

Calendar No. \_\_\_\_\_

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.

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IN THE SENATE OF THE UNITED STATES

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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

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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 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 execu-  
9 tive, 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).