

118TH CONGRESS
1ST SESSION

H. R. 4208

To provide Federal financial regulators with clawback authority over executive compensation and additional industry prohibition and civil money penalty authority with respect to executives whose negligence caused financial loss to the applicable financial institution, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 20, 2023

Ms. WATERS (for herself, Ms. VELÁZQUEZ, Mr. SHERMAN, Mr. DAVID SCOTT of Georgia, Mr. CLEAVER, Mrs. BEATTY, Mr. VARGAS, Mr. HORSFORD, Ms. TLAIB, Ms. GARCIA of Texas, and Mr. GREEN of Texas) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To provide Federal financial regulators with clawback authority over executive compensation and additional industry prohibition and civil money penalty authority with respect to executives whose negligence caused financial loss to the applicable financial institution, 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 “Failed Bank Execu-
5 tives Accountability and Consequences Act”.

1 **SEC. 2. SENSE OF CONGRESS.**

2 It is the sense of the Congress that—

3 (1) financial regulators and law enforcement
4 agencies should fully exercise the maximum extent of
5 their authorities to investigate and use available en-
6 forcement tools to hold executive officers and board
7 members at Silicon Valley Bank, Signature Bank,
8 First Republic Bank, and any other bank that fails
9 fully accountable for any misconduct in which they
10 are found to have engaged; and

11 (2) the Board of Governors of the Federal Re-
12 serve System, the Office of the Comptroller of the
13 Currency, the Board of Directors of the Federal De-
14 posit Insurance Corporation, the National Credit
15 Union Administration Board, the Securities and Ex-
16 change Commission, the Federal Housing Finance
17 Agency should jointly finalize the regulations or
18 guidelines required under section 956 of the “Inves-
19 tor Protection and Securities Reform Act of 2010”,
20 and those regulations or guidelines should include
21 robust clawback requirements.

22 **SEC. 3. CLAWBACK AUTHORITY.**

23 (a) IN GENERAL.—Section 8 of the Federal Deposit
24 Insurance Act (12 U.S.C. 1818) is amended by adding at
25 the end the following:

1 “(x) RECOUPMENT OF COMPENSATION FROM EXEC-
2 UTIVE OFFICERS AND DIRECTORS.—

3 “(1) IN GENERAL.—During any period in which
4 the Corporation is acting as conservator or receiver
5 for an insured depository institution, the Corpora-
6 tion may recover, from any current or former execu-
7 tive officer or director of such insured depository in-
8 stitution whose negligence caused financial loss to
9 such insured depository institution, any compensa-
10 tion received during the 2-year period preceding the
11 date on which the Corporation was appointed as the
12 conservator or receiver of the insured depository in-
13 stitution, except that, in the case of fraud, no time
14 limit shall apply.

15 “(2) RULEMAKING.—The Corporation shall pro-
16 mulgate regulations to implement the requirements
17 of this subsection, including defining the term ‘com-
18 pensation’ to mean any financial remuneration, in-
19 cluding salary, bonuses, incentives, benefits, sever-
20 ance, deferred compensation, or golden parachute
21 benefits, and any profits realized from the sale of
22 the securities of the insured depository institution
23 (or the securities of an affiliate of the insured depos-
24 itory institution).”.

1 (b) CLAWBACK AUTHORITY RELATING TO ORDERLY
 2 LIQUIDATION AUTHORITY.—Section 210(s)(1) of the
 3 Dodd-Frank Wall Street Reform and Consumer Protec-
 4 tion Act is amended as follows:

5 “(1) IN GENERAL.—The Corporation, as re-
 6 ceiver of a covered financial company, may recover
 7 from any current or former executive officer or di-
 8 rector whose negligence caused financial loss to the
 9 covered financial company any compensation re-
 10 ceived during the 2-year period preceding the date
 11 on which the Corporation was appointed as the re-
 12 ceiver of the covered financial company, except that,
 13 in the case of fraud, no time limit shall apply.”.

14 **SEC. 4. REMOVAL AND PROHIBITION AUTHORITY IN THE**
 15 **CASE OF INSTITUTION FAILURE.**

16 (a) IN GENERAL.—Section 8(e) of the Federal De-
 17 posit Insurance Act (12 U.S.C. 1818(e)) is amended—

18 (1) by redesignating paragraphs (3), (4), (5),
 19 (6), and (7) as paragraphs (4), (5), (6), (7), and
 20 (8), respectively; and

21 (2) by inserting after paragraph (2) the fol-
 22 lowing:

23 “(3) SUSPENSION, REMOVAL, AND PROHIBITION
 24 FROM PARTICIPATION ORDERS IN THE CASE OF IN-
 25 STITUTION FAILURE.—Whenever the appropriate

1 Federal banking agency determines that an institu-
2 tion-affiliated party has negligently caused financial
3 loss to any insured depository institution that has
4 failed, the appropriate Federal banking agency for
5 the depository institution may serve upon such party
6 a written notice of the agency’s intention to prohibit
7 any further participation by such party, in any man-
8 ner, in the conduct of the affairs of any insured de-
9 pository institution.”.

