

118TH CONGRESS  
1ST SESSION

# H. R. 5845

To amend the Federal Deposit Insurance Act to address transaction account guarantees, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2023

Mr. KUSTOFF introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Federal Deposit Insurance Act to address transaction account guarantees, 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 “Depositor Protection  
5 Act of 2023”.

6 **SEC. 2. TRANSACTION ACCOUNT GUARANTEES.**

7 (a) IN GENERAL.—Section 11(a)(1) of the Federal  
8 Deposit Insurance Act (12 U.S.C. 1821(a)(1)) is amend-  
9 ed—

1 (1) in subparagraph (B)—

2 (A) by striking “The net amount” and in-  
3 serting the following:

4 “(i) IN GENERAL.—Subject to clause  
5 (ii), the net amount”; and

6 (B) by adding at the end the following:

7 “(ii) INSURANCE FOR NONINTEREST-  
8 BEARING TRANSACTION ACCOUNTS.—

9 “(I) IN GENERAL.—Notwith-  
10 standing clause (i), and subject to  
11 subclause (II) of this clause, the Cor-  
12 poration shall insure the net amount,  
13 in an amount that is not more than  
14 \$100,000,000, that any depositor at  
15 an insured depository institution  
16 maintains in a noninterest-bearing  
17 transaction account. Such amount  
18 shall not be taken into account when  
19 computing the net amount due to  
20 such depositor under clause (i).

21 “(II) ABILITY OF CERTAIN IN-  
22 SURED DEPOSITORY INSTITUTIONS TO  
23 OPT-OUT.—

24 “(aa) IN GENERAL.—An in-  
25 sured depository institution that

1 has less than \$250,000,000,000  
2 in total consolidated assets may  
3 elect not to participate with re-  
4 spect to the increased amount of  
5 insurance made available under  
6 subclause (I).

7 “(bb) LIMITATION ON AS-  
8 SESSMENT OF FEE.—The Cor-  
9 poration may not assess a fee on  
10 any insured depository institution  
11 that elects not to participate with  
12 respect to the increased amount  
13 of insurance made available  
14 under subclause (I).

15 “(III) DEFINITION.—In this  
16 clause, the term ‘noninterest-bearing  
17 transaction account’ means a deposit  
18 or account maintained at an insured  
19 depository institution—

20 “(aa) with respect to which  
21 interest is neither accrued nor  
22 paid;

23 “(bb) on which the depositor  
24 or account holder is permitted to  
25 make withdrawals by negotiable

1 or transferable instrument, pay-  
2 ment orders of withdrawal, tele-  
3 phone or other electronic media  
4 transfers, or other similar items  
5 for the purpose of making pay-  
6 ments or transfers to third par-  
7 ties or others; and

8 “(cc) on which the insured  
9 depository institution does not re-  
10 serve the right to require advance  
11 notice of an intended with-  
12 drawal.”; and

13 (2) in subparagraph (C), by striking “subpara-  
14 graph (B)” and inserting “subparagraph (B)(i)”.

15 (b) REVERSION.—On the date that is 2 years after  
16 the date of enactment of this Act, section 11(a)(1) of the  
17 Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)) is  
18 amended—

19 (1) by amending subparagraph (B) to read as  
20 follows:

21 “(B) NET AMOUNT OF INSURED DE-  
22 POSIT.—The net amount to any depositor at an  
23 insured depository institution shall not exceed  
24 the standard maximum deposit insurance  
25 amount as determined in accordance with sub-

1 paragraphs (C), (D), (E), and (F) and para-  
2 graph (3).”; and

3 (2) in subparagraph (C), by striking “subpara-  
4 graph (B)(i)” and inserting “subparagraph (B)”.

5 **SEC. 3. RECIPROCAL DEPOSITS.**

6 Section 29(i)(1) of the Federal Deposit Insurance Act  
7 (12 U.S.C. 1831f(i)(1)) is amended—

8 (1) in subparagraph (A), by striking  
9 “\$5,000,000,000” and inserting “\$10,000,000,000”;  
10 and

11 (2) in subparagraph (B), by striking “20 per-  
12 cent” and inserting “25 percent”.

