SELF-ASSESSMENT OF COMPLIANCE WITH THE KEY ATTRIBUTES OF EFFECTIVE RESOLUTION REGIMES FOR FINANCIAL INSTITUTIONS

INTERNATIONAL MONETARY FUND

THE DEPARTMENT OF THE TREASURY 1789

FEDERAL DEPOSIT INSURANCE CORPORATION 1933

UNITED STATES FEDERAL RESERVE SYSTEM

COMPTROLLER OF THE CURRENCY 1863

NAIC National Association of Insurance Commissioners

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Defined Terms

165(d) Rule means the joint regulation implementing Section 165(d)(1) of the Dodd-Frank Act, codified by the Federal Reserve Board at 12 C.F.R. Part 243 (Regulation QQ) and the FDIC at 12 C.F.R. Part 381.

Bankruptcy Code means the United States Bankruptcy Code, as amended

Bridge Institution means, unless stated otherwise, either a bridge depository institution established under the FDI Act or a bridge financial company established under the Dodd-Frank Act, as the case may be

CFPB means the Consumer Financial Protection Bureau

CFTC means the Commodity Futures Trading Commission

CMG means Crisis Management Group

Congress means the United States Congress

Dodd-Frank Act means the Dodd-Frank Wall Street Reform and Consumer Protection Act

FBO means a foreign banking organization

Federal Reserve Board means the Board of Governors of the Federal Reserve System

FDI Act means the Federal Deposit Insurance Act, as amended

FDIC means the Federal Deposit Insurance Corporation

FIO means the Federal Insurance Office

FMI means a financial market infrastructure

FSOC means the Financial Stability Oversight Council

G-SIB means a global systemically important bank

G-SIFI means a global systemically important financial institution

G-SII means a global systemically important insurer

IBA means the International Banking Act of 1978

IDI means an insured depository institution

Key Attributes means the Key Attributes of Effective Resolution Regimes for Financial Institutions

NCUA means the National Credit Union Administration

OCC means the Office of the Comptroller of the Currency

SEC means the Securities and Exchange Commission

SIFI means a systemically important financial institution

Treasury means the United States Department of the Treasury

Treasury Secretary means the Secretary of the United States Department of the Treasury

U.S. means the United States

Key Attribute 1: Scope	
KA 1.1	**Any financial institution that could be systemically significant or critical if it fails should be subject to a resolution regime that has the attributes set out in this document ("Key Attributes"). The regime should be clear and transparent as to the financial institutions (hereinafter "firms") within its scope. It should extend to:** **(i) holding companies of a firm;** **(ii) non-regulated operational entities within a financial group or conglomerate that are significant to the business of the group or conglomerate; and** **(iii) branches of foreign firms.**[1]
KA 1.2	**Financial market infrastructure ("FMIs") should be subject to resolution regimes that apply the objectives and provisions of the *Key Attributes* in a manner appropriate to FMIs and their critical role in financial markets. The choice of resolution powers should be guided by the need to maintain continuity of critical FMI functions.**
KA 1.3	**The resolution regime should require that at least all domestically incorporated global SIFIs ("G-SIFIs"):** **(i) have in place a recovery and resolution plan ("RRP"), including a group resolution plan, containing all elements set out in Annex III (see Key Attribute 11);** **(ii) are subject to regular resolvability assessments (see Key Attribute 10); and** **(iii) are the subject of institution-specific cross-border cooperation agreements (see Key Attribute 9).**

EC 1.1	**Key Attribute 1: Scope**

[1] This should not apply where jurisdictions are required by the applicable legal framework to recognise resolution of financial institutions under the law of, and carried out by the authorities of, their home jurisdiction (for example, the EU Directives on the Winding up and Reorganisation of credit institutions and of insurance undertakings).

Essential Criterion	**The scope of application of the resolution regime and the circumstances in which it applies are clearly defined in the legal framework. Any financial institution that could be systemically significant or critical in the event of failure is subject to a resolution regime.**
Federal Response	The scope of application of the U.S. resolution regime for systemic financial institutions is defined in the legal framework.[2] Title II of the Dodd-Frank Act[3] generally applies to a financial company the failure of which is determined to present serious adverse effects on financial stability in the United States and otherwise meets the requirements set forth in Title II.[4] The scope of application of Title II specifically includes (i) bank holding companies; (ii) nonbank financial companies that are supervised by the Federal Reserve Board pursuant to Title I of the Dodd-Frank Act, and (iii) financial companies that are predominantly engaged in activities that are financial in nature or incidental thereto as set forth in Federal Reserve Board regulations.[5] In addition, subsidiaries of companies described above (other than a subsidiary that is an IDI or insurance company) may also be resolved under Title II if they are predominantly engaged in activities that are financial in nature or incidental thereto as set forth in Federal Reserve Board regulations.[6] IDIs (*i.e.*, banks and thrifts), including those that could be systemically significant or critical in the event of failure, are not covered by Title II but are resolved pursuant to the FDI Act. The circumstances in which the U.S. resolution regime for systemic financial institutions applies are also clearly set forth in the legal framework. Title II provides broad powers to resolve failing financial companies that are determined to meet certain systemic criteria when the company is in default or in danger of default. Specifically, Title II may be used to resolve a financial company for which a systemic risk determination is made pursuant to Section 203 of the Dodd-Frank Act.[7] In order for a systemic risk determination to be made with respect to a financial company, two U.S. agencies (the

[2] This self-assessment addresses the framework for resolution of certain financial companies, IDIs, U.S. branches of FBOs, and insurance companies. The resolution of FMIs and the resolution of brokers or dealers are outside the scope of this self-assessment and thus are not addressed herein.

[3] 12 U.S.C. § 5381 *et seq*.

[4] *See* Section 203 of the Dodd-Frank Act, 12 U.S.C. § 5383.

[5] Section 201(a)(11) of the Dodd-Frank Act, 12 U.S.C. § 5381(a)(11).

[6] Section 201(a)(11)(iv) of the Dodd-Frank Act, 12 U.S.C. § 5381(a)(11)(iv).

[7] 12 U.S.C. § 5383.

	Federal Reserve Board and either the FDIC, SEC or FIO, depending on the activities of the financial company) must recommend to the Treasury Secretary that the FDIC be appointed receiver for the financial company.[8] Upon receipt of such recommendations, the Treasury Secretary, in consultation with the President of the United States, may then make a systemic risk determination based upon the following criteria: • the financial company is in default or in danger of default; • the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability in the United States; • no viable private sector alternative is available to prevent the default of the financial company; • any effect on creditors, counterparties, and shareholders of the financial company and other market participants as a result of actions to be taken under Title II is appropriate, given the impact that such actions would have on financial stability in the United States; • any exercise of the orderly liquidation authority would avoid or mitigate such adverse effects, taking into consideration the effectiveness of the exercise of such authority in mitigating (i) potential adverse effects on the financial system, (ii) the cost to the Treasury, and (iii) the potential to increase excessive risk taking on the part of creditors, counterparties, and shareholders in the financial company; • a Federal regulatory agency has ordered the financial company to convert all of its convertible debt instruments that are subject to the regulatory order; and • the company satisfies the definition of a financial company.[9] Following such a determination, and subject to limited judicial review,[10] the FDIC is appointed receiver and can exercise its Title II resolution authorities.[11]

[8] Please see the Federal Response to EC 3.1 below for a more detailed description of the required elements of any such recommendation.

[9] Section 203(b) of the Dodd-Frank Act, 12 U.S.C. § 5383(b).

[10] Section 202(a) of the Dodd-Frank Act, 12 U.S.C. § 5382(a).

[11] Please see the Federal Response to EC 2.1 below for a detailed discussion regarding resolution of insurance companies under Title II of the Dodd-Frank Act.

	Similarly, as discussed in more detail in the Federal Response to EC 3.1, the FDI Act sets forth the criteria pursuant to which the FDIC may be appointed receiver of an IDI.[12]
State Insurance Response	Insurer insolvencies are governed by State law, rather than Federal bankruptcy law.[13] U.S. State insurance laws and regulations clearly establish and define a receivership scheme. Every State has enacted, as required by the NAIC Financial Regulation Standards and Accreditation Program (and every State is accredited), a statute that governs insolvency proceedings of insurance companies. The NAIC has developed and revised these model laws related to receivership, the most recent being IRMA, and NAIC models are the bases for many State receivership schemes. An insolvency proceeding for an insurer is referred to as a "receivership," and may take the form of conservation, rehabilitation or liquidation. A receivership can be commenced against an insurer in the insurer's domiciliary State (the State in which the insurer is incorporated), and is governed by the law of that State. In some circumstances, the laws of the States in which an insurer conducted business may also be implicated. For example, a guaranty fund in a State in which the insurer is licensed is governed by that State's law. State statutes require that the insurance regulator[14] (*i.e.*, commissioner, treasurer, superintendent or director) of the insurer's domiciliary State be appointed receiver of the insurer to administer the receivership.[15] If the insurer is an "alien" insurer admitted to the U.S. market through a "port of entry," the State through which the insurer was admitted will administer the receivership. Receivership laws permit a Commissioner to file a receivership petition under certain circumstances to protect the interests of policyholders, claimants and the public. The potential grounds for receivership can include financially hazardous conditions, such as impairment or insolvency, or other violations, such as a failure to comply with an administrative order, or conversion of an insurer's property or records. A receivership can also be initiated with the consent of its owners. For example, IRMA lists 22 independent grounds, any one of which suffices for a conservation, rehabilitation or liquidation order. In addition, a number of States authorize supervision, which may be either administratively or judicially ordered. A troubled company does not move systematically from one form of receivership

[12] FDI Act, 12 U.S.C. § 1821(c)(5).

[13] A domestic insurance company is not an eligible debtor under the Bankruptcy Code.

[14] While individual titles for the States' insurance regulators may differ, the position is typically referred to as the "Commissioner," and this term will be used in this document.

[15] The term "Receiver" encompasses a conservator, rehabilitator or liquidator, depending on the context.

	to another, but rather, the Commissioner may choose to petition for the form of receivership appropriate to the circumstances at any given time. • Conservation is designed to give the regulator an opportunity to determine the course of action that should be taken with respect to a financially impaired insurer. • Rehabilitation can be used as a mechanism to remedy an insurer's problems, to run off its liabilities to avoid liquidation, or to prepare the insurer for liquidation. • If an insurer is in rehabilitation or conservation, and the Commissioner believes that further attempts to rehabilitate or conserve the insurer would substantially increase the risk of loss to policyholders or the public, the Commissioner may file a liquidation petition. While rehabilitation or conservation may precede liquidation, neither remedy is a prerequisite for liquidation. The Commissioner may file a petition for liquidation without exhausting other remedies if appropriate. In liquidation, the liquidator must identify creditors and marshal and distribute assets in accordance with statutory priorities and dissolve the insurer.

EC 1.2	**Key Attribute 1: Scope**
Essential Criterion	**The scope of the resolution regime covers the following entities located within the jurisdiction:** **(i) holding companies of firms;** **(ii) non-regulated operational entities within a financial group or conglomerate that are significant to the business or continuity of the firm's critical operations; and** **(iii) domestic branches of foreign firms.**[16]
Federal	Holding companies of firms: Title II applies to financial companies (including holding companies of firms), the resolution

[16] EC 1.2 does not apply to the extent that jurisdictions are required by the applicable legal framework to recognise resolution of financial institutions under the law of, and carried out by the authorities of, their home jurisdiction (for example, the EU Directives on the Winding up and Reorganisation of credit institutions and of insurance undertakings). However, EC 1.2 applies in an assessment of such jurisdictions in relation to branches of foreign firms that are not covered by such an obligation to recognise resolution actions by the home jurisdiction of that firm.

Response	of which under otherwise applicable law would have serious adverse effects on financial stability in the United States, and to their subsidiaries other than IDIs. The Dodd-Frank Act defines "financial companies" to include bank holding companies, nonbank financial companies supervised by the Federal Reserve Board, any company that is predominantly engaged in activities that the Federal Reserve Board has determined are financial in nature or incidental thereto, and any subsidiary thereof that is predominantly engaged in activities that the Federal Reserve Board has determined are financial in nature or incidental thereto (other than a subsidiary that is an IDI or an insurance company).[17] <u>Non-regulated operational entities within a financial group or conglomerate that are significant to the business or continuity of the firm's critical operations</u>: As noted above, Title II applies to certain subsidiaries of financial companies, including non-regulated operational entities within a financial group or conglomerate that are significant to the business or continuity of the firm's critical operations, the resolution of which under otherwise applicable law would have serious adverse effects on financial stability in the United States. In addition, the Dodd-Frank Act provides that when the FDIC has been appointed as receiver of a financial company under Title II, it has the authority to appoint itself as receiver of a covered subsidiary of the firm in resolution (including any non-regulated operational entities within a financial group or conglomerate that are significant to the business or continuity of the firm's critical operations) if the FDIC and the Treasury Secretary jointly determine that (1) the covered subsidiary is in default or in danger of default, (2) such action would avoid or mitigate serious adverse effects on the financial stability or economic conditions of the United States, and (3) such action would facilitate the orderly liquidation of the firm in resolution.[18] Covered subsidiaries are subsidiaries of the firm in resolution under Title II of the Dodd-Frank Act, other than a subsidiary that is an IDI, an insurance company, or a covered broker or dealer.[19] <u>Domestic branches of foreign firms</u>:[20] Branches of FBOs operating in the United States must have either a State or Federal license. With respect to a federally licensed branch of a FBO, the legal framework in the United States generally provides that such a branch is resolved in accordance with Federal law—specifically, the IBA. The legal framework generally provides that a branch of a FBO that is licensed by a State is resolved by the State resolution authority in

[17] Section 201(a)(11) of the Dodd-Frank Act, 12 U.S.C. § 5381(a)(11).

[18] Section 210(a)(1)(E) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(E).

[19] Section 201(a)(9) of the Dodd-Frank Act, 12 U.S.C. § 5381(a)(9).

[20] The foregoing Federal Response addresses the resolution of uninsured domestic branches of FBOs. As of December 19, 1991, FBOs may not establish insured branches in the United States. However, insured branches operating as of that date were permitted to continue operating. There are currently ten insured branches in the United States. These insured branches would be resolved by the FDIC under the FDI Act. *See* 12 U.S.C. § 1821(c).

	accordance with that State's law. There may be cases, however, where the resolution framework under Federal law would apply to the property and assets of a State-licensed branch.[21]
State Insurance Response	U.S. State insurance receivership laws specify the entities that are subject to receivership. These laws generally provide that an entity may be placed into receivership if it is subject to supervision or examination by the Commissioner, or is otherwise engaged in the business of insurance. These laws can apply to branches of alien insurers. An affiliate that is not placed in receivership can still be subject to the jurisdiction of the Receivership Court. The court may enter orders to ensure that the affiliate does not usurp property of the receivership, or otherwise interfere with the receivership. An affiliate that is not an insurer may be eligible for Federal bankruptcy. If an affiliate is placed into bankruptcy, the Receiver will typically enter into agreements with the bankruptcy trustee or debtor in possession to coordinate their respective duties.

Key Attribute 2: Resolution Authority

KA 2.1 **Each jurisdiction should have a designated administrative authority or authorities responsible for exercising the resolution powers over firms within the scope of the resolution regime ("resolution authority"). Where there are multiple resolution authorities within a jurisdiction their respective mandates, roles and responsibilities should be clearly defined and coordinated.**

KA 2.2 **Where different resolution authorities are in charge of resolving entities of the same group within a single jurisdiction, the resolution regime of that jurisdiction should identify a lead authority that coordinates the resolution of the legal entities within that jurisdiction.**

KA 2.3 **As part of its statutory objectives and functions, and where appropriate in coordination with other authorities, the resolution authority should:**

(i) **pursue financial stability and ensure continuity of systemically important financial services, and payment,**

[21] Where a FBO has one or more State-licensed branches or agencies and one or more federally licensed branches or agencies, and the OCC appoints a receiver for the Federal branch or agency, the receiver shall take possession of all the property and assets of such FBO in the United States, not only the property and assets of the Federal branch. *See* 12 U.S.C. § 3102(j).

		clearing and settlement functions;
	(ii)	**protect, where applicable and in coordination with the relevant insurance schemes and arrangements, such depositors, insurance policy holders and investors as are covered by such schemes and arrangements;**
	(iii)	**avoid unnecessary destruction of value and seek to minimise the overall costs of resolution in home and host jurisdictions and losses to creditors, where that is consistent with the other statutory objectives; and**
	(iv)	**duly consider the potential impact of its resolution actions on financial stability in other jurisdictions.**
KA 2.4	**The resolution authority should have the authority to enter into agreements with resolution authorities of other jurisdictions.**	
KA 2.5	**The resolution authority should have operational independence consistent with its statutory responsibilities, transparent processes, sound governance and adequate resources and be subject to rigorous evaluation and accountability mechanisms to assess the effectiveness of any resolution measures. It should have the expertise, resources and the operational capacity to implement resolution measures with respect to large and complex firms.**	
KA 2.6	**The resolution authority and its staff should be protected against liability for actions taken and omissions made while discharging their duties in the exercise of resolution powers in good faith, including actions in support of foreign resolution proceedings.**	
KA 2.7	**The resolution authority should have unimpeded access to firms where that is material for the purposes of resolution planning and the preparation and implementation of resolution measures.**	

EC 2.1	Key Attribute 2: Resolution Authority
Essential Criterion	**The legal framework clearly identifies one or more resolution authorities and provides it or them with a clear mandate. Where there are multiple resolution authorities, the resolution regime provides for the identification of a lead authority; sets out clear arrangements to coordinate the resolution of affiliated legal entities within that jurisdiction; and provides for a clear allocation of objectives, functions and powers of those authorities.**
Federal	The legal framework in the United States for any financial institution that could be systemically significant or critical if it

Response	fails clearly identifies the applicable resolution authorities. The FDIC is the sole resolution authority for the vast majority of such financial institutions and their subsidiaries. Under Title II, the FDIC is the resolution authority with respect to a bank holding company, insurance company holding company, or other "financial company" and certain of their subsidiaries, the resolution of which under otherwise applicable law would have serious adverse effects on financial stability in the United States. Under the FDI Act, the FDIC is the resolution authority for all IDIs in the United States, including systemically important IDIs. Title II provides that a systemically important insurance company (as opposed to the parent company of the insurance company, provided that such parent company is not itself an insurance company) is to be resolved pursuant to State law.[22] If the appropriate regulatory agency does not commence the resolution of the insurance company within 60 days of a systemic risk determination by the Treasury Secretary, then the FDIC shall have the authority to stand in the place of the appropriate regulatory agency and file the appropriate judicial action in the appropriate State court to place such company into orderly liquidation under the laws and requirements of the State.[23] In its role as Title II receiver, the FDIC's mandate is to resolve failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard, and to do so in a manner that best fulfills such purpose, so that: • creditors and shareholders will bear the losses of the financial company; • management responsible for the condition of the financial company will not be retained; and • the FDIC and other appropriate agencies will take all steps necessary and appropriate to assure that all parties, including management, directors, and third parties, having responsibility for the condition of the financial company bear losses consistent with their responsibility, including actions for damages, restitution, and recoupment of compensation and other gains not compatible with such responsibility.[24] With respect to IDIs, the FDIC was established under the FDI Act to maintain stability and public confidence in the nation's financial system by:

[22] Section 203(e)(1) of the Dodd-Frank Act, 12 U.S.C. § 5383(e)(1).

