

118TH CONGRESS  
1ST SESSION

# S. 1045

To amend the Federal Deposit Insurance Act to clarify that the Federal Deposit Insurance Corporation and appropriate Federal regulators have the authority to claw back certain compensation paid to executives.

---

## IN THE SENATE OF THE UNITED STATES

MARCH 29, 2023

Ms. WARREN (for herself, Mr. HAWLEY, Ms. CORTEZ MASTO, and Mr. BRAUN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

---

## A BILL

To amend the Federal Deposit Insurance Act to clarify that the Federal Deposit Insurance Corporation and appropriate Federal regulators have the authority to claw back certain compensation paid to executives.

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 “Failed Bank Execu-  
5 tives Clawback Act”.

1 **SEC. 2. CLAWBACK.**

2 Section 8(b) of the Federal Deposit Insurance Act  
3 (12 U.S.C. 1818(b)) is amended by inserting after para-  
4 graph (8) the following:

5 “(9) CLAWBACK.—

6 “(A) DEFINITION.—In this paragraph, the  
7 term ‘covered compensation’ means—

8 “(i) salary;

9 “(ii) bonuses;

10 “(iii) any compensation that is grant-  
11 ed, earned, or vested based wholly or in  
12 part upon the attainment of any financial  
13 reporting measure or other performance  
14 metric;

15 “(iv) equity-based compensation;

16 “(v) time- or service-based awards;

17 “(vi) awards based on nonfinancial  
18 metrics; and

19 “(vii) any profits realized from the  
20 buying or selling of securities.

21 “(B) CLAWBACK.—

22 “(i) LIABILITY OF INSTITUTION-AF-  
23 FILIATED PARTY.—An institution-affiliated  
24 party that is responsible for the condition  
25 of the insured depository institution is lia-  
26 ble to the Corporation for any covered

1 compensation clawed back under clause  
2 (ii).

3 “(ii) REQUIRED CLAWBACKS.—In the  
4 case of insolvency or resolution of any in-  
5 sured depository institution, the Corpora-  
6 tion shall claw back all or part of the cov-  
7 ered compensation received by an institu-  
8 tion-affiliated party during the preceding 5  
9 years as is necessary to prevent unjust en-  
10 richment and assure that the party bears  
11 losses consistent with the responsibility of  
12 the party.

13 “(iii) DEPOSIT.—Any covered com-  
14 pensation clawed back under this subpara-  
15 graph shall be deposited into the Deposit  
16 Insurance Fund or into the general fund of  
17 the Treasury.”.

18 **SEC. 3. ORDERLY LIQUIDATION OF COVERED FINANCIAL**  
19 **COMPANIES.**

20 Section 204(a)(3) of the Dodd-Frank Wall Street Re-  
21 form and Consumer Protection Act (12 U.S.C.  
22 5384(a)(3)) is amended by striking “the financial com-  
23 pany” and inserting “of a financial company for which the  
24 Corporation is appointed receiver, regardless of the proc-  
25 ess by which the Corporation is appointed,”.

1 **SEC. 4. RESOLVED INSURED DEPOSITORY INSTITUTIONS.**

2       If an insured depository institution is resolved by the  
3 Federal Deposit Insurance Corporation, the creditors and  
4 shareholders of any corresponding depository institution  
5 holding company shall bear the losses of the insured de-  
6 pository institution.

○