Insured Depository Institution Resolution Handbook

FDIC

FEDERAL DEPOSIT INSURANCE CORPORATION

Contents

Chapter 1 Introduction

The FDIC was created in 1933 during the Great Depression to restore public confidence in the nation's banking system. From 1929 to 1933, more than 9,000 financial institutions suspended operations resulting in large losses to depositors.[1] In response to this crisis, the U.S. Congress, through the enactment of the Banking Act of 1933, established the FDIC and the foundation for today's system of deposit insurance in the U.S.[2]

The FDIC's primary mission is to maintain stability and public confidence in the U.S. financial system by performing four functions:

- ***Insuring deposits.*** Deposits in an FDIC-insured commercial or savings bank, also known as insured depository institution, receive deposit insurance up to a legal limit.[3] When a U.S. insured depository institution fails, the FDIC either pays off insured depositors, or more frequently, it arranges for the transfer of the deposit accounts from the failed insured depository institution to a healthy assuming insured depository institution, covering the resolution costs related to the failed institution from the Deposit Insurance Fund (DIF). The DIF is primarily funded through quarterly, risk-based,[4] premiums paid by insured depository institutions. In addition to premiums, the DIF also earns interest income on its investment securities.[5] To ensure the DIF has adequate funds to cover potential losses, the Federal Deposit Insurance Act (FDI Act) requires that the FDIC designate a reserve ratio of reserves to total insured deposits.[6] In its capacity as deposit insurer, the FDIC identifies, monitors, and addresses risks to the DIF, as well as manages the adequacy of funds necessary to maintain public confidence in the U.S. financial system and to resolve failed insured depository institutions.
- ***Examining and supervising financial institutions for safety, soundness, and consumer protection.*** The FDIC shares responsibility for the supervision and regulation of insured depository institutions with other U.S. federal regulators and state banking authorities. The Office of the Comptroller of the Currency (OCC) is responsible for chartering and supervising federally chartered commercial and savings banks; the Federal Reserve System (FRS) is responsible for supervising both state member[7] banks and bank holding companies; and the FDIC is responsible for supervising state nonmember[8] banks. State member and nonmember banks are chartered by

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[1] For more information about the early years of the FDIC, see "The First Fifty Years: A History of the FDIC 1933–1983" at https://www.fdic.gov/bank/historical/firstfifty/.

[2] FDIC is responsible for protecting deposits and managing the deposit insurance fund for insured commercial and savings banks. Credit unions are supervised, and deposits are protected by, the National Credit Union Administration.

[3] Savings, checking, and other deposit accounts, when combined, are generally insured up to $250,000 per depositor in each depository institution for each account ownership category.

[4] For more information on risk-based premiums, see https://www.fdic.gov/deposit/insurance/assessments/risk.html.

[5] For more information on the DIF management, see https://www.fdic.gov/resources/deposit-insurance/deposit-insurance-fund/index.html.

[6] Historical data on the designated reserve ratio can be obtained at https://www.fdic.gov/resources/deposit-insurance/deposit-insurance-fund/dif-fund.html.

[7] State member banks include all commercial and savings banks that are state-chartered and members of the Federal Reserve System.

[8] State nonmember banks include commercial and savings banks that are state-chartered and not members of the Federal Reserve System.

the U.S. state in which they operate. Through its examination programs, the FDIC helps to ensure the safety and soundness of insured depository institutions and their compliance with federal consumer protection, anti-discrimination, and community reinvestment laws.

- ***Making large and complex financial institutions resolvable.*** The FDIC is responsible for monitoring and assessing risks posed by large, complex financial institutions and planning for resolution of these risks under authority derived from the FDI Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[9]. Title I of the Dodd-Frank Act requires the largest bank holding companies and other non-bank financial companies supervised by the Board of Governors of the Federal Reserve System (Federal Reserve Board) to prepare resolution plans (alternatively referred to as living wills, Title I plans, or 165[d] plans). These companies must provide a plan for their rapid and orderly resolution—meaning reorganization or liquidation under the U.S. Bankruptcy Code—within a reasonable period of time. A resolution plan must also substantially mitigate the risk that a company's failure would have serious adverse effects on the financial stability of the United States. As part of this work, the FDIC and the Federal Reserve Board have joint responsibility for reviewing resolution plans submitted by large bank holding companies and designated nonbank financial companies[10] that demonstrate how those financial companies would be resolved in a rapid and orderly manner in the event of financial distress. If one of those institutions were to fail and reorganization under the U.S. Bankruptcy Code was deemed to have serious adverse effects on the financial stability of the United States, Title II of the Dodd-Frank Act gives the FDIC the authority to execute a timely and orderly resolution. However, this Handbook does not address the potential liquidation and resolution of the financial companies under the Dodd-Frank Act.
- ***Managing receiverships.*** The FDIC acts as the receiver for failed insured depository institutions. In its role as receiver, the FDIC assumes responsibility for efficiently achieving maximum recoveries from the disposition of assets from the receivership. These recoveries are then distributed to the creditors of the receivership under the priorities established by law.

This publication describes the FDIC's resolution process, including:

- The specific actions that the FDIC takes prior to the closure of an insured depository institution.
- The preparation for the closure.
- The marketing of the failing institution.
- The evaluation of bids for the failing institution.
- FDIC's duties in managing the receiverships of the failed institution.

Chapter 2 Overview of the Resolution Process

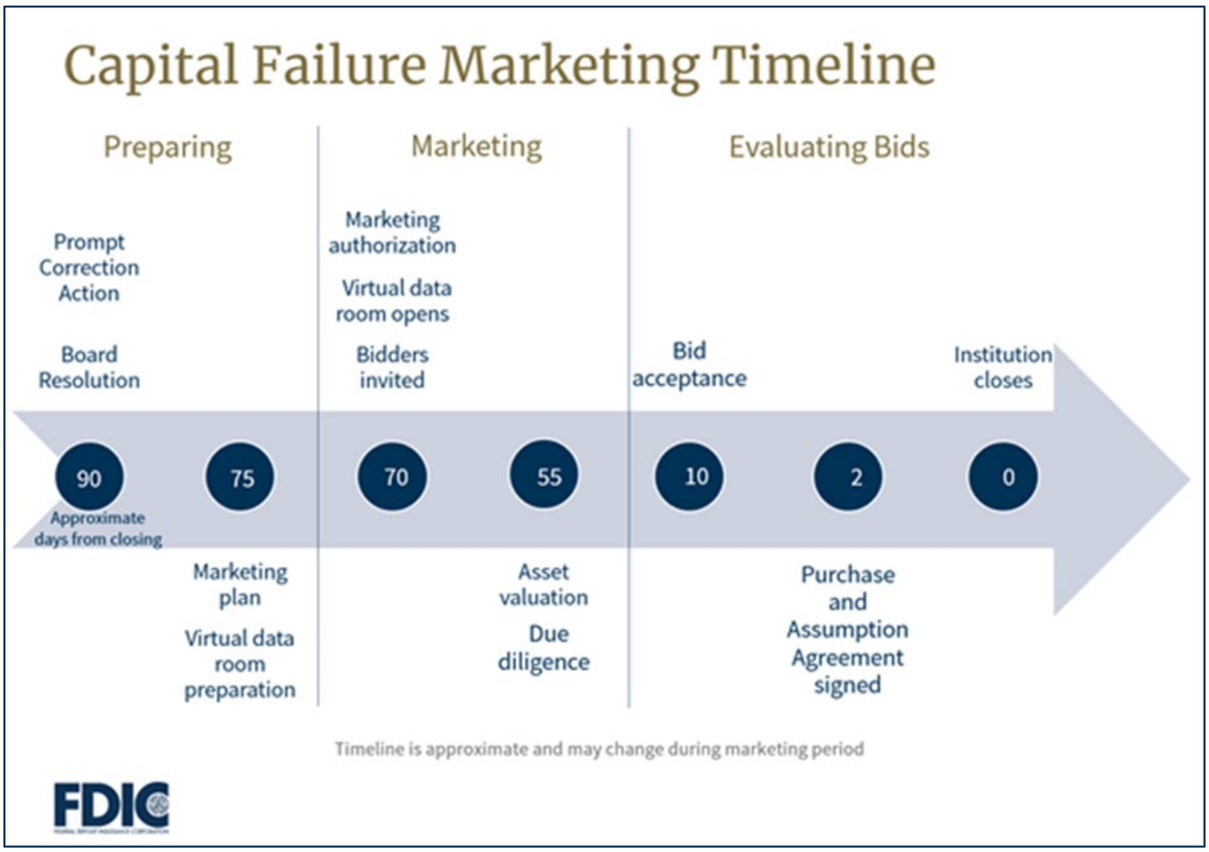
In the U.S., a financial institution must obtain a charter from a recognized chartering authority in order to obtain federal deposit insurance and to conduct the business of banking. The chartering authority typically closes an insured depository institution when the institution becomes insolvent, critically

[9] For a complete copy of the Dodd-Frank Act, see http://www.gpo.gov/fdsys/pkg/BILLS-111hr4173enr/pdf/BILLS-111hr4173enr.pdf
[10] See https://fdic.gov/resources/resolutions/resolution-authority/

undercapitalized, or unable to meet requests for deposit withdrawals.

