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## Senate Banking Committee Approves Bill Clawing Back Compensation from Executives of Failed Banks, 21-2

### Warren Calls Bill 'Reasonable Compromise'; Panel Also Approves Fentanyl Trafficking Bill

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The Senate Banking Committee today (Wednesday, June 21) approved two bills that would: 1) empower the FDIC to recoup bonuses that senior executives received in the two years before a bank failure and increase certain other penalties on them, and 2) impose sanctions on transnational criminal organizations, such as Mexican drug cartels, for trafficking of illicit fentanyl and its raw materials. The clawbacks bill was approved 21-2, while the fentanyl bill was approved unanimously. Notably, it was the first legislative markup the Banking Committee has held since the 116<sup>th</sup> Congress of 2019-2020.

A webcast of the markup, followed by a nominations hearing for three Federal Reserve nominees, is available [here](#). The text of prepared statements on the bills by Chairman Sherrod Brown and Ranking Member Tim Scott (R-SC) are posted [here](#) (Brown) and [here](#) (Scott). Attached with this alert please find one-page summaries of the RECOUP Act and the Fend Off Fentanyl Act.

House prospects. The bank executives clawback bill now moves to the Senate floor, where sponsors will seek at least 60 votes to circumvent a filibuster. The Republican leadership of the House Financial Services Committee so far has not offered a comparable clawbacks bill in the wake of the failures of Silicon Valley Bank and Signature Bank earlier this year. The *Washington Post* reported that a spokesperson for the Financial Services Committee said the committee "will take a look at any bill that is advanced by the Senate Banking Committee, including on executive compensation clawbacks," while adding that the committee is focused on decisions made by financial regulators during the bank failures.

### Executive Compensation Clawbacks

The committee approved, by a vote of 21-2, the bipartisan Recovering Executive Compensation Obtained from Unaccountable Practices Act (RECOUP Act), sponsored by Chairman Brown and Ranking Member Scott. Sens. Thom Tillis (R-NC) and Bill Hagerty (R-TN) voted against the bill.

The RECOUP Act (unnumbered) would authorize the FDIC to recoup proceeds from executives' stock sales as well as bonuses that executives receive in the 24 months leading up to a bank failure. Executives who "recklessly" violate the law or engage in "unsafe and unsound practices" could also face penalties up to \$3 million. In a carve-out for community banks, the bill would exempt banks with less than \$10 billion in assets. The bill would also:

- Allow regulators to remove senior banking executives who demonstrate misconduct in oversight, including failures to apply risk controls and breaches of fiduciary duty, and regulators would have discretion to ban such executives from the industry.
- Give the FDIC control over penalties for executives who break the law and increase the maximum civil penalty for the worst violations.
- Require affected banks to adopt enforcement of responsible management bylaws, including allowances for the bank's board.
- Define "senior executives" as those who are among a bank's senior leadership and certain directors.

During the markup, Chairman Brown said, "Bank executives who take on too much risk and crash their banks shouldn't get to land on their feet, they shouldn't get to keep the profits they made by making bad bets with other people's money, and they shouldn't get to take their bad behavior to another bank." Speaking with reporters afterward, Brown said, "For years and years, we've tried to hold banks accountable. Of course, there will be some people that think [the bill] didn't go far enough or went too far. This is a huge victory for consumers, for the banking system, for honest bankers and for the whole country." He continued, "There are 23 members of the committee. Almost every one of them came forward with ideas, with amendments... That's one of the joys of this job: how do you put together the interests of everybody and keep enough people happy to pass it, but always with the goal in mind of making sure we hold these executives – who were overcome by their greed and incompetence – accountable?"

Ranking Member Scott said, "Shortly after the collapse of SVB, CEO Greg Becker fled to Hawaii while the American people were left holding the bag for billions.... These bank executives were completely derelict in their duties."

**GOP Objections.** Speaking with reporters after the markup, Sen. Tillis said the bill is "too expansive... It has been refined substantially since the first version that I saw, but we still have a lot more work to do... We're not making the distinction between bad management decisions and management malpractice, and if we're not careful here, you're going to stifle innovation." In a statement, Sen. Hagerty said the bill "will have the perverse effect of making the biggest banks even bigger... Second, it lets the government regulators and bureaucrats – whose supervisory failures led to SVB's collapse – off scot-free. In fact, it empowers government agencies even more."

**Warren-Hawley Bill.** There had been speculation that S. 1045, a competing bank clawbacks [bill](#) drafted by Elizabeth Warren (D-MA) and Josh Hawley (R-MO), might sap some support or force substantial changes to the text, but in the end that bill's supporters on the committee agreed to support the Brown-Scott bill. The Warren bill would cover a broader range of executives and types of compensation, impose more stringent penalties and would reach back three years before the bank's failure, instead of the two years in the RECOUP Act. The Warren bill would require action by the FDIC, instead of leaving decision on clawbacks to the agency's discretion. Sen. Warren described the amended version of the Brown-Scott bill as "a reasonable compromise."

**Amendments.** The committee approved, both by voice votes, a substitute amendment offered by Chairman Brown and a package of bipartisan changes packaged by Ranking Member Scott. Scott said his amendment

would bring better transparency to bank supervision. It would: 1) expand the types of compensation covered by the clawback; 2) impose new requirements for reports to Congress from bank regulators in the case of failed institutions; 3) codify a requirement for semiannual reports from the Federal Reserve on metrics for the effectiveness of its workforce; and 4) introduce new requirements for the largest banks to acquire failed lenders.

A number of Republican senators withdrew amendments, including Sen. Tillis (on “management malpractice”); Sen. Hagerty (FDIC clawback consultation); Cynthia Lummis, R-WY (community bank threshold); John Kennedy, R-LA (“foreign Insiders”); and Steve Daines, R-MT (Community Development Financial Institutions fund).

## Fentanyl Trafficking

The committee also approved, by a unanimous vote of 23-0, the FEND Off Fentanyl Act (S. 1271), sponsored by Ranking Member Scott and Chairman Brown, who said the bill had 60 cosponsors in the Senate. The bill would allow the president to block and prohibit all U.S. transactions involving property and interests of foreign persons and organizations involved in “significant trafficking” of illicit fentanyl, of raw materials used to manufacture the synthetic opioid and of other related opioids. It would require the administration to send a series of reports to Congress within 180 days of enactment, including a classified report and briefing on actions taken by the Chinese government regarding entities involved in the shipment of the drug, its analogues and its raw materials, as well as those involved in providing equipment for manufacturing fentanyl and fentanyl-laced pills.

Ranking Member Scott said, “By using the full weight of America’s economic power and directing the Treasury Department to make addressing this crisis a priority, this bill will restore hope for communities suffering from this deadly drug.” Chairman Brown said, “Our bill uses our economic arsenal to target the foreign fentanyl supply chain, from the Chinese chemical suppliers to the Mexican cartel distributors to the money launderers profiting off the illicit drug chain.”

If you have questions, please contact Will Heyniger or Bob Schellhas at (202) 293-7474 or [wcey@ey.com](mailto:wcey@ey.com).

Embedded hyperlinks:

- Markup webcast - <https://www.banking.senate.gov/hearings/06/15/2023/executive-session>
- Brown statement - <https://www.banking.senate.gov/newsroom/majority/brown-advances-bipartisan-bills-hold-bank-executives-accountable-curb-flow-deadly-fentanyl-into-communities>
- Scott statement - <https://www.banking.senate.gov/newsroom/minority/scotts-fentanyl-bill-proceeds-through-key-committee-markup>

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