UNITED STATES SENATE COMMITTEE ON
BANKING, HOUSING, & URBAN AFFAIRS

RECOVERING EXECUTIVE COMPENSATION FROM UNACCOUNTABLE PRACTICES (RECOUP) ACT

Background

The Recovering Executive Compensation from Unaccountable Practices (RECOUP) Act addresses concerns surrounding executive accountability following recent bank failures by strengthening certain existing authorities regarding senior executives. The bill also requires banks to adopt forward looking, corporate governance and accountability standards to promote responsible management and provides clawback authority in the event of a bank failure.

The RECOUP Act will:

- Strengthen the banking agencies' ability to remove or prohibit senior executives who did not appropriately oversee and manage the risks and governance of their banks.
- Require banks to include governance and accountability standards in their bylaws.
- Provide the FDIC with the authority to clawback certain compensation from senior executives at failed banks, including profits made by selling the bank's stock.
- Increase and strengthen penalties against bad actors.

Section-by-Section:

Section 1 – Short Title

- The "Recovering Executive Compensation from Unaccountable Practices (RECOUP) Act."

Section 2 – Removal and Prohibition Authority

- Building on existing authorities in the Federal Deposit Insurance Act, allows regulators to remove and prohibit from the banking industry senior executives that demonstrated misconduct in their oversight of a bank.
- Building on existing authorities, allows regulators to remove senior executives that breach fiduciary duties to a bank, or that fail to appropriately implement risk, financial, or other controls.
- Defines "senior executive" to include a bank's senior leadership and certain directors.

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Section 3 – Governance and Accountability Standards

- Requires banks to adopt in their bylaws or articles of incorporation standards that promote safety, soundness, and responsible bank management.
- These standards include executives and directors implementing sound risk management practices and promptly responding to supervisory matters.
- Additionally, these standards allow the bank's board or the FDIC to claw back executive compensation received in the 24 months prior to a bank's failure, including incentive-based and equity-based compensation, as well as profits realized from selling the bank's stock.
- Such clawbacks would not include Senior Executives that come to institutions in crisis—or "white knights."
- This section would not include community banks.

Section 4 – Cease-and-Desist Authority

- Permits the FDIC to claw back senior executives' compensation received in the 24 months prior to a bank's failure, including incentive-based, equity-based, or performance-based compensation, as well as profits realized from selling the bank's stock.
- Such clawbacks would not include community banks.

Section 5 – Civil Money Penalties

- Strengthens regulators' ability to impose penalties against a senior executive who "recklessly" violates the law, engages in unsafe and unsound practices, or breaches any fiduciary duty.
- Increases the maximum civil money penalty regulators may assess for the most egregious violations by senior executives.

Section 6 – Rule of Construction

- Clarifies that this Act and the amendments made by this Act do not affect the existing authority of the FDIC or any other appropriate federal banking agency.