[23] Section 203(e)(3) of the Dodd-Frank Act, 12 U.S.C. § 5383(e)(3).

[24] Section 204(a) of the Dodd-Frank Act, 12 U.S.C. § 5384(a).

	• insuring deposits, • examining and supervising State nonmember banks and savings associations for safety and soundness and consumer protection, having special examination authority (in the circumstances discussed in greater detail in the Federal Response to EC 2.7 below) for all IDIs as well as examination authority for any affiliate of an IDI,[25] and • managing receiverships and resolving failed IDIs in the manner least costly to the Deposit Insurance Fund,[26] provided that meeting this least cost test is not required if the statutorily prescribed determination is made that compliance with the least cost test would have serious adverse effects on economic conditions or financial stability in the United States.[27] Similarly, a branch of a FBO that is licensed by a State is generally resolved by the State resolution authority, which is typically the branch's primary State regulator, in accordance with that State's law. With respect to a federally licensed branch of a FBO, the legal framework in the United States provides that such a branch is generally resolved by a receiver appointed by the OCC in accordance with Federal law. In the event of the failure of a domestic systemically important financial company, once a resolution under Title II has commenced, the FDIC is authorized to act as the resolution authority for the parent holding company as well as most subsidiaries so as to minimize the need for multiple resolutions of affiliated legal entities conducted by different authorities within the United States. In addition, Federal laws authorize the exchange of confidential information in connection with financial companies, including systemically important financial companies, between the FDIC as resolution authority and the various State authorities responsible for the resolution of insurance companies and State-licensed branches of FBOs. Through CMGs for specific financial institutions and the negotiation of related firm-specific cooperation agreements, the FDIC as resolution authority and relevant State resolution authorities are working to facilitate any necessary coordination of resolution functions and responsibilities.
State Insurance	U.S. State insurance laws and regulations clearly identify the resolution authority through the appointment of a Receiver (i.e. conservator, rehabilitator or liquidator), and clearly define the powers and duties of the Receiver. The laws also

[25] FDI Act, 12 U.S.C. § 1820(b)(2), (3) and (4).

[26] FDI Act, 12 U.S.C. § 1823(c)(4).

[27] FDI Act, 12 U.S.C. § 1823(c)(4)(G).

Response	define the responsibilities of the State guaranty associations that may become responsible for policy claims. The lead authority of an insurer in receivership is the Commissioner of the domiciliary State of the insurer. If a receivership impacts multiple States, the NAIC has established a process for the Commissioners to coordinate their respective duties. Insurance laws assign the responsibility of paying certain covered policy claims to State guaranty associations. In the event that multiple State guaranty associations are involved in a receivership, the National Organization of Life & Health Insurance Guaranty Associations (NOLHGA) or the National Conference of Insurance Guaranty Funds (NCIGF) can assist in coordinating the guaranty associations' activities. U.S. State insurance regulators believe that strong communication and coordination among functional regulators, receivers and guaranty associations is important to achieving effective and efficient resolution of an insurer in receivership in order to best protect policyholders and creditors. U.S. State insurance regulators have experience with cross-border crisis management situations, including certain States' involvement in Crisis Management Groups (CMGs) for certain insurers. Supervisors are able to coordinate with other relevant authorities, through supervisory colleges or otherwise, such that a cross-border crisis involving a specific insurer can be managed effectively. As described in ICP 26 of the self-assessment, recent coordination efforts have demonstrated that the U.S. lead States coordinate not only with other U.S. States, but with material international regulators. This cooperation and coordination is made possible through broad-based authority that all States have in their statutes based upon the NAIC Model Law on Examinations, which provides States with the ability to share and receive any information with/from international regulators. Further, State regulators actively participate in international standard setting at the IAIS Resolution Working Group. U.S. State insurance regulators have been leading or participating in all of the major insurers' international supervisory colleges, and there appear to be no barriers to efficient and internationally coordinated work.

EC 2.2	**Key Attribute 2: Resolution Authority**
Essential Criterion	**The statutory objectives and functions of the resolution authority include those set out in KA 2.3, as applicable to the sectoral responsibilities of the authority. Where the exercise of resolution powers requires court involvement, the objectives of that involvement are aligned with the statutory objectives and functions set out in KA 2.3.**
Federal	The objectives and functions of the FDIC as receiver set forth in the U.S. resolution regime for systemically important

Response	financial companies include those objectives and functions set forth in KA 2.3. (i) Under the FDI Act, the FDIC was established to maintain stability and public confidence in the nation's financial system by: • insuring deposits, • examining and supervising State nonmember banks and savings associations for safety and soundness and consumer protection, having special examination authority (in the circumstances discussed in greater detail in the Federal Response to EC 2.7 below) for all IDIs as well as examination authority for any affiliate of an IDI,[28] and • managing receiverships and resolving failed IDIs in the least costly manner possible,[29] provided that meeting this least cost test is not required if the statutorily prescribed determination is made that compliance with the least cost test would have serious adverse effects on economic conditions or financial stability in the United States.[30] Similarly, the statutory objectives of the FDIC's resolution authority under Title II are to resolve failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard, and to do so in a manner that best fulfills such purpose, so that: • creditors and shareholders will bear the losses of the financial company; • management responsible for the condition of the financial company will not be retained; and • the FDIC and other appropriate agencies will take all steps necessary and appropriate to assure that all parties, including management, directors, and third parties, having responsibility for the condition of the financial company bear losses consistent with their responsibility, including actions for damages, restitution, and recoupment of compensation and other gains not compatible with such responsibility.[31]

[28] FDI Act, 12 U.S.C. § 1820(b)(2), (3) and (4).

[29] FDI Act, 12 U.S.C. § 1823(c)(4).

[30] FDI Act, 12 U.S.C. § 1823(c)(4)(G).

[31] Section 204(a) of the Dodd-Frank Act, 12 U.S.C. § 5384(a).

In addition, the Dodd-Frank Act provides that taxpayers shall bear no losses from the exercise of any authority under Title II.[32]

In general, the FDIC as receiver can ensure continuity of systemically important financial services because it succeeds to all rights, titles, powers, and privileges of the failed institution and therefore can perform all functions of the failed financial company.[33] In particular, the FDIC can provide for continuity of payment, clearing and settlement functions by:

- Arranging for the transfer of the entity's qualified financial contracts;
- Establishing a bridge institution; and
- Allowing parties to netting contracts to exercise their rights under those contracts.[34]

Finally, the FDIC as receiver is authorized to fund the continuation of operations, such as payment, clearing, and settlement obligations.[35]

(ii) With respect to protecting depositors, the FDIC guarantees to pay insured deposits up to the deposit insurance limit on a timely basis.[36] With respect to insurance policy holders, resolution of insurance companies (as opposed to their holding companies) is to be conducted in accordance with State insurance law.[37] These laws generally vest policy holders and claimants with priority claims against assets of the receivership estate.

(iii) Under the FDI Act, the FDIC must exercise its authority as receiver of a failed IDI in a manner that, among other things,

[32] Section 214(c) of the Dodd-Frank Act, 12 U.S.C. § 5394(c).

[33] FDI Act, 12 U.S.C. § 1821(d)(2), and Section 210(a)(1) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1).

[34] *See* FDI Act, 12 U.S.C. § 1821(e)(9) and Section 210(c)(9) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(9) (with respect to the transfer of qualified financial contracts); FDI Act, 12 U.S.C. § 1821(n) and Section 210(h) of the Dodd-Frank Act, 12 U.S.C. § 5390(h) (with respect to bridge institutions); and FDI Act, 12 U.S.C. § 1821(e)(8)(A)(iii), and Section 210(c)(8)(A)(iii) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(8)(A)(iii) (with respect to netting contracts).

[35] FDI Act, 12 U.S.C. § 1823(c), and Section 204(d) of the Dodd-Frank Act, 12 U.S.C. § 5384(d).

[36] FDI Act, 12 U.S.C. § 1821(a) and (f)(1).

[37] Section 203(e) of the Dodd-Frank Act, 12 U.S.C. § 5383(e).

	• maximizes the net present value return from the sale or disposition of the failed IDI's assets; and • minimizes the amount of loss realized in the resolution of cases.[38] The FDIC also has the power to act as conservator for a failed IDI and, in such capacity, may take such action as may be necessary to put the IDI in a sound and solvent condition and to carry on the business of the IDI and preserve and conserve its assets.[39] Under the Dodd-Frank Act, there is a similar emphasis on maximizing return on the disposition of assets, but this objective must be balanced with the other statutory imperative to mitigate adverse impacts to the financial stability of the United States.[40] In addition, the Dodd-Frank Act sets forth a minimum recovery amount for creditors.[41] (iv) The Dodd-Frank Act requires the FDIC when it is acting as receiver under Title II to coordinate to the maximum extent possible with appropriate foreign regulatory authorities regarding the resolution of any failed financial company that has any assets or operations in a country other than the United States.[42] In the United States, the exercise of resolution powers generally does not require court involvement, although in certain circumstances in order to appoint the FDIC as receiver for a financial company under Title II of the Dodd-Frank Act the Treasury Secretary must petition the United States District Court for the District of Columbia for an order authorizing the appointment, as described in detail in the Federal Response to EC 3.1 below.
State Insurance Response	U.S. State insurance laws promote the financial stability of insurers, continuity of coverage to policyholders, and protection of policy claimants and other creditors. Another objective of these laws is to avoid unnecessary destruction of value of the insurer, if possible. Due consideration is given to reducing the costs of the process, in order to maximize distributions to creditors.

[38] FDI Act, 12 U.S.C. § 1821(d)(13)(E).

[39] FDI Act, 12 U.S.C. § 1821(d)(2)(D).

[40] Section 210 (a)(9)(E) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(9)(E).

[41] Section 210(a)(7)(B) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(7)(B).

[42] Section 210(a)(1)(N) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(N).

EC 2.3	Key Attribute 2: Resolution Authority
Essential Criterion	**The resolution authority is, by law and in practice, operationally independent in the performance of its statutory responsibilities. There are arrangements, procedures and safeguards against undue political or industry influence, which include:** **(i) internal governance arrangements which promote sound and independent decision-making;** **(ii) rules and procedures for the appointment and dismissal of the head of the authority, members of the governing body (where relevant) and senior management; and** **(iii) rules on conflicts of interest.**
Federal Response	The FDIC is by law and in practice an independent regulatory agency of the Federal government,[43] and has in place arrangements, procedures and safeguards against undue political or industry influence that would compromise its operational independence with respect to all of its functions, including its role as resolution authority. The FDIC's operational funds are not provided through Congressional appropriations. Instead, the operations of the FDIC acting in its corporate capacity are generally funded by the Deposit Insurance Fund, which is funded through regular assessments on IDIs. With respect to operations of the FDIC in its capacity as receiver of failed IDIs, such operations are funded by the assets of the failed IDI and, if necessary, the Deposit Insurance Fund.[44] The FDIC has the authority to borrow from the U.S. Treasury if necessary for insurance purposes.[45] Reasonable implementation expenses of the FDIC incurred as part of its efforts to implement Title II, including expenses related to the development of policies, procedures, rules and regulations and other planning activities, are reimbursed by the FSOC.[46] In turn, the FSOC's

[43] 44 U.S.C. § 3502(5).

[44] FDI Act, 12 U.S.C. § 1823(d).

[45] FDI Act, 12 U.S.C. § 1824(a).

[46] Section 210(n)(10) of the Dodd-Frank Act, 12 U.S.C. § 5390(n)(10).

	expenses are funded through assessments by Treasury on bank holding companies with total consolidated assets of $50 billion or more and nonbank financial companies supervised by the Federal Reserve Board.[47] The FDIC's operations relating to the resolution of failed financial companies under Title II are funded by the assets of the failed financial company and, if necessary, the Orderly Liquidation Fund.[48] The FDIC's governance structure is generally set forth in the FDI Act.[49] The FDIC is managed by a five-member board of directors, each of whom is appointed by the President of the United States and must be confirmed by the U.S. Senate, with no more than three being from the same political party.[50] Two of the FDIC's directors are the Comptroller of the Currency and the Director of the CFPB, each of whom is appointed for a five year term.[51] The FDIC's three remaining directors are appointed to six year terms, although one of the appointed directors is designated as Chairman for a five year term. In addition, the President of the United States may only remove directors from office for cause.[52] By regulation, all employees must meet certain minimum standards for employment with the FDIC.[53] With respect to potential conflicts of interest, directors may not hold stock in, or act as an officer or director of, an IDI or bank holding company.[54] In addition to being subject to the ethical standards and financial disclosure regulations applicable to all Executive Branch employees, all employees of the FDIC must comply with supplemental standards of ethical conduct.[55] With respect to its resolution functions and objectives, the FDIC's operational independence is ensured principally by the broad control over the resolution process afforded the FDIC as receiver under the Dodd-Frank Act and the FDI Act. The FDI Act and Dodd-Frank Act also set forth the limited scope of judicial review of the FDIC's operations as receiver,[56] and

[47] Section 155(d) of the Dodd-Frank Act, 12 U.S.C. § 5345(d). *See also* Section 118 of the Dodd-Frank Act, 12 U.S.C. § 5328.

[48] Please see the Federal Responses to the Essential Criteria under Key Attribute 6 for a detailed description of the Orderly Liquidation Fund.

[49] FDI Act, 12 U.S.C. §§ 1811 and 1812.

[50] 12 U.S.C. § 1812(a).

[51] 12 U.S.C. § 2 (OCC); 12 U.S.C. § 5491(c)(1) (CFPB).

[52] *See, e.g.*, *Humphrey's Executor v. United States*, 295 U.S. 602, 55 S.Ct. 869 (1935).

[53] 12 C.F.R. Part 336.

[54] FDI Act, 12 U.S.C. § 1812.

[55] 12 C.F.R. Part 336 and 5 C.F.R. Part 3201.

[56] FDI Act, 12 U.S.C. § 1821(d)(13)(D), and Sections 205(c) and 210(a)(9)(D) of the Dodd-Frank Act, 12 U.S.C. §§ 5385(c) and 5390(a)(9)(D).

	provide that courts may not restrain or affect the exercise of powers or functions of the FDIC as receiver[57] or issue any attachment or execution upon assets in the possession of the FDIC as receiver.[58]
State Insurance Response	The receivership process involves the executive and judicial branches of State government, as well as the guaranty associations. The court appoints the Commissioner as Receiver, and the Receiver must obtain the court's approval for numerous actions that impact the insurer's policyholders, claimants and other creditors. Guaranty associations are usually the major creditors in a receivership, and have an opportunity to represent their interests in the proceeding. This system provides effective checks and balances.

EC 2.4	**Key Attribute 2: Resolution Authority**
Essential Criterion	**The resolution authority is accountable through a transparent framework for the discharge of its duties in relation to its statutory responsibilities. This framework includes procedures for reviewing and evaluating actions that the resolution authority takes in carrying out its statutory responsibilities, and the periodic publication of reports on its resolution actions and policies.**
Federal Response	Although the FDIC is an independent regulatory agency of the Federal government, it is accountable through a transparent framework for the discharge of its duties in relation to its statutory responsibilities. Courts do not have jurisdiction over any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of a failed institution or any claim relating to any act or omission of the failed institution or the FDIC as receiver, unless a claimant has exhausted the administrative claims process.[59] Once a claimant has exhausted the administrative claims process, Federal courts have jurisdiction over a *de novo* review of such claim.[60] There are also significant reporting requirements established by statute for the FDIC in relation to certain resolution

57 FDI Act, 12 U.S.C. § 1821(j), and Section 210(e) of the Dodd-Frank Act, 12 U.S.C. § 5390(e).

58 FDI Act, 12 U.S.C. § 1821(d)(13)(C), and Section 210(a)(9)(C) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(9)(C).

59 FDI Act, 12 U.S.C. § 1821(d)(13)(D), and Section 210(a)(9)(D) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(9)(D).

60 FDI Act, 12 U.S.C. § 1821(d)(6), and Section 210(a)(4) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(4).

	actions. The FDIC is required to maintain a full accounting of each receivership undertaken under the FDI Act or Title II of the Dodd-Frank Act, and make an annual accounting available to the Treasury Secretary and the Comptroller General of the United States, among others.[61] Before the beginning of each fiscal quarter, the FDIC must also provide to the Treasury Secretary a copy of the FDIC's financial operating plans and forecasts.[62] At the end of each fiscal quarter, the FDIC must submit to the Treasury Secretary a copy of the report of the FDIC's financial condition as of the end of such fiscal quarter and the results of the FDIC's operations during such fiscal quarter.[63] In addition to these requirements, the FDIC reviews its resolution policies and procedures on a regular basis. The FDIC is also accountable to Congress through certain statutory reporting obligations. Within 24 hours of the appointment of the FDIC as receiver for a covered financial company under Title II, the Treasury Secretary is required to provide to certain specified members of Congress written notice of the recommendations made and determinations reached in connection with the appointment.[64] The FDIC, as receiver of a failed financial company, is required to file a report to Congress within 60 days of appointment as receiver on the financial condition of the failed financial company and the plan and actions taken by the FDIC to wind down the company.[65] If the FDIC requires more than three years to resolve a failed financial company under Title II, the FDIC must certify to certain Congressional Committees that the continuation of the receivership is necessary to, among other reasons, protect the stability of the financial system of the United States and, within 30 days, file a report with such Congressional Committees describing the need for the extension and the specific plan for concluding the receivership before the end of the extension.[66] The FDIC is also required to submit to Congress an annual report of the FDIC's operations, activities, budget, receipts and expenditures for the preceding twelve-month period, including (1) an analysis of the current financial condition of the Deposit Insurance Fund; (2) the purpose, effect, and estimated cost of each resolution action taken for an IDI during the preceding year; (3) the extent to which the actual costs of assistance provided to, or for the benefit of, an IDI during the preceding year exceed the estimated costs of such assistance reported in a previous year; (4) the exposure of the Deposit

[61] FDI Act, 12 U.S.C. § 1821(d)(15)(A) and (B), and Section 210(a)(16)(A) and (B) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(16)(A) and (B).

[62] FDI Act, 12 U.S.C. § 1827(b)(1).

[63] FDI Act, 12 U.S.C. § 1827(b)(2).

[64] Section 203(c)(2) of the Dodd-Frank Act, 12 U.S.C. § 5383(c)(2).

[65] Section 203(c)(3) of the Dodd-Frank Act, 12 U.S.C. § 5383(c)(3).

[66] Section 202(d) of the Dodd-Frank Act, 12 U.S.C. § 5382(d).

