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(Original Signature of Member)

118TH CONGRESS
1ST SESSION

H. R. _____

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 HOUSE OF REPRESENTATIVES

Ms. PORTER introduced the following bill; which was referred to the Committee on _____

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. CLAW BACK.**

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 substantially responsible for
25 the condition of the insured depository in-
26 stitution is liable to the Corporation for

1 any covered compensation clawed back
2 under clause (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 of the Dodd-Frank Wall Street Reform
21 and Consumer Protection Act (12 U.S.C. 5384) is amend-
22 ed by adding at the end the following:

23 “(e) CLAWBACK.—

24 “(1) DEFINITION.—In this subsection, the term
25 ‘covered compensation’ means—

1 “(A) salary;

2 “(B) bonuses;

3 “(C) any compensation that is granted,
4 earned, or vested based wholly or in part upon
5 the attainment of any financial reporting meas-
6 ure or other performance metric;

7 “(D) equity-based compensation;

8 “(E) time- or service-based awards;

9 “(F) awards based on nonfinancial
10 metrics; and

11 “(G) any profits realized from the buying
12 or selling of securities.

13 “(2) CLAWBACK.—

14 “(A) LIABILITY OF INSTITUTION-AFFILI-
15 ATED PARTY.—An institution-affiliated party
16 that is substantially responsible for the condi-
17 tion of a covered financial company is liable to
18 the Corporation for any covered compensation
19 clawed back under subparagraph (B).

20 “(B) REQUIRED CLAWBACKS.—In the case
21 of insolvency or resolution of any covered finan-
22 cial company, the Corporation shall claw back
23 all or part of the covered compensation received
24 by an institution-affiliated party during the pre-
25 ceding 5 years as is necessary to prevent unjust

1 enrichment and assure that the party bears
2 losses consistent with the responsibility of the
3 party.

4 “(C) DEPOSIT.—Any covered compensa-
5 tion clawed back under this subparagraph shall
6 be deposited into the Deposit Insurance Fund
7 or into the general fund of the Treasury.”.

8 **SEC. 4. LIABILITY TO THE FEDERAL DEPOSIT INSURANCE**
9 **CORPORATION.**

10 The Bank Holding Company Act (12 U.S.C. 1841
11 et seq.) is amended by adding at the end the following:

12 **“SEC. 15. LIABILITY TO THE FEDERAL DEPOSIT INSURANCE**
13 **CORPORATION.**

14 “(a) IN GENERAL.—Any bank holding company that
15 has control over an insured depository institution for
16 which the Corporation is appointed and acts as receiver
17 under section 11 of the Federal Deposit Insurance Cor-
18 poration Act shall be liable to the Corporation for—

19 “(1) any payments from the Deposit Insurance
20 Fund established under section 11 of the Federal
21 Deposit Insurance Act to insured depositors of such
22 insured depository institution;

23 “(2) any costs incurred by the Corporation as
24 receiver of such insured depository institution; and

1 “(3) any interest on the amounts described in
2 paragraphs (1) and (2).

3 “(b) LIEN AGAINST ALL ASSETS.—

4 “(1) IN GENERAL.—Any liability of a bank
5 holding company to the Corporation under sub-
6 section (a) shall be secured by a lien on all assets
7 of such bank holding company.

8 “(2) SPECIFICATIONS.—Any lien arising under
9 this subsection—

10 “(A) shall be deemed to be automatically
11 perfected;

12 “(B) shall have priority over all other liens,
13 irrespective of their date of creation or perfec-
14 tion; and

15 “(C) may not be avoided in a proceeding
16 under title 11, United States Code.

17 “(c) PRIORITY OF LIABILITY.—

18 “(1) IN GENERAL.—Any liability of a bank
19 holding company to the Corporation under sub-
20 section (a) shall have payment priority over all other
21 liabilities of and interests in the bank holding com-
22 pany.

23 “(2) CLARIFYING RULE.—No payment shall be
24 made to any other creditor or shareholder of the

1 bank holding company until the liability to the Cor-
2 poration under this section has been paid in full.

3 “(d) DEFINITIONS.—In this section:

4 “(1) INSURED DEPOSITORY INSTITUTION.—The
5 term ‘insured depository institution’ has the mean-
6 ing given the term in section 3 of the Federal De-
7 posit Insurance Act.

8 “(2) CORPORATION.—The term ‘Corporation’
9 means the Federal Deposit Insurance Corporation.”.