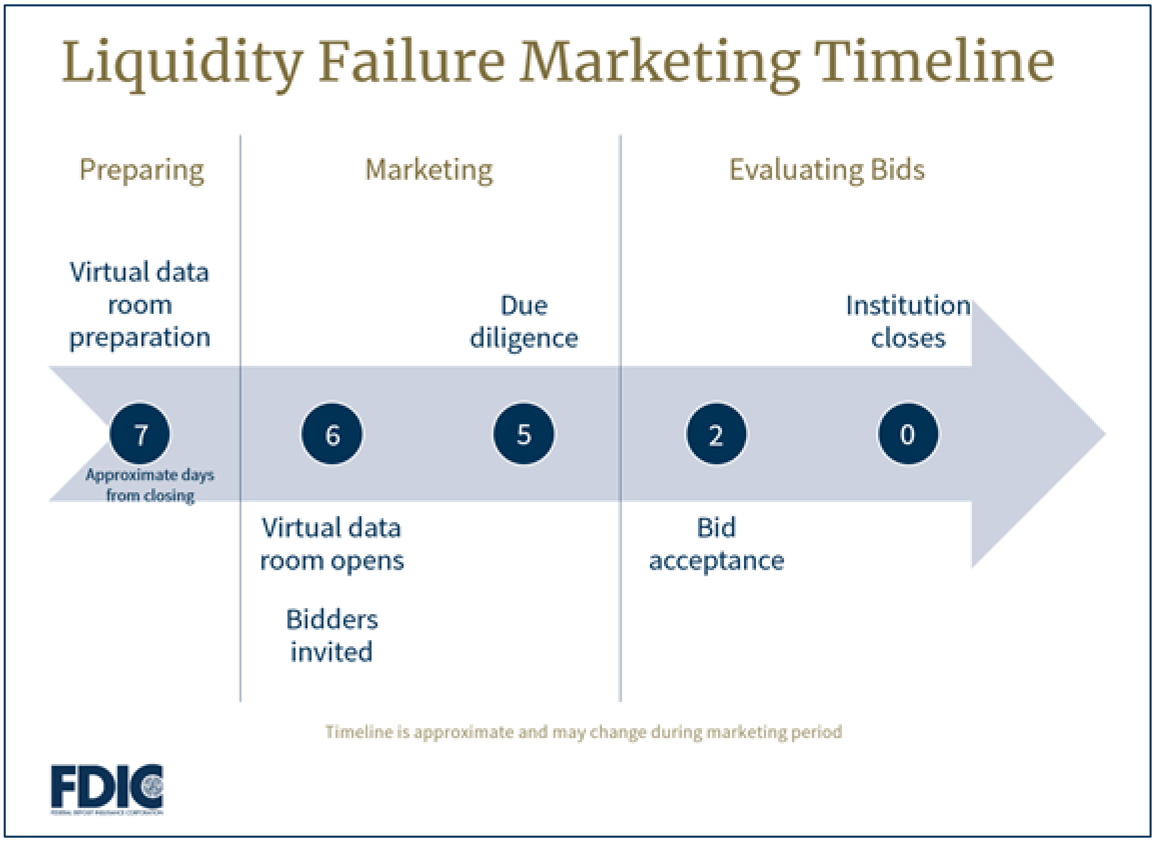
The resolution process begins when FDIC is notified by the chartering authority of the potential failure of an insured depository institution. The resolution process—from preparing, marketing, and accepting bids to the final closing event—generally takes 90 days or less in a capital failure scenario.[11] Figure 2.1 displays the number of days of each step in a typical resolution process of a failed insured depository institution. It is important to note that in the event of a liquidity failure, the timeline is significantly shortened (see Figure 2.2 for an example timeline of a liquidity failure).

Figure 2.1: Example Timeline of a Capital Related Resolution



[11] Generally, insured depository institutions must be closed within 90 days after becoming critically undercapitalized (ratio of tangible equity to total assets ≤ 2.0 percent) pursuant to Prompt Corrective Action. See 12 U.S.C. §1831(o)(h)(3)(A).

Figure 2.2: Example Timeline of a Liquidity Related Resolution



Preparing to Market

Gathering Financial Institution Information for Resolution Planning

The FDIC typically sends one or more representatives onsite to gather information for resolution planning purposes, to analyze the financial and operational structure of the failing insured depository institution, and to prepare a sealed bid auction. FDIC representatives also meet with the board of directors of the failing insured depository institution to explain the FDIC's resolution process and to obtain a resolution from the board of directors allowing interested, regulatory-approved potential bidders to perform due diligence on-site, if necessary.

At this initial stage, the FDIC collects detailed information about the assets and liabilities of the failing insured depository institution, including:

- General Ledger
- Deposits
- Facilities and branches
- Loans

- Other Real Estate Owned
- Securities
- Information technology systems and technical environment
- Contracts and leases
- Subsidiaries
- Specialized activities such as derivatives, fintech partnerships, mortgage originations, credit card processing, and international operations

Determining the Resolution Transaction Structure

The FDIC uses the information it gathers about the failing insured depository institution to develop a marketing plan and potential resolution structure. The FDIC considers the following key elements when developing the resolution structure for the failing insured depository institution:

- Asset and liability composition
- Asset repayment performance
- Liquidity position
- Marketability of the deposit franchise given the competitive and economic conditions of the market area
- Available time to market the institution before failure
- Macroeconomic environment and recent transaction activity
- Other relevant information such as potential fraud or material information technology issues at the failing insured depository institution

Based on this information, the FDIC determines which resolution structure to offer potential qualified bidders. The FDIC will generally offer multiple resolution transaction options to potential bidders in order to increase the number of bids that the FDIC receives.[12] FDIC has three resolution options available: Purchase and Assumption (P&A), deposit payout, and bridge depository institution. Appendix A provides details on each of the resolution options.

Marketing the Failing Insured Depository Institution

After the resolution transaction structure has been determined, the FDIC begins a confidential marketing process for the failing insured depository institution to potential bidders (typically healthy insured depository institutions). Several criteria are used to identify potential bidders, including the bidder's asset size, capital level, regulatory ratings, location, and minority-owned[13] status. Once a bidders list is generated, the FDIC obtains approval from the primary federal regulatory and chartering authority of each potential bidder to enable participation in the confidential bidding process. Private investors who want to bid on a failing insured depository institution must have adequate investment funds and be

[12] The FDIC's resolution process has evolved over time as the FDIC addressed multiple financial crises with failing insured depository institutions under challenging economic conditions. Although least cost to the DIF considerations determines the ultimate resolution method, the FDIC has sufficient latitude to customize particular resolution methods within that framework. Circumstances frequently dictate that the resolution methods change considerably.

[13] See https://www.fdic.gov/regulations/resources/minority/policy.html.

engaged in establishing a new insured depository institution and obtaining a charter. This could be a *de novo or shelf* charter from the appropriate chartering authority, including the approval from the FDIC for deposit insurance. Additionally, the FDIC may market failing insured depository institution loans and/or other real estate owned to private investors to increase competition when the asset pools are of a significant size or the market characteristics warrant inclusion of additional bidders.

Asset Valuation Review

To determine the estimated cost of alternative resolution options, including liquidation, the FDIC must perform an Asset Valuation Review (AVR). When determining the liquidation value of the assets of a failing insured depository institution, the FDIC typically hires independent Asset Valuation Specialists that possess extensive experience performing asset valuations for private, public, and governmental entities.

When performing the AVR, the failing insured depository institution's assets are grouped by type, such as single-family real estate, commercial real estate, installment loans, and other real estate owned. A representative sample of the assets in each group is reviewed using multiple criteria to value each asset in the sample. The Asset Valuation Specialist provides the FDIC with two estimates:

- The market value and loss of all assets if sold or liquidated in the current market using discounted cash flows, net present value, and recent sales in the market.
- The cumulative loss which reflects the book value of the assets minus the potential recovery on the assets if they are held to maturity and are managed with the objective of maximizing recovery.

Market value, market loss, and cumulative loss estimates from the asset sample are extrapolated to the total asset portfolio. These estimates are used by FDIC to develop and consider the options for the least costly resolution.