	Insurance Fund to changes in those economic factors most likely to affect its condition; and (5) a current estimate of the resources needed for the Deposit Insurance Fund to achieve its statutory purposes.[67] The FDIC is also subject to external review by the Government Accountability Office. The Comptroller General of the United States, the head of the Government Accountability Office, is required to perform an annual audit of the FDIC and the Deposit Insurance Fund in accordance with generally accepted government auditing standards.[68] All books, records, accounts, reports, files, and property belonging to or used by the FDIC and Deposit Insurance Fund, or by an independent certified public accountant retained to audit the Deposit Insurance Fund's financial statements, shall be made available to the Comptroller General of the United States.[69] Separately, the Government Accountability Office must audit the financial transactions of the FDIC in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States.[70] The FDIC also operates with an internal auditor: the Office of the Inspector General. The FDIC Inspector General is required to perform semi-annual audits and investigations of the liquidation of any failed financial company under Title II, and to include the findings of such audits and investigations in its semi-annual report to Congress and the FDIC's Board of Directors.[71] The FDIC is also subject, like other independent Federal agencies, to Congressional oversight procedures, including providing official responses to formal inquiries and attending hearings as requested by Congress.
State Insurance Response	U.S. State receivership laws provide a mechanism for interested parties to review the actions taken in the receivership, and participate as appropriate. For example, many receivership acts permit the appointment of creditor committees. Financial reports and plans for the insurer based on the specifics of the circumstances are filed with the court, and are reported to the NAIC. These reports can be accessed by the public on the NAIC's website.

[67] FDI Act, 12 U.S.C. § 1827(a).

[68] FDI Act, 12 U.S.C. § 1827(d)(1).

[69] FDI Act, 12 U.S.C. § 1827(d)(2).

[70] FDI Act, 12 U.S.C. § 1827(e).

[71] Section 211(d) of the Dodd-Frank Act, 12 U.S.C. § 5391(d).

EC 2.5	Key Attribute 2: Resolution Authority
Essential Criterion	**The resolution authority has adequate human and financial resources or access to such resources, sufficient to enable it to carry out its resolution functions effectively without undermining its independence, both before and during a crisis.**
Federal Response	The FDIC has adequate human and financial resources or access to such resources, sufficient to enable it to carry out its resolution functions effectively without undermining its independence, both before and during a crisis. With respect to human resources, expertise and operational capacity, the FDIC employs approximately 6,700 people. Since its creation, the FDIC has successfully resolved thousands of insured depository institutions. Since the start of FDIC deposit insurance on January 1, 1934, no depositor has lost a single cent of insured funds as a result of a failure. With respect to financial resources, the operations of the FDIC acting in its corporate capacity are generally funded by the Deposit Insurance Fund, which is funded through regular assessments on IDIs. With respect to operations of the FDIC in its capacity as receiver of failed IDIs, such operations are funded by the assets of the failed IDI and, if necessary, the Deposit Insurance Fund.[72] The FDIC has the authority to borrow from the U.S. Treasury if necessary for insurance purposes.[73] Reasonable implementation expenses of the FDIC incurred as part of its efforts to implement Title II, including expenses related to the development of policies, procedures, rules and regulations and other planning activities, are to be reimbursed by the FSOC.[74] In turn, the FSOC's expenses are funded through assessments by Treasury on bank holding companies with total consolidated assets of $50 billion or more and nonbank financial companies supervised by the Federal Reserve Board.[75] The FDIC's operations relating to the resolution of failed financial companies under Title II are funded by the assets of the failed financial company and, if necessary, the Orderly Liquidation Fund.[76] If the proceeds of the resolution of the failed financial company are insufficient to repay any amounts borrowed from the Orderly Liquidation Fund, such shortfall is funded through assessments on any claimant that received additional payments, except for payments necessary to initiate and continue operations essential to the implementation of the receivership or any

[72] FDI Act, 12 U.S.C. § 1823(d).

[73] FDI Act, 12 U.S.C. § 1824(a).

[74] Section 210(n)(10) of the Dodd-Frank Act, 12 U.S.C. § 5390(n)(10).

[75] Section 155(d) of the Dodd-Frank Act, 12 U.S.C. § 5345(d). *See also* Section 118 of the Dodd-Frank Act, 12 U.S.C. § 5328.

[76] Please see the Federal Responses to the Essential Criteria under Key Attribute 6 for a detailed description of the Orderly Liquidation Fund.

	bridge financial company, in excess of the value the claimant was entitled to receive on such claim solely from the proceeds of the resolution of the failed financial company.[77] If such assessments are insufficient to repay any amounts borrowed from the Orderly Liquidation Fund, such shortfall is funded through risk-based assessments on bank holding companies with total consolidated assets of $50 billion or more, other financial companies with total consolidated assets of $50 billion or more, and nonbank financial companies supervised by the Federal Reserve Board.[78] By law, taxpayers shall bear no losses from the exercise of any authority under Title II of the Dodd-Frank Act.[79]
State Insurance Response	U.S. State insurance laws and regulations give the receiver the powers to access and utilize resources necessary to enable it to carry out its receivership functions effectively as described in EC 2.5, including retaining legal counsel, actuaries, accountants, appraisers, consultants, clerks, assistants and other personnel.

EC 2.6	**Key Attribute 2: Resolution Authority**
Essential Criterion	**The legal framework provides legal protection through statute for the resolution authority, its head, members of the governing body and its staff and any agents against liability for actions taken or omissions made while discharging their duties in good faith and acting within the scope of their powers, including actions taken in support of foreign resolution proceedings; including indemnification against any costs of defending any such actions.**
Federal Response	The legal framework in the United States provides legal protection through statute and indemnification against any costs of defending actions. Employees of the FDIC are generally protected from legal liability for the exercise of resolution powers. Pursuant to the FDIC's Indemnification Policy, set forth in Circular 5000.1, the FDIC will indemnify a present or past director, officer or employee of the FDIC against any and all liability and expenses that may be incurred in connection with or resulting from any claim for wrongful acts in which the person may become involved by reason of being or having been a director,

[77] Section 210(o)(1)(D)(i) of the Dodd-Frank Act, 12 U.S.C. § 5390(o)(1)(D)(i).

[78] Section 210(o)(1)(D)(ii) of the Dodd-Frank Act, 12 U.S.C. § 5390(o)(1)(D)(ii).

[79] Section 214(c) of the Dodd-Frank Act, 12 U.S.C. § 5394(c).

	officer or employee or by reason of any action taken or not taken in the person's official capacity as a director, officer or employee, whether or not such person continues to be such at the time the liability or expense is incurred. Under the Federal Tort Claims Act,[80] claims cannot be brought against Federal agencies such as the FDIC, or its officials, for money damages for injury or loss of property or personal injury or death caused by any allegedly negligent or wrongful act or omission committed by an employee within the scope of the employee's authority or office.[81] Additionally, a director, member, officer, or employee of the FDIC has no liability under the Securities Act of 1933, as amended, with respect to any claim arising out of or resulting from any act or omission by such person in connection with any transaction involving the disposition of assets (or any interests in any assets or any obligations backed by any assets) by the FDIC, provided such act or omission was within the scope of such person's employment.[82]
State Insurance Response	U.S. State insurance laws and regulations provide immunity for the Receiver, and those acting on behalf of the Receiver.

EC 2.7	**Key Attribute 2: Resolution Authority**
Essential Criterion	**Under the legal framework, the resolution authority has unimpeded access to the domestic premises of firms where that is material for the purposes of resolution planning and the preparation and implementation of resolution measures.**
Federal Response	Under the legal framework in the United States, the FDIC as resolution authority has unimpeded access to the domestic premises of firms where that is material for the purposes of resolution planning and the preparation and implementation of resolution measures. As a general matter, upon appointment as receiver, the FDIC succeeds to all rights, titles, powers, and privileges of the

[80] 28 U.S.C. § 2671 *et seq*.

[81] 28 U.S.C. § 2679.

[82] FDI Act, 12 U.S.C. § 1812(f)(1).

	financial company or IDI, as the case may be, and may take over the assets, including the domestic premises of the financial company or IDI.[83] The FDIC has special examination authority with respect to any IDI, any nonbank financial company supervised by the Federal Reserve Board, and any bank holding company with total consolidated assets equal to or greater than $50 billion.[84] The FDIC may exercise this special examination authority with respect to any IDI for which the FDIC is not the primary Federal regulator whenever the FDIC determines that a special examination of any such IDI is necessary to determine the condition of such IDI for insurance purposes. The FDIC coordinates with such IDI's primary Federal regulator in connection with the exercise of this special examination authority. The FDIC may exercise this special examination authority with respect to any nonbank financial company supervised by the Federal Reserve Board or bank holding company with total consolidated assets equal to or greater than $50 billion for the purpose of implementing the FDIC's authority under Title II of the Dodd-Frank Act, provided that the FDIC must coordinate any such special examination to the maximum extent practicable with the Federal Reserve Board and that such special examination authority may not be used with respect to any such nonbank financial company or bank holding company that is in a generally sound condition.[85] The FDIC also has access to information through (i) its review of plans submitted pursuant to 12 C.F.R. § 360.10 by IDIs with $50 billion or more in total assets and (ii) its review, conducted jointly with the Federal Reserve Board, of plans submitted pursuant to Section 165(d)(1) of the Dodd-Frank Act[86] and the 165(d) Rule by nonbank financial companies supervised by the Federal Reserve Board, as determined by the FSOC,[87] and bank holding companies with $50 billion or more in total consolidated assets.
State Insurance Response	State receivership laws give the Receiver complete control of an insurer that is placed in receivership. The Receiver is vested with title to all of the insurer's property and records, and assumes all rights of the insurer's officers and directors.

[83] FDI Act, 12 U.S.C. § 1821(d)(2)(A) and (B), and Section 210(a)(1)(A) and (B) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(A) and (B).

[84] FDI Act, 12 U.S.C. § 1820(b)(3).

[85] *Id*.

[86] 12 U.S.C. § 5365(d)(1).

[87] Sections 113(a)(1) and 165(d)(1) of the Dodd-Frank Act, 12 U.S.C. §§ 5323(a)(1) and 5365(d)(1).

Key Attribute 3: Resolution Powers

KA 3.1 **Resolution should be initiated when a firm is no longer viable or likely to be no longer viable, and has no reasonable prospect of becoming so. The resolution regime should provide for timely and early entry into resolution before a firm is balance-sheet insolvent and before all equity has been fully wiped out. There should be clear standards or suitable indicators of non-viability to help guide decisions on whether firms meet the conditions for entry into resolution.**

KA 3.2 **Resolution authorities should have at their disposal a broad range of resolution powers, which should include powers to do the following:**

(i) **Remove and replace the senior management and directors and recover monies from responsible persons, including claw-back of variable remuneration;**

(ii) **Appoint an administrator to take control of and manage the affected firm with the objective of restoring the firm, or parts of its business, to on-going and sustainable viability;**

(iii) **Operate and resolve the firm, including powers to terminate contracts, continue or assign contracts, purchase or sell assets, write down debt and take any other action necessary to restructure or wind down the firm's operations;**

(iv) **Ensure continuity of essential services and functions by requiring other companies in the same group to continue to provide essential services to the entity in resolution, any successor or an acquiring entity; ensuring that the residual entity in resolution can temporarily provide such services to a successor or an acquiring entity; or procuring necessary services from unaffiliated third parties;**

(v) **Override rights of shareholders of the firm in resolution, including requirements for approval by shareholders of particular transactions, in order to permit a merger, acquisition, sale of substantial business operations, recapitalisation or other measures to restructure and dispose of the firm's business or its liabilities and assets;**

(vi) **Transfer or sell assets and liabilities, legal rights and obligations, including deposit liabilities and ownership in shares, to a solvent third party, notwithstanding any requirements for consent or novation that would**

Key Attribute 3: Resolution Powers

otherwise apply (see Key Attribute 3.3);

(vii) Establish a temporary bridge institution to take over and continue operating certain critical functions and viable operations of a failed firm (see Key Attribute 3.4);

(viii) Establish a separate asset management vehicle (for example, as a subsidiary of the distressed firm, an entity with a separate charter, or as a trust or asset management company) and transfer to the vehicle for management and run-down non-performing loans or difficult-to-value assets;

(ix) Carry out bail-in within resolution as a means to achieve or help achieve continuity of essential functions either (i) by recapitalising the entity hitherto providing these functions that is no longer viable, or, alternatively, (ii) by capitalising a newly established entity or bridge institution to which these functions have been transferred following closure of the non-viable firm (the residual business of which would then be wound up and the firm liquidated) (see Key Attribute 3.5);

(x) Temporarily stay the exercise of early termination rights that may otherwise be triggered upon entry of a firm into resolution or in connection with the use of resolution powers (see Key Attribute 4.3 and Annex IV);

(xi) Impose a moratorium with a suspension of payments to unsecured creditors and customers (except for payments and property transfers to central counterparties (CCPs) and those entered into the payment, clearing and settlements systems) and a stay on creditor actions to attach assets or otherwise collect money or property from the firm, while protecting the enforcement of eligible netting and collateral agreements; and

(xii) Effect the closure and orderly wind-down (liquidation) of the whole or part of a failing firm with timely pay-out or transfer of insured deposits and prompt (for example, within seven days) access to transaction accounts and to segregated client funds).

KA 3.3 Resolution authorities should have the power to transfer selected assets and liabilities of the failed firm to a third party institution or to a newly established bridge institution. Any transfer of assets or liabilities should not:

(i) require the consent of any interested party or creditor to be valid; and

(ii) constitute a default or termination event in relation to any obligation relating to such assets or liabilities or

Key Attribute 3: Resolution Powers

under any contract to which the failed firm is a party (see Key Attribute 4.2).

KA 3.4 **Resolution authorities should have the power to establish one or more bridge institutions to take over and continue operating certain critical functions and viable operations of a failed firm, including:**

(i) **the power to enter into legally enforceable agreements by which the authority transfers, and the bridge institution receives, assets and liabilities of the failed firm as selected by the authority;**

(ii) **the power to establish the terms and conditions under which the bridge institution has the capacity to operate as a going concern, including the manner under which the bridge institution obtains capital or operational financing and other liquidity support; the prudential and other regulatory requirements that apply to the operations of the bridge institution; the selection of management and the manner by which the corporate governance of the bridge institution may be conducted; and the performance by the bridge institution of such other temporary functions as the authority may from time to time prescribe;**

(iii) **the power to reverse, if necessary, asset and liability transfers to a bridge institution subject to appropriate safeguards, such as time restrictions; and**

(iv) **the power to arrange the sale or wind-down of the bridge institution, or the sale of some or all of its assets and liabilities to a purchasing institution, so as best to effect the objectives of the resolution authority.**

KA 3.5 **Powers to carry out bail-in within resolution should enable resolution authorities to:**

(i) **write down in a manner that respects the hierarchy of claims in liquidation (see Key Attribute 5.1) equity or other instruments of ownership of the firm, unsecured and uninsured creditor claims to the extent necessary to absorb the losses; and to**

(ii) **convert into equity or other instruments of ownership of the firm under resolution (or any successor in resolution or the parent company within the same jurisdiction), all or parts of unsecured and uninsured creditor claims in a manner that respects the hierarchy of claims in liquidation**

(iii) **upon entry into resolution, convert or write-down any contingent convertible or contractual bail-in instruments whose terms had not been triggered prior to entry into resolution and treat the resulting**

instruments in line with (i) or (ii).

KA 3.6 **The resolution regime should make it possible to apply bail-in within resolution in conjunction with other resolution powers (for example, removal of problem assets, replacement of senior management and adoption of a new business plan) to ensure the viability of the firm or newly established entity following the implementation of bail-in.**

KA 3.7 **In the case of insurance firms, resolution authorities should also have powers to:**

(i) **undertake a portfolio transfer moving all or part of the insurance business to another insurer without the consent of each and every policy holder; and**

(ii) **discontinue the writing of new business by an insurance firm in resolution while continuing to administer existing contractual policy obligations for in-force business (run-off).**

KA 3.8 **Resolution authorities should have the legal and operational capacity to:**

(i) **apply one or a combination of resolution powers, with resolution actions being either combined or applied sequentially;**

(ii) **apply different types of resolution powers to different parts of the firm's business (for example, retail and commercial banking, trading operations, insurance); and**

(iii) **initiate a wind-down for those operations that, in the particular circumstances, are judged by the authorities to be not critical to the financial system or the economy (see Key Attribute 3.2 xii).**

KA 3.9 **In applying resolution powers to individual components of a financial group located in its jurisdiction, the resolution authority should take into account the impact on the group as a whole and on financial stability in other affected jurisdictions, and undertake best efforts to avoid taking actions that could reasonably be expected to trigger instability elsewhere in the group or in the financial system.**

EC 3.1	Key Attribute 3: Resolution Powers

EC 3.1	Key Attribute 3: Resolution Powers
Essential Criterion	**The legal framework includes clear criteria that provide for timely and early entry into resolution before a firm is balance sheet insolvent, when a firm is no longer viable or when it is likely to be no longer viable and, in either case, has no reasonable prospect of return to viability. Adequate arrangements are in place to support the timely determination of non-viability or likely non-viability.**
Federal Response	The legal framework in the United States includes clear criteria that provide for timely and early entry into resolution before a firm is balance sheet insolvent, when a firm is no longer viable or when it is likely to be no longer viable and, in either case, has no reasonable prospect to return to viability. In order for the FDIC to be appointed receiver under Title II of the Dodd-Frank Act for a failed or failing systemically important financial company, a recommendation, a determination and, in certain circumstances, an expedited judicial review process must transpire. The required recommendation is initiated at the request of the Treasury Secretary or upon the initiative of the Federal Reserve Board and the FDIC, in the case of a financial company other than a broker-dealer or insurance company.[88] The recommendation to place a broker or dealer (or a financial company for which the largest domestic subsidiary is a broker or dealer) into receivership is made by the Federal Reserve Board and the SEC, in consultation with the FDIC.[89] The recommendation to place an insurance company (or a financial company for which the largest domestic subsidiary is an insurance company) into receivership is made by the Federal Reserve Board and the Director of FIO, in consultation with the FDIC.[90] Upon a 2/3 vote by both the Federal Reserve Board and the Board of Directors of the FDIC (or a 2/3 vote by the Federal Reserve Board and the SEC in the case of a broker or dealer or a financial company in which the largest domestic subsidiary is a broker or dealer, or a 2/3 vote by the Federal Reserve Board and the approval of the Director of FIO in the case of an insurance company or a financial company in which the largest domestic subsidiary is an insurance company), a written recommendation is delivered to the Treasury Secretary. The written recommendation must include:

[88] Section 203(a)(1)(A) of the Dodd-Frank Act, 12 U.S.C. § 5383(a)(1)(A).

[89] Section 203(a)(1)(B) of the Dodd-Frank Act, 12 U.S.C. § 5383(a)(1)(B).

[90] Section 203(a)(1)(C) of the Dodd-Frank Act, 12 U.S.C. § 5383(a)(1)(C).

