

February 27, 2024

Honorable Mike Johnson
Speaker
United States House of Representatives

Honorable Charles Schumer
Majority Leader
United States Senate

Honorable Hakeem Jeffries
Minority Leader
United States House of Representatives

Honorable Mitch McConnell
Minority Leader
United States Senate

Dear Speaker Johnson, Minority Leader Jeffries, Majority Leader Schumer, and Minority Leader McConnell:

As leaders of policy groups concerned with constitutional liberties, government accountability, and the abuse of power, we urge you to reject the dangerous and misguided S. 2190, the RECOUP (Recovering Executive Compensation Obtained from Unaccountable Practices) Act.

The RECOUP Act would increase financial regulatory agencies' powers excessively by allowing them to remove the leadership of any U.S. bank they supervise, even if the agency doesn't deem such a bank as at risk of going under.

Under the bill, financial regulators would have the power to remove the executives of banks – including the smallest of community banks – anytime these bureaucrats believe a bank has failed “to appropriately implement financial, risk, or supervisory reporting or information system or controls.” The bill's language is written so broadly that it may allow bank regulators to take over banks on the basis of policy judgments about certain industries with which the banks do business. It has been postulated, for instance, that executives of banks lending to oil and gas producers could be subject to the bill's removal provisions for failing to implement adequate “climate risk” reporting or controls.

We believe the granting of new powers such as these to federal bank regulatory agencies would be especially dangerous given recent allegations of abuses of power at such agencies. For instance, the House Judiciary Committee revealed that the Treasury Department's Financial Crimes Enforcement Network (FinCEN) instructed banks to send the government random info about purchases at outdoor sporting stores and use of the terms “Trump and “MAGA” in payment app messages, because FinCEN claimed that these mere purchases and word usage could be indicators of “extremism.” Giving bureaucrats a trove of data on people's private purchases and speech could enable dossiers and profiles of law-abiding Americans that bureaucrats believe have the “wrong” pursuits and thoughts.

Similarly, a guidance document issued late last year by bank regulatory agencies -- warning of the supposed risks to banks of dealing with fossil fuel industries -- has been read by industry watchers as regulatory pressure on banks to sever relationships with companies and individuals in those sectors. This is reminiscent of Operation Choke Point, under which Obama administration agencies pressured banks to cut off or reduce financial services to several types of legal businesses —from firearms to fireworks — that bureaucrats deemed harmful to a bank's “reputational risk.”

The RECOUP Act is flawed under any circumstances, but its boosting of the powers of financial regulatory agencies before these troubling issues are resolved would almost certainly lead to new

abuses of power. We are also particularly concerned about provisions of the RECOUP Act being added to a must-pass appropriations bill. This approach would deny members of Congress the opportunity for basic debate of the far-reaching impactful provisions of the legislation. For these reasons, we urge you to reject the RECOUP Act as a stand-alone bill or if added to other legislation.

Sincerely,

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