13 **SEC. 4. ADJUSTED LEAST COST RESOLUTION.**

14 Section 13(c)(4) of the Federal Deposit Insurance  
15 Act (12 U.S.C. 1823(c)(4)) is amended—

16 (1) by redesignating subparagraph (H) as sub-  
17 paragraph (I); and

18 (2) by inserting after subparagraph (G) the fol-  
19 lowing:

20 “(H) NON-SYSTEMIC SECONDARY COST TO  
21 THE DEPOSIT INSURANCE FUND.—

22 “(i) DEFINITIONS.—In this subpara-  
23 graph:

24 “(I) LARGE INSURED DEPOSIT-  
25 TORY INSTITUTION.—The term ‘large

1 insured depository institution’ means  
2 an insured depository institution with  
3 total consolidated assets of not less  
4 than \$100,000,000,000.

5 “(II) NON-SYSTEMIC SECONDARY  
6 COST TO THE DEPOSIT INSURANCE  
7 FUND.—The term ‘non-systemic sec-  
8 ondary cost to the Deposit Insurance  
9 Fund’ means a cost to the Deposit In-  
10 surance Fund from—

11 “(aa) the appointment of the  
12 Corporation as a receiver for a  
13 second or additional insured de-  
14 pository institution as a direct  
15 and contemporaneous result of  
16 the compliance by the Corpora-  
17 tion with subparagraphs (A) and  
18 (E) with respect to a large in-  
19 sured depository institution, in-  
20 cluding the cost of liquidating  
21 any such second or additional in-  
22 sured depository institution in  
23 compliance with subparagraphs  
24 (A) and (E);

1           “(bb) a reduction in the  
2 price of an asset as a direct and  
3 contemporaneous result of the  
4 liquidation by the Corporation of  
5 a large insured depository insti-  
6 tution in compliance with sub-  
7 paragraphs (A) and (E); or

8           “(cc) any other direct and  
9 contemporaneous result of the  
10 compliance by the Corporation  
11 with subparagraphs (A) and (E)  
12 with respect to a large insured  
13 depository institution (other than  
14 any such loss that arises from se-  
15 rious adverse effects on economic  
16 conditions or financial stability  
17 within the meaning of subpara-  
18 graph (G)).

19           “(ii) ACTION PERMITTED UPON DE-  
20 TERMINATION BY THE BOARD OF DIREC-  
21 TORS.—

22           “(I) IN GENERAL.—Notwith-  
23 standing subparagraphs (A) and (E),  
24 if the Board of Directors (upon a vote  
25 of not less than two-thirds of the

1 members of the Board of Directors)  
2 makes a determination described in  
3 subclause (II), the Corporation may  
4 take action or assistance under para-  
5 graph (2) for the purpose of facili-  
6 tating—

7 “(aa) a merger or consolida-  
8 tion of the applicable large in-  
9 sured depository institution with  
10 another insured depository insti-  
11 tution;

12 “(bb) the sale of any or all  
13 of the assets of the applicable  
14 large insured depository institu-  
15 tion;

16 “(cc) the assumption of any  
17 or all of the liabilities of the ap-  
18 plicable large insured depository  
19 institution by another insured de-  
20 pository institution; or

21 “(dd) the acquisition of the  
22 stock of the applicable large in-  
23 sured depository institution.

24 “(II) DETERMINATION DE-  
25 SCRIBED.—A determination described



1 in this subclause is a determination  
2 that—

3 “(aa) the compliance by the  
4 Corporation with subparagraphs  
5 (A) and (E) with respect to a  
6 large insured depository institu-  
7 tion for which the Corporation  
8 has been appointed receiver  
9 would result in a non-systemic  
10 secondary cost to the Deposit In-  
11 surance Fund; and

12 “(bb) any action or assist-  
13 ance under this subparagraph  
14 would avoid or mitigate the non-  
15 systemic secondary cost to the  
16 Deposit Insurance Fund de-  
17 scribed in item (aa).

18 “(iii) ADJUSTED LEAST-COST RESOLU-  
19 TION REQUIREMENT.—The Corporation  
20 may not take any action or provide any as-  
21 sistance under this subparagraph unless  
22 the total amount of the expenditures by  
23 the Corporation and obligations incurred  
24 by the Corporation (including any imme-  
25 diate and long-term obligation of the Cor-

1           poration and any direct or contingent li-  
2           ability for future payment by the Corpora-  
3           tion) in connection with the taking of that  
4           action or provision of that assistance with  
5           respect to an insured depository institution  
6           is the least costly to the Deposit Insurance  
7           Fund, taking into account the non-sys-  
8           temic secondary costs to the Deposit Insur-  
9           ance Fund that would result without the  
10          taking of that action or the provision of  
11          that assistance, of all possible methods for  
12          meeting the obligations of the Corporation  
13          under this section.