EC 3.1	Key Attribute 3: Resolution Powers
	• an evaluation of whether the financial company is in default or in danger of default; • a description of the effect that the default of the financial company would have on financial stability in the United States; • a description of the effect that the default of the financial company would have on economic conditions or financial stability for low income, minority, or underserved communities; • a recommendation regarding the nature and the extent of actions to be taken under Title II regarding the financial company; • an evaluation of the likelihood of a private sector alternative to prevent the default of the financial company; • an evaluation of why a case under the Bankruptcy Code is not appropriate for the financial company; • an evaluation of the effects on creditors, counterparties, and shareholders of the financial company and other market participants; and • an evaluation of whether the company satisfies the definition of a financial company set forth in Section 201(a)(11) of the Dodd-Frank Act.[91] The Treasury Secretary, in consultation with the President of the United States, is responsible for making a determination as to whether the financial company should be placed into receivership under the Dodd-Frank Act. In so doing, the Treasury Secretary must determine that: • the financial company is in default or in danger of default; • the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability in the United States; • no viable private sector alternative is available to prevent the default of the financial company;

[91] Section 203(a)(2) of the Dodd-Frank Act, 12 U.S.C. § 5383(a)(2).

EC 3.1	Key Attribute 3: Resolution Powers
	• any effect on creditors, counterparties, and shareholders of the financial company and other market participants as a result of actions to be taken under Title II of the Dodd-Frank Act is appropriate, given the impact that such actions would have on financial stability in the United States; • any exercise of the orderly liquidation authority would avoid or mitigate such adverse effects, taking into consideration the effectiveness of the exercise of such authority in mitigating (i) potential adverse effects on the financial system, (ii) the cost to the Treasury, and (iii) the potential to increase excessive risk taking on the part of creditors, counterparties, and shareholders in the financial company; • a Federal regulatory agency has ordered the financial company to convert all of its convertible debt instruments that are subject to the regulatory order; and • the company satisfies the definition of a financial company set forth in Section 201(a)(11) of the Dodd-Frank Act.[92] Following the Treasury Secretary's determination to appoint the FDIC as receiver, the Treasury Secretary must notify the financial company.[93] If the financial company's board of directors acquiesces or consents to the FDIC's appointment as receiver, the Treasury Secretary shall appoint the FDIC as receiver.[94] If the board of directors does not acquiesce to the appointment, the Treasury Secretary must petition the United States District Court for the District of Columbia for an order authorizing the Treasury Secretary to appoint the FDIC as receiver.[95] The Treasury Secretary's petition must be filed under seal.[96] The Court must determine, on a strictly confidential basis and without any prior public disclosure, and after notice to the financial company and a hearing at which the financial company may oppose the Treasury Secretary's petition, whether

[92] Section 203(b) of the Dodd-Frank Act, 12 U.S.C. § 5383(b).

[93] Section 202(a)(1)(A)(i) of the Dodd-Frank Act, 12 U.S.C. § 5382(a)(1)(A)(i).

[94] *Id*.

[95] *Id*.

[96] Section 202(a)(1)(A)(ii) of the Dodd-Frank Act, 12 U.S.C. § 5382(a)(1)(A)(ii).

EC 3.1	Key Attribute 3: Resolution Powers
	the determination of the Treasury Secretary that the financial company is in default or in danger of default and satisfies the statutory definition of financial company is arbitrary and capricious.[97] If the Court determines that the Treasury Secretary's determination with respect to these two criteria is not arbitrary and capricious, the Court must issue an order immediately authorizing the Treasury Secretary to appoint the FDIC as receiver of the financial company.[98] If, however, the Court determines that the Treasury Secretary's determination with respect to these two criteria is arbitrary and capricious, the Court must immediately provide to the Treasury Secretary a written statement of each reason supporting its determination, and afford the Treasury Secretary an immediate opportunity to amend and refile the petition.[99] If the Court does not make a determination within 24 hours of receipt of the Treasury Secretary's petition, the Treasury Secretary's petition is granted by operation of law, and the FDIC is appointed receiver of the financial company.[100] The Court's determination may be appealed, but there is no stay pending any such appeal.[101] The legal framework in the United States also provides clear criteria that specify when the FDIC can be appointed receiver for an IDI. Triggering events include: • assets are less than the institution's obligations; • substantial dissipation of assets due to any violation of any statute or regulation, or any unsafe or unsound practice; • an unsafe or unsound condition to transact business; • any willful violation of a cease-and-desist order; • any concealment of the institution's books, papers, records, or assets; • the institution is likely to be unable to pay its obligations or meet its depositors' demands in the normal course

[97] Section 202(a)(1)(A)(iii) of the Dodd-Frank Act, 12 U.S.C. § 5382(a)(1)(A)(iii).

[98] Section 202(a)(1)(A)(iv)(I) of the Dodd-Frank Act, 12 U.S.C. § 5382(a)(1)(A)(iv)(I).

[99] Section 202(a)(1)(A)(iv)(II) of the Dodd-Frank Act, 12 U.S.C. § 5382(a)(1)(A)(iv)(II).

[100] Section 202(a)(1)(A)(v) of the Dodd-Frank Act, 12 U.S.C. § 5382(a)(1)(A)(v).

[101] Section 202(a)(1)(B) of the Dodd-Frank Act, 12 U.S.C. § 5382(a)(1)(B).

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	of business; • the institution has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the institution to become adequately capitalized without Federal assistance; • any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to cause insolvency or substantial dissipation of assets or earnings, weaken the institution's condition or otherwise seriously prejudice the interests of the institution's depositors or the deposit insurance fund; • the institution, by resolution of its board of directors or its shareholders or members, consents to the appointment; • the institution ceases to be an insured institution; • the institution is undercapitalized under the prompt corrective action scheme of 12 U.S.C. § 1831o and (i) has no reasonable prospect of becoming adequately capitalized; (ii) fails to become adequately capitalized when required to do so under section 1831o; (iii) fails to submit a capital restoration plan acceptable to its Federal supervisor within the time prescribed under section 1831o; or (iv) materially fails to implement a capital restoration plan submitted and accepted under section 1831o; • the institution is critically undercapitalized or otherwise has substantially insufficient capital; and • the institution has been found guilty of a money laundering offense under applicable U.S. law.[102] Separately, if an IDI participating in an FDIC established program to guarantee the obligations of solvent IDIs during times of severe economic crisis defaults on certain obligations guaranteed by the FDIC, the FDIC shall appoint itself receiver for the defaulting IDI.[103] Adequate arrangements are in place to support the timely determination of non-viability or likely non-viability. Under the Dodd-Frank Act, a financial company shall be considered to be in default or in danger of default if (A) a case has

[102] FDI Act, 12 U.S.C. § 1821(c)(5).

[103] Section 1106(c) of the Dodd-Frank Act, 12 U.S.C. § 5613(c).

EC 3.1	Key Attribute 3: Resolution Powers
	been, or likely will promptly be, commenced with respect to the financial company under the Bankruptcy Code, (B) the financial company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion, (C) the assets of the financial company are, or are likely to be, less than its obligations to creditors and others, or (D) the financial company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.[104] The relevant U.S. authorities described above that are involved in the statutorily prescribed recommendation and determination process have established appropriate communication channels and contacts to ensure that all necessary information and analysis can be provided on a timely basis. Relevant authorities have also been working in close coordination to ensure that they can obtain and review firm-specific information on a timely basis in a crisis situation. As described in the Federal Response to EC 2.7, this includes maintaining access to firm information and personnel. Under the FDI Act, an IDI may be placed into a receivership on certain grounds prior to non-viability or likely non-viability, including when the institution operates under unsafe or unsound conditions; when the institution conceals its books, papers, records, or assets; when the institution violates any law or regulation; or when there are willful violations of cease and desist orders.[105] The FDIC as the resolution authority has established processes to ensure it has timely access to relevant firm-specific information, including through its statutory special examination authority (in the circumstances discussed in greater detail in the Federal Response to EC 2.7 above,[106] to promptly act in the event of an IDI's distress.
State Insurance Response	U.S. State receivership laws specify the circumstances in which an insurer may be placed in receivership. The grounds for receivership include situations where an insurer is no longer viable due to its financial condition. For example, IRMA §207 authorizes the Commissioner to seek receivership if an insurer is insolvent, about to become insolvent, or is otherwise in hazardous financial condition. Timely determination of insolvency or hazardous financial condition and regulatory action is accomplished through the domiciliary regulator's ongoing risk-focused financial solvency monitoring processes.

[104] Section 203(c)(4) of the Dodd-Frank Act, 12 U.S.C. § 5383(c)(4).

[105] FDI Act, 12 U.S.C. § 1821(c)(5).

[106] FDI Act, 12 U.S.C. § 1820(b)(3).

EC 3.2	Key Attribute 3: Resolution Powers
Essential Criterion	**The resolution authority, either directly or through the supervisory authority, has powers to remove and replace senior management and directors of the firm in resolution. It or another authority has the power to pursue claims and recover monies, including variable remuneration, from persons whose actions or omissions have caused or materially contributed to the failure of the firm.**
Federal Response	The FDIC as the resolution authority has the power to remove and replace senior management and directors of a firm in resolution. The FDIC as receiver succeeds to all rights, titles, powers, and privileges of the failed firm and of any stockholder, member, officer or director of such firm, and therefore can perform all functions of the firm, including the removal and replacement of senior management and directors.[107] Furthermore, there is a statutory obligation under the Dodd-Frank Act not to retain management and directors responsible for the condition of the failed financial company.[108] The FDIC as the resolution authority also has the power to pursue claims and recover monies, including variable remuneration, from persons whose actions or omissions have caused or materially contributed to the failure of the firm.[109] To do so, the FDIC as receiver may commence a civil judicial action against a director or officer of a failed institution for monetary damages for gross negligence or any similar conduct or conduct demonstrating a greater disregard of a duty of care under applicable State law.[110] Under the Dodd-Frank Act, the FDIC as receiver is also expressly authorized to recoup past compensation from senior executives and directors substantially responsible for the failed condition of the failed financial company for a period of two years preceding the failure of the financial company and, in cases of fraud, for an unlimited period of time.[111] Depending on the facts of a particular case, the primary supervisors' enforcement authority may also permit actions

[107] FDI Act, 12 U.S.C. § 1821(d)(2), and Section 210(a)(1)(A) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(A).

[108] *See* Sections 204(a)(2) and 206(4) and (5) of the Dodd-Frank Act, 12 U.S.C. §§ 5384(a)(2), 5386(4) and (5).

[109] FDI Act, 12 U.S.C. §§ 1818(i) and 1821(k), and Section 210(f) of the Dodd-Frank Act, 12 U.S.C. § 5390(f).

[110] FDI Act, 12 U.S.C. § 1821(k), and Section 210(f) of the Dodd-Frank Act, 12 U.S.C. § 5390(f).

[111] *See* Section 210(s) of the Dodd-Frank Act, 12 U.S.C. § 5390(s). *See also* 12 C.F.R. § 380.7.

EC 3.2	Key Attribute 3: Resolution Powers
	against senior management or directors of a firm in resolution just as in the case of a firm not in resolution.
State Insurance Response	U.S. State receivership laws vest the Receiver with all of the powers of the insurer's officers and directors. The Receiver has discretion to remove and replace the insurer's officers, directors, managers or employees. The Receiver has the power to recover monies owed to the insurer, and may pursue claims against persons or entities that may be liable for the failure of the insurer. For example, see IRMA §302, §402 and §504.

EC 3.3	Key Attribute 3: Resolution Powers
Essential Criterion	**The resolution authority has powers, directly or indirectly through an administrator, to temporarily take control and operate a firm in order to achieve its orderly resolution. This includes powers to restructure or wind down the firm's operations; terminate, continue or assign contracts; enter into contracts and service agreements to ensure the continuity of essential services and functions; and purchase or sell assets.**
Federal Response	The FDIC as the resolution authority has the power to take control and operate a firm to achieve the firm's orderly resolution. The FDIC as receiver has broad authority to manage the assets and operations of the failed institution in resolution to, among other things, restructure or wind down the failed institution, repudiate contracts, enforce contracts, transfer contracts, enter into contracts, and purchase and sell assets.[112]
State Insurance Response	U.S. State receivership laws give the receiver the powers to take control of and operate an insurer in order to achieve its orderly resolution, including the powers listed in EC 3.3. For example, see IRMA §302, §402 and §504.

[112] FDI Act, 12 U.S.C. § 1821(d)(2)(B), (E) and (G); (e) and (n), and Section 210(a)(1)(B), (D) and (G); (c) and (h) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(B), (D) and (G); (c) and (h).

EC 3.4	Key Attribute 3: Resolution Powers
Essential Criterion	**The resolution authority has powers to:** **(i) require that the firm in resolution temporarily provides, to any successor or acquiring entity to which assets and liabilities of the firm have been transferred, services that are necessary to support continuity of essential services and functions related to those assets and liabilities;** **(ii) require companies in the same group located within the jurisdiction (whether or not they are regulated) to continue to provide services that are necessary to support such continuity to the firm under resolution or to any successor or acquiring entity at a reasonable rate of reimbursement; and** **(iii) procure necessary services from unaffiliated third parties.**
Federal Response	The FDIC as the resolution authority has powers to (i) require that the firm in resolution temporarily provides, to any successor or acquiring entity to which assets and liabilities of the firm have been transferred, services that are necessary to support continuity of essential services and functions related to those assets and liabilities; (ii) require companies in the same group located within the jurisdiction (whether or not they are regulated) to continue to provide services that are necessary to support such continuity to the firm under resolution or to any successor or acquiring entity at a reasonable rate of reimbursement; and (iii) procure necessary services from unaffiliated third parties. The FDIC succeeds to all rights, titles, powers, and privileges of the failed institution and therefore can perform all functions of the institution, including causing the failed institution to provide necessary services to any successor or acquiring entity to which the assets and liabilities of the failed institution have been transferred and causing companies in the same group located within the jurisdiction to continue to provide services that are necessary to support continuity of essential services and functions to the failed institution or to any successor or acquiring entity at a reasonable rate of reimbursement.[113] In addition, to the extent the provision of services by companies in the same group as the failed institution are governed by contracts, both the FDI Act and the Dodd-Frank Act provide that, generally, no person (including companies in the same group as the failed institution) may exercise any right to terminate any contract to

[113] FDI Act, 12 U.S.C. § 1821(d)(2), and Section 210(a)(1)(A) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(A).

EC 3.4	Key Attribute 3: Resolution Powers
	which the IDI or failed financial company, as the case may be, is a party or affect any contractual rights of the institution, without the consent of the receiver for 90 days following the appointment of the FDIC as receiver.[114] Furthermore, the FDIC is expressly authorized under both the Dodd-Frank Act and the FDI Act to utilize the services of private persons to, among other things, provide management services in respect of bridge institutions and entities in resolution, provided the FDIC determines that the utilization of such services is practicable, efficient and cost effective.[115]
State Insurance Response	As the Receiver is placed in control of the insurer, the Receiver may take action to provide necessary services to an entity that assumes the policies of the insurer. The Receiver is also authorized to procure necessary services from third parties. State receivership laws require parties that are holding records of the insurer to provide such records to the Receiver, and the Receivership Court may enter orders to enforce these provisions.

EC 3.5	Key Attribute 3: Resolution Powers
Essential Criterion	**The resolution authority has the power to effect the sale of the institution or its merger with another institution, or the transfer of assets or liabilities (including insurance portfolios and holdings of client assets) to a third party, asset management vehicle or bridge institution without requiring prior notification or the consent of any interested private party such as the shareholders, depositors, policyholder or other creditors and clients of the firm in resolution.**
Federal Response	The FDIC as resolution authority has the power to effect the sale of the institution or its merger with another institution, or the transfer of assets or liabilities (including insurance portfolios and holdings of client assets) to a third party, asset management vehicle or bridge institution without requiring prior notification or the consent of any interested private

[114] FDI Act, 12 U.S.C. § 1821(e)(13)(C)(i), and Section 210(c)(13)(C)(i) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(13)(C)(i).

[115] FDI Act, 12 U.S.C. § 1821(d)(2)(K), and Section 210(a)(1)(L) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(L).

EC 3.5	Key Attribute 3: Resolution Powers
	party such as the shareholders, depositors, policyholders or other creditors and clients of the firm in resolution. Upon appointment as receiver, the FDIC succeeds to all rights, titles, powers, and privileges of the financial company or IDI, as the case may be, and may take over the assets of and operate the entity with all of the powers of the members or shareholders, directors and officers and conduct all business of the entity.[116] As such, the FDIC as receiver has the power to merge the failed institution with another institution and the power to transfer or sell any asset or liability of the failed institution to a third party (including an asset management vehicle or bridge institution) without providing prior notification or obtaining any approval, assignment or consent with respect to such transfer.[117]
State Insurance Response	In a rehabilitation proceeding, the Receiver has discretion to transfer the insurer's business. The notice requirements for a transaction will depend on the circumstances and the applicable procedural rules. In a liquidation proceeding, a life / health guaranty association is authorized to transfer policies to an assuming insurer. Policyholders are typically notified of the transfer after it is consummated. Transfers in this situation are not subject to assumption reinsurance regulations.

EC 3.6	Key Attribute 3: Resolution Powers
Essential Criterion	**The resolution authority has the power to transfer assets or liabilities back from the bridge institution to the firm in resolution, the estate of the firm or to an asset management vehicle. The exercise of that reverse transfer power is subject to appropriate safeguards.**
Federal Response	The FDIC as the resolution authority has the power to transfer assets or liabilities back from the bridge institution to the firm in resolution, the estate of the firm or to an asset management vehicle. The transfer of assets or liabilities from the FDIC to the bridge institution is typically effectuated through purchase and assumption agreements. Such agreements

116 FDI Act, 12 U.S.C. § 1821(d)(2)(A) and (B), and Section 210(a)(1)(A) and (B) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(A) and (B).

117 FDI Act, 12 U.S.C. § 1821(d)(2)(G) and (n)(1)(A) and (B), and Section 210(a)(1)(G) and (h)(5)(A) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(G) and (h)(5)(A).

EC 3.6	Key Attribute 3: Resolution Powers
	typically provide a limited ability to put back assets or liabilities to the receivership. The exercise of the reverse transfer power is subject to appropriate safeguards, including that the reverse transfer power may be exercised only for a limited period of time and only under limited conditions consistent with efficient resolution as set forth in such agreements.
State Insurance Response	In a rehabilitation proceeding, the Receiver has authority to take action to rehabilitate the insurer, subject to court approval. Commonly used mechanisms to rehabilitate the insurer include a sale of the company to another insurer, a transfer and assumption of blocks of business, or a restructuring (e.g., a "good bank / bad bank" division). However, as the Receiver's powers in a rehabilitation are very broad, a Receiver could use a bridge institution, provided that creditors are no worse off than they would be in a liquidation.

EC 3.7	Key Attribute 3: Resolution Powers
Essential Criterion	**The resolution authority has the powers set out in KA 3.4 to establish one or more bridge institutions. The legal framework specifies, or gives the resolution authority the power to specify, the terms and conditions under which a bridge institution will be set up and operate as a going concern, including:** **(i) its ownership structure;** **(ii) the sources of capital, its operational financing and liquidity support;** **(iii) the applicable regulatory requirements, including regulatory capital;** **(iv) the applicable corporate governance framework; and** **(v) the process for appointing the management of the bridge institution and its responsibilities.**
Federal	The FDIC as the resolution authority has the powers set out in KA 3.4 to establish one or more bridge institutions,[118] and

[118] FDI Act, 12 U.S.C. § 1821(n)(1)(A), and Section 210(a)(1)(F) and (h) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(F) and (h).

