

118TH CONGRESS
1ST SESSION

S. _____

To amend the Federal Deposit Insurance Act to address transaction account guarantees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. HAGERTY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Federal Deposit Insurance Act to address transaction account guarantees, 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 “Depositor Protection
5 Act of 2023”.

6 **SEC. 2. TRANSACTION ACCOUNT GUARANTEES.**

7 (a) IN GENERAL.—Section 11(a)(1) of the Federal
8 Deposit Insurance Act (12 U.S.C. 1821(a)(1)) is amend-
9 ed—

10 (1) in subparagraph (B)—

1 (A) by striking “The net amount” and in-
2 serting the following:

3 “(i) IN GENERAL.—Subject to clause
4 (ii), the net amount”; and

5 (B) by adding at the end the following:

6 “(ii) INSURANCE FOR NONINTEREST-
7 BEARING TRANSACTION ACCOUNTS.—

8 “(I) IN GENERAL.—Notwith-
9 standing clause (i), and subject to
10 subclause (II) of this clause, the Cor-
11 poration shall insure the net amount,
12 in an amount that is not more than
13 \$100,000,000, that any depositor at
14 an insured depository institution
15 maintains in a noninterest-bearing
16 transaction account. Such amount
17 shall not be taken into account when
18 computing the net amount due to
19 such depositor under clause (i).

20 “(II) ABILITY OF CERTAIN IN-
21 SURED DEPOSITORY INSTITUTIONS TO
22 OPT-OUT.—

23 “(aa) IN GENERAL.—An in-
24 sured depository institution that
25 has less than \$250,000,000,000

1 in total consolidated assets may
2 elect not to participate with re-
3 spect to the increased amount of
4 insurance made available under
5 subclause (I).

6 “(bb) LIMITATION ON AS-
7 SESSMENT OF FEE.—The Cor-
8 poration may not assess a fee on
9 any insured depository institution
10 that elects not to participate with
11 respect to the increased amount
12 of insurance made available
13 under subclause (I).

14 “(III) DEFINITION.—In this
15 clause, the term ‘noninterest-bearing
16 transaction account’ means a deposit
17 or account maintained at an insured
18 depository institution—

19 “(aa) with respect to which
20 interest is neither accrued nor
21 paid;

22 “(bb) on which the depositor
23 or account holder is permitted to
24 make withdrawals by negotiable
25 or transferable instrument, pay-

1 ment orders of withdrawal, tele-
2 phone or other electronic media
3 transfers, or other similar items
4 for the purpose of making pay-
5 ments or transfers to third par-
6 ties or others; and

7 ““(cc) on which the insured
8 depository institution does not re-
9 serve the right to require advance
10 notice of an intended with-
11 drawal.”; and

12 (2) in subparagraph (C), by striking “subpara-
13 graph (B)” and inserting “subparagraph (B)(i)”.

14 (b) REVERSION.—On the date that is 2 years after
15 the date of enactment of this Act, section 11(a)(1) of the
16 Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)) is
17 amended—

18 (1) by amending subparagraph (B) to read as
19 follows:

20 “(B) NET AMOUNT OF INSURED DE-
21 POSIT.—The net amount to any depositor at an
22 insured depository institution shall not exceed
23 the standard maximum deposit insurance
24 amount as determined in accordance with sub-

1 paragraphs (C), (D), (E), and (F) and para-
2 graph (3).”; and

3 (2) in subparagraph (C), by striking “subpara-
4 graph (B)(i)” and inserting “subparagraph (B)”.

5 **SEC. 3. RECIPROCAL DEPOSITS.**

6 Section 29(i)(1) of the Federal Deposit Insurance Act
7 (12 U.S.C. 1831f(i)(1)) is amended—

8 (1) in subparagraph (A), by striking
9 “\$5,000,000,000” and inserting “\$10,000,000,000”;
10 and

11 (2) in subparagraph (B), by striking “20 per-
12 cent” and inserting “25 percent”.

