A BILL

To amend the Federal Deposit Insurance Act to increase bank executive accountability and to improve financial stability, 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 “Recovering Executive Compensation Obtained from Unaccountable Practices Act of 2023” or the “RECOUP Act of 2023”.
SEC. 2. REMOVAL AND PROHIBITION AUTHORITIES.

Section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) in clause (ii), by striking “or” at the end;

(ii) in clause (iii), by inserting “or” at the end; and

(iii) by adding at the end the following:

“(iv) in the case of a senior executive, as defined in paragraph (2)(C), failed to carry out the responsibilities of the senior executive for governance, operations, or risk or financial management of an insured depository institution or business institution;”;

(B) in subparagraph (B), in the matter preceding clause (i), by inserting “failure,” after “practice,”; and

(C) in subparagraph (C)—

(i) in the matter preceding clause (i), by inserting “failure,” after “practice,”; and

and
(ii) by striking clause (ii) and inserting the following:

“(ii) demonstrates—

“(I) willful or continuing disregard by such party for the safety or soundness of such insured depository institution or business institution; or

“(II) in the case of a senior executive, as defined in paragraph (2)(C), gross negligence by such senior executive in the performance of the duties of the senior executive to the insured depository institution or business institution,”; and

(2) in paragraph (2)—

(A) in subparagraph (A)—

(i) in clause (iii), by striking “or” at the end;

(ii) by redesignating clause (iv) as clause (v); and

(iii) by inserting after clause (iii) the following:

“(iv) a senior executive of an insured depository institution has—
“(I) breached any fiduciary duty owed to the institution, if the breach is determined to require grossly negligent, reckless, or willful conduct;

“(II) failed to appropriately implement financial, risk, or supervisory reporting or information system or controls; or

“(III) having implemented a system or controls described in subclause (II), has failed to oversee its operations; or”; and

(B) by adding at the end the following:

“(C) DEFINITION.—In this paragraph, the term ‘senior executive’ means an individual who has oversight authority for managing the overall governance, operations, risk, or finances of a depository institution or depository institution holding company, including the president, the chief executive officer, the chief operating officer, the chief financial officer, the chief risk officer, the chief legal officer, the chairman of the board, an inside director of the board of directors, and an individual who occupies an equivalent position, as determined by the depository
institution or depository institution holding company, as applicable.”.

SEC. 3. GOVERNANCE AND ACCOUNTABILITY STANDARDS.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following:

“SEC. 54. GOVERNANCE AND ACCOUNTABILITY STANDARDS.

“(a) DEFINITION.—In this section, the term ‘senior executive’ has the meaning given the term in section 8(e)(2)(C).

“(b) ADOPTION OF STANDARDS.—Except as provided in subsection (d), each depository institution and depository institution holding company shall adopt governance and accountability standards in the bylaws (or their equivalents) of the depository institution or depository institution holding company, as applicable, that promote safety and soundness, responsiveness to supervisory matters, and responsible management.

“(c) REQUIRED CONTENTS.—

“(1) IN GENERAL.—The standards adopted under subsection (b) shall include—

“(A) policies for senior executives and members of the board of directors of the depository institution or depository institution holding company relating to appropriate risk manage-
ment and responsiveness to supervisory mat-
ters, including responding to the appropriate
Federal banking agency and State banking su-
pervisor, as applicable, on supervisory matters
on a timely basis;
“(B) accountability and corporate govern-
ance mechanisms and controls such as—
“(i) directing such senior executives
and board of directors to implement re-
porting or information system or controls
and oversee such systems appropriately
and prudently;
“(ii) directing that management does
not deviate from sound governance, inter-
nal control, or risk management; and
“(iii) directing that appropriate long-
term risk management be tailored to long-
term economic conditions; and
“(C) except as provided in paragraph (2)
and subsection (d), in the event of the failure
of the depository institution or depository insti-
tution holding company, as applicable, clawback
authority that permits the board of directors of
the depository institution or depository institu-
tion holding company (or the equivalent), or, if
the Corporation has been appointed receiver or conservator of the depository institution, the Corporation, in its capacity as receiver or conservator, to recover from a senior executive of the depository institution or depository institution holding company who is responsible for the failed condition of the depository institution or depository institution holding company—

“(i) any bonus, other incentive-based or equity-based compensation, severance pay, or golden parachute benefits received by that senior executive from the depository institution or depository institution holding company during the 24-month period preceding the failure of the depository institution or depository institution holding company; and

“(ii) any profits realized by that senior executive from the sale of securities of the entity during the 24-month period described in clause (i).