EC 3.7	Key Attribute 3: Resolution Powers
Response	has the power to enter into legally enforceable agreements by which the FDIC can transfer, and the bridge institution can receive, assets and liabilities of the failed firm as selected by the FDIC.[119] The FDIC as receiver is afforded broad discretion in specifying the terms and conditions under which a bridge institution will be established and operate as a going concern, including with respect to the bridge institution's ownership structure.[120] With respect to sources of a bridge institution's capital, the FDIC as receiver has the discretion to cause capital stock or other securities of a bridge institution to be issued and offered for sale in amounts and on terms and conditions as the FDIC may determine.[121] Both the FDI Act and the Dodd-Frank Act provide that the status of a bridge institution shall terminate as such upon, among other things, the sale of 80 percent or more of its capital stock to a person or entity other than the FDIC or another bridge institution.[122] With respect to operational financing and liquidity support, both the FDI Act and the Dodd-Frank Act provide the FDIC as receiver with the discretion to either raise capital or make funds available for the operation of the bridge institution in lieu of capital.[123] Under the Dodd-Frank Act, the FDIC as receiver may authorize a bridge institution to obtain credit.[124] As noted above, the FDIC as receiver is afforded broad discretion in specifying the terms and conditions under which a bridge institution will be established and operated as a going concern, including with respect to the manner in which the bridge institution will comply with applicable regulatory requirements. With respect to regulatory capital, both the FDI Act and the Dodd-Frank Act provide that a bridge institution may operate without any capital or surplus, or such capital or surplus as the FDIC as receiver may in its discretion determine to be appropriate.[125] The FDI Act also provides that a

[119] FDI Act, 12 U.S.C. § 1821(n)(3)(A), and Section 210(h)(5)(A) of the Dodd-Frank Act, 12 U.S.C. § 5390(h)(5)(A).

[120] *See* FDI Act, 12 U.S.C. § 1821(n), and Section 210(h) of the Dodd-Frank Act, 12 U.S.C. § 5390(h).

[121] FDI Act, 12 U.S.C. § 1821(n)(5)(C), and Section 210(h)(2)(G)(iii) of the Dodd-Frank Act, 12 U.S.C. § 5390(h)(2)(G)(iii).

[122] FDI Act, 12 U.S.C. § 1821(n)(10)(C), and Section 210(h)(13)(C) of the Dodd-Frank Act, 12 U.S.C. § 5390(h)(13)(C).

[123] FDI Act, 12 U.S.C. § 1821(n)(5)(B), and Section 210(h)(2)(G)(iv) of the Dodd-Frank Act, 12 U.S.C. § 5390(h)(2)(G)(iv).

[124] Section 210(h)(16) of the Dodd-Frank Act, 12 U.S.C. § 5390(h)(16).

[125] FDI Act, 12 U.S.C. § 1821(n)(5), and Section 210(h)(2)(G) of the Dodd-Frank Act, 12 U.S.C. § 5390(h)(2)(G).

EC 3.7	Key Attribute 3: Resolution Powers
	bridge depository institution will not be deemed undercapitalized for purposes of certain advances obtainable from the Federal Reserve Board.[126] Under the Dodd-Frank Act, a bridge financial company may elect to follow the corporate governance practices and procedures that are applicable to a corporation incorporated under the general corporation law of the State of Delaware, or the State of incorporation or organization of the failed financial company with respect to which the bridge financial company was established.[127] Under the FDI Act, a bridge depository institution may be organized as either a national bank, in the case of one or more insured banks, or as a Federal savings association, in the case of one or more insured savings associations.[128] The FDIC as receiver has broad authority in determining the process for appointing the management of the bridge institution and its responsibilities. Under both the FDI Act and the Dodd-Frank Act, the bridge institution is to be under the management of a board of directors whose members are appointed by the FDIC.[129]
State Insurance Response	See the State Insurance Responses to ECs 3.5 and 3.6.

EC 3.8	Key Attribute 3: Resolution Powers
Essential Criterion	**The resolution authority has the power, either directly or indirectly, to establish a separate asset management vehicle for the purposes of managing and winding down assets transferred to it from a firm in resolution.**

[126] FDI Act, 12 U.S.C. § 1821(n)(5)(D).

[127] Section 210(h)(2)(F) of the Dodd-Frank Act, 12 U.S.C. § 5390(h)(2)(F).

[128] FDI Act, 12 U.S.C. § 1821(n)(1)(E).

[129] FDI Act, 12 U.S.C. § 1821(n)(2)(D), and Section 210(h)(2)(B) of the Dodd-Frank Act, 12 U.S.C. § 5390(h)(2)(B).

EC 3.8	Key Attribute 3: Resolution Powers
Federal Response	The FDIC as the resolution authority has the power to establish a separate asset management vehicle or equivalent corporate entity and transfer to the vehicle for management and run-down of non-performing loans or difficult-to-value assets. Both the Dodd-Frank Act and the FDI Act grant the FDIC broad powers to conduct the liquidation, management and other disposition of assets of the failed financial company or IDI.[130] Upon appointment as receiver, the FDIC succeeds to all rights, titles, powers, and privileges of the financial institution, and may take over the assets of and operate the entity with all of the powers of the members or shareholders, directors and officers and conduct all business of the entity.[131] Under these broad powers, the FDIC as receiver is empowered to manage the assets of the failed institution by establishing a separate asset management vehicle or equivalent corporate entity and transferring to the vehicle for management and run-down the non-performing loans or difficult-to-value assets.[132] Historically, in resolutions of IDIs, the FDIC has used separate asset management vehicles, including securitization vehicles, for purposes of transferring non-performing loans or difficult-to-value assets for management and run-down.
State Insurance Response	See the State Insurance Responses to ECs 3.5 and 3.6.

EC 3.9	Key Attribute 3: Resolution Powers
Essential Criterion	**For FMIs: the regime provides that where functions of an FMI are transferred to another entity, the following should also be transferred or applied to that entity:** **(i) any licenses, authorisations, recognitions and legal designations of the FMI necessary for the continued performance of those functions in resolution, including its recognition for the purposes of the application**

[130] FDI Act, 12 U.S.C. § 1821(d)(2)(B), (E) and (G), and Section 210(a)(1)(B), (D) and (G) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(B), (D) and (G).

[131] FDI Act, 12 U.S.C. § 1821(d)(2)(A) and (B), and Section 210(a)(1)(A) and (B) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(A) and (B).

[132] FDI Act, 12 U.S.C. § 1821(d)(2)(G), and Section 210(a)(1)(G) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(G).

EC 3.9	Key Attribute 3: Resolution Powers
	of relevant settlement finality rules; **(ii) any domestic or cross-border links with other FMIs that are essential for the continuity of the transferred functions.**
Federal Response	No response has been provided to EC 3.9 as FMIs are outside the scope of the FSAP and thus not addressed in the self-assessment.

EC 3.10	Key Attribute 3: Resolution Powers
Essential Criterion	**The resolution authority has the power to give effect to all of the following actions as necessary to absorb losses:** **(i) cancel or write off equity or other instruments of ownership of the firm;** **(ii) terminate or write down unsecured and uninsured creditor claims; and** **(iii) exchange or convert into equity or other instruments of ownership of the firm, any successor in resolution (such as a bridge institution to which part or all of the business of the failed firm is transferred) or the parent company within that jurisdiction, all or parts of unsecured and uninsured creditor claims.**
Federal Response	The FDIC as the resolution authority under Title II of the Dodd-Frank Act has the power to terminate or write down equity, subordinated debt, senior unsecured debt and uninsured deposits, and to exchange such obligations for equity or other instruments of ownership of a bridge financial company to which part or all of the business of failed financial company is transferred as necessary to absorb losses.

EC 3.10	Key Attribute 3: Resolution Powers
	The FDIC has broad authority to manage the resolution of a failed financial company in an orderly manner in order to mitigate risk to the financial stability of the United States, minimize moral hazard, and maximize the value of assets.[133] This broad grant of authority includes the power to determine claims in accordance with the statutory hierarchy, discussed in greater detail in the Federal Response to EC 3.11 below.[134] It is through this claims process that the FDIC as receiver can write down or terminate the claims of equity holders and creditors of the failed financial company to ensure that such persons bear the losses arising from its failure.[135] The FDIC as the resolution authority under Title II of the Dodd-Frank Act also has the power to exchange equity in a successor to the failed financial company, including a bridge financial company, in satisfaction of claims against the failed financial company in accordance with the statutory hierarchy of claims. As noted above in the Federal Response to EC 3.7, the FDIC as receiver has the power to transfer assets and liabilities to a newly established bridge financial company following the closure of the failed financial company.[136] The FDIC also has the power to cause the bridge financial company to issue capital stock or other securities.[137] The power to cause the bridge financial company to issue capital stock or other securities enables the FDIC as receiver to exchange such equity in satisfaction of claims against the failed financial company. Consistent with the foregoing, the FDIC is developing the single point of entry strategy that is designed for the resolution of systemically important financial institutions that are potentially subject to the FDIC's resolution authority under Title II of the Dodd-Frank Act. Pursuant to this strategy, the FDIC would be appointed as receiver only of the ultimate U.S. parent holding company of the financial group. Immediately following the FDIC's appointment as receiver, the FDIC would charter a bridge financial company to which substantially all of the assets and certain liabilities of the U.S. parent holding company, including its investments in and loans to subsidiaries, would be transferred. Rights related to equity, subordinated debt and senior unsecured debt of the U.S. parent holding company in resolution would be terminated,

[133] Section 210 of the Dodd-Frank Act, 12 U.S.C. § 5390.

[134] Section 210(b) of the Dodd-Frank Act, 12 U.S.C. § 5390(b).

[135] *See, e.g.*, Sections 204)(a)(1), 206(2) and (3), and 210(a)(1)(M) of the Dodd-Frank Act, 12 U.S.C. §§ 5384(a)(1), 5386(2) and (3), and 5390(a)(1)(M).

[136] Section 210(a)(1)(F) and (h) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(F) and (h).

[137] Section 210(h)(2)(G)(iii) of the Dodd-Frank Act, 12 U.S.C. § 5390(h)(2)(G)(iii).

EC 3.10	Key Attribute 3: Resolution Powers
	except that the right to payment, resolution or other satisfaction of claims based thereon would be determined pursuant to the claims process of the receivership.[138] This newly formed bridge financial company would continue to perform the systemically important functions of the failed financial company, thereby minimizing disruptions to the financial system and minimizing the risk of spill-over effects to counterparties. Subsidiaries—both domestic and foreign—of the failed financial company may remain open and operating. During this process, the FDIC would undertake measures to address the problems that led to the financial company's failure. Such measures could include changes to the financial company's businesses, shrinking those businesses, breaking them into smaller entities, or liquidating certain subsidiaries or business lines or closing certain operations. The single point of entry strategy would provide for the payment of creditors' claims through a securities-for-claims exchange, pursuant to which equity in and new debt of a new financial company or companies, as the successor or successors to the bridge financial company, would be issued to creditors in satisfaction of their claims against the receivership estate of the failed financial company. For a more detailed description of the single point of entry resolution strategy summarized above, please see the FDIC's Notice entitled "Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy," published in the Federal Register on December 18, 2013.[139]
State Insurance Response	In a rehabilitation proceeding, the Receiver may submit a plan of rehabilitation to the court. The plan may include provisions terminating certain liabilities of the insurer. When an insurer is placed into liquidation, claims must be filed in the receivership, and are payable by class. Unsecured general creditor claims are subordinate to policy claims, and the equity interests of the insurer's owners are in the lowest class.

EC 3.11	Key Attribute 3: Resolution Powers

[138] Section 210(a)(1)(M) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(M).

[139] 78 Fed. Reg. 76614.

EC 3.11	Key Attribute 3: Resolution Powers
Essential Criterion	**The legal framework provides clarity as regards the scope of the bail-in power set out in KA 3.5, that is, the range of liabilities covered and provides for its application in a manner that respects the hierarchy of claims as established in KA 5.1.**
Federal Response	The legal framework in the United States is clear as to the scope of liabilities that may be bailed-in in accordance with the statutory hierarchy of claims. The FDI Act provides that, in the case of the resolution of a failed IDI, the statutory hierarchy of claims is: (i) administrative expenses of the receiver; (ii) any deposit liability of the IDI; (iii) any other general or senior liability of the IDI; (iv) any obligation subordinated to depositors or general creditors; and (v) any obligation to shareholders or members arising as a result of their status as shareholders or members.[140] As noted in the Federal Response to EC 3.18 below, the FDIC may pay claims on account of insured deposits in cash from the Deposit Insurance Fund or transfer such insured deposits to a new IDI.[141] In either case, the FDIC would then be subrogated to all rights of such insured depositors against the failed IDI.[142] The FDIC's claim as subrogee is classified as a deposit liability under (ii) above. The Dodd-Frank Act provides a statutory hierarchy of claims as follows: (i) administrative expenses of the receiver;

[140] FDI Act, 12 U.S.C. § 1821(d)(11)(A).

[141] FDI Act, 12 U.S.C. § 1821(f).

[142] FDI Act, 12 U.S.C. § 1821(g)(1).

EC 3.11	Key Attribute 3: Resolution Powers
	(ii) any amounts owed to the United States, unless the United States agrees or consents otherwise; (iii) certain wages, salaries, or commissions earned by an individual (other than such amounts owed to senior executives or directors of the failed financial company); (iv) certain contributions to employee benefit plans; (v) any other general or senior liability of the failed financial company; (vi) any obligation subordinated to general creditors; (vii) certain wages, salaries, or commissions earned by senior executives or directors of the failed financial company; and (viii) any obligation to shareholders, members, general partners, limited partners, or other persons, with interests in the equity of the failed financial company arising as a result of their status as such.[143]
State Insurance Response	U.S. State receivership laws provide for a classification of claims consistent with the hierarchy in KA 5.1.

EC 3.12	Key Attribute 3: Resolution Powers
Essential Criterion	**The legal framework enables the resolution authority to require or bring about, including through application to the court or through another authority, all of the following actions where necessary to give effect to the write-down or conversion, quickly and without the need for existing shareholder consent:**

[143] Section 210(b)(1) of the Dodd-Frank Act, 12 U.S.C. § 5390(b)(1).

EC 3.12	Key Attribute 3: Resolution Powers
	(i) the cancellation of share capital and instruments; **(ii) the issuance of new shares or other instruments of ownership;** **(iii) the overriding of pre-emption rights of existing shareholders of the firm;** **(iv) the issuance of warrants to equity holders or subordinated (and if appropriate senior) debt holders whose claims have been subject to bail-in (to enable adjustment of the distribution of shares based on a further valuation at a later stage); and** **(v) the suspension of shares and other relevant securities from listing and trading for a temporary period.**
Federal Response	The legal framework in the United States enables the FDIC as the resolution authority to effectuate the write-down or conversion quickly and without the need for shareholder consent. The FDIC as receiver succeeds to all rights, titles, powers, and privileges of the institution as well as its shareholders or members, and may take over the assets of and operate the entity with all of the powers of the members or shareholders, directors and officers and conduct all business of the entity.[144] As noted in the various other Federal Responses to the Essential Criteria under KA 3, this broad authority enables the FDIC as the resolution authority to cancel existing share capital and instruments; issue new shares or other instruments of ownership, including warrants; and override pre-emption rights of existing shareholders.[145] With respect to the suspension of shares and other relevant securities from listing and trading, all resolution powers must be exercised on a closed-firm basis. Accordingly, the institution will, as a matter of course, be de-listed from any exchanges on which its shares formerly traded.
State Insurance	The Receiver may sell or dissolve the charter of an insurer separate from the claims of its creditors and interests of its stockholders. In such a transaction, the court may cancel all outstanding stock, and authorize the issuance of new stock.

[144] FDI Act, 12 U.S.C. § 1821(d)(2)(A) and (B), and Section 210(a)(1)(A) and (B) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(A) and (B).

[145] FDI Act, 12 U.S.C. § 1821(d)(2) and (n)(5)(C), and Section 210(a)(1)(A), (a)(1)(M) and (h)(2)(G)(iii) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(A), (a)(1)(M) and (h)(2)(G)(iii).

EC 3.12	Key Attribute 3: Resolution Powers
Response	For example, see IRMA §503.

EC 3.13	Key Attribute 3: Resolution Powers
Essential Criterion	**The legal framework enables contingent convertible instruments not triggered prior to entry into resolution to be terminated, written down or converted in accordance with the particular contractual terms immediately on entry into resolution, and enables bail-in powers to be applied to those instruments, or claims resulting from their termination, contractual write-down or conversion, *pari passu* with instruments of the same type , except if necessary to contain the potential systemic impact of a firm's failure or to maximise the value for the benefit of all creditors as a whole (see KA 5.1).**
Federal Response	The legal framework in the United States does not differentiate between contingent convertible instruments not triggered prior to entry into resolution and other types of unsecured debt. Accordingly, contingent convertible instruments not triggered prior to entry into resolution may be terminated, written down or converted in accordance with the particular contractual terms immediately on entry into resolution, and bail-in powers may be applied to the instruments or claims resulting from that termination, contractual write-down or conversion, *pari passu* with claims of creditors of the same class, subject to the exceptions set forth below.[146] As discussed in greater detail in the Federal Response to EC 5.2, there are circumstances under the FDI Act and the Dodd-Frank Act, as the case may be, in which the FDIC may depart from the principle of equal treatment of creditors. The FDIC has stated that it would not exercise its discretion under the Dodd-Frank Act to treat similarly situated creditors differently in a manner that would result in preferential treatment to holders of long-term senior debt (defined as unsecured debt with a term of longer than one year), subordinated debt, or equity.[147]

[146] FDI Act, 12 U.S.C. § 1821(d)(11), and Section 210(b)(1) of the Dodd-Frank Act, 12 U.S.C. § 5390(b)(1).

[147] *See* 12 C.F.R. § 380.27.

EC 3.13	Key Attribute 3: Resolution Powers
State Insurance Response	U.S. State receivership laws provide for a classification of claims consistent with the hierarchy in KA 5.1.

EC 3.14	Key Attribute 3: Resolution Powers
Essential Criterion	**A resolution authority that is responsible for the resolution of FMIs has the powers to:** **(i) enforce any existing and outstanding contractual obligations of the FMI's participants to meet cash calls or make further contributions to a guarantee or default fund, or any other rules and procedures of the FMI for loss allocation (including for the repayment of liquidity providers) where they have not been already applied exhaustively by the FMI prior to the entry of the FMI into resolution;** **(ii) enforce any existing and outstanding obligations of the FMI's participants pursuant to the rules and procedures of the FMI to accept allocations of the positions of a defaulting participant;** **(iii) write down (fully or partially) equity of the FMI;** **(iv) write down and convert to equity unsecured debt of the FMI in a manner that respects the hierarchy of claims under the applicable insolvency regime;** **(v) reduce the value of any gains payable by the FMI to participants (for example, by variation margin hair-cutting); and** **(vi) terminate ("tear up") or close out contracts.**
Federal Response	No response has been provided to EC 3.14 as FMIs are outside the scope of the FSAP and thus not addressed in the self-assessment.

