

118TH CONGRESS
1ST SESSION

S. 1790

To amend the Federal Deposit Insurance Act to clarify that the Federal Deposit Insurance Corporation and appropriate Federal regulators have the authority to claw back certain compensation paid to executives, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 1, 2023

Ms. WARREN (for herself, Mr. HAWLEY, Ms. CORTEZ MASTO, Mr. BRAUN, Mr. VANCE, Mr. MENENDEZ, Mr. WARNER, Mr. VAN HOLLEN, Ms. SMITH, Mrs. BRITT, Mr. CRAMER, Mr. WARNOCK, and Mr. FETTERMAN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Federal Deposit Insurance Act to clarify that the Federal Deposit Insurance Corporation and appropriate Federal regulators have the authority to claw back certain compensation paid to executives, 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 Clawback Act”.

1 **SEC. 2. CLAWBACK.**

2 Section 8(b) of the Federal Deposit Insurance Act
 3 (12 U.S.C. 1818(b)) is amended by inserting after para-
 4 graph (8) the following:

5 “(9) CLAWBACK.—

6 “(A) DEFINITIONS.—In this paragraph:

7 “(i) COVERED COMPENSATION.—The
 8 term ‘covered compensation’ means—

9 “(I) salary;

10 “(II) bonuses;

11 “(III) any compensation that is
 12 granted, earned, or vested based whol-
 13 ly or in part upon the attainment of
 14 any financial reporting measure or
 15 other performance metric;

16 “(IV) equity-based compensation;

17 “(V) time- or service-based
 18 awards;

19 “(VI) awards based on non-
 20 financial metrics; and

21 “(VII) any profits realized from
 22 the buying or selling of securities.

23 “(ii) COVERED PARTY.—

24 “(I) IN GENERAL.—The term
 25 ‘covered party’ means an entity de-
 26 scribed in subclause (II) with respect

1 to an insured depository institution
2 that caused more than a minimal fi-
3 nancial loss to, or a significant ad-
4 verse effect on, the insured depository
5 institution.

6 “(II) ENTITIES DESCRIBED.—An
7 entity described in this subclause is
8 any of the following:

9 “(aa) Any director, officer,
10 or controlling stockholder (other
11 than a bank holding company or
12 savings and loan holding com-
13 pany) of, or agent for, an insured
14 depository institution.

15 “(bb) Any other person who
16 has filed or is required to file a
17 change-in-control notice with the
18 appropriate Federal banking
19 agency under section 7(j).

20 “(cc) Any shareholder (other
21 than a bank holding company or
22 savings and loan holding com-
23 pany), joint venture partner, and
24 any other person as determined
25 by the appropriate Federal bank-

1 ing agency (by regulation or
2 case-by-case) who participates in
3 the conduct of the affairs of an
4 insured depository institution.

5 “(B) CLAWBACK.—

6 “(i) LIABILITY OF COVERED PARTY.—

7 A covered party with respect to an insured
8 depository institution with total assets
9 more than \$10,000,000,000 is liable to the
10 Corporation for any covered compensation
11 clawed back under clause (ii).

12 “(ii) REQUIRED CLAWBACKS.—In the
13 case of insolvency, resolution, or the ap-
14 pointment of the Corporation as receiver of
15 any insured depository institution with
16 total assets more than \$10,000,000,000,
17 the Corporation shall claw back all or part
18 of the covered compensation received by
19 any covered party with respect to the in-
20 sured depository institution during the pre-
21 ceding 3 years.

22 “(iii) DEPOSIT.—Any covered com-
23 pensation clawed back under this subpara-
24 graph shall be deposited into the Deposit
25 Insurance Fund.”.

1 **SEC. 3. ORDERLY LIQUIDATION OF COVERED FINANCIAL**
2 **COMPANIES.**

3 Section 204(a)(3) of the Dodd-Frank Wall Street Re-
4 form and Consumer Protection Act (12 U.S.C.
5 5384(a)(3)) is amended by striking “the financial com-
6 pany” and inserting “of a financial company for which the
7 Corporation is appointed receiver, regardless of the proc-
8 ess by which the Corporation is appointed,”.

○