“(2) Exception.—Paragraph (1)(C) shall not apply to any senior executive—

“(A) who has been employed by the depository institution or depository institution holding
company for not more than 18 months before
the date of the failure of the depository institu-
tion or depository institution holding company;
and
“(B) whose conduct did not contribute to
the failure of the depository institution or de-
pository institution holding company, as appli-
cable.
“(d) EXCEPTION.—This section shall not apply to a
depository institution or depository institution holding
company with total consolidated assets of not more than
$10,000,000,000.”.

SEC. 4. CEASE-AND-DESIST PROCEEDINGS.

Section 8(b) of the Federal Deposit Insurance Act
(12 U.S.C. 1818(b)) is amended by inserting after para-
graph (8) the following:
“(9) RECOVERY OF COMPENSATION.—If the
Corporation is appointed receiver or conservator of
an insured depository institution with total consoli-
dated assets of more than $10,000,000,000, the
Corporation may recover for the receivership or con-
servatorship incentive-based compensation, equity-
based compensation, severance pay, golden para-
chute benefits, or compensation that is granted or
vested based wholly or in part upon the attainment
of any financial reporting measure or other perform-
ance metric, and any profits realized from the pur-
chase or sale of securities of the depository institu-
tion or depository institution holding company dur-
ing the 24-month period preceding the failure of the
insured depository institution from any senior execu-
tive, as defined in subsection (e)(2)(C), who is re-
sponsible for the failed condition of the depository
institution or depository institution holding com-
pany.”.

SEC. 5. CIVIL MONEY PENALTIES.

Section 8(i)(2) of the Federal Deposit Insurance Act
(12 U.S.C. 1818(i)(2)) is amended—

(1) in subparagraph (C)(i), in the matter pre-
ceeding subclause (I), by inserting “or, in the case of
a senior executive, as defined in subsection
(e)(2)(C), recklessly” after “knowingly”; and

(2) in subparagraph (D)(i), by striking
“$1,000,000” and inserting “$3,000,000”.

SEC. 6. FAILED BANK MERGERS AND ACQUISITIONS.

(a) FAILED BANK MERGERS.—Section 18(c)(13)(B)
of the Federal Deposit Insurance Act (12 U.S.C.
1828(c)(13)(B)) is amended by striking “section 13.” and
inserting “section 13, if—
“(i) at the time the responsible agency proposes to approve the application, there is no application or proposed application (other than an application that also would be subject to the prohibition in subparagraph (A)) to acquire the 1 or more insured depository institutions in default or in danger of default pending before any appropriate Federal banking agency that would, according to the responsible agency for such application, meet all applicable standards for approval by the responsible agency;

“(ii) the Corporation would provide assistance under section 13 with respect to the interstate merger transaction; and

“(iii) the Corporation has determined that the interstate merger transaction that is the subject of the application to the responsible agency is the only proposed transaction to acquire, directly or indirectly, the 1 or more insured depository institutions in default or in danger of default pending before the Corporation (other than an interstate merger transaction that also would be subject to the prohibition in subparagraph (A)) that would permit the Corporation to—

“(I) comply with the least-cost resolution requirements set forth in section 13(c)(4); or
“(II) avoid the serious adverse effects on
economic conditions or financial stability that
would occur absent exercise of the authority in
section 13(e)(4)(G), if a systemic risk deter-
mination has been made under such section
with respect to the insured depository institu-
tion or institutions that are the subject of the
application.”.

(b) FAILED BANK ACQUISITIONS.—Section 3(d)(5)
1842(d)(5)) is amended—

(1) by redesignating subparagraphs (A) and
(B) as clauses (i) and (ii), respectively, and adjust-
ing the margins accordingly;

(2) in the matter preceding clause (i), as so re-
designated, by striking “The Board may approve”
and inserting the following:

“(A) Except as provided in subparagraph
(B), the Board may approve”; and

(3) by inserting at the end the following:

“(B) Notwithstanding subparagraph (A),
the Board may approve an application that
would otherwise be subject to the prohibition in
subparagraph (A) or (B) of paragraph (2) if—
“(i) at the time the Board proposes to approve the application, there is no application or proposed application (other than an application that also would be subject to the prohibitions in subparagraph (A) or (B) of paragraph (2)) to acquire, directly or indirectly, the 1 or more banks in default or in danger of default, or the acquisition with respect to which assistance is provided under section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)), pending before the Board that would meet all applicable standards for approval under this section;

“(ii) the Federal Deposit Insurance Corporation would provide assistance under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) with respect to the acquisition that is the subject of the application to the Board; and