Due Diligence

The due diligence period allows potential bidders to inspect the books and records of the failing insured depository institution to value its deposits and assets, and to submit bids. To facilitate the marketing and due diligence processes, the FDIC creates a secure portal known as a Virtual Data Room (VDR) to present relevant information to potential bidders to perform due diligence. Before potential bidders can access the VDR, they are required to execute a confidentiality agreement.

A VDR enables potential bidders access to financial and operational information about the failing insured depository institution, as well as draft legal documents, bidding procedures, and descriptions of the resolution transactions offered by the FDIC. The information posted in the VDR varies depending on the size and business strategy of the failing insured depository institution, as well as the amount of time available for the FDIC to collect information. Information posted to the VDR is redacted to remove personally identifiable information and proprietary information. All potential qualified bidders performing due diligence are provided the same information to ensure a fair and transparent bidding process. A VDR allows potential bidders to access the confidential information at their convenience and the ability to perform due diligence 24 hours a day, seven days a week. Experience has shown that the FDIC is more likely to receive additional and more competitive bids when potential bidders are provided ample opportunity to perform their due diligence. The FDIC may add or replace information within the

VDR at any time during the marketing period. In this event, the FDIC will send an alert to all interested bidders about the availability of new information. In some instances, the FDIC may provide an opportunity for potential bidders to perform due diligence onsite, one example is when resolution timelines are too short to obtain imaged loan files but there is ample time to bring several bidders onsite to review paper loan files. In these instances, there may also be an opportunity to talk to one or more key senior executives of the failing institution.

During the marketing and due diligence process, the failing institution may also be attempting to raise capital or find a purchaser to avoid failure. If the failing institution is successful in these efforts, the FDIC terminates the resolution process in consultation with the chartering authority and primary federal regulator.

Table 2.1: Preservation and Promotion of Minority Depository Institutions

In accordance with Section 308 of Financial Institution Reform, Recovery and Enforcement Act (FIRREA) and FDIC policy, the FDIC seeks to preserve the minority character of failing institutions before and during the resolution process. In the event of a potential failure of an insured minority depository institution (MDI), the FDIC first contacts all MDIs nationwide that qualify to bid on the failing institution. A two-week window (when the marketing timeline permits) is provided exclusively for qualified MDIs to consider pursuing a resolution transaction. During this period, the FDIC provides technical assistance regarding the structure of the resolution transaction, the bidding process and access to information about the failing MDI. Following this two-week period, the FDIC contacts all other qualified bidders to notify them of the potential resolution transaction.

Bid Acceptance and the Least Cost Test

The FDIC conducts bidding through a sealed bid auction. Bids for the failing insured depository institution must be submitted before the deadline established by the FDIC, ideally one to two weeks before the scheduled closing of the failing institution. Insured depository institution bidders may submit multiple bids and may purchase all deposits or only insured deposits. Private investors may also submit multiple bids for asset pools when offered.

An insured depository institution's bid typically contains at least two pricing terms. The first term is the bid amount (premium) offered for deposits, either the insured and uninsured[14] deposits or just the insured portion. This term generally represents the bidder's proposed value of the deposit franchise.[15] The second term of the bid amount reflects the bidder's proposed value of the failing institution's assets, other operating business lines, and customer lending relationships. Private investor bid forms will only contain

[14] Any amount that exceeds the deposit insurance limit, including interest, is uninsured. The FDIC uses the term "insured depositor" to refer to any depositor whose deposits are covered under the insurance limit. Similarly, the term "uninsured depositor" is used to refer to those depositors whose deposits exceed the deposit insurance limit.

[15] The cost analysis of an insured deposit bid allocates a portion of the loss to the uninsured depositors, which decreases the loss amount allocated to the FDIC. For the cost of an all deposit bid to be less than the cost of an insured deposit bid, the all deposit bid must be sufficient to cover the loss uninsured depositors incur in an insured deposit transaction.

one term reflecting the bidder's proposed value of the failing institution's assets and customer lending relationships.

To determine the least costly resolution to the DIF, the FDIC evaluates and compares bids against all those received and to the estimated cost of liquidation. Bidders may submit proposals that do not conform to the resolution transactions offered by the FDIC; however, the FDIC must have time to estimate the cost of these bids for them to be included in its consideration.

Pursuant to the FDI Act, the FDIC is required to choose the resolution alternative that represents the least cost resolution to the DIF.[16]

Table 2.2 Other Bid Construction Options

Alliance Bidding

When a larger or diversified insured depository institution is failing, the FDIC may offer Alliance Bidding options for bidders interested in only part of a failing insured depository institution. An opportunity for Alliance Bidding exists when:

- There is little interest in purchasing the whole failing institution,
- When few institutions are qualified to bid on the whole failing insured depository institution, or
- When multiple banks are interested in only parts of a failing insured depository institution.

Alliance Bidding increases competition and helps smaller community insured depository institutions and MDIs increase market share by allowing two or more bidders to submit a joint bid. Alliance members can bid on segments of the failing insured depository institution such as deposits, branches, or business lines.

Linked Bidding

A linked bidding option may be offered to attract bidders and create competition for failing insured depository institution acquisitions by offering the opportunity to submit bids for multiple failing insured depository institutions that are failing at the same time. This option allows independent bids for each failing insured depository institution or a combined bid for all linked failing insured depository institutions, allowing larger acquisitions. The cost of linked bids is evaluated based on the acquisition of all linked institutions.

The FDIC uses a Least Cost Test (LCT) to compare the cost of liquidating the failing insured depository institution to the cost of all bids received. If the FDIC receives an acceptable least cost bid, depending on the transaction structure, the FDIC will transfer to the AI either the insured and uninsured deposits or only the insured deposits—in addition to any other assets purchased by the AI pursuant to the P&A

[16] See 12 U.S.C. §1823(c)(4).

Agreement. If liquidation is the least costly option, the FDIC will pay insured depositors up to the deposit insurance limits and liquidate the assets of the failed insured depository institution, distributing the liquidation proceeds to allowed creditors in accordance with the order of priority scheme specified by the FDI Act.[17]

The FDIC determines the least costly resolution transaction by evaluating all possible resolution alternatives and computing costs on a net present value basis. The overall cost to the FDIC of a failed insured depository institution depends on a number of factors, including:

- The difference between total book value of assets and liabilities
- The amounts of uninsured and insured deposits
- The premium paid by the AI
- Losses on contingent claims
- The realized value of assets liquidated by the FDIC
- The value of recoveries from cross guaranty obligations of affiliated insured depository institutions[18]

Figure 2.2 shows a simplified calculation of the estimated loss for a receivership. Assets available for distribution to allowed claimants are calculated by deducting estimated asset losses and adding any bids received for the failing insured depository institution. The FDIC's estimated expenses related to the administration of the receivership are also deducted from total assets. Total estimated liabilities (claims) of the receivership are then deducted to determine the total estimated loss to the receivership.

Figure 2.2: Least Cost Test Calculations

Least Cost Test	
	Total Gross Assets
Minus (–)	Asset Losses (FDIC Estimate)
Plus (+)	Estimated Loss on Assets Acquired by Bidder
Minus (–)	Bidder Asset Discount
Plus (+)	Bidder Deposit Premium
Minus (–)	FDIC Receivership Expenses
Minus (–)	Claims - Liabilities on Receivership
Equals (=)	**Total Receivership Loss**

[17] See 12 U.S.C. §1821(d)(11).
[18] See 12 U.S.C. §1815(e).

For purposes of this calculation, the estimated claims against the receivership are calculated in the following order of priority:

Note: Creditors in each class must be paid in full before any creditors of the next class can be paid.

- **Priority 1**: Administrative claims of the receiver.
- **Priority 2**: Secured depositors and preferred creditors are paid up to the value of their collateral, and if there is any deficiency, such an amount becomes a Priority 4 general unsecured claim.
- **Priority 3:** The FDIC (in its corporate capacity is a subrogee based on its payment of the insured deposits) and uninsured depositors share payments and incur losses pro-rata based on their respective share of total deposits.[19] [20]
- **Priority 4:** General creditors can receive payments only after all depositor claims have been paid in full, but typically incur losses in the total amount of the claim.
- **Priority 5:** Subordinated creditors can receive payments only after all general creditor claims have been paid in full.[21]
- **Priority 6:** Shareholder or member obligations (including to an insured depository institution holding company).[22]

After the FDIC's identification of the least costly resolution transaction to the DIF and prior to its approval of the transaction, the FDIC consults—as appropriate—with the winning bidder's primary federal regulator to confirm its authorization of the winning bidder's transaction. Once the FDIC approves the transaction, then the FDIC notifies the winning bidder and arranges for the AI to sign the appropriate legal documents before the failing insured depository institution closes. The FDIC staff meets with the chartering authority, and the AI to coordinate the logistics of the closing.