14                 “(iv) DOCUMENTATION REQUIRED.—  
15          The Chairperson of the Board of Directors  
16          shall—

17                         “(I) document any determination  
18                         under clause (ii); and

19                         “(II) retain the documentation  
20                         for review under clause (v).

21                 “(v) GAO REVIEW.—The Comptroller  
22          General of the United States shall review  
23          and report to Congress on any determina-  
24          tion under clause (ii), including—

1 “(I) the basis for the determina-  
2 tion;

3 “(II) the purpose for which any  
4 action was taken pursuant to such  
5 clause; and

6 “(III) the likely effect of the de-  
7 termination and such action on the in-  
8 centives and conduct of insured depos-  
9 itory institutions and uninsured de-  
10 positors.

11 “(vi) NOTICE.—

12 “(I) IN GENERAL.—Not later  
13 than 3 days after making a deter-  
14 mination under clause (ii), the Sec-  
15 retary of the Treasury shall provide  
16 written notice of any determination  
17 under clause (ii) to the Committee on  
18 Banking, Housing, and Urban Affairs  
19 of the Senate and the Committee on  
20 Financial Services of the House of  
21 Representatives.

22 “(II) DESCRIPTION OF BASIS OF  
23 DETERMINATION.—The notice under  
24 subclause (I) shall include a descrip-

1                   tion of the basis for any determination  
2                   under clause (ii).”.

3 **SEC. 5. ACQUISITIONS OF DISTRESSED BANKS.**

4       (a) DEFINITIONS.—In this section:

5           (1) APPROPRIATE FEDERAL BANKING AGENCY;  
6       INSURED BANK.—The terms “appropriate Federal  
7       banking agency” and “insured bank” have the  
8       meanings given the terms in section 3 of the Federal  
9       Deposit Insurance Act (12 U.S.C. 1813).

10          (2) BOARD.—The term “Board” means the  
11       Board of Governors of the Federal Reserve System.

12          (3) BANK HOLDING COMPANY; CONTROL; SUB-  
13       SIDIARY.—The terms “bank holding company”,  
14       “control”, and “subsidiary” have the meanings given  
15       the terms in section 2 of the Bank Holding Com-  
16       pany Act of 1956 (12 U.S.C. 1841).

17          (4) COVERED ENTITY.—The term “covered en-  
18       tity” means—

19           (A) after a transaction described in sub-  
20       section (b)(1)(A), the bank holding company of  
21       which the applicable distressed insured bank  
22       has become a subsidiary;

23           (B) after a transaction described in sub-  
24       section (b)(1)(B), the bank holding company

1 that has acquired the direct or indirect owner-  
2 ship or control described in that provision; and

3 (C) after a merger or consolidation de-  
4 scribed in subsection (b)(1)(C), the bank hold-  
5 ing company that results because of that merg-  
6 er or consolidation.

7 (5) DISTRESSED INSURED BANK.—The term  
8 “distressed insured bank” means an insured bank  
9 that has a class of equity securities, or is controlled,  
10 directly or indirectly, by a company that has a class  
11 of equity securities—

12 (A) registered pursuant to section 12(b) of  
13 the Securities Exchange Act of 1934 (15  
14 U.S.C. 78l(b)); and

15 (B) the price of which on a national securi-  
16 ties exchange has declined not less than 20 per-  
17 cent at any time on or after March 1, 2023, as  
18 compared with the highest price of those securi-  
19 ties on that exchange on or after March 1,  
20 2023.

21 (6) EQUITY SECURITY; EXCHANGE.—The terms  
22 “equity security” and “exchange” have the meanings  
23 given the terms in section 3(a) of the Securities Ex-  
24 change Act of 1934 (15 U.S.C. 78c(a)).