EC 3.15	Key Attribute 3: Resolution Powers
Essential Criterion	**A resolution authority that is responsible for the resolution of insurers has the power to restructure, limit or write down insurance and reinsurance liabilities and allocate losses to creditors and policy holders in a way consistent with the statutory creditor hierarchy.**
Federal Response	Please refer to the State Insurance Response below.
State Insurance Response	See the State Insurance Response to EC 5.1.

EC 3.16	Key Attribute 3: Resolution Powers
Essential Criterion	**The resolution authority has the power to impose a moratorium (stay of creditor actions to attach assets or otherwise collect money or property from the firm and suspension of payments).**
Federal Response	The legal framework in the United States imposes a statutory stay on the exercise of creditor actions to attach assets or otherwise collect money or property from the firm. Parties to financial contracts with a failed financial institution cannot exercise any right to terminate, liquidate or net such contract solely because the FDIC was appointed receiver of such institution (i) until 5:00 p.m. (Eastern Time) on the business day following the date of the appointment or (ii) after the person has received notice that the contract has been transferred.[148] For contracts other than financial contracts, there is

[148] FDI Act, 12 U.S.C. § 1821(e)(10)(B), and Section 210(c)(10)(B) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(10)(B).

EC 3.16	Key Attribute 3: Resolution Powers
	generally a 90-day stay in which the parties cannot terminate the contract or obtain control of the institution's property.[149] In addition, the Dodd-Frank Act gives the FDIC as receiver for a failed financial company the power to enforce contracts of subsidiaries or affiliates of the failed financial company, the obligations under which are guaranteed or supported by, or linked to, the failed financial company, notwithstanding contractual provisions that give rise to termination, liquidation or acceleration rights based on the financial condition, insolvency or receivership of the failed financial company.[150] If the obligations are guaranteed or supported by the failed financial company, either (i) the guaranty or other support, together with all related assets and liabilities, must be transferred to and assumed by a qualified transferee not later than 5:00 p.m. (Eastern Time) on the business day following the date of appointment of the FDIC as receiver, or (ii) the FDIC must provide adequate protection to the counterparties to such contracts with respect to the failed financial company's support of the obligations or liabilities of the subsidiary or affiliate and take steps to provide notice of such transfer or provision of adequate protection not later than 5:00 p.m. (Eastern Time) on the business day following the date of appointment of the FDIC as receiver.[151] The legal framework in the United States also provides for the general suspension of payments to unsecured creditors and customers.[152] With respect to payments and property transfers to central counterparties and financial contracts entered into the payment, clearing and settlements systems, under the Dodd-Frank Act, if the FDIC as receiver fails to satisfy margin, collateral or settlement obligations (other than those that are unenforceable under the Dodd-Frank Act) that arise under a financial contract cleared by or subject to the rules of the clearing organization as required by the rules of the clearing organization, the clearing organization has the right to exercise its default remedies.[153]

[149] FDI Act, 12 U.S.C. § 1821(e)(13)(C)(i), and Section 210(c)(13)(C)(i) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(13)(C)(i).

[150] Section 210(c)(16) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(16). S*ee also* 12 C.F.R. § 380.12.

[151] *Id*.

[152] FDI Act, 12 U.S.C. § 1821(e)(8)(G), and Section 210(c)(8)(F) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(8)(F).

[153] Section 210(c)(8)(G) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(8)(G).

EC 3.16	Key Attribute 3: Resolution Powers
	In addition, the legal framework in the United States provides that no property of the FDIC shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the FDIC, nor shall any involuntary lien attach to the property of the FDIC.[154]
State Insurance Response	U.S. State receivership laws provide for a stay of actions against property of the insurer, and / or the issuance of an injunction against such actions. For example, see IRMA §108.

EC 3.17	Key Attribute 3: Resolution Powers
Essential Criterion	**In the resolution of an insurer, the resolution authority has the power to temporarily restrict or suspend the rights of policy holders to withdraw from their insurance contracts which may be exercised in a way appropriate to the nature of the insurance contract.**
Federal Response	Please refer to the State Insurance Response below.
State Insurance Response	As part of the rehabilitation plan, U.S. State insurance laws and regulations give the receiver the right to restrict or suspend the rights of policyholders for a period of time, for example, to suspend claims payments and halt the transfer of cash or loan values on life insurance contracts. Additionally, the receiver may impose significant restrictions or prohibit the renewal of business when the renewal is at the option of the insurer.

[154] FDI Act, 12 U.S.C. § 1825(b)(2), and Section 210(q)(1)(B) of the Dodd-Frank Act, 12 U.S.C. § 5390(q)(1)(B).

EC 3.18	Key Attribute 3: Resolution Powers
Essential Criterion	**The resolution authority has the power to effect the closure and orderly wind-down and liquidation of the whole or part of a failing firm, and in such event, has the capacity and practical ability to effect or secure any of the following:** **(i) the timely pay-out to insured depositors, insurance policy holders or other protected clients** **(ii) the prompt transfer of insured deposits or insurance contracts to a third party or bridge institution;** **(iii) the timely transfer or return of client assets.**
Federal Response	The FDIC as the resolution authority has broad powers to effect the closure and orderly wind-down and liquidation of the whole or part of a failing institution.[155] With respect to insured deposits, these broad powers provide the FDIC with the capacity and practical ability to pay claims on account of such deposits as soon as possible either in cash from the Deposit Insurance Fund or by making available to each depositor a transferred deposit in a new IDI.[156] To the extent an IDI holds non-deposit client assets in a trust or similar fiduciary capacity, such assets are treated separately from the other assets of the failed IDI and would be returned to the client or transferred to a bridge bank or a new IDI. With respect to the timely pay-out to insurance policy holders and the prompt transfer of insurance contracts, please refer to the State Insurance Response below.
State Insurance Response	In a rehabilitation proceeding, the Receiver may take action to pay policy claims, transfer business to an assuming insurer, or return the insurer to its owners if rehabilitation is accomplished. In a liquidation proceeding, the Receiver must pay claims in accordance with the priority scheme.

EC 3.19	Key Attribute 3: Resolution Powers

[155] FDI Act, 12 U.S.C. § 1821(d), and Section 210 of the Dodd-Frank Act, 12 U.S.C. § 5390.

[156] FDI Act, 12 U.S.C. § 1821(f).

EC 3.19	Key Attribute 3: Resolution Powers
Essential Criterion	**In the resolution of an insurer the resolution regime enables the writing of new business to be discontinued once the firm is placed in resolution while existing contractual policy obligations continue to be administered (run-off).**
Federal Response	Please refer to the State Insurance Response below.
State Insurance Response	Resolution of property/casualty insurers – In a rehabilitation proceeding, new policies may be discontinued, and the claims may be handled in a run-off. In a liquidation proceeding, existing policies must be cancelled; claims on cancelled policies are transferred to a guaranty association or classified as claims in the receivership, as applicable. Resolutions of life insurers – In a rehabilitation proceeding, new policies may be discontinued and the claims may be handled in a run-off. For financially impaired insurers (those not declared insolvent and are not placed under an order of liquidation), guaranty associations have discretion (which is not often exercised) to guarantee, assume or reinsure the covered policies and contracts of the impaired insurer or to provide such moneys, pledges, and loans to the insurer to support such obligations. For insurers that are determined to be insolvent and placed under an order of liquidation, guaranty associations are required to take measures to assure payment of the insurer’s policyholder obligations. In most life insurance insolvencies, the guaranty associations will act to facilitate the transfer of policies and contracts to a financially stable insurer, or will otherwise provide a financial support for the run-off of the insurer’s policies and contracts.

EC 3.20	Key Attribute 3: Resolution Powers
Essential Criterion	**The legal framework does not restrict the resolution authority from combining resolution actions and does not require it to apply such actions in a particular order.**
Federal	The legal framework in the United States does not restrict the FDIC as the resolution authority under the Dodd-Frank Act

EC 3.20	Key Attribute 3: Resolution Powers
Response	or the FDI Act from exercising its resolution powers separately or in any combination and does not require the FDIC as the resolution authority to take any such actions in a particular order. As noted above, the FDIC has broad authority to manage the resolution of a failed institution.[157] This broad authority includes the power to combine resolution actions and the discretion to apply such actions in the order the FDIC as receiver determines to be most appropriate to achieve the objectives of resolution.
State Insurance Response	The Commissioner may request an order of conservation, rehabilitation or liquidation. While a conservation or rehabilitation proceeding may be converted to a liquidation proceeding, neither conservation nor rehabilitation are prerequisites for liquidation.

Key Attribute 4: Set-off, Netting, Collateralisation, Segregation of Client Assets

KA 4.1	**The legal framework governing set-off rights, contractual netting and collateralisation agreements and the segregation of client assets should be clear, transparent and enforceable during a crisis or resolution of firms, and should not hamper the effective implementation of resolution measures.**
KA 4.2	**Subject to adequate safeguards, entry into resolution and the exercise of any resolution powers should not trigger statutory or contractual set-off rights, or constitute an event that entitles any counterparty of the firm in resolution to exercise contractual acceleration or early termination rights provided the substantive obligations under the contract continue to be performed.**
KA 4.3	**Should contractual acceleration or early termination rights nevertheless be exercisable, the resolution authority should have the power to stay temporarily such rights where they arise by reason only of entry into resolution or in**

[157] FDI Act, 12 U.S.C. § 1821(d), and Section 210 of the Dodd-Frank Act, 12 U.S.C. § 5390.

Key Attribute 4: Set-off, Netting, Collateralisation, Segregation of Client Assets	
	connection with the exercise of any resolution powers. The stay should: **(i) be strictly limited in time (for example, for a period not exceeding 2 business days);** **(ii) be subject to adequate safeguards that protect the integrity of financial contracts and provide certainty to counterparties (see Annex IV on Conditions for a temporary stay); and** **(iii) not affect the exercise of early termination rights of a counterparty against the firm being resolved in the case of any event of default not related to entry into resolution or the exercise of the relevant resolution power occurring before, during or after the period of the stay (for example, failure to make a payment, deliver or return collateral on a due date).** **The stay may be discretionary (imposed by the resolution authority) or automatic in its operation. In either case, jurisdictions should ensure that there is clarity as to the beginning and the end of the stay.**
KA 4.4	**Resolution authorities should apply the temporary stay on early termination rights in accordance with the guidance set out in Annex IV to ensure that it does not compromise the safe and orderly operations of regulated exchanges and FMIs.**

EC 4.1	Key Attribute 4: Set-off, Netting, Collateralisation, Segregation of Client Assets
Essential Criterion	**The legal framework requires firms to maintain effective arrangements for the identification and safeguarding of client assets that facilitate rapid identification of which assets are client assets and support legal clarity about the nature of the claims and entitlements of individual clients to those assets and clear rules as to how losses are shared between clients in the event of shortfalls in a pool of client assets.**
Federal Response	The legal framework in the United States applicable to IDIs generally requires that an IDI maintain arrangements for identification and segregation of non-deposit client assets held in trust and similar fiduciary capacities. Although an IDI would not generally pool client assets that it holds in such capacities (as a broker-dealer or commodity broker would pool client assets it holds), in the event of a resolution, the legal framework provides for a claims process that establishes

EC 4.1	Key Attribute 4: Set-off, Netting, Collateralisation, Segregation of Client Assets
	clear rules as to the payment of claims that arise in the event of losses to clients occasioned by shortfalls in the trust assets at the time of appointment of the receiver. Generally, a claim with respect to such a shortfall would be an unsecured claim and would fall within the procedure for consideration and payment of such claims established under the FDI Act.[158]
State Insurance Response	This question is not applicable to insurers.

EC 4.2	Key Attribute 4: Set-off, Netting, Collateralisation, Segregation of Client Assets
Essential Criterion	**The legal framework does not establish or contain any statutory or common law set-off rights that arise solely by virtue of either a firm's entry into resolution or the exercise of resolution powers against that firm and prohibits the exercise by counterparties of early termination rights by reason only of the entry into resolution or the exercise of any resolution power against that firm provided that the substantive obligations under the contract continue to be performed, except as provided in EC 4.3.**
Federal Response	The legal framework in the United States does not establish or contain any statutory or common law set-off rights that arise solely by virtue of either a firm's entry into resolution or the exercise of resolution powers against that firm. Rather, the legal framework in the United States provides that netting rights with respect to financial contracts are subject to a temporary stay.[159] In the case of other types of contracts, subject to limited exceptions, such contracts are enforceable by the FDIC as receiver notwithstanding any contractual term providing for the termination, default,

[158] FDI Act, 12 U.S.C. § 1821(d)(5) and (6).

[159] FDI Act, 12 U.S.C. § 1821(e)(10)(B), and Section 210(c)(10) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(10).

EC 4.2	Key Attribute 4: Set-off, Netting, Collateralisation, Segregation of Client Assets
	acceleration or exercise of rights upon, or solely by reason of, insolvency or the appointment of a receiver or the exercise of rights by the receiver.[160] In addition, subject to limited exceptions, in the case of contracts other than financial contracts, parties to such contracts with a failed financial institution are prohibited from exercising any right to terminate, accelerate or declare a default under such contracts or to obtain possession or exercise control over any property of the failed financial institution or affect any contractual rights of the failed financial institution without the consent of the FDIC as receiver during the 90-day period commencing on the date of appointment of the FDIC as receiver.[161] Please see the Federal Response to EC 4.3 below for a detailed discussion of the stays imposed under the FDI Act and Title II of the Dodd-Frank Act.
State Insurance Response	U.S. State receivership laws specify the circumstances in which set-off is permitted in a receivership. These laws may restrict the exercise of set-offs in some situations. For example, see IRMA § 609. These laws typically will not mandate a set-off in a situation where a set-off right would not otherwise exist.

EC 4.3	Key Attribute 4: Set-off, Netting, Collateralisation, Segregation of Client Assets
Essential Criterion	**Where certain contracts or arrangements (for example, financial contracts) are not subject to the prohibition referred to in EC 4.2, the legal framework provides, in relation to such contracts, for a temporary stay on the exercise of early termination rights that arise by reason only of entry into resolution or in connection with the exercise of any resolution powers, subject to the conditions set out in points (i) to (iii) of KA 4.3 and section 2 of Annex IV to the *Key Attributes*. Those conditions include, in particular, that:** **(i) where the contracts to which the early termination right relates are transferred to another entity or remain with a firm that has been recapitalised in resolution, early termination rights can be exercised after he expiry of the stay period only in the event of a separate default under the terms of the contract**

[160] FDI Act, 12 U.S.C. § 1821(e)(13)(A), and Section 210(c)(13)(A) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(13)(A).

[161] FDI Act, 12 U.S.C. § 1821(e)(13)(C)(i), and Section 210(c)(13)(C)(i) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(13)(C)(i).

EC 4.3	Key Attribute 4: Set-off, Netting, Collateralisation, Segregation of Client Assets
	that is not based on the entry into resolution or the exercise of resolution powers; **(ii) where those contracts remain with the failing firm that has not been recapitalised, any early termination rights that were subject to the stay may be exercised immediately on the expiry of the stay or, if earlier, a notification by the resolution authority that the contracts will remain with that failing firm.**
Federal Response	The legal framework in the United States provides that early termination rights against a failed institution arising by reason only of the entry into resolution or the exercise of any resolution power against a failed institution are subject to a temporary stay.[162] Parties to financial contracts with a failed financial institution cannot exercise any right to terminate, liquidate or net such contract solely because the FDIC was appointed receiver of such institution or due to the financial condition or insolvency of such institution (i) until 5:00 p.m. (Eastern Time) on the business day following the date of the appointment or (ii) after the person has received notice that the contract has been transferred.[163] With respect to other types of contracts, the stay generally runs to 90 days.[164] This temporary stay remains in effect with respect to each financial contract for the full period described above, even if the FDIC as receiver informs the counterparty prior to the end of such period that the financial contracts between the counterparty and the failed financial institution will not be transferred. If the financial contracts are not transferred, early termination rights can be exercised upon the expiration of the stay period described above. If the financial contracts are transferred, early termination rights can be exercised after the transfer only in the event of a separate default under the terms of the contract that is not based on the entry into resolution, the financial condition or insolvency of the failed institution, or the exercise of resolution powers. In the case of a financial contract of a financial company for which the FDIC has been appointed receiver under the Dodd-Frank Act, which contract is cleared by or subject to the rules of a clearing organization, if the FDIC as receiver fails to satisfy any margin, collateral or settlement obligation as required by the rules of the clearing organization when

[162] FDI Act, 12 U.S.C. § 1821(e)(10)(B) and (e)(13)(C)(i), and Section 210(c)(10) and (c)(13)(C)(i) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(10) and (c)(13)(C)(i).

[163] FDI Act, 12 U.S.C. § 1821(e)(10)(B), and Section 210(c)(10)(B) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(10)(B).

[164] FDI Act, 12 U.S.C. § 1821(e)(13)(C)(i), and Section 210(c)(13)(C)(i) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(13)(C)(i).

EC 4.3	Key Attribute 4: Set-off, Netting, Collateralisation, Segregation of Client Assets
	due, the clearing organization has the immediate right to exercise its rights and remedies under its rules with respect to the financial contract, including the right to liquidate all positions and collateral.[165] In all other cases, including all cases in which the FDIC has been appointed receiver of an IDI under the FDI Act, the temporary stay remains in effect notwithstanding the occurrence of an event of default during the stay period. As a safeguard to counterparties, financial contracts are not permitted to be transferred to an entity that is not a financial institution or that is in receivership or the subject of a bankruptcy or insolvency proceeding.[166] The legal framework in the United States requires that when the FDIC as receiver transfers a financial contract, all claims of the counterparty against the failed financial institution, other than claims subordinated under the terms of such financial contract to the claims of general unsecured creditors, must be transferred to the transferee.[167] In addition, the Dodd-Frank Act gives the FDIC as receiver for a failed financial company the power to enforce contracts of subsidiaries or affiliates of the failed financial company, the obligations under which are guaranteed or supported by, or linked to, the failed financial company, notwithstanding contractual provisions that give rise to termination, liquidation or acceleration rights based on the financial condition, insolvency or receivership of the failed financial company.[168] If the obligations are guaranteed or supported by the failed financial company, either (i) the guaranty or other support, together with all related assets and liabilities, must be transferred to and assumed by a qualified transferee not later than 5:00 p.m. (Eastern Time) on the business day following the date of appointment of the FDIC as receiver, or (ii) the FDIC must provide adequate protection to the counterparties to such contracts with respect to the failed financial company's support of the obligations or liabilities of the subsidiary or affiliate and take steps to provide notice of such transfer or provision of adequate protection not later than 5:00 p.m. (Eastern Time) on the business day following the date of appointment of the FDIC as receiver.[169]

[165] Section 210(c)(8)(G) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(8)(G).

[166] FDI Act, 12 U.S.C. § 1821(e)(9)(A)(i), and Section 210(c)(9)(A)(i) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(9)(A)(i).

[167] FDI Act, 12 U.S.C. § 1821(e)(9)(A), and Section 210(c)(9)(A) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(9)(A).

[168] Section 210(c)(16) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(16). S*ee also* 12 C.F.R. § 380.12.