Chapter 3 The FDIC's Role as Receiver

The U.S. Congress granted the FDIC special powers to use in the liquidation of assets of failed insured depository institutions and the payment of claims from the receivership estate. U.S. laws governing the resolution of failed insured depository institutions were designed to promote the efficient and expedient liquidation of failed insured depository institutions. The most significant of these powers are discussed below.

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[19] In receiverships under the FDI Act, both the insured and uninsured depositor claims are included in the depositor class and are treated similarly for purposes of receivership distributions. The distribution amounts are calculated on a pro-rata basis (i.e., the total debt owed to each member of the depositor class as a percentage of the total value of the receivership assets available for distribution to the depositor class).

[20] Customers' deposits held on the books and records of a U.S. insured depository institution's foreign branches are not insured by the FDIC. If a U.S. insured depository institution with foreign branches fails, foreign branch deposit claims would be classified as Priority 4 general creditor claims. If however the foreign branch deposits are "dually payable" (i.e., payable both in the foreign branch and in the U.S. branches of the failed insured depository institution, and such payment arrangement is confirmed in a written deposit account agreement), then the foreign deposit claims would be classified as Priority 3 deposits.

[21] Any liability of the insured depository for a cross guaranty assessment would receive distributions after subordinated debtholders, but before distributions were made to shareholders.

[22] Shareholders estimated claims are not included in the LCT, as they can only be paid after all of the higher-priority claimants have been paid in full.

Comparison with U.S. Bankruptcy Law

The statutory powers of the FDIC as receiver for a failed insured depository institution are similar to those of a U.S. bankruptcy trustee. The FDIC as receiver steps into the shoes of a failed insured depository institution. The FDIC as receiver may liquidate the insolvent insured depository institution or transfer some or all of its assets to an AI. Although many of the concepts central to the operation of a FDIC receivership are similar to those of the U.S. bankruptcy process, U.S. law grants the FDIC additional powers, resulting in critical differences between bankruptcy process and the FDIC's receivership process.

When serving as receiver, the FDIC's powers are defined by the FDI Act[23] rather than the U.S. Bankruptcy Code. These powers enable the FDIC both to expedite the liquidation process in order to maintain confidence in the U.S. banking system and maximize the cost effectiveness of the receivership process to preserve the DIF. The primary advantage is that, unlike bankruptcy, the FDIC's receivership process is not subject to U.S. court supervision, and the decisions of the FDIC as receiver are not reviewable by a U.S. court—except under limited circumstances. Key differences between U.S. bankruptcy law and receivership law applicable to the FDIC include:

- **Claims process.** The receivership claims process is an administrative process. After failure, any party with a claim against the failed insured depository institution must timely file a claim with the FDIC as receiver, or the claim is barred. The FDIC as receiver has the power to allow or disallow claims. The bankruptcy claims process is a judicial process. A U.S. bankruptcy trustee can object to a claim, but the decision about whether to allow or disallow the claim is made by the U.S. bankruptcy court.
- **Contract repudiation.** The FDIC as receiver may repudiate certain burdensome contracts within a "reasonable time" of its appointment (subject to the specific facts and circumstances of the failed insured depository institution, typically 180 days). A U.S. bankruptcy trustee is generally deemed to reject all executory contracts unless the bankruptcy trustee obtains a U.S. bankruptcy court order assuming the contract within 60 days (in Chapter 7 cases), 210 days (for commercial real property leases), or before plan confirmation (in all other cases).
- **Stay of litigation.** The FDIC as receiver can request a stay of up to 90 days after its appointment as receiver of legal proceedings to which the failed insured depository institution is a party. The automatic stay in U.S. bankruptcy court proceedings becomes effective immediately upon the filing of a U.S. bankruptcy petition and is terminated only by a U.S. bankruptcy court order or the conclusion of the U.S. bankruptcy case.
- **Avoidance powers.** Both the FDIC as receiver and a U.S. bankruptcy trustee have avoidance powers. The FDIC as receiver can void or nullify fraudulent transfers by obligors of a failed insured depository institution made with the intent to hinder, delay, or defraud the institution. This power applies to transfers made within five years of the date of the FDIC's appointment as receiver. A U.S. bankruptcy trustee can void fraudulent transfers and recover property for the bankruptcy estate. The fraudulent transfer lookback period for a U.S. bankruptcy trustee is two years prior to the filing of the bankruptcy petition or a longer time period if provided under state or federal law.

[23] See 12 U.S.C. §1821(d) et seq.

- **Special defenses.** The FDIC as receiver has special statutory powers to defeat certain defenses of obligors of a failed insured depository institution. A U.S. bankruptcy trustee generally can use only the defenses available to the debtor that accrued prior to the day the bankruptcy case was filed.
- **Depositor preference.** The FDIC as receiver is required under the FDI Act to pay depositor claims in full before any distribution is made to allowed unsecured creditors. The U.S. Bankruptcy Code does not distinguish between deposits and any other type of unsecured claim for priority of payment purposes. Instead, the U.S. Bankruptcy Code contains a different claims priority scheme favoring certain tax obligations, unpaid employee wage and benefit claims, and domestic support obligations.

A more detailed discussion of the FDIC's special receivership powers follows later in this chapter.

Appointment of the FDIC as a Receiver

An insured depository institution's charter determines which state or federal regulatory agency will appoint a receiver for a failing insured depository institution. The FDIC must be appointed receiver for insured federally chartered institutions. For insured state-chartered depository institutions, the FDIC may accept appointment as receiver by the appropriate state regulatory authority, but it is not required to do so. In 1991, the U.S. Congress also granted the FDIC self-appointment authority.[24]

The FDIC in its capacity as receiver is functionally and legally separate from the FDIC in its corporate capacity as deposit insurer. The FDIC as receiver also has separate rights, duties, and obligations from those of the FDIC as the deposit insurer. U.S. courts have long recognized the FDIC's dual and separate legal capacities.

The Functions of the FDIC as Receiver

The U.S. Congress has entrusted the FDIC with the responsibility for resolving failed federally insured depository institutions and has conferred significant powers to ensure the efficiency of the process. In exercising this authority, the FDIC is required by the FDI Act to maximize the return on the failed insured depository institution's assets and to minimize any loss to the DIF.

The FDIC receivership is designed to market and liquidate the failed insured depository institution's assets, and to distribute the proceeds to the failed institution's creditors. The FDIC as receiver assumes the rights, powers, and privileges of the failed insured depository institution and its stockholders, officers, and directors. The FDIC may collect all obligations or funds due to the failed insured depository institution, as well as preserve or liquidate its assets and property. Additionally, the FDIC may perform any other function of the failed institution consistent with its appointment.

Even without the consent or approval of any other agency, court, or party with contractual rights, the

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[24] The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) granted FDIC self-appointment authority to close an institution that was considered to be critically undercapitalized and that did not have an adequate plan to restore capital to the required levels. The FDICIA also gave the FDIC the authority to close an insured depository institution that had a substantial dissipation of assets due to a violation of law, operated in an unsafe or unsound manner, engaged in a willful violation of a cease and desist order, concealed records, or ceased to be insured.

FDIC as receiver also has the power to transfer a failed insured depository institution's assets and liabilities to an AI. The FDIC may charter a bridge depository institution (BDI) to take over the assets and liabilities of the failed insured depository institution, or it may sell or pledge the assets of the failed insured depository institution to the FDIC in its corporate capacity.

Under the FDI Act, the FDIC as receiver is not subject to the direction or supervision of any other agency or department of the U.S. government or state governments. The FDIC as receiver may exercise its discretion to determine the most effective resolution of the failed insured depository institution's assets and liabilities.

The FDIC also has the power to act as a conservator[25] of an open insured depository institution to preserve franchise value and return the insured depository institution to a sound and solvent operation. In many respects, the FDIC's receivership and conservatorship powers are similar, even though the FDIC's conservator powers have been rarely used. Many statutory powers of a receiver under the FDI Act are expressly conferred upon a conservator, while certain powers are limited to the receiver. While in conservatorship, the insured depository institution remains subject to the supervision of the appropriate state or U.S. federal banking regulator. By contrast, a receivership is designed to liquidate and resolve the failed insured depository institution, and the receivership is no longer subject to the supervision of a U.S. federal or state bank regulator.

