank; and

(iii) has an appropriate Federal banking agency.

(2) CONSUMER BUREAU.—The term “Consumer Bureau” means the Bureau of Consumer Financial Protection.

(3) FEDERAL CONSUMER FINANCIAL LAW.—

The term “Federal consumer financial law” has the meaning given that term under section 1002 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481).

(4) FEDERAL CONSUMER PROTECTION LAW.—

The term “Federal consumer protection law” means—

(A) the Federal consumer financial law;
(B) the Fair Housing Act;

(C) the Federal Trade Commission Act;

(D) section 987 of title 10, United States Code (commonly known as the “Military Lending Act”);

(E) the Servicemembers Civil Relief Act;

and

(F) any regulation issued under a law described under subparagraph (A), (B), (C), (D), or (E).

(5) MEGABANK.—

(A) IN GENERAL.—The term “megabank” means—

(i) a bank holding company that has been identified by the Board of Governors of the Federal Reserve System as a global systemically important bank holding company pursuant to section 217.402 of title 12, Code of Federal Regulations; and

(ii) a global systemically important foreign banking organization, as defined under section 252.2 of title 12, Code of Federal Regulations.

(B) TREATMENT OF EXISTING GSIBS.—A company or organization described under clause
(i) or (ii) of subparagraph (A) on the date of the enactment of this Act shall be deemed a megabank.

(6) STATE.—The term “State” means the several States, the District of Columbia, and any other territory or possession of the United States.

(7) DEFINITIONS RELATED TO SUBSIDIARIES AND AFFILIATES OF FOREIGN BANKS.—The terms “agency”, “branch”, “commercial lending company”, and “representative office” have the meanings given those terms, respectively, under section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101(b)).

(8) OTHER BANKING DEFINITIONS.—The terms “affiliate”, “appropriate Federal banking agency”, “Federal banking agency”, “foreign bank”, “State depository institution”, and “subsidiary” have the meaning given those terms, respectively, under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

SEC. 3. ANNUAL CERTIFICATION BY EXECUTIVE OFFICERS AND DIRECTORS OF THE BOARD.

(a) In GENERAL.—Each executive officer and director of an affiliated banking organization shall certify and submit a written attestation, at least on an annual basis
to the appropriate Federal banking agency, the Consumer
Bureau, and any relevant Federal law enforcement agency
that the executive officer or directory has regularly re-
viewed the organization’s lines of business and conducted
due diligence to ensure that—

(1) the organization has established and main-
tained internal risk controls to identify significant
deficiencies and weaknesses in its compliance with
Federal consumer protection laws;

(2) the organization has promptly disclosed all
known violations of Federal consumer protection
laws to the Consumer Bureau and the appropriate
Federal banking agency;

(3) the organization is taking all reasonable
steps to correct any identified deficiencies and weak-
nesses in the organization’s compliance with Federal
center protection laws based on a review of all
regulatory examination results received in prior
years; and

(4) the organization is in substantial compli-
ance with all Federal consumer protection laws.

(b) GUIDANCE.—The Consumer Bureau, in consulta-
tion with the relevant Federal and State regulatory and
law enforcement agencies, shall issue final guidance on the
content, form, and method of delivery of the certification
and attestation required under subsection (a) within 6 months of the date of the enactment of this Act.

(c) CRIMINAL PENALTIES.—Any individual who certifies and submits an attestation described under subsection (a) that contains a false statement—

(1) if done knowingly, shall be fined not more than $1,000,000 or imprisoned not more than 10 years, or both; or

(2) if done intentionally, shall be fined not more than $5,000,000 or imprisoned not more than 20 years, or both.

(d) PENALTIES FOR FAILURE TO COMPLY.—Any individual who fails to certify and submit a required attestation described under subsection (a) shall be fined not more than $1,000,000 or imprisoned not more than 10 years, or both.

SEC. 4. PERSONAL LIABILITY OF EXECUTIVE OFFICERS AND DIRECTORS OF THE BOARD FOR FEDERAL CONSUMER PROTECTION LAW VIOLATIONS.

(a) CIVIL LIABILITY.—

(1) IN GENERAL.—If an executive officer or director of an affiliated banking organization knowingly violates any Federal consumer protection law (or knowingly directs any agent, officer, or director
of the organization to violate), such executive officer
or director shall be liable in their personal and indi-
vidual capacity for damages which the organization
or any other person shall have sustained in con-
sequence of such violation.

(2) RULE OF CONSTRUCTION.—Any liability de-
scribed under paragraph (1) shall not limit the au-
thority of a Federal department or agency or Fed-
eral law enforcement agency to impose civil pen-
alties, fines, or other appropriate consumer redress
on the organization.

(3) LIMITATION ON ACTIONS.—Except as other-
wise provided by law, a civil action arising under
this subsection may not be commenced after the
later of—

(A) 2 years after the discovery of the facts
constituting the violation; or

(B) 5 years after such violation.

(b) CRIMINAL LIABILITY.—Any executive officer or
director who knowingly causes an affiliated banking orga-
nization to violate any Federal consumer protection law
(or who knowingly directs any agent, officer, or director
of the organization to commit such a violation or engages
in such acts that result in the executive officer or director
being personally unjustly enriched and the organization
being conducted in an unsafe and unsound manner) shall be—

(1) fined in an amount not to exceed 100 percent of the annual compensation (including stock options awarded as compensation) received by such executive officer or director from the organization during each year in which the violations occurred; and

(2) imprisoned for not more than 5 years.

(e) Termination of Employment and Lifetime Ban.—If an executive officer or director of an affiliated banking organization commits a violation or engages in an act described under subsection (a) or is convicted of a violation or of engaging in an act described under subsection (b)—

(1) the appropriate Federal banking agency shall notify the organization within 24 hours of such fact;

(2) the organization shall immediately terminate such executive officer or director; and

(3) such executive officer or director shall be permanently prohibited from engaging in the operation and management of any other federally-chartered or federally-insured banking organization, pursuant to section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)).
SEC. 5. AGENCY AUTHORITY.

(a) IN GENERAL.—Notwithstanding any other law and for the sole purpose of carrying out the requirements of this Act, in the event that a Federal banking agency lacks a quorum, a majority of the members of the Federal banking agency shall have the full authority to act on behalf of the agency.

(b) DETERMINATION OF CERTAIN VIOLATIONS.—In making any determination under this Act with respect to whether an affiliated banking organization or individual has violated a Federal consumer protection law, if a Federal banking agency does not have enforcement authority over the applicable Federal consumer protection law, the agency shall rely on publically available information with respect to such violations, such as criminal convictions and enforcement actions, and consult with any relevant Federal department or agency that took such actions against the affiliated banking organization or individual.