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118TH CONGRESS
1ST SESSION

S. _____

[Report No. 118-_____]]

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

IN THE SENATE OF THE UNITED STATES

Mr. BROWN (for himself and Mr. SCOTT of South Carolina), from the Committee on Banking, Housing, and Urban Affairs, reported the following original bill; which was read twice and placed on the calendar

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 AUTHORITY.**

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, risk
16 or financial management of an insured de-
17 pository 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 exec-
9 utive, as defined in paragraph (2)(C),
10 gross negligence by such senior execu-
11 tive in the performance of their duties
12 to the depository institution or busi-
13 ness institution,”; and

14 (2) in paragraph (2)—

15 (A) in subparagraph (A)—

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

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

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

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

24 “(I) breached any fiduciary duty
25 owed to the institution, if the breach

1 is defined and determined to require
2 grossly negligent, reckless, or willful
3 conduct;

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

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

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

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

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

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

4 **“SEC. 54. GOVERNANCE AND ACCOUNTABILITY STAND-**
5 **ARDS.**

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

9 “(b) ADOPTION OF STANDARDS.—Except as provided
10 in subsection (d), each depository institution and depository
11 institution holding company shall adopt governance
12 and accountability standards in the bylaws and articles of
13 incorporation (or their equivalents) of the depository insti-
14 tution or depository institution holding company, as appli-
15 cable, that promote safety and soundness, responsiveness
16 to supervisory matters, and responsible management.

17 “(c) REQUIRED CONTENTS.—

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

20 “(A) requirements for senior executives
21 and members of the boards of directors of de-
22 pository institutions and depository institution
23 holding companies relating to appropriate risk
24 management and responsiveness to supervisory
25 matters, including responding to the appro-
26 priate Federal banking regulator and State

1 banking regulator on supervisory matters on a
2 timely basis; and

3 “(B) accountability and corporate govern-
4 ance mechanisms and controls such as—

5 “(i) ensuring such senior executives
6 and boards of directors are implementing
7 reporting or information system or controls
8 and overseeing such systems appropriately
9 and prudently;

10 “(ii) ensuring that management does
11 not deviate from sound governance, inter-
12 nal control, or risk management; and

13 “(iii) ensuring appropriate long-term
14 risk management tailored to long-term eco-
15 nomic conditions; and

16 “(C) except as provided in paragraph (2)
17 and subsection (d), in the event of the failure
18 of the depository institution or depository insti-
19 tution holding company, as applicable, clawback
20 authority that permits the board of directors of
21 the depository institution or depository institu-
22 tion holding company (or the equivalent), or, if
23 the Corporation has been appointed receiver or
24 conservator of the depository institution, the
25 Corporation, in its capacity as receiver or con-

1 servator, to recover from a senior executive of
2 the depository institution or depository institu-
3 tion holding company—

4 “(i) any bonus or other incentive-
5 based or equity-based compensation re-
6 ceived by that senior executive from the
7 depository institution or depository institu-
8 tion holding company during the 24-month
9 period preceding the failure of the deposi-
10 tory institution or depository institution
11 holding company; and

12 “(ii) any profits realized by that sen-
13 ior executive from the sale of securities of
14 the entity during the 24-month period de-
15 scribed in clause (i).

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

18 “(A) who has been employed by the deposi-
19 tory institution or depository institution holding
20 company for not more than 12 months before
21 the date of the failure of the depository institu-
22 tion or depository institution holding company;
23 and

24 “(B) whose conduct did not contribute to
25 the failure of the depository institution or de-

1 pository institution holding company, as appli-
2 cable.

3 “(d) EXCEPTION.—This section shall not apply to a
4 depository institution or depository institution holding
5 company with total consolidated assets of not more than
6 \$10,000,000,000.”.

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

8 Section 8(b) of the Federal Deposit Insurance Act
9 (12 U.S.C. 1818(b)) is amended—

10 (1) by redesignating paragraph (8) as para-
11 graph (9); and

12 (2) by inserting after paragraph (7) the fol-
13 lowing:

14 “(8) RECOVERY OF COMPENSATION.—If the
15 Corporation is appointed receiver or conservator of
16 an insured depository institution with total consoli-
17 dated assets of more than \$10,000,000,000, the
18 Corporation may recover for the receivership or con-
19 servatorship incentive-based compensation, equity-
20 based compensation, or compensation that is granted
21 or vested based wholly or in part upon the attain-
22 ment of any financial reporting measure or other
23 performance metric, and any profits realized from
24 the purchase or sale of securities of the depository
25 institution or depository institution holding company

1 from any senior executive during the 24-month pe-
2 riod preceding the failure of the insured depository
3 institution.”.

4 **SEC. 5. CIVIL MONEY PENALTIES.**

5 Section 8(i)(2) of the Federal Deposit Insurance Act
6 (12 U.S.C. 1818(i)(2)) is amended—

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

11 (2) in subparagraph (D)(i), by striking
12 “\$1,000,000” and inserting “\$3,000,000”.

13 **SEC. 6. RULE OF CONSTRUCTION.**

14 Except as otherwise specifically provided herein,
15 nothing in this Act, or the amendments made by this Act,
16 may be construed to amend or alter the authority of the
17 Federal Deposit Insurance Corporation or any other ap-
18 propriate Federal banking agency, as defined in section
19 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).