The Closing Function of the FDIC as Receiver

When a chartering authority closes a failing insured depository institution and appoints the FDIC as receiver, the FDIC's first task is to take custody of the failed insured depository institution's premises and all of its records, loans, and other assets. After taking possession, the FDIC posts public notices on the premises and external websites to explain the closing. It then notifies correspondent institutions and other appropriate parties about the insured depository institution's closing. Additionally, the FDIC closing staff:

- Works with employees of the failed insured depository institution,
- Adjust accounts to reflect unrecorded activity through the closing date,
- Post all applicable entries to the general ledger, and
- Ensure all accounts are in balance.

If there is an AI, the FDIC splits the financial statement into assets and liabilities acquired by the AI and retained by the Receivership.

Resolution of Claims

After appointment, the FDIC as receiver must notify the failed insured depository institution's creditors to submit their claims to the FDIC as receiver. The FDIC as receiver also arranges for notices to be published in a local newspaper, stating that the insured depository institution has failed and explaining

[25]The FDIC has never been appointed conservator by the OCC or a state regulatory authority and may decline the appointment if tendered; the FDIC was appointed conservator twice by the Office of Thrift Supervision (OTS). The OTS was abolished effective on October 19, 2011, pursuant to the Dodd-Frank Act.

how claimants may file their claims. The FDIC as receiver must also mail notices to file claims to all creditors identified on the failed insured depository institution's books and records.

All claimants other than depositors, including those who may have been suing the failing insured depository institution, must file proof of their claims with the FDIC as receiver by a specified deadline that is at least 90 days after the insured depository institution's closing. Depositors do not have to notify the FDIC of their claim. If the resolution has uninsured depositors, FDIC will notify the uninsured depositors directly. The FDIC as receiver may seek to put on hold for 90 days any pending litigation to which the failed insured depository institution was a party. Once a claim has been filed, the FDIC as receiver has 180 days to determine if the claim should be allowed. If the FDIC as receiver determines that a claim does not have merit, the claim is disallowed.

An allowed claim is paid on a pro rata basis with other allowed claims of the same class to the extent funds are available in the receivership after expenses are paid. If a creditor's claim is disallowed, the creditor may seek de novo judicial review of the claim by filing a lawsuit or continuing pending litigation within 60 days of claim disallowance. If the FDIC as receiver has not acted on the claim within 180 days of its filing, the claim is deemed disallowed, and the creditor may file a lawsuit within 60 days thereafter.

Payment of Claims

The priority for payment of allowed claims against a failed insured depository institution is established under the provisions of the FDI Act. The FDI Act mandates payment priority to all depositors, including the FDIC as subrogee, over general unsecured creditors.

Claims against the failed insured depository institution are paid from the funds recovered by the FDIC as receiver through its liquidation efforts. Under the FDI Act, allowed claims are paid in the order of priority described in Chapter 2.

Payments on these claims are known as dividends. After all assets are liquidated, final receivership expenses are paid, a final dividend is made, and the receivership is terminated. U.S. law provides that the maximum liability of the FDIC as receiver to a claimant is an amount equal to what the claimant would have received if the failed insured depository institution's assets and liabilities had been liquidated.[26]

Advance Dividend

Shortly after the failure of an insured depository institution, FDIC may choose to provide an immediate return of a portion of the uninsured deposits to the affected customers. This distribution is known as an advance dividend and occurs before completing the resolution and liquidation of the failed bank's assets. The main difference between an advance dividend and a traditional dividend is that an advance dividend is paid in anticipation of estimated cash that will be generated by the receivership through the liquidation of assets, while a traditional dividend is paid only after receivership cash becomes available. The amount of an advance dividend is based upon preliminary pre-closing asset valuation estimates. Advance dividends serve as a tool to reduce the liquidity hardships that uninsured depositors suffer in bank failures.

[26] See 12 U.S.C. §1821(i).

FDIC's Special Receivership Powers

As noted earlier in this chapter, the FDIC as receiver may exercise the following special powers granted by U.S. law.

Repudiation of Contracts

The FDIC as receiver may repudiate or disaffirm a contract when if it determines:

- The failed insured depository institution was a party to a contract,
- The contract is burdensome, and
- The repudiation of the contract would promote the orderly administration of the receivership estate.[27]

This power permits the receiver to terminate the contract, thus ending any future legal obligations imposed on the receivership by the contract. The FDIC as receiver must repudiate a contract within a "reasonable time" after its appointment as receiver, generally within 180 days. However, this timeframe may vary depending on the specific facts and circumstances related to the failed insured depository institution. While the FDIC as receiver may become liable for damages resulting from the repudiation of a contract, those damages are limited by statute to actual direct compensatory damages determined as of the date of the appointment of the FDIC as receiver. These direct compensatory damages do not include punitive or exemplary damages, damages for lost profits or opportunity, or rewards for pain and suffering. Any claim for damages due to the repudiation of a contract by the FDIC as receiver is subject to the administrative claims process.

Slightly different repudiation rules apply to contracts of the failed insured depository institution that are qualified financial contracts (QFCs), which include—but are not limited to—securities contracts, commodity contracts, forward contracts, repurchase agreements, and swap agreements. When the FDIC as receiver repudiates a QFC, damages are measured as of the date of the repudiation and may include the cost of assuming a replacement QFC. These special rules for QFCs are necessary to protect the stability of U.S. financial markets.

Enforcement of Contracts

In addition to being able to repudiate or disaffirm contracts, the FDIC as receiver also has the limited authority to enforce a contract and prevent the other party to the contract from terminating it.[28] However, keeping the contract in place must be in the best interest of the receivership. Any contract clause that allows the termination of the contract due to insolvency or appointment of the receiver (or similar language) is unenforceable.

If, at the time of failure, the insured depository institution had defaulted on the terms of a contract, the FDIC as receiver has the authority to prevent the third party from exercising any right or power to terminate, accelerate, declare a contractual default, or to obtain possession or exercise control over any of the failed insured depository institution property for a period of 90 days after the FDIC's appointment

[27] See 12 U.S.C. §1821(e)(1).
[28] See 12 U.S.C. §1821(e)(13)(A).

as receiver. The FDIC as conservator may exercise this same statutory power for a period of 45 days following its appointment as conservator.

Placing Litigation on Hold

After its appointment as receiver, the FDIC may request a stay (or hold) on all U.S. litigation pending or subsequently filed against the failed insured depository institution, and the U.S. courts must grant such stays. The FDIC will normally take such action in order to obtain adequate time to evaluate the facts of each case and to decide how to proceed. The length of the stay is up to 90 days for the FDIC in its capacity as receiver and 45 days for the FDIC in its capacity as conservator.

After a litigation stay expires, the FDIC as receiver generally may elect to continue such litigation in a U.S. state court or remove the litigation to a U.S. federal court.

Avoiding Fraudulent Conveyances

The FDIC as receiver has the power to avoid certain fraudulent transfers. Under U.S. law, the FDIC as receiver may avoid a security interest—even a perfected security interest in property—which is taken in contemplation of the failed insured depository institution's insolvency or with the intent to hinder, delay, or defraud the failed institution or its creditors.[29] The FDIC as receiver may also avoid any transfers made within five years of the appointment of the receiver by certain parties with the intent to hinder, delay, or defraud the failed insured depository institution.[30] These avoidance rights are superior to the rights of other parties.

Special Defenses

Over the years, U.S. statutes and court decisions have provided the FDIC as receiver certain special defenses to promote the efficient resolution of failed insured depository institutions.

Improperly Documented Agreements Are Not Binding on the FDIC

The FDIC must be able to rely on the written books and records of the failed insured depository institution in order to evaluate its assets and liabilities accurately. For the FDIC, the ability to rely on the failed insured depository institution's records is critical in completing cost-effective resolution transactions, such as the sale of assets to third parties and the effective collection of debts due to the failed insured depository institution.

U.S. law recognizes that unless an agreement is properly documented in the failed insured depository institution's records, it cannot be enforced against the FDIC either by making a claim or by defending against the FDIC's claim.[31] Therefore, for example, this authority would bar an obligor on a promissory note from asserting that an undocumented, unrecorded side agreement with the failed insured depository institution changed or released the duty to repay the loan.

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[29] See 12 U.S.C. §1821(e)(12).
[30] See 12 U.S.C. §1821(d)(17)(A).
[31] See 12 U.S.C. §1823(e).

U.S. Courts May Not Enjoin the FDIC as Receiver

The U.S. Congress has provided the FDIC, in its roles as receiver, with additional protection by prohibiting U.S. courts from issuing injunctions or similar equitable relief to restrain the receiver from completing its resolution and liquidation activities.[32] For example, this legal authority could enjoin court-ordered injunctions to prevent foreclosures or asset sales by the FDIC as receiver. Similarly, this authority could enjoin courts from issuing orders to attach or execute upon any assets of the failed insured depository institution in the possession of the FDIC as receiver.