13 **SEC. 4. ADJUSTED LEAST COST RESOLUTION.**

14 Section 13(c)(4) of the Federal Deposit Insurance
15 Act (12 U.S.C. 1823(c)(4)) is amended—

16 (1) by redesignating subparagraph (H) as sub-
17 paragraph (I); and

18 (2) by inserting after subparagraph (G) the fol-
19 lowing:

20 “(H) NON-SYSTEMIC SECONDARY COST TO
21 THE DEPOSIT INSURANCE FUND.—

22 “(i) DEFINITIONS.—In this subpara-
23 graph:

24 “(I) LARGE INSURED DEPOSIT-
25 TORY INSTITUTION.—The term ‘large

1 insured depository institution’ means
2 an insured depository institution with
3 total consolidated assets of not less
4 than \$100,000,000,000.

5 “(II) NON-SYSTEMIC SECONDARY
6 COST TO THE DEPOSIT INSURANCE
7 FUND.—The term ‘non-systemic sec-
8 ondary cost to the Deposit Insurance
9 Fund’ means a cost to the Deposit In-
10 surance Fund from—

11 “(aa) the appointment of the
12 Corporation as a receiver for a
13 second or additional insured de-
14 pository institution as a direct
15 and contemporaneous result of
16 the compliance by the Corpora-
17 tion with subparagraphs (A) and
18 (E) with respect to a large in-
19 sured depository institution, in-
20 cluding the cost of liquidating
21 any such second or additional in-
22 sured depository institution in
23 compliance with subparagraphs
24 (A) and (E);

1 “(bb) a reduction in the
2 price of an asset as a direct and
3 contemporaneous result of the
4 liquidation by the Corporation of
5 a large insured depository insti-
6 tution in compliance with sub-
7 paragraphs (A) and (E); or

8 “(cc) any other direct and
9 contemporaneous result of the
10 compliance by the Corporation
11 with subparagraphs (A) and (E)
12 with respect to a large insured
13 depository institution (other than
14 any such loss that arises from se-
15 rious adverse effects on economic
16 conditions or financial stability
17 within the meaning of subpara-
18 graph (G)).

19 “(ii) ACTION PERMITTED UPON DE-
20 TERMINATION BY THE BOARD OF DIREC-
21 TORS.—

22 “(I) IN GENERAL.—Notwith-
23 standing subparagraphs (A) and (E),
24 if the Board of Directors (upon a vote
25 of not less than two-thirds of the

1 members of the Board of Directors)
2 makes a determination described in
3 subclause (II), the Corporation may
4 take action or assistance under para-
5 graph (2) for the purpose of facili-
6 tating—

7 “(aa) a merger or consolida-
8 tion of the applicable large in-
9 sured depository institution with
10 another insured depository insti-
11 tution;

12 “(bb) the sale of any or all
13 of the assets of the applicable
14 large insured depository institu-
15 tion;

16 “(cc) the assumption of any
17 or all of the liabilities of the ap-
18 plicable large insured depository
19 institution by another insured de-
20 pository institution; or

21 “(dd) the acquisition of the
22 stock of the applicable large in-
23 sured depository institution.

24 “(II) DETERMINATION DE-
25 SCRIBED.—A determination described

1 in this subclause is a determination
2 that—

3 “(aa) the compliance by the
4 Corporation with subparagraphs
5 (A) and (E) with respect to a
6 large insured depository institu-
7 tion for which the Corporation
8 has been appointed receiver
9 would result in a non-systemic
10 secondary cost to the Deposit In-
11 surance Fund; and

12 “(bb) any action or assist-
13 ance under this subparagraph
14 would avoid or mitigate the non-
15 systemic secondary cost to the
16 Deposit Insurance Fund de-
17 scribed in item (aa).

18 “(iii) ADJUSTED LEAST-COST RESOLU-
19 TION REQUIREMENT.—The Corporation
20 may not take any action or provide any as-
21 sistance under this subparagraph unless
22 the total amount of the expenditures by
23 the Corporation and obligations incurred
24 by the Corporation (including any imme-
25 diate and long-term obligation of the Cor-

1 poration and any direct or contingent li-
2 ability for future payment by the Corpora-
3 tion) in connection with the taking of that
4 action or provision of that assistance with
5 respect to an insured depository institution
6 is the least costly to the Deposit Insurance
7 Fund, taking into account the non-sys-
8 temic secondary costs to the Deposit Insur-
9 ance Fund that would result without the
10 taking of that action or the provision of
11 that assistance, of all possible methods for
12 meeting the obligations of the Corporation
13 under this section.