“(iii) the Federal Deposit Insurance Corporation has determined that the acquisition is the only proposed transaction to acquire, directly or indirectly, the 1 or more banks in default or in danger of de-
fault pending before the Corporation (other
than an acquisition that also would be sub-
ject to the prohibition in subparagraph (A)
or (B) of paragraph (2)) that would permit
the Corporation to—

“(I) comply with the least-cost
resolution requirements set forth in
section 13(c)(4) of the Federal De-
posit Insurance Act (12 U.S.C.
1823(c)(4)); or

“(II) avoid the serious adverse
effects on economic conditions or fi-
nancial stability that would occur ab-
sent exercise of the authority in sec-
tion 13(c)(4)(G) of the Federal De-
posit Insurance Act (12 U.S.C.
1823(c)(4)(G)), if a systemic risk de-
termination has been made under
such section with respect to the bank
or banks that are the subject of the
application.”.

SEC. 7. TRANSPARENCY RELATING TO FAILED INSTITU-
TIONS.

(a) DEFINITIONS.—In this section:
(1) **APPROPRIATE FEDERAL BANKING AGENCY;**

*depository institution.*—The terms “appropriate Federal banking agency” and “depository institution” have the meanings given the terms in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(2) **COVERED INSTITUTION.**—The term “covered institution” means a depositary institution with more than $10,000,000,000 in total consolidated assets.

(b) **SUPERVISION REVIEW AND PUBLIC REPORT.**—

Not later than 180 days (or during a period of financial stress, a reasonable time) after the failure of a covered institution, each appropriate Federal banking agency shall complete a review of the management, supervision, and regulation of that institution and make publicly available a report detailing the findings of the agency.

SEC. 8. **FEDERAL RESERVE SUPERVISION AND REGULATION REPORT.**

Not less frequently than semiannually, the Board of Governors of the Federal Reserve System shall make publicly available a report on—

(1) the supervisory and regulatory policies and actions of the Board;

(2) the current banking conditions; and
(3) any internal changes the Board is making to the operations and culture of the Board with respect to the supervisory and regulatory actions described in paragraph (1), including the frameworks, strategies, and metrics that the Board is using to—

(A) improve internal communication within the Federal Reserve System and with Federal banking agencies and State banking supervisors;

(B) enhance the process by which the Board solicits and receives public input; and

(C) ensure timely, appropriate, and effective actions and communications are taken in response to supervisory concerns;

(4) the budgets, staffing, and any use of outside services to accomplish the items described in paragraph (3); and

(5) the progress made for each of the metrics for each of the items described in paragraph (3).

SEC. 9. REPORTS AND TESTIMONY.

(a) IN GENERAL.—Not later than 180 days (or during a period of financial stress, a reasonable time) after the appointment of the Federal Deposit Insurance Corporation as receiver or conservator of an insured depository institution with more than $10,000,000,000 in total
consolidated assets, as those terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), the inspector general of the primary Federal regulator of the insured depository institution or depository institution holding company, including the Board of Governors of the Federal Reserve System, shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that includes—

(1) an evaluation of the effectiveness of the primary Federal regulator in carrying out its supervisory responsibilities with respect to the insured depository institution or depository institution holding company;

(2) an identification of any acts or omissions on the part of officials of the primary Federal regulator that contributed to the failure of the insured depository institution or depository institution holding company;

(3) an identification of any actions that could have been taken by the primary Federal regulator that would have prevented the failure of the insured depository institution or depository institution holding company; and
(4) an identification of the causes of the failure of the insured depository institution or depository institution holding company, including actions or omissions by both the primary Federal regulator and management of the insured depository institution or depository institution holding company.

(b) Testimony.—Not later than 30 days after the date on which the report required under subsection (a) is received, the inspector general of the primary Federal regulator shall be available to testify before the committees described in subsection (a).

SEC. 10. SENSE OF CONGRESS.

It is the Sense of Congress that—

(1) the financial system of the United States is strong and resilient, and the vast majority of the financial institutions in the United States are well managed;

(2) in order to ensure the financial system of the United States remains strong and resilient, mismanagement by senior executives must be deterred;

(3) financial regulators should operate in an appropriate and transparent manner; and

(4) this Act and the amendments made by this Act should not be used to penalize senior executives
of healthy financial institutions that are appropriately managed.

SEC. 11. RULE OF CONSTRUCTION.

Except as otherwise specifically provided herein, nothing in this Act, or the amendments made by this Act, may be construed to amend or alter the authority of the Federal Deposit Insurance Corporation or any other appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).
A BILL

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

S. 2190

118th CONGRESS

Calendar No. 115

June 22, 2023

Read twice and placed on the calendar.

July 22, 2023

Passed the House of Representatives.

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