Post-Closing Settlement with the Assuming Institution

The FDIC and the AI address most of their post-closing activities in a P&A transaction through the "settlement" process. The FDIC, in its role as settlement agent, serves as the post-closing primary contact with the AI for all matters pertaining to the terms of the P&A agreement. Furthermore, the FDIC ensures that the transfer of a failed insured depository institution's assets and liabilities occurs according to the terms of the P&A agreement. The settlement period begins with the AI's purchase or assumption of some or all of the failed insured depository institution's assets or liabilities. This period normally continues for up to 364 days after the closing. Typical settlement transactions include the following:

- Correcting discrepancies related to the balances of the failed insured depository institution's assets and liabilities purchased by or transferred to the AI.
- Optional purchasing of assets by the AI.
- Repurchasing of assets by the FDIC as receiver or any assets returned (put back) to the FDIC as receiver by the AI.
- Valuing assets sold to the AI at market prices.
- Discovering new assets and liabilities of the failed insured depository institution.
- Reimbursing receivership expenses and pre-closing service period expenses of the failed insured depository institution.

[32] See 12 U.S.C. §1821(j).

Appendix A: Resolution Methods

The FDIC uses three basic resolution structures: purchase and assumption (P&A), deposit payouts, and bridge depository institutions. This appendix provides details of each of these resolution structures. In the past, the FDIC has offered other resolution structures, some of which are no longer possible under current laws. This Appendix describes those options as well.[33]

Purchase and Assumption

A P&A transaction is a resolution transaction between the FDIC in its receivership capacity and a healthy financial institution, generally referred to as the AI. P&A transactions have three primary structures: Basic P&A, Whole Bank P&A, and P&A with Shared Loss. A P&A is implemented with an agreement between the FDIC and the assuming institution.[34]

Basic P&As

In a Basic P&A transaction, the FDIC offers bidders the option of assuming all of the failed insured depository institution's deposit liabilities or only the insured portion. Assets passing to an AI are generally limited to cash, cash equivalents, and marketable securities— with the remaining assets retained by the FDIC as receiver. The FDIC provides cash in accordance with the winning bid; the cash amount approximates the difference between the deposits and the value of the assets of the failed insured depository institution purchased by the AI. This resolution method offers two benefits compared to liquidation. First, it allows at least some of the deposit franchise value to be retained. Second, it is less disruptive because depositors receive continuous deposit processing services.

The FDIC can also offer numerous combinations of the basic option. One commonly used option—called "optional loan pools"—groups the assets of the failed insured depository institution into homogeneous pools and asks bidders to submit a bid value for each desired pool. Certain assets, such as distressed assets, may be excluded from the franchise offering and sold later by the receiver. A key benefit of this option is that it attracts bidders who may only be interested in a subset of the assets.

Whole Bank P&As

In a Whole Bank P&A transaction, the FDIC offers bidders the opportunity to acquire essentially all of the failed insured depository institution's assets and liabilities. Assets are offered on an "as is" discounted basis, and bids reflect a discount from the book value of assets. The FDIC offers bidders the option of assuming all of the failed insured depository institution's deposit liabilities or only the insured portion. This transaction minimizes market disruption and requires fewer staff to execute than transactions in which the FDIC retains more assets. It also conserves cash for the FDIC, because although the FDIC

[33] More detail about historical resolution structures and programs can be found in *Managing the Crisis: The FDIC and RTC Experience* https://www.fdic.gov/bank/historical/managing/.

[34] Some categories of assets never pass to the AI in a P&A transaction and remain with the FDIC as receiver. These include claims against former directors and officers, claims under bankers blanket bonds and director and officer insurance policies, prepaid assessments, loan loss reserves, and tax receivables. Additionally, a standard P&A agreement provision typically allows the AI to require the FDIC as receiver to repurchase any acquired loan that contains forged and stolen instruments.

provides cash up front to address the capital shortfall, the assets and deposits are sold together. Therefore, ongoing working capital needs are minimal.

Shared Loss P&As

A P&A with Shared Loss is similar to a Whole Bank P&A transaction, except that the FDIC as receiver agrees to share losses on certain types of assets (up to an established limit). Like the Whole Bank P&A, the Shared Loss P&A transaction minimizes disruptions to the failed insured depository institution's customers and the local community, as well as conserves cash for the FDIC. During periods of high asset value uncertainty, shared loss presents clear advantages. First, the FDIC retains a significant portion of the risk exposure; therefore, franchise bids may improve. Shared loss allows the FDIC to shift responsibility for management of the failed insured depository institution's assets to the private sector and also participate in asset price improvements through reduced shared loss payments during the life of the agreement.

During the most recent U.S. financial crisis, the FDIC offered shared loss transactions in which the AI accepted 20 percent or more of the credit losses, depending on the bid. Since shared loss assets are typically distressed assets of the failing insured depository institution that otherwise might not appeal to potential acquirers without an incentive or protection from losses; the Shared Loss P&A transaction splits defined credit losses and expenses on certain assets between the FDIC and the AI. Assets covered by shared loss have typically included single-family residential loans, commercial loans, commercial real estate loans, and other owned real estate. The Shared Loss P&A reduces the FDIC's immediate cash needs and moves assets quickly back into the private sector.

There are some negative aspects of the shared loss structure. It requires both the FDIC and the AI to assume additional administrative duties and costs in managing the shared loss assets throughout the life of the P&A Agreement. It is critical to establish an effective governance process to monitor these agreements to ensure appropriate management of the assets by the AI. Some bidders may find these added administrative duties and costs unacceptable, and the bidders may lose interest in this option. Another concern in offering the shared loss structure is that many healthy, smaller insured depository institutions may not have the appropriate experience in working out problem assets. In recognition of the different skills and interests of potential bidders, the FDIC normally offers other resolution methods simultaneously with the shared loss structure to encourage more institutions to bid.

Multiple Deposit Acquirer Strategy (MDAS)

MDAS is a resolution strategy that provides bidders the choice of bidding on the entire franchise or on the failing insured depository institution's individual branch or groups of branches. Providing the option of purchasing a group of branches rather than the entire branch network can expand the universe of potential buyers and may result in better bids in the aggregate. In MDAS transactions, prospective acquirers are required to submit bids on both the all-deposits and insured deposits only options, unless the bid is for the entire franchise. This is to ensure all depositors are treated the same in the resulting transaction.

The Resolution Trust Corporation (RTC) developed the branch breakup resolution strategy to allow smaller institutions to participate in the resolution process and increase competition among the bidders.

Because thrift institutions were in conservatorship prior to their resolution, the RTC had both the time and control of the failed thrift's deposit and loan systems to execute this strategy. Because failing insured depository institutions are open and operating, it is more difficult for the FDIC to execute a branch breakup strategy. Thus, a branch breakup strategy is only feasible when failing insured depository institution's deposit and loan systems operate in a manner that they can be easily split apart, and enough time is available to prepare for this type of resolution.

Deposit Payouts

A Deposit Payout is executed when:

- None of the bids received by the FDIC are less costly to the DIF than liquidation,
- When no bids are received, or
- When there is insufficient time to complete the resolution process.

In a deposit payout, the FDIC is appointed receiver of all the failed institution's assets and liabilities. As deposit insurer, the FDIC pays all of the depositors of the failed insured depository institution the full amount of their insured deposits up to the legal limit of $250,000 per depositor, per account type. The three most common types of deposit payouts are a Straight Deposit Payout, an Insured Deposit Transfer, and a Deposit Insurance National Bank.

Straight Deposit Payout

A Straight Deposit Payout is a resolution method used when the liquidation (or winding down of affairs) of the failed insured depository institution is determined to be the least costly resolution to the DIF. In a Straight Deposit Payout, the FDIC determines the amount of insured deposits and pays that amount directly to insured depositors. Generally, funds are paid the next business day. The FDIC as receiver retains all assets and other liabilities of the failed insured depository institution, and the receivership bears the responsibility and cost of liquidating the assets.

Insured Deposit Transfer

An Insured Deposit Transfer is a deposit payout in which the insured and secured deposits of a failed insured depository institution are transferred to a transferee or agent insured depository institution in the community. This transfer permits a direct payout of the failed insured depository institution's depositors by the agent institution. The agent institution pays customers of the failed insured depository institution the amount of their insured deposits or, at the customer's request, opens a new account at the agent institution for the customer.

Deposit Insurance National Bank

A Deposit Insurance National Bank (DINB) is a new national bank organized by the FDIC and chartered by the OCC with limited duration, limited powers, and no capitalization.[35] The FDIC may organize a DINB to protect insured depositors and ensure that these depositors, particularly those in underserved

[35] The FDI Act, see 12 U.S.C. §1821(m), authorizes the FDIC to operate a DINB for up to two years; however, the FDIC has operated most DINBs for only 30-45 days.

communities, have continued access to their insured funds.

