

# Calendar No. 115

118TH CONGRESS  
1ST SESSION

# S. 2190

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

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## IN THE SENATE OF THE UNITED STATES

JUNE 22, 2023

Mr. BROWN from the Committee on Banking, Housing, and Urban Affairs, reported the following original bill; which was read twice and placed on the calendar

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## A BILL

To amend the Federal Deposit Insurance Act to increase bank executive accountability and to improve financial stability, 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 “Recovering Executive  
5 Compensation Obtained from Unaccountable Practices  
6 Act of 2023” or the “RECOUP Act of 2023”.

1 **SEC. 2. REMOVAL AND PROHIBITION AUTHORITIES.**

2 Section 8(e) of the Federal Deposit Insurance Act  
3 (12 U.S.C. 1818(e)) is amended—

4 (1) in paragraph (1)—

5 (A) in subparagraph (A)—

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

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

10 (iii) by adding at the end the fol-  
11 lowing:

12 “(iv) in the case of a senior executive,  
13 as defined in paragraph (2)(C), failed to  
14 carry out the responsibilities of the senior  
15 executive for governance, operations, or  
16 risk or financial management of an insured  
17 depository institution or business institu-  
18 tion;”;

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

22 (C) in subparagraph (C)—

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

1 (ii) by striking clause (ii) and insert-  
2 ing the following:

3 “(ii) demonstrates—

4 “(I) willful or continuing dis-  
5 regard by such party for the safety or  
6 soundness of such insured depository  
7 institution or business institution; or

8 “(II) in the case of a senior execu-  
9 tive, as defined in paragraph (2)(C),  
10 gross negligence by such senior execu-  
11 tive in the performance of the duties  
12 of the senior executive to the insured  
13 depository institution or business in-  
14 stitution,”; and

15 (2) in paragraph (2)—

16 (A) in subparagraph (A)—

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

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

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

23 “(iv) a senior executive of an insured  
24 depository institution has—

1                   “(I) breached any fiduciary duty  
2                   owed to the institution, if the breach  
3                   is determined to require grossly neg-  
4                   ligent, reckless, or willful conduct;

5                   “(II) failed to appropriately im-  
6                   plement financial, risk, or supervisory  
7                   reporting or information system or  
8                   controls; or

9                   “(III) having implemented a sys-  
10                  tem or controls described in subclause  
11                  (II), has failed to oversee its oper-  
12                  ations; or”;

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

14                  “(C) DEFINITION.—In this paragraph, the  
15                  term ‘senior executive’ means an individual who  
16                  has oversight authority for managing the over-  
17                  all governance, operations, risk, or finances of  
18                  a depository institution or depository institution  
19                  holding company, including the president, the  
20                  chief executive officer, the chief operating offi-  
21                  cer, the chief financial officer, the chief risk of-  
22                  ficer, the chief legal officer, the chairman of the  
23                  board, an inside director of the board of direc-  
24                  tors, and an individual who occupies an equiva-  
25                  lent position, as determined by the depository

1 institution or depository institution holding  
2 company, as applicable.”.

3 **SEC. 3. GOVERNANCE AND ACCOUNTABILITY STANDARDS.**

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

6 **“SEC. 54. GOVERNANCE AND ACCOUNTABILITY STAND-**  
7 **ARDS.**

8 “(a) DEFINITION.—In this section, the term ‘senior  
9 executive’ has the meaning given the term in section  
10 8(e)(2)(C).

11 “(b) ADOPTION OF STANDARDS.—Except as provided  
12 in subsection (d), each depository institution and depository  
13 institution holding company shall adopt governance  
14 and accountability standards in the bylaws (or their  
15 equivalents) of the depository institution or depository in-  
16 stitution holding company, as applicable, that promote  
17 safety and soundness, responsiveness to supervisory mat-  
18 ters, and responsible management.

