

## FDIC Proposes Rule for Compensation Clawback from Officials Responsible for Financial Institution Failure

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The FDIC has proposed a rule implementing its authority under the Dodd-Frank Act to serve as a receiver for a financial company whose failure would pose a significant risk to the financial stability of the U.S. The proposed rule, in part, identifies the circumstances in which the FDIC as receiver will seek to recoup compensation from senior executives and directors who are "substantially responsible" for the failed condition of a covered financial company. In determining whether to recoup, the FDIC will consider whether (1) the senior executive or director performed his or her responsibilities with the requisite degree of skill and care for his or her position and (2) as a result of his or her performance the senior executive or director individually or collectively caused a loss that materially contributed to the failure of the covered financial company. The FDIC will presume "substantial responsibility" if the senior executive or director is the chairman of the board of directors, CEO, president, CFO, or acts in any other similar role. The FDIC will also presume substantial responsibility if the senior executive or director has been found to breach his or her duty of loyalty. The proposed rule adds new definitions of "compensation" and "director", and clarifies the term "senior executive." The FDIC explanatory memorandum and proposed rule can be found [here](#).