Additionally, a DINB ensures that account holders have ample time to:

- Open accounts at other insured depository institutions when no other insured depository institution has agreed to assume the insured deposits.
- Transfer their banking relationships via uninterrupted direct deposits and automated payments from customer accounts to other financial institutions.

Bridge Depository Institution

A bridge depository institution (BDI)—also known as a bridge bank—is a new, temporary depository institution chartered by the OCC after a failed insured depository institution is closed by its chartering authority, and the FDIC is appointed receiver. The FDIC may establish a BDI to provide time to arrange a final resolution transaction. Before establishing a BDI, the FDIC must prepare a LCT to determine whether the BDI strategy is less costly to the DIF than a liquidation of the failed institution. The LCT analysis will determine whether all deposits or only the insured portion will be transferred to the BDI. The FDIC must also determine which assets of the failed IDI will be transferred to the BDI and which assets will remain in the receivership.

Upon appointment of the FDIC as receiver, the board of directors of the failed insured depository institution and executives who contributed to its failure are removed. The FDIC's Board of Directors will appoint new members of the board of directors and individuals who will serve in key senior executive positions of the BDI. The board of directors of the BDI is responsible for reviewing and approving the BDI's business plan and for other day-to-day management and oversight duties. The FDIC's Board of Directors retains the ultimate authority to affect the BDI's final resolution and approve the resolution of the BDI.

A BDI is designed to "bridge" the gap in time between the failure of the IDI and the FDIC's final resolution. Under U.S. law, the FDIC can operate a BDI for two years, with three potential one-year extensions, after which the BDI must be sold or otherwise resolved.[36] The exit strategy for the BDI will vary depending on the length of time needed for the BDI to execute its proposed exit strategy. The BDI may be resolved through a P&A transaction, a merger, or a stock sale. In addition, business lines and assets of the BDI may be sold prior to the final resolution of the BDI.

Historical Resolution Options

Some resolution techniques for failing insured depository institutions that were used in the past are no longer legislatively available. One such technique was Open Bank Assistance. The Open Bank Assistance resolution was a method in which a failing insured depository institution received financial assistance from the FDIC. As a condition of this financial assistance, the entity was required to obtain new management and a capital infusion from the private sector, thus diluting the current ownership interest to a nominal amount. This option was used only twice[37] after 1992 due to legislative changes

[36] See 12 U.S.C. §1821(n)(9).

[37] For more information about open bank assistance, see FDIC, Crisis and Response: An FDIC History, 2008-2013, Chapter 3. https://www.fdic.gov/bank/historical/crisis/

that restricted its use and broadened the resolution options available to the FDIC, such as BDI authority. The Dodd-Frank Act eliminated this option.[38]

[38] Dodd-Frank Act, Pub L. No. 111-203, 124 Stat.1376, §1823(c)(4)(G) (2016)

Appendix B: History of Deposit Insurance Coverage

Since the start of FDIC insurance on January 1, 1934, no depositor has lost any insured funds because of a insured depository institution failure. Over time, Congress has adjusted the deposit insurance coverage limit, as shown in Table B.1.

Table B.1 History of Deposit Insurance Coverage

Year	Deposit Insurance Coverage
1934	$2,500 initially; raised to $5,000 mid-year
1950	Increased to $10,000
1966	Increased to $15,000
1969	Increased to $20,000
1974	Increased to $40,000
1980	Increased to $100,000
2006	Coverage for individual retirement accounts increased to $250,000
2008	Temporarily increased from $100,000 to $250,000, and unlimited coverage provided for noninterest-bearing accounts
2010	Permanently increased to $250,000 for all accounts, and unlimited coverage for noninterest-bearing accounts ended

Glossary

Assuming Institution (AI) – A healthy insured depository institution that purchases some or all of the assets and assumes some or all of the liabilities of a failed insured institution in a Purchase and Assumption (P&A) transaction.

Asset Valuation Review (AVR) – A review of all of a failing insured depository institution's loans and other real estate owned used to estimate the liquidation value of the failing institution. This estimate is used in the least costly analysis that is required by the Federal Deposit Insurance (FDI) Act. The Asset Valuation Review compares the book value of the failing insured depository institution's loans and other real estate owned to the estimated recovery value to help determine the projected net loss to the FDIC.

Bank – A U.S. financial institution that in the normal course of its business operations accepts deposits; pays, processes, or transacts checks or other deposit accounts; and performs related financial services for the public. Also, a Bank generally makes loans or advances credit.

Book value – The dollar amount on the insured depository institution's accounting records or related financial statements. The gross book value of an asset is the value without consideration for adjustments, such as valuation allowances. The net book value is the book value net of such adjustments. The FDIC restates amounts on the books of a failed insured depository institution to conform to the FDIC's liquidation accounting practices. Therefore, in the FDIC accounting environment, book value generally refers to the unpaid balance of loans or accounts receivable or the recorded amount of other types of assets (e.g., owned real estate or securities).

Bridge Depository Institution (BDI) –A temporary national bank established and operated by the FDIC to acquire the assets and assume the liabilities of a failed insured depository institution until final disposition can be accomplished. The use of a BDI is generally limited to large or complex U.S. insured depository institutions that are determined to have franchise value but where more time is needed to permit the completion of the least costly resolution strategy.

Branch breakup – A resolution strategy that provides bidders the choice of bidding on the entire franchise or on individual or groups of branches of the failing insured depository institution. Marketing failing insured depository institutions on both a whole franchise and a branch breakup basis can expand the universe of potential buyers and may result in better bids in the aggregate.

Chartering authority – A state or federal agency in the U.S. that grants charters to new depository institutions. For state-chartered institutions, the chartering authority is the state banking department; for national banks and for federal savings institutions, it is the Office of the Comptroller of the Currency (OCC).

Claim – An assertion of the indebtedness of a failed insured depository institution to a secured creditor, depositor, general unsecured creditor, subordinated creditor, or shareholder.

Conservator – A person or entity— including a government agency— appointed by a regulatory authority to operate a troubled insured depository institution in an effort to conserve, manage, and protect the troubled insured depository institution's assets until the institution has stabilized or has been closed by the chartering authority.

Conservatorship – The interim entity established after a person or entity—including a government agency—is appointed by a regulatory authority to operate a troubled insured depository institution in an effort to conserve, manage, and protect the troubled institution's assets until the institution has stabilized or has been closed by the chartering authority.

Deposit Insurance Fund (DIF) – An insurance fund responsible for protecting insured depository institution depositors from loss due to failures of insured depository institutions. It was established on March 31, 2006, as a result of the 2005 U.S. deposit insurance reform legislation requiring the merger of the Bank Insurance Fund and the Savings Association Insurance Fund. The FDIC is the administrator of the DIF.

Deposit Insurance National Bank (DINB) – The Federal Deposit Insurance (FDI) Act authorized the FDIC to establish a new limited purpose national bank to assume and pay to depositors the insured deposits of a failed insured depository institution. A DINB allows a failed insured depository institution to be liquidated in an orderly fashion, minimizing disruption to local communities and financial markets. Cash and safekeeping business are transferred to the DINB, and all other assets remain in the FDIC receivership.

Deposit payout – A resolution method for failed insured depository institutions used when liquidation of the institution is determined to be the least costly resolution or when no assuming institution (AI) can be found. Deposit payouts generally have three forms:

- A straight deposit payout in which FDIC directly pays the insured amount of each depositor.
- An insured deposit transfer in which a healthy insured depository institution is paid by the FDIC to act as its agent and pay the insured deposits to customers of the failed insured depository institution.
- A Deposit Insurance National Bank (DINB).

A Deposit payout is sometimes called a "payoff".

Dodd-Frank Wall Street Reform and Consumer Protection (Dodd-Frank Act) – Federal financial regulatory reform legislation passed by the 111th U.S. Congress and signed into law by President Barack Obama on July 21, 2010. The Act was passed as a response to the late-2000s U.S. financial crisis and ensuing recession. It was touted as the most sweeping change to financial regulation in the U.S. since the Great Depression. It represented a significant change in the American financial regulatory environment, affecting all federal financial regulatory agencies and almost every aspect of the U.S. financial services industry.

Due diligence – A potential purchaser's on-site or virtual inspection of the books and records of a failing insured depository institution. Before an insured depository institution's failure, the FDIC invites potential purchasers to review pertinent files (either at the institution or via the Virtual Data Room (VDR), so they can make informed decisions about the value of the failing insured depository institution's assets. All potential purchasers must first sign a confidentiality agreement.