19 “(c) REQUIRED CONTENTS.—

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

22 “(A) policies for senior executives and  
23 members of the board of directors of the depository  
24 institution or depository institution holding  
25 company relating to appropriate risk manage-

1           ment and responsiveness to supervisory mat-  
2           ters, including responding to the appropriate  
3           Federal banking agency and State banking su-  
4           pervisor, as applicable, on supervisory matters  
5           on a timely basis;

6           “(B) accountability and corporate govern-  
7           ance mechanisms and controls such as—

8                   “(i) directing such senior executives  
9                   and board of directors to implement re-  
10                  porting or information system or controls  
11                  and oversee such systems appropriately  
12                  and prudently;

13                  “(ii) directing that management does  
14                  not deviate from sound governance, inter-  
15                  nal control, or risk management; and

16                  “(iii) directing that appropriate long-  
17                  term risk management be tailored to long-  
18                  term economic conditions; and

19           “(C) except as provided in paragraph (2)  
20           and subsection (d), in the event of the failure  
21           of the depository institution or depository insti-  
22           tution holding company, as applicable, clawback  
23           authority that permits the board of directors of  
24           the depository institution or depository institu-  
25           tion holding company (or the equivalent), or, if

1 the Corporation has been appointed receiver or  
2 conservator of the depository institution, the  
3 Corporation, in its capacity as receiver or con-  
4 servator, to recover from a senior executive of  
5 the depository institution or depository institu-  
6 tion holding company who is responsible for the  
7 failed condition of the depository institution or  
8 depository institution holding company—

9 “(i) any bonus, other incentive-based  
10 or equity-based compensation, severance  
11 pay, or golden parachute benefits received  
12 by that senior executive from the depository  
13 institution or depository institution  
14 holding company during the 24-month pe-  
15 riod preceding the failure of the depository  
16 institution or depository institution holding  
17 company; and

18 “(ii) any profits realized by that sen-  
19 ior executive from the sale of securities of  
20 the entity during the 24-month period de-  
21 scribed in clause (i).

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

24 “(A) who has been employed by the depository  
25 institution or depository institution holding

1           company for not more than 18 months before  
2           the date of the failure of the depository institu-  
3           tion or depository institution holding company;  
4           and

5           “(B) whose conduct did not contribute to  
6           the failure of the depository institution or de-  
7           pository institution holding company, as appli-  
8           cable.

9           “(d) EXCEPTION.—This section shall not apply to a  
10          depository institution or depository institution holding  
11          company with total consolidated assets of not more than  
12          \$10,000,000,000.”.

13       **SEC. 4. CEASE-AND-DESIST PROCEEDINGS.**

14          Section 8(b) of the Federal Deposit Insurance Act  
15          (12 U.S.C. 1818(b)) is amended by inserting after para-  
16          graph (8) the following:

17               “(9) RECOVERY OF COMPENSATION.—If the  
18          Corporation is appointed receiver or conservator of  
19          an insured depository institution with total consoli-  
20          dated assets of more than \$10,000,000,000, the  
21          Corporation may recover for the receivership or con-  
22          servatorship incentive-based compensation, equity-  
23          based compensation, severance pay, golden para-  
24          chute benefits, or compensation that is granted or  
25          vested based wholly or in part upon the attainment



1 of any financial reporting measure or other perform-  
2 ance metric, and any profits realized from the pur-  
3 chase or sale of securities of the depository institu-  
4 tion or depository institution holding company dur-  
5 ing the 24-month period preceding the failure of the  
6 insured depository institution from any senior execu-  
7 tive, as defined in subsection (e)(2)(C), who is re-  
8 sponsible for the failed condition of the depository  
9 institution or depository institution holding com-  
10 pany.”.

11 **SEC. 5. CIVIL MONEY PENALTIES.**

12 Section 8(i)(2) of the Federal Deposit Insurance Act  
13 (12 U.S.C. 1818(i)(2)) is amended—

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

18 (2) in subparagraph (D)(i), by striking  
19 “\$1,000,000” and inserting “\$3,000,000”.

