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Bank Compensation

From a simple circular to a law ?

Par Besart Buci le 22 September 2026

On August 12, 2026, the Federal Council opened a public comment period on a preliminary draft of the Banking Act (PDA-BA) in the wake of the Credit Suisse collapse (see CDBF bulletin of August 12, 2026). This commentary focuses on the measures related to compensation. For the first time, the principles governing compensation systems could be enshrined in law (Art. 5*c* AP-LB). Systemically important banks (SIBs)—which in Switzerland include : UBS, the Zurich Cantonal Bank, Raiffeisen, and PostFinance—would be subject to additional requirements : partial deferral of variable compensation, penalties, clawback provisions, and in-year adjustments (Art. 10*b* AP-LB) .

First, the principles governing compensation systems will apply to all banks (Art. 5*c* Draft Banking Act). They must have a compensation system "based on a simple design and objective criteria," which they will document in detail (para. 1). According to the explanatory report, this principle requires that employees, the senior management board, the executive board, and FINMA be able to clearly identify the components of compensation.

Remuneration must then be covered in the long term by the bank's economic performance (para. 2) : in its explanatory report, the Federal Council specifies that the envisaged time horizon is five years. Furthermore, remuneration may not be financed by current income or capital reserves "that do not reflect, or only temporarily reflect, the bank's economic success." A limited period of losses should not preclude the payment of variable compensation. This would be the case, for example, during a restructuring, if the across-the-board elimination of variable compensation risked causing staff departures that would be detrimental to future revenues. In any event, individuals directly responsible for a loss could have their variable compensation eliminated or reduced.

The last two principles of Art. 5*c* of the Draft Banking Act (AP-LB) require that compensation and the criteria determining its award take risks into account and do not give rise to conflicts of interest (para. 3). Paragraph 4 delegates to the Federal Council the authority to specify these principles by ordinance, taking into account, in particular, the size of the institutions and the risks they bear, with the option to further delegate to FINMA the authority to issue implementing provisions.

This new provision is part of a broader framework. Art. 5*b* of the Draft Banking Act requires banks to impose sanctions for any breach of the duty of care (Art. 37*n* of the Draft Banking Act) committed by persons responsible for senior management, management, or central functions within the meaning of Art. 3*c*, paras. 1 and 2, of the Draft Banking Act. These sanctions may affect variable compensation or consist of disciplinary measures provided for in the bank's internal regulations. Article 19 of the Draft Banking Act (AP-LB) allows FINMA to order "adjustments to the design or application of the compensation system" when it identifies a violation of supervisory law or a risk of such a violation.

For SIBs, the Federal Council goes a step further by introducing Art. 10*b* of the Draft Banking Act. SIBs that award variable compensation to the persons referred to in Article 3*c*, paragraphs 1 and 2, of the Draft Banking Act (AP-LB), as well as to persons receiving "high total compensation," must defer payment of a portion of such compensation (para. 1), with each bank defining in its internal regulations who falls into this second category (para. 2). Furthermore, the compensation system must be designed such that the amount of deferred variable compensation is determined based on changes in results and risks (para. 3(a)), and that, in the event of a violation of the law or internal regulations, the bank may withhold all or part of the deferred payment (malus), demand the return of amounts already paid (*clawback*), or forfeit future variable compensation (*in-year adjustment*).

SIBs, by contrast, that do not award variable compensation must provide for disciplinary measures in the event of a violation (para. 4). Finally, as with Art. 5*c* of the Draft Banking Act (AP-LB), it will be up to the Federal Council to specify the portion of variable compensation to be deferred, the duration of the deferral, the period during which repayment may be demanded, and the criteria for determining "high total compensation" (para. 5).

This preliminary draft implements the recommendations of the Parliamentary Commission of Inquiry (see postulates 24.4535 and 24.4541 ; motions 24.4527 and 24.4531) and responds to motion 23.3452 (see CDBF report of September 9, 2025). It is also consistent with the Federal Council's previous positions (see Federal Council Report on Bank Stability of April 10, 2024, section 15.4.4 ; Guidelines Set by the Federal Council for the Amendment of the Banking Act of June 6, 2025 and its fact sheet on compensation).

In substance, these rules are not entirely new. Art. 5c of the Draft Amendment to the Banking Act (AP-LB) essentially incorporates the principles of the FINMA Circular 2010/1 "Compensation Systems", which already provides for the deferral of a portion of variable compensation and its reduction (malus). However, it does not provide for a *clawback*.

The significance of the proposed amendment should not, however, be overlooked.

On the one hand, the circular, based on Article 7(1)(b) of the FINMA Act, is merely an administrative ordinance. It applies only to institutions required to hold capital of at least CHF 10 billion (minimum requirements under Art. 7 et seq. and Art. 42 OFR), which, as of June 30, 2026, means only UBS ; other banks are merely encouraged to follow its example. The preliminary draft thus provides these principles with a formal legal basis and extends them to all banks.

Furthermore, in the Banking Act currently in force, only Article 10*a* of the Banking Act addresses compensation. It allows the Federal Council to take measures in this regard when a systemically important bank (SIB) or its parent company receives financial assistance from the Confederation, and only for the duration of such assistance. Based on this time limit, the Federal Administrative Court has ruled that this provision does not allow for the permanent cancellation of variable compensation already earned by Credit Suisse executives (FAC B-3655/2023 of March 31, 2025 ; appeal pending before the Federal Supreme Court). The preliminary draft leaves Art. 10*a* of the Banking Act (LB) intact but adds a supplementary regime that differs from it in three respects. It is directed at the bank itself (which will be responsible for establishing the necessary mechanisms). It applies on an ongoing basis, in the course of ordinary business, and not only in the event of a bailout. Finally, it aims to penalize misconduct. The bank must therefore have mechanisms in place that allow it to refuse payment of deferred amounts, demand the return of amounts already paid, or reduce the compensation still to be awarded.

Finally, questions remain regarding the implementation of the *malus* and the *clawback*. The preliminary draft imposes these mechanisms on SIBs without examining any potential legal obstacles that private law might present. However, this issue will need to be addressed in due course.

The consultation is scheduled to run through November 19, 2026, and the Federal Council's report is expected in 2027.

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