14 “(iv) DOCUMENTATION REQUIRED.—
15 The Chairperson of the Board of Directors
16 shall—

17 “(I) document any determination
18 under clause (ii); and

19 “(II) retain the documentation
20 for review under clause (v).

21 “(v) GAO REVIEW.—The Comptroller
22 General of the United States shall review
23 and report to Congress on any determina-
24 tion under clause (ii), including—

11

1 “(I) the basis for the determina-
2 tion;

3 “(II) the purpose for which any
4 action was taken pursuant to such
5 clause; and

6 “(III) the likely effect of the de-
7 termination and such action on the in-
8 centives and conduct of insured depos-
9 itory institutions and uninsured de-
10 positors.

11 “(vi) NOTICE.—

12 “(I) IN GENERAL.—Not later
13 than 3 days after making a deter-
14 mination under clause (ii), the Sec-
15 retary of the Treasury shall provide
16 written notice of any determination
17 under clause (ii) to the Committee on
18 Banking, Housing, and Urban Affairs
19 of the Senate and the Committee on
20 Financial Services of the House of
21 Representatives.

22 “(II) DESCRIPTION OF BASIS OF
23 DETERMINATION.—The notice under
24 subclause (I) shall include a descrip-

1 tion of the basis for any determination
2 under clause (ii).”.

3 **SEC. 5. ACQUISITIONS OF DISTRESSED BANKS.**

4 (a) DEFINITIONS.—In this section:

5 (1) APPROPRIATE FEDERAL BANKING AGENCY;
6 INSURED BANK.—The terms “appropriate Federal
7 banking agency” and “insured bank” have the
8 meanings given the terms in section 3 of the Federal
9 Deposit Insurance Act (12 U.S.C. 1813).

10 (2) BOARD.—The term “Board” means the
11 Board of Governors of the Federal Reserve System.

12 (3) BANK HOLDING COMPANY; CONTROL; SUB-
13 SIDIARY.—The terms “bank holding company”,
14 “control”, and “subsidiary” have the meanings given
15 the terms in section 2 of the Bank Holding Com-
16 pany Act of 1956 (12 U.S.C. 1841).

17 (4) COVERED ENTITY.—The term “covered en-
18 tity” means—

19 (A) after a transaction described in sub-
20 section (b)(1)(A), the bank holding company of
21 which the applicable distressed insured bank
22 has become a subsidiary;

23 (B) after a transaction described in sub-
24 section (b)(1)(B), the bank holding company

1 that has acquired the direct or indirect owner-
2 ship or control described in that provision; and

3 (C) after a merger or consolidation de-
4 scribed in subsection (b)(1)(C), the bank hold-
5 ing company that results because of that merg-
6 er or consolidation.

7 (5) DISTRESSED INSURED BANK.—The term
8 “distressed insured bank” means an insured bank
9 that has a class of equity securities, or is controlled,
10 directly or indirectly, by a company that has a class
11 of equity securities—

12 (A) registered pursuant to section 12(b) of
13 the Securities Exchange Act of 1934 (15
14 U.S.C. 78l(b)); and

15 (B) the price of which on a national securi-
16 ties exchange has declined not less than 20 per-
17 cent at any time on or after March 1, 2023, as
18 compared with the highest price of those securi-
19 ties on that exchange on or after March 1,
20 2023.

21 (6) EQUITY SECURITY; EXCHANGE.—The terms
22 “equity security” and “exchange” have the meanings
23 given the terms in section 3(a) of the Securities Ex-
24 change Act of 1934 (15 U.S.C. 78c(a)).

1 (7) NATIONAL SECURITIES EXCHANGE.—The
2 term “national securities exchange” means an ex-
3 change that is registered in accordance with section
4 6 of the Securities Exchange Act of 1934 (15 U.S.C.
5 78f).