1           (7) NATIONAL SECURITIES EXCHANGE.—The  
2 term “national securities exchange” means an ex-  
3 change that is registered in accordance with section  
4 6 of the Securities Exchange Act of 1934 (15 U.S.C.  
5 78f).

6           (8) TOTAL CONSOLIDATED ASSETS.—The term  
7 “total consolidated assets” means, with respect to an  
8 entity, the total consolidated assets of that entity, as  
9 determined pursuant to the instructions of Form FR  
10 Y-9C of the Board.

11       (b) TEMPORARY WAIVER OF REGULATORY APPROV-  
12 ALS FOR ACQUISITIONS OF DISTRESSED BANKS.—

13           (1) IN GENERAL.—Subject to paragraphs (2)  
14 and (3), except as provided in paragraph (4), and  
15 notwithstanding any requirement or restriction relat-  
16 ing to notification, approval, or other matter under  
17 section 3 or 4 of the Bank Holding Company Act of  
18 1956 (12 U.S.C. 1842, 1843), section 7(j) or 18(c)  
19 of the Federal Deposit Insurance Act (12 U.S.C.  
20 1817(j), 1828(c)), or any other Federal or State  
21 law, after written notice to the Board—

22                   (A) a distressed insured bank may become  
23 a subsidiary of a bank holding company;

24                   (B) a bank holding company may acquire  
25 direct or indirect ownership or control of any

1 voting shares of any distressed insured bank or  
2 any company that controls a distressed insured  
3 bank; and

4 (C) a bank holding company may merge or  
5 consolidate with a bank holding company that  
6 has a subsidiary that is a distressed insured  
7 bank.

8 (2) CONDITIONS.—Paragraph (1) shall apply  
9 only if—

10 (A) after the applicable transaction or  
11 other action under that paragraph—

12 (i) the applicable covered entity would  
13 meet the required capital levels for well  
14 capitalized bank holding companies estab-  
15 lished by the Board; or

16 (ii) in the case of a transaction or  
17 other action described in subparagraph (A)  
18 or (B) of that paragraph, the total consoli-  
19 dated assets of the applicable covered enti-  
20 ty would be not more than 2 times the  
21 amount of the total consolidated assets (as  
22 measured immediately before the trans-  
23 action or other action) of—

24 (I) in the case of an action de-  
25 scribed in subparagraph (A) of that

1 paragraph, the bank holding company  
2 of which the distressed insured bank  
3 is becoming a subsidiary as a result of  
4 that action; or

5 (II) in the case of an acquisition  
6 described in subparagraph (B) of that  
7 paragraph, the bank holding company  
8 that is acquiring direct or indirect  
9 ownership or control of any voting  
10 shares of the distressed insured bank  
11 or the company that controls a dis-  
12 tressed insured bank; and

13 (B) each insured bank controlled by the  
14 applicable covered entity—

15 (i) has a composite rating, as deter-  
16 mined by the appropriate Federal banking  
17 agency in the most recent report of exam-  
18 ination of the applicable insured bank, of  
19 1 or 2 under the Uniform Financial Insti-  
20 tution Rating System; and

21 (ii) has been assigned by the appro-  
22 priate Federal banking agency a rating of  
23 “outstanding” or “satisfactory” in the  
24 most recent Community Reinvestment Act



1 examination of the applicable insured  
2 bank.

3 (3) EXPIRATION.—A transaction or other ac-  
4 tion to which paragraph (1) applies shall be con-  
5 summated not later than 90 days after the date of  
6 enactment of this Act.

7 (4) EXCEPTIONS.—Paragraph (1) shall not  
8 apply to—

9 (A) any action that would cause a dis-  
10 tressed insured bank to become a subsidiary of  
11 an insured bank;

12 (B) any acquisition of direct or indirect  
13 ownership or control by an insured bank of any  
14 voting shares of any distressed insured bank or  
15 any company that controls a distressed insured  
16 bank; or

17 (C) any merger, consolidation, acquisition  
18 of assets, or other acquisition of control, of an-  
19 other company that would be subject to section  
20 14 of the Bank Holding Company Act of 1956  
21 (12 U.S.C. 1852).

22 (c) NO PREMERGER NOTIFICATION AND WAITING  
23 PERIOD.—A transaction under subsection (b) shall be ex-

- 1   empt from the requirements of section 7A of the Clayton
- 2   Act (15 U.S.C. 18a).

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