[169] *Id*.

EC 4.3	Key Attribute 4: Set-off, Netting, Collateralisation, Segregation of Client Assets
State Insurance Response	IRMA § 711, which has been adopted in a majority of States, provides a safe harbor for qualified financial contract (QFC) counterparties of a domestic insurer, allowing them to terminate. The provision largely tracks similar provisions in the Bankruptcy Code as well as laws of other foreign jurisdictions. These safe harbor provisions for QFCs were adopted to avoid disruptions resulting from judicial intervention that can cause unintended chain reactions and significant systemic impact. Section 711 applies in both Rehabilitation and Liquidation proceedings. Section 711 states that a right to terminate or liquidate or accelerate a close out under a netting agreement or a qualified financial contract with an insurer either due to the insolvency, financial condition or default of the insurer or the commencement of a formal delinquency proceeding, is not prohibited by any other provision of IRMA. Section 711 allows a counterparty to net different contracts and realize on collateral without a stay.

EC 4.4	Key Attribute 4: Set-off, Netting, Collateralisation, Segregation of Client Assets
Essential Criterion	**Under the legal framework, any contract with a domestically incorporated financial institution that contains early termination rights is subject to either a prohibition in accordance with EC 4.2 or a temporary stay in accordance with EC 4.3. Where the legal framework includes both kinds of provision, it is clear in advance, for any type of such contract, which provision would apply to those early termination rights in a resolution of the financial institution under the domestic regime.**
Federal Response	The legal framework in the United States provides a clear definition of "qualified financial contracts."[170] Parties to contracts with a failed financial institution that fall within such definition cannot exercise any right to terminate, liquidate or net such contract solely because the FDIC was appointed receiver of such institution or due to the financial condition or insolvency of such institution (i) until 5:00 p.m. (Eastern Time) on the business day following the date of the appointment or (ii) after the person has received notice that the contract has been transferred.[171] With respect to

[170] FDI Act, 12 U.S.C. § 1821(e)(10)(D), and Section 210(c)(10)(D) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(10)(D)

[171] FDI Act, 12 U.S.C. § 1821(e)(10)(B), and Section 210(c)(10)(B) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(10)(B).

EC 4.4	Key Attribute 4: Set-off, Netting, Collateralisation, Segregation of Client Assets
	contracts with a failed financial institution that do not fall within the definition of "qualified financial contract," the stay generally runs to 90 days.[172] Please see the Federal Response to EC 4.3 above for a detailed discussion of these stays.
State Insurance Response	See the State Insurance Response to EC 4.3.

Key Attribute 5: Safeguards	
KA 5.1	**Resolution powers should be exercised in a way that respects the hierarchy of claims while providing flexibility to depart from the general principle of equal (*pari passu*) treatment of creditors of the same class, with transparency about the reasons for such departures, if necessary to contain the potential systemic impact of a firm's failure or to maximise the value for the benefit of all creditors as a whole. In particular, equity should absorb losses first, and no loss should be imposed on senior debt holders until subordinated debt (including all regulatory capital instruments) has been written-off entirely (whether or not that loss-absorption through write-down is accompanied by conversion to equity).**
KA 5.2	**Creditors should have a right to compensation where they do not receive at a minimum what they would have received in a liquidation of the firm under the applicable insolvency regime ("no creditor worse off than in liquidation" safeguard).**
KA 5.3	**Directors and officers of the firm under resolution should be protected in law (for example, from law suits by shareholders or creditors) for actions taken when complying with decisions of the resolution authority.**
KA 5.4	**The resolution authority should have the capacity to exercise the resolution powers with the necessary speed and flexibility, subject to constitutionally protected legal remedies and due process. In those jurisdictions where a court**

[172] FDI Act, 12 U.S.C. § 1821(e)(13)(C)(i), and Section 210(c)(13)(C)(i) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(13)(C)(i).

Key Attribute 5: Safeguards	
	order is still required to apply resolution measures, resolution authorities should take this into account in the resolution planning process so as to ensure that the time required for court proceedings will not compromise the effective implementation of resolution measures.
KA 5.5	**The legislation establishing resolution regimes should not provide for judicial actions that could constrain the implementation of, or result in a reversal of, measures taken by resolution authorities acting within their legal powers and in good faith. Instead, it should provide for redress by awarding compensation, if justified.**
KA 5.6	**In order to preserve market confidence, jurisdictions should provide for flexibility to allow temporary exemptions from disclosure requirements or a postponement of disclosures required by the firm, for example, under market reporting, takeover provisions and listing rules, where the disclosure by the firm could affect the successful implementation of resolution measures.**

EC 5.1	Key Attribute 5: Safeguards
Essential Criterion	**The resolution authority is required to exercise resolution powers in a way that respects the hierarchy of creditor claims under the applicable insolvency regime.**
Federal Response	The FDIC as resolution authority is required to pay claims and ensure shareholders and unsecured creditors bear losses through the exercise of resolution powers in accordance with the applicable statutory hierarchy of claims.[173] The FDI Act provides that, in the case of the resolution of a failed insured depository institution, claims must be paid pursuant to the following statutory hierarchy of claims, which effectively allocates losses first to equity holders and then to creditors:

[173] FDI Act, 12 U.S.C. § 1821(d)(11), and Sections 206(2) and (3), 210(a)(1)(M) and 210(b) of the Dodd-Frank Act, 12 U.S.C. §§ 5386(2) and (3), 5390(a)(1)(M) and 5390(b).

EC 5.1	Key Attribute 5: Safeguards
	(i) administrative expenses of the receiver; (ii) any deposit liability of the IDI; (iii) any general or senior liability of the insured depository institution; (iv) any obligation subordinated to depositors or general creditors; and (v) any obligation to shareholders or members arising as a result of their status as shareholders or members.[174] As noted in the Federal Response to EC 3.11, the FDIC may pay claims on account of insured deposits in cash from the Deposit Insurance Fund or transfer such insured deposits to a new IDI.[175] In either case, the FDIC would then be subrogated to all rights of such insured depositors against the failed IDI.[176] The FDIC's claim as subrogee is classified as a deposit liability under (ii) above. In the case of the resolution of a financial company under Title II of the Dodd-Frank Act, claims must be paid pursuant to the following statutory hierarchy of claims, which effectively allocates losses first to equity holders and then to creditors: (i) administrative expenses of the receiver; (ii) any amounts owed to the United States, unless the United States agrees or consents otherwise; (iii) certain wages, salaries, or commissions earned by an individual (other than such amounts owed to senior executives or directors of the failed financial company); (iv) certain contributions to employee benefit plans;

[174] FDI Act, 12 U.S.C. § 1821(d)(11).

[175] FDI Act, 12 U.S.C. § 1821(f).

[176] FDI Act, 12 U.S.C. § 1821(g)(1).

EC 5.1	Key Attribute 5: Safeguards
	(v) any general or senior liability of the failed financial company; (vi) any obligation subordinated to general creditors; (vii) certain wages, salaries, or commissions earned by senior executives or directors of the failed financial company; and (viii) any obligation to shareholders, members, general partners, limited partners, or other persons, with interests in the equity of the failed financial company arising as a result of their status as such.[177]
State Insurance Response	Every State receivership law has a priority scheme that governs the distribution of general assets from the insolvent insurer. Claims are categorized into classes, which are ranked in order of priority. The Receiver must distribute assets in accordance with the applicable priority scheme.

EC 5.2	Key Attribute 5: Safeguards
Essential Criterion	**The legal framework requires the resolution authority, as a general principle, to observe the principle of equal (*pari passu*) treatment of creditors of the same class while permitting departure from that principle where it is necessary for either of the following purposes: (i) to protect financial stability by containing the potential systemic impact of the firm's failure; or (ii) to maximise the value of the firm for the benefit of all creditors.**
Federal Response	The legal framework in the United States requires the FDIC as resolution authority, as a general principle, to observe the principal of equal (*pari passu*) treatment of creditors of the same class while permitting departure from that principle in clearly specified circumstances. Under the FDI Act, the FDIC, in its discretion and in the interests of minimizing its losses, may use its own resources to

[177] Section 210(b)(1) of the Dodd-Frank Act, 12 U.S.C. § 5390(b)(1).

EC 5.2	Key Attribute 5: Safeguards
	make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants.[178] Under Title II of the Dodd-Frank Act, in taking any action, including departing from the principle of equal treatment of creditors of the same class, the FDIC as receiver must determine that such action is necessary for purposes of the financial stability of the United States and not for the purpose of preserving the financial company.[179] Under Title II of the Dodd-Frank Act, the FDIC as receiver may treat similarly situated creditors differently if the FDIC as receiver determines that such different treatment is necessary (i) to maximize the value of the assets of the failed financial company; (ii) to initiate and continue operations essential to implementation of the receivership or any bridge financial company; (iii) to maximize the present value return from the sale or other disposition of the assets of the failed financial company; or (iv) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the failed financial company.[180] In addition, the FDIC may, with the approval of the Treasury Secretary, make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants of the failed financial company if the FDIC determines that such payments or credits are necessary or appropriate to minimize losses to the FDIC as receiver due to the resolution of the failed financial company, provided that no claimant or category of claimants receiving such additional payments or credits would receive more than the face value amount of any proven claim.[181] Furthermore, the FDIC, in exercising its authority as receiver to transfer assets or liabilities of the failed financial

[178] FDI Act, 12 U.S.C. § 1821(i)(3).

[179] Section 206(1) of the Dodd-Frank Act, 12 U.S.C. § 5386(1).

[180] Section 210(b)(4)(A) of the Dodd-Frank Act, 12 U.S.C. § 5390(b)(4)(A).

[181] Section 210(d)(4) of the Dodd-Frank Act, 12 U.S.C. § 5390(d)(4).

EC 5.2	Key Attribute 5: Safeguards
	company to one or more bridge financial companies, may treat similarly situated creditors differently if the FDIC determines that such differential treatment is necessary (i) to maximize the value of the assets of the failed financial company; (ii) to maximize the present value return from the sale or other disposition of the assets of the failed financial company; or (iii) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the failed financial company; and all similarly situated creditors receive at least what they would have received had the FDIC not been appointed receiver under Title II of the Dodd-Frank Act and the failed financial company had been liquidated under Chapter 7 of the Bankruptcy Code or any similar provision of State insolvency law applicable to the failed financial company.[182] The FDIC has stated that it would not exercise its discretion under the Dodd-Frank Act to treat similarly situated creditors differently in a manner that would result in preferential treatment to holders of long-term senior debt (defined as unsecured debt with a term of longer than one year), subordinated debt, or equity.[183]
State Insurance Response	U.S. State receivership laws require equal treatment of creditors in the same class. However, the claims handling process can result in the subordination of claims in certain circumstances. For example, a claims filing deadline is imposed in a liquidation to facilitate the adjudication and payment of claims. Claims that are filed after the deadline may be placed in a lower class to ensure that they do not disturb the processing and payment of timely filed claims.

EC 5.3	Key Attribute 5: Safeguards

[182] Section 210(h)(5)(E) of the Dodd-Frank Act, 12 U.S.C. § 5390(h)(5)(E).

[183] *See* 12 C.F.R. § 380.27.

EC 5.3	Key Attribute 5: Safeguards
Essential Criterion	**The legal framework provides that creditors that receive less as a result of resolution than they would have received in liquidation have a right to compensation. The resolution regime specifies how the right to compensation can be exercised.**
Federal Response	The legal framework in the United States incorporates the "no creditor worse off than in liquidation" safeguard. Under the Dodd-Frank Act, creditors are statutorily required to receive not less than what they would have received had the FDIC not been appointed receiver under Title II of the Dodd-Frank Act and the failed financial company had been liquidated under Chapter 7 of the Bankruptcy Code or any similar provision of State insolvency law applicable to the failed financial company.[184] With respect to IDIs, the FDI Act is the applicable resolution regime in all cases.
State Insurance Response	U.S. State receivership laws are intended to avoid an outcome in which creditors receive less than they would receive in liquidation. For example, IRMA requires that a plan of rehabilitation must be "fair and equitable" to all parties, and provide no less favorable treatment of a claim than would occur in liquidation, unless the claim is *de minimis* or a claimant agrees to a less favorable treatment. For example, see IRMA, § 403.

EC 5.4	Key Attribute 5: Safeguards
Essential Criterion	**The legal framework protects the directors and officers of a firm in resolution against liability, including to shareholders and creditors of the firm, arising from actions taken when acting in compliance with decisions and instructions of domestic resolution authorities.**
Federal	Under the legal framework in the United States, upon the appointment of the FDIC as receiver, the failed IDI or financial

[184] Section 210(a)(7)(B) and (d)(2) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(7)(B) and (d)(2).

EC 5.4	Key Attribute 5: Safeguards
Response	company in resolution would cease to exist as an operating entity and the directors and officers of such entities would not retain their positions. Accordingly, directors and officers of the failed IDI or financial company in resolution would not be in a position to take actions in compliance with decisions and instructions of domestic resolution authorities and therefore would not face liability for such actions. The legal framework in the United States does, however, provide protection from liability to members of the board of directors (or body performing similar functions) of a failed IDI or financial company for which the FDIC has been appointed receiver for acquiescing in or consenting in good faith to the appointment of the FDIC as receiver.[185]
State Insurance Response	A person acting at the direction of the Receiver will typically be afforded protection, such as a defense and indemnification, if the person is sued for an action taken in compliance with the Receiver's directives.

EC 5.5	Key Attribute 5: Safeguards
Essential Criterion	**The legal framework enables the resolution authority to exercise the powers in KA 3 in a timely manner and without any delay that could compromise the achievement of the objectives mentioned in KA 2.3. Where prior court approval is required, the timelines required for completing court proceedings are consistent with KA 5.4 and are incorporated into resolution planning.**
Federal Response	The legal framework in the United States enables the FDIC as the resolution authority to exercise the powers in KA 3 in a timely manner and without any delay that could compromise the achievement of the objectives mentioned in KA 2.3. As a general matter, the legal framework ensures the FDIC's independence by providing the FDIC as the resolution authority with broad control over the resolution process under the Dodd-Frank Act and the FDI Act. The FDI Act and

[185] FDI Act, 12 U.S.C. § 1821(c)(12), and Section 207 of the Dodd-Frank Act, 12 U.S.C. § 5387.

EC 5.5	Key Attribute 5: Safeguards
	Dodd-Frank Act also set forth the limited scope of judicial review once the FDIC is appointed receiver (as discussed in more detail in the Federal Response to EC 2.3),[186] and provide that courts may not restrain or affect the exercise of powers or functions of the FDIC as receiver[187] or issue any attachment or execution upon assets in the possession of the FDIC as receiver.[188] As described in detail in the Federal Response to EC 3.1, in the absence of acquiescence or consent by the board of directors of the failed financial company, the United States District Court for the District of Columbia has a statutorily circumscribed role in the appointment of the FDIC as receiver of a financial company under Title II of the Dodd-Frank Act.[189] Separately, the FDI Act provides that, in limited circumstances, the IDI may, within 30 days of the FDIC's appointment as receiver for the IDI, bring an action in the United States District Court for the District of Columbia or in the district in which the home office of the IDI is located seeking the removal of the FDIC as receiver.[190] Once the FDIC is appointed receiver, the legal framework in the United States does not require prior court approval before the FDIC as the resolution authority takes a resolution action or applies a resolution measure. As noted above and in the Federal Response to EC 2.3, the FDI Act and Dodd-Frank Act set forth the limited scope of judicial review of the FDIC's operations as receiver,[191] and provide that courts may not restrain or affect the exercise of powers or functions of the FDIC as receiver[192] or issue any attachment or execution upon assets in the possession of the FDIC as receiver.[193]
State Insurance	U.S. State insurance laws and regulations enable the Receiver to exercise the powers in a timely and appropriate manner described in EC 5.5.

[186] FDI Act, 12 U.S.C. § 1821(d)(13)(D), and Section 210(a)(9)(D) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(9)(D).

[187] FDI Act, 12 U.S.C. § 1821(j), and Section 210(e) of the Dodd-Frank Act, 12 U.S.C. § 5390(e).

[188] FDI Act, 12 U.S.C. § 1821(d)(13)(C), and Section 210(a)(9)(C) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(9)(C).

[189] Section 202(a)(1) of the Dodd-Frank Act, 12 U.S.C. § 5382(a)(1).

[190] FDI Act, 12 U.S.C. § 1821(c)(7).

[191] FDI Act, 12 U.S.C. § 1821(d)(13)(D), and Section 210(a)(9)(D) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(9)(D).

[192] FDI Act, 12 U.S.C. § 1821(j), and Section 210(e) of the Dodd-Frank Act, 12 U.S.C. § 5390(e).

[193] FDI Act, 12 U.S.C. § 1821(d)(13)(C), and Section 210(a)(9)(C) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(9)(C).

EC 5.5	Key Attribute 5: Safeguards
Response	

EC 5.6	Key Attribute 5: Safeguards
Essential Criterion	**The legal framework provides that the only remedy that can be obtained from a court or tribunal through judicial review of measures taken by resolution authorities acting within their legal powers and in good faith is compensation, to the exclusion of any remedy that could constrain the implementation of, or reverse, any such measure taken by the resolution authority.**
Federal Response	The legal framework in the United States provides that courts may not restrain or affect the exercise of powers or functions of the FDIC as receiver.[194] Courts do not have jurisdiction over any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of a failed institution or any claim relating to any act or omission of the failed institution or the FDIC as receiver, unless a claimant has exhausted the administrative claims process.[195] Once a claimant has exhausted the administrative claims process, Federal courts have jurisdiction over a *de novo* review of such claim.[196] Moreover, the Dodd-Frank Act expressly limits any remedy against the FDIC to money damages.[197]
State Insurance Response	U.S. State insurance laws and regulations provide that the only remedy that can be obtained from a court or tribunal through judicial review of measures taken by resolution authorities acting within their legal powers and in good faith is monetary compensation, to the exclusion of any remedy that could constrain the implementation of, or reverse, any such measure taken by the resolution authority. For example, see IRMA §115.

[194] FDI Act, 12 U.S.C. § 1821(j), and Section 210(e) of the Dodd-Frank Act, 12 U.S.C. § 5390(e).

[195] FDI Act, 12 U.S.C. § 1821(d)(13)(D), and Section 210(a)(9)(D) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(9)(D).

[196] FDI Act, 12 U.S.C. § 1821(d)(6), and Section 210(a)(4) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(4).

[197] Section 210(e) of the Dodd-Frank Act, 12 U.S.C. § 5390(e).

EC 5.7	Key Attribute 5: Safeguards
Essential Criterion	**The legal framework allows for temporary exemptions from disclosure requirements, for example, under market reporting, takeover provisions and listing rules, or the postponement of a disclosure, by a firm to be granted in circumstances where that disclosure could affect the successful implementation of resolution measures.**
Federal Response	Under the legal framework in the United States, all resolution powers must be exercised on a closed-firm basis. The failed institution will, as a matter of course, be de-listed from any exchanges on which its securities were traded. Failed institutions remain subject to SEC reporting requirements (8-K, 10-K and 10-Q) under the Securities Exchange Act of 1934, but relief may be available in certain circumstances.
State Insurance Response	U.S. State insurance laws and regulations generally allow for temporary exemptions from disclosure requirements, except where Federal law mandates disclosure that preempts State law. Such is the case with Federal securities laws that require disclosures related to SEC-registered products.