6 (8) TOTAL CONSOLIDATED ASSETS.—The term
7 “total consolidated assets” means, with respect to an
8 entity, the total consolidated assets of that entity, as
9 determined pursuant to the instructions of Form FR
10 Y-9C of the Board.

11 (b) TEMPORARY WAIVER OF REGULATORY APPROV-
12 ALS FOR ACQUISITIONS OF DISTRESSED BANKS.—

13 (1) IN GENERAL.—Subject to paragraphs (2)
14 and (3), except as provided in paragraph (4), and
15 notwithstanding any requirement or restriction relat-
16 ing to notification, approval, or other matter under
17 section 3 or 4 of the Bank Holding Company Act of
18 1956 (12 U.S.C. 1842, 1843), section 7(j) or 18(c)
19 of the Federal Deposit Insurance Act (12 U.S.C.
20 1817(j), 1828(c)), or any other Federal or State
21 law, after written notice to the Board—

22 (A) a distressed insured bank may become
23 a subsidiary of a bank holding company;

24 (B) a bank holding company may acquire
25 direct or indirect ownership or control of any

1 voting shares of any distressed insured bank or
2 any company that controls a distressed insured
3 bank; and

4 (C) a bank holding company may merge or
5 consolidate with a bank holding company that
6 has a subsidiary that is a distressed insured
7 bank.

8 (2) CONDITIONS.—Paragraph (1) shall apply
9 only if—

10 (A) after the applicable transaction or
11 other action under that paragraph—

12 (i) the applicable covered entity would
13 meet the required capital levels for well
14 capitalized bank holding companies estab-
15 lished by the Board; or

16 (ii) in the case of a transaction or
17 other action described in subparagraph (A)
18 or (B) of that paragraph, the total consoli-
19 dated assets of the applicable covered enti-
20 ty would be not more than 2 times the
21 amount of the total consolidated assets (as
22 measured immediately before the trans-
23 action or other action) of—

24 (I) in the case of an action de-
25 scribed in subparagraph (A) of that

1 paragraph, the bank holding company
2 of which the distressed insured bank
3 is becoming a subsidiary as a result of
4 that action; or

5 (II) in the case of an acquisition
6 described in subparagraph (B) of that
7 paragraph, the bank holding company
8 that is acquiring direct or indirect
9 ownership or control of any voting
10 shares of the distressed insured bank
11 or the company that controls a dis-
12 tressed insured bank; and

13 (B) each insured bank controlled by the
14 applicable covered entity—

15 (i) has a composite rating, as deter-
16 mined by the appropriate Federal banking
17 agency in the most recent report of exam-
18 ination of the applicable insured bank, of
19 1 or 2 under the Uniform Financial Insti-
20 tution Rating System; and

21 (ii) has been assigned by the appro-
22 priate Federal banking agency a rating of
23 “outstanding” or “satisfactory” in the
24 most recent Community Reinvestment Act

1 examination of the applicable insured
2 bank.

3 (3) EXPIRATION.—A transaction or other ac-
4 tion to which paragraph (1) applies shall be con-
5 summated not later than 90 days after the date of
6 enactment of this Act.

7 (4) EXCEPTIONS.—Paragraph (1) shall not
8 apply to—

9 (A) any action that would cause a dis-
10 tressed insured bank to become a subsidiary of
11 an insured bank;

12 (B) any acquisition of direct or indirect
13 ownership or control by an insured bank of any
14 voting shares of any distressed insured bank or
15 any company that controls a distressed insured
16 bank; or

17 (C) any merger, consolidation, acquisition
18 of assets, or other acquisition of control, of an-
19 other company that would be subject to section
20 14 of the Bank Holding Company Act of 1956
21 (12 U.S.C. 1852).

22 (c) NO PREMERGER NOTIFICATION AND WAITING
23 PERIOD.—A transaction under subsection (b) shall be ex-
24 empt from the requirements of section 7A of the Clayton
25 Act (15 U.S.C. 18a).