20 **SEC. 6. FAILED BANK MERGERS AND ACQUISITIONS.**

21 (a) FAILED BANK MERGERS.—Section 18(c)(13)(B)  
22 of the Federal Deposit Insurance Act (12 U.S.C.  
23 1828(c)(13)(B)) is amended by striking “section 13.” and  
24 inserting “section 13, if—

1           “(i) at the time the responsible agency proposes  
2           to approve the application, there is no application or  
3           proposed application (other than an application that  
4           also would be subject to the prohibition in subpara-  
5           graph (A)) to acquire the 1 or more insured deposi-  
6           tory institutions in default or in danger of default  
7           pending before any appropriate Federal banking  
8           agency that would, according to the responsible  
9           agency for such application, meet all applicable  
10          standards for approval by the responsible agency;

11          “(ii) the Corporation would provide assistance  
12          under section 13 with respect to the interstate merg-  
13          er transaction; and

14          “(iii) the Corporation has determined that the  
15          interstate merger transaction that is the subject of  
16          the application to the responsible agency is the only  
17          proposed transaction to acquire, directly or indi-  
18          rectly, the 1 or more insured depository institutions  
19          in default or in danger of default pending before the  
20          Corporation (other than an interstate merger trans-  
21          action that also would be subject to the prohibition  
22          in subparagraph (A)) that would permit the Cor-  
23          poration to—

24                  “(I) comply with the least-cost resolution  
25                  requirements set forth in section 13(c)(4); or

1           “(II) avoid the serious adverse effects on  
2           economic conditions or financial stability that  
3           would occur absent exercise of the authority in  
4           section 13(c)(4)(G), if a systemic risk deter-  
5           mination has been made under such section  
6           with respect to the insured depository institu-  
7           tion or institutions that are the subject of the  
8           application.”.

9           (b) FAILED BANK ACQUISITIONS.—Section 3(d)(5)  
10          of the Bank Holding Company Act of 1956 (12 U.S.C.  
11          1842(d)(5)) is amended—

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

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

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

20           (3) by inserting at the end the following:

21                   “(B) Notwithstanding subparagraph (A),  
22                   the Board may approve an application that  
23                   would otherwise be subject to the prohibition in  
24                   subparagraph (A) or (B) of paragraph (2) if—

1           “(i) at the time the Board proposes to  
2           approve the application, there is no appli-  
3           cation or proposed application (other than  
4           an application that also would be subject  
5           to the prohibitions in subparagraph (A) or  
6           (B) of paragraph (2)) to acquire, directly  
7           or indirectly, the 1 or more banks in de-  
8           fault or in danger of default, or the acqui-  
9           sition with respect to which assistance is  
10          provided under section 13(c) of the Fed-  
11          eral Deposit Insurance Act (12 U.S.C.  
12          1823(c)), pending before the Board that  
13          would meet all applicable standards for ap-  
14          proval under this section;

15          “(ii) the Federal Deposit Insurance  
16          Corporation would provide assistance  
17          under section 13 of the Federal Deposit  
18          Insurance Act (12 U.S.C. 1823) with re-  
19          spect to the acquisition that is the subject  
20          of the application to the Board; and

21          “(iii) the Federal Deposit Insurance  
22          Corporation has determined that the acqui-  
23          sition is the only proposed transaction to  
24          acquire, directly or indirectly, the 1 or  
25          more banks in default or in danger of de-

1 fault pending before the Corporation (other  
2 than an acquisition that also would be sub-  
3 ject to the prohibition in subparagraph (A)  
4 or (B) of paragraph (2)) that would permit  
5 the Corporation to—

6 “(I) comply with the least-cost  
7 resolution requirements set forth in  
8 section 13(c)(4) of the Federal De-  
9 posit Insurance Act (12 U.S.C.  
10 1823(c)(4)); or

11 “(II) avoid the serious adverse  
12 effects on economic conditions or fi-  
13 nancial stability that would occur ab-  
14 sent exercise of the authority in sec-  
15 tion 13(c)(4)(G) of the Federal De-  
16 posit Insurance Act (12 U.S.C.  
17 1823(c)(4)(G)), if a systemic risk de-  
18 termination has been made under  
19 such section with respect to the bank  
20 or banks that are the subject of the  
21 application.”.