Failure – The closing of an insured depository institution by its chartering authority, which rescinds the institution's charter and revokes its ability to conduct business, because the institution is insolvent, critically undercapitalized, or unable to meet deposit outflows.

Federal Deposit Insurance Act (FDI Act) – The Federal Deposit Insurance Act, as amended.

Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) – Federal law enacted in 1991 in the U.S. during the savings and loan (S&L) crisis that recapitalized the Bank Insurance Fund by allowing the FDIC to borrow from the U.S. Treasury. The Act also expanded the authority of banking regulators to seize undercapitalized banks, mandated that failing insured depository institutions be resolved by the least costly method available, and expanded consumer protections available to banking customers.

Federal Reserve System (FRS) – The central banking system of the U.S., founded by U.S. Congress in 1913 to provide the nation with a safer, more flexible, and more stable monetary and financial system. Over the years, the FRS's role in banking and the economy has expanded. The FRS administers U.S. monetary policy using three major tools: open market operations, the reserve requirement, and the discount rate. The FRS also plays a major role in the supervision and regulation of the U.S. banking system. The Board of Governors of the FRS (i.e., the Federal Reserve Board) is composed of seven members appointed to 14-year terms by the President and confirmed by the Senate. However, the Chairman and Vice Chairman of the board serve four-year terms. The Federal Reserve Board's policies are carried out by the 12 regional Federal Reserve Banks.

Federal Savings and Loan Insurance Corporation (FSLIC) – The federal corporation chartered by Congress in 1934 to insure deposits in savings and loan institutions (S&Ls). The FSLIC also served as a conservator or receiver for troubled or failed insured S&Ls. The FSLIC functioned under the direction of the Federal Home Loan Bank Board, which provided certain administrative services and conducted the examination and supervision of insured S&Ls. In 1989, Congress abolished the FSLIC, transferring its resolution, conservatorship, and receivership functions to the Resolution Trust Corporation (RTC) and its responsibility to insure deposits in S&Ls to the Savings Association Insurance Fund—which was administered by the FDIC.

Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) – The federal law enacted in the wake of the savings and loan crisis of the 1980s. It established the Resolution Trust Corporation (RTC) to close hundreds of insolvent thrifts and provided funds to pay out insurance to their depositors. It transferred thrift regulatory authority from the Federal Home Loan Bank (FHLB) Board to the Office of Thrift Supervision (OTS).

General creditors – Entities—including suppliers, tradespeople, and contractors—with unsecured claims against a failed insured depository institution.

Insured deposit – The portion of a deposit in an FDIC-insured commercial or savings bank that is fully protected by FDIC deposit insurance. Savings, checking, and other deposit accounts, when combined, are generally insured up to $250,000 per depositor in each financial institution insured by the FDIC. Deposits held in different ownership categories, such as single or joint accounts, are separately insured. Also, separate $250,000 coverage is usually provided for retirement accounts, such as individual retirement accounts.

Insured Depository Institution – a U.S. financial institution which holds insured deposits which are protected by deposit insurance provided by the FDIC.

Insured deposit transfer (IDT) – A type of deposit payout in which the insured and secured deposits of a closed insured depository institution are transferred to a transferee or agent institution in the community, permitting a direct payout of the failed insured depository institution's depositors by the agent institution. The agent institution pays customers of the failed insured depository institution the amount of their insured deposits or, at the customer's request, opens a new account in the agent institution for the customer. When no assuming institution (AI) can be found for the failed bank, an insured deposit transfer is an alternative to a straight deposit payout.

Least Cost Test (LCT) – A procedure mandated by the Federal Deposit Insurance (FDI) Act that requires the FDIC to implement the resolution alternative that is determined to be least costly to the Deposit Insurance Fund (DIF) of all possible resolution alternatives, including liquidation of the failed insured depository institution.

Liquidation – The winding down of the business affairs and operations of a failed insured depository institution through the orderly disposition of its assets after it has been placed in receivership.

Notice of Allowable Claim – A document issued by the FDIC, as receiver of a failed institution, that represents the total amount of the proved claim that each depositor or unsecured creditor has against a failed institution in receivership.

Minority Deposit Institution (MDI) – Any insured depository institution where 51 percent or more of the voting stock is owned by minority individuals. "Minority" as defined by Section 308 of Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) means any "Black American, Asian American, Hispanic American, or Native American." The voting stock must be held by U.S. citizens or permanent legal U.S. residents to be counted in determining minority ownership.

Office of the Comptroller of the Currency (OCC) – A bureau within the U.S. Department of the Treasury that was established in 1863. The OCC charters, regulates, and supervises federally chartered commercial and savings banks. The banks can usually be identified because they have the word "national" or "national association" in their names. The OCC also supervises and regulates the federally licensed branches and agencies of foreign banks doing business in the U.S. The Comptroller of the Currency heads the OCC and is a member of the FDIC's five- member Board of Directors.

Office of Thrift Supervision (OTS) – An organization within the U.S. Department of the Treasury, established on August 9, 1989, by the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) to supervise, regulate, and examine all federally chartered thrift institutions. On July 21, 2011, the OTS was merged into the Office of the Comptroller of the Currency (OCC), which became the successor regulator of federally chartered thrifts.

Purchase and Assumption (P&A) – A resolution method in which a healthy insured depository institution purchases some or all of the assets and assumes some or all of the liabilities including deposits, of a failed insured depository institution.

Qualified financial contract (QFC) – A type of financial agreement that includes, but is not limited to, securities contracts, forward contracts, repurchase agreements, and swap agreements. When a receiver repudiates a QFC, damages are measured as of the date of the repudiation and may include the cost of acquiring a replacement QFC. Special rules for the repudiation of QFCs exist to protect the stability of

U.S. financial markets.

Receiver – A person or entity, including a government agency, appointed to handle the assets and liabilities of a failed insured depository institution. A receiver succeeds to all the interests and property owned by the failed insured depository institution. The U.S. Congress requires the FDIC to be the receiver for insured federal depository institutions. The FDIC may accept appointment as the receiver of a state-chartered insured institution and has authority under certain circumstances to appoint itself as the receiver for a state-chartered insured depository institution.

Repudiate – The act by which a receiver (or conservator) exercises its right to disaffirm outstanding contractual obligations previously entered into by a failed insured depository institution. The receiver may take such action only if the contracts are considered burdensome and repudiation will promote the orderly administration of the receivership estate. The Federal Deposit Insurance (FDI) Act provides that certain contracts cannot be repudiated.

Resolution – The disposition plan for a failed insured depository institution, designed to protect insured depositors and minimize losses to the Deposit Insurance Fund (DIF) that are expected from covering insured deposits and disposing of the failed institution's assets. Resolution methods generally include Purchase and Assumption (P&A) transactions, insured deposit transfers, straight deposit payouts, bridge depository institutions (BDIs), and Deposit Insurance National Banks (DINBs).

Resolution Trust Corporation (RTC) – An entity established in 1989 by the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) to oversee the resolution of insolvent savings and loan institutions (S&Ls) and to dispose of assets acquired from the failed S&Ls in the wake of the saving and loan (S&L) crisis of the 1980s. The RTC operated from August 9, 1989, to December 31, 1995.

Shared Loss – A method in a Purchase and Assumption (P&A) transaction in which the FDIC as receiver agrees to share losses with the assuming institution (AI) on certain types of loans. Shared loss may be offered by the FDIC as receiver in connection with the sale of loans that otherwise might not be sold to an acquirer at the time of resolution. The FDIC usually agrees to absorb a significant portion of future credit losses on assets that have been designated as shared loss assets for a specific period of time. The economic rationale for such transactions is that retaining shared loss assets in the banking sector would produce a better net recovery to the FDIC than a liquidation of the assets.

Straight deposit payout – A resolution method for failed insured depository institutions that can be used when the liquidation, closing, or winding down of affairs is determined to be the least costly resolution of the institution. A straight deposit payout is one of the three methods of deposit payouts. In a straight deposit payout, the FDIC determines the amount of insured deposits and pays that amount directly to each depositor. The FDIC as receiver retains all assets and liabilities, and the receivership bears the cost of liquidating the assets.

Savings and Loan (S&L) – A insured depository institution that ordinarily possesses the same depository, credit, financial intermediary, and account transactional functions as a bank, but which is chiefly organized and primarily operated to promote savings and home mortgage lending rather than commercial lending. Also known as a thrift.

Uninsured deposit – Deposit amounts in an insured depository institution that exceed the amounts insured by the FDIC, based on the applicable deposit ownership category.

Virtual data room (VDR) - An online database in which confidential information is stored and shared during the marketing process.