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”.

SEC. 2. REMOVAL AND PROHIBITION AUTHORITY.

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

(1) in paragraph (1)—

(A) in subparagraph (A)—

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

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

(iii) by adding at the end the following:

“(iv) in the case of a senior executive, as defined in paragraph (2)(C), failed to carry out the responsibilities of the senior executive for governance, operations, risk or financial management of an insured depository institution or business institution;”;

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

(C) in subparagraph (C)—

(i) in the matter preceding clause (i), by inserting “failure,” after “practice,”; and
(ii) by striking clause (ii) and inserting the following:

“(ii) demonstrates—

“(I) willful or continuing disregard by such party for the safety or soundness of such insured depository institution or business institution; or

“(II) in the case of a senior executive, as defined in paragraph (2)(C), gross negligence by such senior executive in the performance of their duties to the depository institution or business institution,”; and

(2) in paragraph (2)—

(A) in subparagraph (A)—

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

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

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

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

“(I) breached any fiduciary duty owed to the institution, if the breach
is defined and determined to require grossly negligent, reckless, or willful conduct;

“(II) failed to appropriately implement financial, risk, or supervisory reporting or information system or controls; or

“(III) having implemented a system or controls described in subclause (II), has failed to oversee its operations; or”; and

(B) by adding at the end the following:

“(C) DEFINITION.—In this paragraph, the term ‘senior executive’ means an individual who has oversight authority for managing the overall governance, operations, risk, or finances of a depository institution or depository institution holding company, including the president, chief executive officer, chief operating officer, chief financial officer, chief risk officer, chief legal officer, chairman of the board, an inside director of the board of directors, and an individual who occupies an equivalent position, as determined by the depository institution or depository institution holding company, as applicable.”.
SEC. 3. GOVERNANCE AND ACCOUNTABILITY STANDARDS.

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

SEC. 54. GOVERNANCE AND ACCOUNTABILITY STANDARDS.

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

“(b) ADOPTION OF STANDARDS.—Except as provided in subsection (d), each depository institution and depository institution holding company shall adopt governance and accountability standards in the bylaws and articles of incorporation (or their equivalents) of the depository institution or depository institution holding company, as applicable, that promote safety and soundness, responsiveness to supervisory matters, and responsible management.

“(c) REQUIRED CONTENTS.—

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

“(A) requirements for senior executives and members of the boards of directors of depository institutions and depository institution holding companies relating to appropriate risk management and responsiveness to supervisory matters, including responding to the appropriate Federal banking regulator and State
banking regulator on supervisory matters on a
timely basis; and

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

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

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

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

“(C) except as provided in paragraph (2)
and subsection (d), in the event of the failure
of the depository institution or depository insti-
tution holding company, as applicable, clawback
authority that permits the board of directors of
the depository institution or depository institu-
tion holding company (or the equivalent), or, if
the Corporation has been appointed receiver or
conservator of the depository institution, the
Corporation, in its capacity as receiver or con-
servator, to recover from a senior executive of
the depository institution or depository institu-
tion holding company—

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

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

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

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

“(B) whose conduct did not contribute to
the failure of the depository institution or de-
pository institution holding company, as applicable.

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

SEC. 4. CEASE-AND-DESIST PROCEEDINGS.

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

(1) by redesignating paragraph (8) as paragraph (9); and

(2) by inserting after paragraph (7) the following:

“(8) RECOVERY OF COMPENSATION.—If the Corporation is appointed receiver or conservator of an insured depository institution with total consolidated assets of more than $10,000,000,000, the Corporation may recover for the receivership or conservatorship incentive-based compensation, equity-based compensation, or compensation that is granted or vested based wholly or in part upon the attainment of any financial reporting measure or other performance metric, and any profits realized from the purchase or sale of securities of the depository institution or depository institution holding company
from any senior executive during the 24-month period preceding the failure of the insured depository institution.”.

SEC. 5. CIVIL MONEY PENALTIES.

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

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

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

SEC. 6. RULE OF CONSTRUCTION.

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