22 **SEC. 7. TRANSPARENCY RELATING TO FAILED INSTITU-**  
23 **TIONS.**

24 (a) **DEFINITIONS.**—In this section:



1           (3) any internal changes the Board is making  
2           to the operations and culture of the Board with re-  
3           spect to the supervisory and regulatory actions de-  
4           scribed in paragraph (1), including the frameworks,  
5           strategies, and metrics that the Board is using to—

6                   (A) improve internal communication within  
7           the Federal Reserve System and with Federal  
8           banking agencies and State banking super-  
9           visors;

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

12                   (C) ensure timely, appropriate, and effec-  
13           tive actions and communications are taken in  
14           response to supervisory concerns;

15           (4) the budgets, staffing, and any use of out-  
16           side services to accomplish the items described in  
17           paragraph (3); and

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

20 **SEC. 9. REPORTS AND TESTIMONY.**

21           (a) IN GENERAL.—Not later than 180 days (or dur-  
22           ing a period of financial stress, a reasonable time) after  
23           the appointment of the Federal Deposit Insurance Cor-  
24           poration as receiver or conservator of an insured deposi-  
25           tory institution with more than \$10,000,000,000 in total

1 consolidated assets, as those terms are defined in section  
2 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813),  
3 the inspector general of the primary Federal regulator of  
4 the insured depository institution or depository institution  
5 holding company, including the Board of Governors of the  
6 Federal Reserve System, shall submit to the Committee  
7 on Banking, Housing, and Urban Affairs of the Senate  
8 and the Committee on Financial Services of the House of  
9 Representatives a report that includes—

10 (1) an evaluation of the effectiveness of the pri-  
11 mary Federal regulator in carrying out its super-  
12 visory responsibilities with respect to the insured de-  
13 pository institution or depository institution holding  
14 company;

15 (2) an identification of any acts or omissions on  
16 the part of officials of the primary Federal regulator  
17 that contributed to the failure of the insured deposi-  
18 tory institution or depository institution holding  
19 company;

20 (3) an identification of any actions that could  
21 have been taken by the primary Federal regulator  
22 that would have prevented the failure of the insured  
23 depository institution or depository institution hold-  
24 ing company; and



1           (4) an identification of the causes of the failure  
2           of the insured depository institution or depository in-  
3           stitution holding company, including actions or omis-  
4           sions by both the primary Federal regulator and  
5           management of the insured depository institution or  
6           depository institution holding company.

7           (b) TESTIMONY.—Not later than 30 days after the  
8           date on which the report required under subsection (a)  
9           is received, the inspector general of the primary Federal  
10          regulator shall be available to testify before the commit-  
11          tees described in subsection (a).

12          **SEC. 10. SENSE OF CONGRESS.**

13          It is the Sense of Congress that—

14                 (1) the financial system of the United States is  
15                 strong and resilient, and the vast majority of the fi-  
16                 nancial institutions in the United States are well  
17                 managed;

18                 (2) in order to ensure the financial system of  
19                 the United States remains strong and resilient, mis-  
20                 management by senior executives must be deterred;

21                 (3) financial regulators should operate in an ap-  
22                 propriate and transparent manner; and

23                 (4) this Act and the amendments made by this  
24                 Act should not be used to penalize senior executives

1 of healthy financial institutions that are appro-  
2 priately managed.

3 **SEC. 11. RULE OF CONSTRUCTION.**

4 Except as otherwise specifically provided herein,  
5 nothing in this Act, or the amendments made by this Act,  
6 may be construed to amend or alter the authority of the  
7 Federal Deposit Insurance Corporation or any other ap-  
8 propriate Federal banking agency, as defined in section  
9 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).



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