

The Recovering Executive Compensation from Unaccountable Practices (RECOUP) Act Voted out Of Senate Banking Committee

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On June 21, 2023, the U.S. Senate Committee on Banking, Housing, and Urban Affairs (the “Senate Banking Committee”) voted the Recover Executive Compensation from Unaccountable Practices Act (the “RECOUP Act”) out of committee and into the full Senate by a vote of 21 to 2. U.S. Sen. Sherrod Brown, Chairman of the Senate Banking Committee, described the RECOUP Act in a press release as a bipartisan response to the recent spate of bank executives pushing unsustainable business models designed to increase short-term profits and executive compensation, ignoring directives and warnings from regulators and taking risky bets at the expense of their customers. The three key tenets of the RECOUP Act are (1) enhanced oversight authority, (2) strengthened corporate governance and (3) increased deterrence.

1. **Enhanced Oversight Authority.** The RECOUP Act would allow the federal government (i) to remove senior bank executives of any insured bank, regardless of size, for failing to appropriately manage the risks and governance of their respective institutions and (ii) in the event of a bank failure, to claw back any bonus, incentive-based compensation or equity-based compensation received by a senior executive (as well as any profits realized from selling the bank’s stock) of a bank with \$10 billion or more in total consolidated assets during the two years preceding said failure. The RECOUP Act broadly defines a “senior executive” to mean “an individual who has oversight authority for managing the overall governance, operations, risk, or finances of a depository institution or depository institution holding company,” which would include a president, C-suite executive, chairman of the board, an inside director of the board of directors, and/or any individual who occupies an equivalent position, as applicable.

2. **Strengthened Corporate Governance.** The RECOUP Act would require each depository institution and depository institution holding company with \$10 billion or more in total consolidated assets to include in its bylaws and articles of incorporation (or their equivalents) forward-looking, corporate governance and accountability standards that promote safety and soundness, executive responsiveness to supervisory matters and responsible corporate management. Such standards would include requirements that senior executives (i) respond to federal and state regulators on supervisory matters in a timely manner, (ii) prudently ensure and oversee reporting and/or information systems and (iii) affirm adherence to appropriate long-term risk management objectives tailored to long-term economic conditions.

3. **Increased Deterrence.** The RECOUP Act would make it easier for the federal government to penalize violators of certain civil money provisions of the Federal Deposit Insurance Act (the “FDIA”) by lowering the requisite mens rea, or intent, for certain violations of the FDIA (i.e., third-tier civil money penalties pursuant to 12 U.S.C. § 1818(i)(2)(C)(i)) from “knowingly” to “recklessly” and would increase the maximum per day civil money penalty regulators may assess for such violations from \$1 million to \$3 million. 12 U.S.C. § 1818(i)(2)(C) currently authorizes the imposition of a third-tier civil money penalty against an insured depository institution which, and/or an institution-affiliated party who, knowingly (i) violates any law or regulation, certain final orders and temporary orders, written conditions imposed by a federal banking agency, or any written agreements between such depository institution and a federal banking agency, (ii) engages in any unsafe or unsound practice in conducting the affairs of such depository institution or (iii) breaches any fiduciary duty, and knowingly or recklessly causes a substantial loss to such depository institution or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach.

The full legislative text of the RECOUP Act can be found [here](#) and a summary of the bill can be found [here](#).

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