10 (b) CONFORMING AMENDMENT.—The Federal De-
11 posit Insurance Act (12 U.S.C. 1811 et seq.) is amend-
12 ed—

13 (1) in section 8—

14 (A) in subsection (e)—

15 (i) in paragraph (3), by striking
16 “under paragraph (1) or (2)” each place it
17 occurs and inserting “under paragraphs
18 (1), (2), or (3)”; and

19 (ii) in paragraph (7), as so redesign-
20 nated, by striking “paragraph (7)(A)” and
21 inserting “paragraph (8)(A)”;

22 (B) in subsection (f), by striking “sub-
23 section (e)(3)” and inserting “subsection
24 (e)(4)”;

1 (C) in subsection (g)(1)(D)(ii), by striking
2 “paragraph (1), (2), or (3) of subsection (e)”
3 and inserting “paragraph (1), (2), or (4) of
4 subsection (e)”; and

5 (D) in subsection (j), by striking “sub-
6 section (e)(6)” and inserting “subsection
7 (e)(7)”; and

8 (2) in section 10(k)(6)—

9 (A) in subparagraph (A)(i), by striking
10 “section 8(e)(4) for written notices or orders
11 under paragraph (1) or (2) of section 8(e)” and
12 inserting “section 8(e)(5) for written notices or
13 orders under paragraph (1), (2), or (3) of sec-
14 tion 8(e)”; and

15 (B) in subparagraph (B), by striking
16 “paragraphs (6) and (7) of section 8(e)” and
17 inserting “paragraphs (7) and (8) of section
18 8(e)”.

19 **SEC. 5. FINES FOR FAILED BANK EXECUTIVES.**

20 (a) IN GENERAL.—Section 8(i)(2) of the Federal De-
21 posit Insurance Act (12 U.S.C. 1818(i)(2)) is amended
22 by—

23 (1) redesignating subparagraphs (D), (E), (F),
24 (G), (H), (I), (J), and (K) as paragraphs (E), (F),
25 (G), (H), (I), (J), (K), and (L), respectively; and:

1 (2) by inserting after subparagraph (C), the fol-
2 lowing:

3 “(D) FINES FOR CONTRIBUTING TO INSTI-
4 TUTION FAILURE.—

5 “(i) FIRST TIER.—Notwithstanding
6 subparagraphs (A), (B), and (C), any exec-
7 utive officer or director who has neg-
8 ligently caused financial loss to any in-
9 sured depository institution that has failed
10 shall forfeit and pay a civil penalty of not
11 more than \$25,000 for each day during
12 which such conduct occurred.

13 “(ii) SECOND TIER.—Notwithstanding
14 subparagraphs (A), (B), and (C), any exec-
15 utive officer or director who knowingly or
16 recklessly caused financial loss to any in-
17 sured depository institution that has failed
18 shall forfeit and pay a civil penalty in an
19 amount not to exceed the applicable max-
20 imum amount determined under subpara-
21 graph (E) for each day during which such
22 conduct occurred.”.

23 (b) CONFORMING AMENDMENTS.—Section 8(i)(2) of
24 the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(2)),
25 as amended by subsection (a) is further amended—

1 (1) in subparagraph (E), by striking “to sub-
2 paragraph (C)” and inserting “to subparagraph (C)
3 or (D)”;

4 (2) in subparagraph (F)—

5 (A) by striking “under subparagraph (A),
6 (B), or (C)” and inserting “under subpara-
7 graph (A), (B), (C), or (D)”; and

8 (B) by striking “subparagraph (H)” and
9 inserting “subparagraph (I)”;

10 (3) in subparagraph (G), by striking “under
11 subparagraph (A), (B), or (C)” and inserting “under
12 subparagraph (A), (B), (C), or (D)”; and

13 (4) in subparagraph (H), by striking “under
14 subparagraph (A), (B), or (C)” and inserting “under
15 subparagraph (A), (B), (C), or (D)”.

16 **SEC. 6. RULE OF CONSTRUCTION.**

17 This Act and the amendments made by this Act may
18 not be construed to limit the enforcement authorities that
19 financial regulators and law enforcement agencies had,
20 prior to the date of enactment of this Act, to hold execu-
21 tive officers and board members of insured depository in-
22 stitutions and covered financial companies accountable for
23 any misconduct in which they are found to have engaged.

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