Key Attribute 6: Funding of Firms in Resolution

KA 6.1 **Jurisdictions should have statutory or other policies in place so that authorities are not constrained to rely on public ownership or bail-out funds as a means of resolving firms.**

KA 6.2 **Where temporary sources of funding to maintain essential functions are needed to accomplish orderly resolution, the resolution authority or authority extending the temporary funding should make provision to impose any losses incurred on (i) shareholders and unsecured creditors subject to the "no creditor worse off than in liquidation" safeguard (see Key Attribute 5.2); and recover them (ii) if necessary, from the financial system more widely.**

KA 6.3 **Jurisdictions should have in place privately-financed deposit insurance or resolution funds, or a funding mechanism with ex post recovery from the industry of the costs of providing temporary financing to facilitate the resolution of**

Key Attribute 6: Funding of Firms in Resolution

the firm.

KA 6.4	**Any provision by the authorities of temporary funding should be subject to strict conditions that minimise the risk of moral hazard, and should include the following:** **(i) a determination that the provision of temporary funding is necessary to foster financial stability and will permit implementation of a resolution option that is best able to achieve the objectives of an orderly resolution, and that private sources of funding have been exhausted or cannot achieve these objectives; and** **(ii) the allocation of losses to equity holders and residual costs, as appropriate, to unsecured and uninsured creditors and the industry through ex-post assessments, insurance premium or other mechanisms.**
KA 6.5	**As a last resort and for the overarching purpose of maintaining financial stability, some countries may decide to have a power to place the firm under temporary public ownership and control in order to continue critical operations, while seeking to arrange a permanent solution such as a sale or merger with a commercial private sector purchaser. Where countries do equip themselves with such powers, they should make provision to recover any losses incurred by the state from unsecured creditors or, if necessary, the financial system more widely.**

EC 6.1	Key Attribute 6: Funding of Firms in Resolution
Essential Criterion	**The legal framework establishes arrangements to provide temporary financing to support the use of the resolution powers set out in KA 3, which include one or a combination of the following:** **(i) a privately funded resolution fund;** **(ii) a privately funded protection scheme (for example, for deposits or insurance policy holders);** **(iii) a privately funded fund with combined deposit or policy holder protection and resolution functions;** **(iv) recourse to public funds, coupled with a mechanism for recovery from the industry of any losses**

EC 6.1	Key Attribute 6: Funding of Firms in Resolution
	incurred in the provision of public funds.
Federal Response	The legal framework in the United States (1) establishes a fund, funded privately on an ex ante basis, with combined deposit protection and resolution functions with respect to failed insured depository institutions and (2) provides for temporary recourse to public funds, coupled with a mechanism for ex post recovery from the industry, with respect to failed financial companies. With respect to IDIs, the legal framework in the United States establishes a Deposit Insurance Fund that is funded on an ex-ante basis by assessments paid into the Deposit Insurance Fund by open IDIs.[198] The Deposit Insurance Fund may be used by the FDIC in connection with resolutions of IDIs. In regard to any such resolution of an IDI, the FDIC must generally exercise its authorities in the manner that is least costly to the Deposit Insurance Fund.[199] In addition, the FDIC has the authority to borrow from the U.S. Treasury if necessary for insurance purposes.[200] Any obligations incurred by the FDIC in borrowing funds from the U.S. Treasury shall be obligations of the Deposit Insurance Fund, which shall repay the U.S. Treasury through the assessments paid by open IDIs.[201] With respect to financial companies, the Dodd-Frank Act provides a mechanism for the provision of temporary public funding to support the resolution of a failed financial company, the Orderly Liquidation Fund,[202] which may serve as a temporary back-up source of liquidity in the event that private-sector funding cannot immediately be obtained. The Dodd-Frank Act provides that any borrowings from the Orderly Liquidation Fund, claims on account of which are to be treated as administrative expenses of the FDIC as receiver or amounts owed to the United States under the statutory creditor hierarchy,[203] are to first be repaid from recoveries on the assets of the failed financial company,[204] which would

[198] As of June 30, 2014, the Deposit Insurance Fund has a balance of $51.1 billion.

[199] FDI Act, 12 U.S.C. § 1823(c)(4). The least cost requirement is inapplicable if the Treasury Secretary, in consultation with the President of the United States and upon a recommendation of both the Federal Reserve Board and the FDIC (based upon a 2/3 vote by both the Federal Reserve Board and the Board of Directors of the FDIC, determines that compliance with the least cost requirement would have serious adverse effects on economic conditions or financial stability in the United States and other action or assistance would avoid or mitigate such adverse effects. FDI Act, 12 U.S.C. § 1823(c)(4)(G).

[200] FDI Act, 12 U.S.C. § 1824(a)(1).

[201] FDI Act, 12 U.S.C. § 1824(c)(1)(B).

[202] Section 210(n) of the Dodd-Frank Act, 12 U.S.C. § 5390(n).

[203] Section 204(d) of the Dodd-Frank Act, 12 U.S.C. § 5384(d).

EC 6.1	Key Attribute 6: Funding of Firms in Resolution
	reduce the recoveries of junior classes of claimants in accordance with the statutory hierarchy of claims. In the unlikely event such recoveries are insufficient to repay any amounts borrowed from the Orderly Liquidation Fund, the FDIC must impose assessments on any claimant that received additional payments, except for payments necessary to initiate and continue operations essential to the implementation of the receivership or any bridge financial company, in excess of the value the claimant was entitled to receive on such claim solely from the proceeds of the resolution of the failed financial company.[205] If such assessments are insufficient to repay any amounts borrowed from the Orderly Liquidation Fund, the FDIC must then impose risk-based assessments on bank holding companies with total consolidated assets equal to or greater than $50 billion; financial companies with total consolidated assets equal to or greater than $50 billion; and nonbank financial companies supervised by the Federal Reserve Board.[206] By law, taxpayers shall bear no losses from the exercise of any authority under Title II of the Dodd-Frank Act.[207]
State Insurance Response	U.S. State insurance laws and regulations provide for guaranty mechanisms for the payment of covered claims arising from the insolvency of insurers licensed in their State. In the case of life/health insurance, the guaranty mechanism also provides for the continuation of eligible contracts that would otherwise terminate because of the insolvency. Guaranty fund mechanisms are provided for in the *NAIC Life and Health Insurance Guaranty Association Model Act* and *Property and Casualty Insurance Guaranty Association Model Act*. All 50 States, Puerto Rico, the United States Virgin Islands (property/casualty only), and the District of Columbia have guaranty fund mechanisms. Insurance guaranty mechanisms obtain the funds necessary to pay claims by assessing solvent members of the insurance industry, subject to annual limitations. In the case of property/casualty guaranty funds, the members may be permitted by statute to recoup the assessments through premium increases, premium tax offsets or policy surcharges. For life/health guaranty associations, recoupment of assessments through premium increases or policy surcharges is not feasible because many life/health contracts are issued on a level premium basis. The burden of the assessments on solvent insurers is mitigated somewhat, in the majority of States, by statutes that allow insurers to offset a portion of the insurer's assessments, over a period of years, against the insurer's premium tax liability. The NAIC *Life and Health Insurance*

[204] Section 210(n)(9)(B)(i) of the Dodd-Frank Act, 12 U.S.C. § 5390(n)(9)(B)(i).

[205] Section 210(o)(1)(D)(i) of the Dodd-Frank Act, 12 U.S.C. § 5390(o)(1)(D)(i).

[206] Section 210(o)(1)(D)(ii) of the Dodd-Frank Act, 12 U.S.C. § 5390(o)(1)(D)(ii).

[207] Section 214(c) of the Dodd-Frank Act, 12 U.S.C. § 5394(c).

EC 6.1	Key Attribute 6: Funding of Firms in Resolution
	Guaranty Association Model Act allows life/health insurers to consider the amount reasonably necessary to meet their assessment obligations in the determination of the premiums they charge.

EC 6.2	Key Attribute 6: Funding of Firms in Resolution
Essential Criterion	**If the resolution regime provides for the provision of temporary recourse to public funds under point (iv) of EC 6.1, it also ensures that such financing is made available only if:** **(i) it has been assessed as necessary for financial stability by supporting the implementation of a resolution option that best achieves the statutory objectives of resolution (see KA 2.3);** **(ii) private sources of funding have been exhausted or would not achieve those objectives; and** **(iii) losses are allocated to shareholders and, as appropriate, to unsecured and uninsured creditors (in accordance with the hierarchy of claims) and, if necessary, public funds are recovered from the financial industry through assessments or other mechanisms.**
Federal Response	The Dodd-Frank Act provides the FDIC as receiver under Title II with discretion to determine that the use of borrowings from the Orderly Liquidation Fund is necessary or appropriate.[208] In exercising such discretion, the FDIC as receiver is bound by the statutory objectives of the FDIC's resolution authority under Title II to resolve failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard, and to do so in a manner that best fulfills such purpose, so that: • creditors and shareholders will bear the losses of the financial company; • management responsible for the condition of the financial company will not be retained; and

[208] Section 204(d) of the Dodd-Frank Act, 12 U.S.C. § 5384(d).

EC 6.2	Key Attribute 6: Funding of Firms in Resolution
	• the FDIC and other appropriate agencies will take all steps necessary and appropriate to assure that all parties, including management, directors, and third parties, having responsibility for the condition of the financial company bear losses consistent with their responsibility, including actions for damages, restitution, and recoupment of compensation and other gains not compatible with such responsibility.[209] Furthermore, the Dodd-Frank Act requires that in taking action under Title II, including the provision of temporary public funding, the FDIC as receiver must determine that such action is necessary for purposes of the financial stability of the United States and not for the purpose of preserving the financial company.[210] As discussed in detail in the FDIC's Notice entitled "Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy," published in the Federal Register on December 18, 2013,[211] the FDIC intends to maximize the use of private sector sources of funding. Only if such sources are unavailable would the FDIC utilize the Orderly Liquidation Fund provided for under Title II as a temporary back-up source of liquidity.[212] The Dodd-Frank Act provides that any borrowings from the Orderly Liquidation Fund, claims on account of which are to be treated as administrative expenses of the FDIC as receiver or amounts owed to the United States under the statutory creditor hierarchy,[213] are to first be repaid from recoveries on the assets of the failed financial company,[214] which would reduce the recoveries of junior classes of claimants in accordance with the statutory hierarchy of claims. In the unlikely event such recoveries are insufficient to repay any amounts borrowed from the Orderly Liquidation Fund, the FDIC must impose assessments on any claimant that received additional payments, except for payments necessary to initiate and continue operations essential to the implementation of the receivership or any bridge financial company, in excess of the value the claimant was entitled to receive on such claim solely from the proceeds of the resolution of the failed financial company.[215] If such assessments are insufficient to repay any amounts borrowed from the Orderly Liquidation Fund, the

[209] Section 204(a) of the Dodd-Frank Act, 12 U.S.C. § 5384(a).

[210] Section 206(1) of the Dodd-Frank Act, 12 U.S.C. § 5386(1).

[211] 78 Fed. Reg. 76614.

[212] *Id*. at 76616.

[213] Section 204(d) of the Dodd-Frank Act, 12 U.S.C. § 5384(d).

[214] Section 210(n)(9)(B)(i) of the Dodd-Frank Act, 12 U.S.C. § 5390(n)(9)(B)(i).

[215] Section 210(o)(1)(D)(i) of the Dodd-Frank Act, 12 U.S.C. § 5390(o)(1)(D)(i).

EC 6.2	Key Attribute 6: Funding of Firms in Resolution
	FDIC must then impose risk-based assessments on bank holding companies with total consolidated assets equal to or greater than $50 billion; financial companies with total consolidated assets equal to or greater than $50 billion; and nonbank financial companies supervised by the Federal Reserve Board.[216] By law, taxpayers shall bear no losses from the exercise of any authority under Title II of the Dodd-Frank Act.[217] In addition, the FDIC has the authority under the FDI Act to borrow from the U.S. Treasury if necessary for deposit insurance purposes.[218] Any obligations incurred by the FDIC in borrowing funds from the U.S. Treasury shall be obligations of the Deposit Insurance Fund, which shall repay the U.S. Treasury through the assessments paid by open IDIs.[219]
State Insurance Response	See the State Insurance Response to EC 6.1.

EC 6.3	Key Attribute 6: Funding of Firms in Resolution
Essential Criterion	**If the resolution regime includes the option of placing a firm under temporary public ownership as part of a resolution action, such an option is subject to the following conditions:** **(i) the failure of the firm, or its resolution through all other options, would cause financial instability; and** **(ii) there are clear rules regarding the allocation of losses to shareholders and creditors or, if necessary,**

[216] Section 210(o)(1)(D)(ii) of the Dodd-Frank Act, 12 U.S.C. § 5390(o)(1)(D)(ii).

[217] Section 214(c) of the Dodd-Frank Act, 12 U.S.C. § 5394(c).

[218] FDI Act, 12 U.S.C. § 1824(a)(1).

[219] FDI Act, 12 U.S.C. § 1824(c)(1)(B).

EC 6.3	Key Attribute 6: Funding of Firms in Resolution
	recovery from financial system participants more widely.
Federal Response	The resolution regime in the United States does not include the option of placing a firm under temporary public ownership as part of a resolution action.
State Insurance Response	U.S. State receivership laws do not provide for public ownership of an insurer in receivership.

Key Attribute 7: Legal Framework Conditions for Cross-Border Cooperation

KA 7.1 **The statutory mandate of a resolution authority should empower and strongly encourage the authority wherever possible to act to achieve a cooperative solution with foreign resolution authorities.**

KA 7.2 **Legislation and regulations in jurisdictions should not contain provisions that trigger automatic action in that jurisdiction as a result of official intervention or the initiation of resolution or insolvency proceedings in another jurisdiction, while reserving the right of discretionary national action if necessary to achieve domestic stability in the absence of effective international cooperation and information sharing. Where a resolution authority takes discretionary national action it should consider the impact on financial stability in other jurisdictions.**

KA 7.3 **The resolution authority should have resolution powers over local branches of foreign firms and the capacity to use its powers either to support a resolution carried out by a foreign home authority (for example, by ordering a transfer of property located in its jurisdiction to a bridge institution established by the foreign home authority) or, in exceptional cases, to take measures on its own initiative where the home jurisdiction is not taking action or acts in a manner that does not take sufficient account of the need to preserve the local jurisdiction's financial stability.[*] Where a resolution authority acting as host authority takes discretionary national action, it should give prior notification**

Key Attribute 7: Legal Framework Conditions for Cross-Border Cooperation	
	and consult the foreign home authority.
KA 7.4	National laws and regulations should not discriminate against creditors on the basis of their nationality, the location of their claim or the jurisdiction where it is payable. The treatment of creditors and ranking in insolvency should be transparent and properly disclosed to depositors, insurance policy holders and other creditors.
KA 7.5	Jurisdictions should provide for transparent and expedited processes to give effect to foreign resolution measures, either by way of a mutual recognition process or by taking measures under the domestic resolution regime that support and are consistent with the resolution measures taken by the foreign home resolution authority. Such recognition or support measures would enable a foreign home resolution authority to gain rapid control over the firm (branch or shares in a subsidiary) or its assets that are located in the host jurisdiction, as appropriate, in cases where the firm is being resolved under the law of the foreign home jurisdiction. Recognition or support of foreign measures should be provisional on the equitable treatment of creditors in the foreign resolution proceeding.
KA 7.6	The resolution authority should have the capacity in law, subject to adequate confidentiality requirements and protections for sensitive data, to share information, including recovery and resolution plans (RRPs), pertaining to the group as a whole or to individual subsidiaries or branches, with relevant foreign authorities (for example, members of a CMG), where sharing is necessary for recovery and resolution planning or for implementing a coordinated resolution.
KA 7.7	Jurisdictions should provide for confidentiality requirements and statutory safeguards for the protection of information received from foreign authorities.
* This should not apply where jurisdictions are subject to a binding obligation to respect resolution of financial institutions under the authority of the home jurisdiction (for example, the EU Winding up and Reorganisation Directives).	

EC 7.1	Key Attribute 7: Legal Framework Conditions for Cross-Border Cooperation
Essential Criterion	The legal framework does not create any material barriers to cooperation with foreign resolution authorities, including by providing for automatic action as a result of official intervention or the initiation of resolution or

EC 7.1	Key Attribute 7: Legal Framework Conditions for Cross-Border Cooperation
	insolvency proceedings in other jurisdictions that could undermine a cooperative solution.
Federal Response	The legal framework in the United States does not create any material barriers to cooperation with foreign resolution authorities, and does not generally provide for automatic action as a result of official intervention or the initiation of resolution or insolvency proceedings in other jurisdictions that could undermine a cooperative solution. Under Title II of the Dodd-Frank Act, the FDIC, as receiver for a failed financial company, is required to coordinate, to the maximum extent possible, with the appropriate foreign financial authorities regarding the resolution of any failed financial company that has assets or operations in a country other than the United States.[220] In addition, authorities with the legal authority to commence the resolution of U.S. branches of FBOs generally have discretion with respect to the exercise of such authority.
State Insurance Response	Communication and coordination between regulators has always been an important component of State-based solvency regulation. For instance, information-sharing procedures between States are a component of the NAIC Financial Regulation Standards and Accreditation Program. While the successful operation of cross-border communication and cooperation raises unique and significant challenges, as regulators around the world must attempt to develop a common understanding of the overall group-wide risk profile (despite potentially differing languages, regulatory, accounting, legal, and corporate regimes of each involved jurisdiction), the overarching goals of international cross-border cooperation (including, for example, supervisory colleges) are quite similar to the lead State approach that has been practiced in the United States for many years for insurance legal entities. U.S. State insurance regulators have been leading or participating in all of the major insurers' international supervisory colleges, and there appear to be no barriers to efficient and internationally coordinated work. As described in ICP 26 of the self-assessment, recent coordination efforts have demonstrated that the U.S. lead States have been communicating with the applicable global group-wide supervisor and other international regulators to ensure any identified issues are dealt with appropriately. See ICP 3, ICP 25 and ICP 26 of the self-assessment for additional information regarding supervisory cooperation. State regulators engage in regulatory dialogues with jurisdictions from around the world relating to topics of mutual regulatory

[220] *See* Section 210(a)(1)(N) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(N).

EC 7.1	Key Attribute 7: Legal Framework Conditions for Cross-Border Cooperation
	concern, and many States have bilateral agreements in place with jurisdictions from around the world relating to the exchange of confidential information. Many States are also either signatory authorities or have applied to become signatories of the IAIS Multilateral Memorandum of Understanding (MMoU) (considered the gold standard for information exchange amongst international regulators), with many more States considering applying. Additionally, U.S. State insurance regulators have some experience with cross-border crisis management situations, including certain States' involvement in Crisis Management Groups (CMGs) for certain insurers.

EC 7.2	Key Attribute 7: Legal Framework Conditions for Cross-Border Cooperation
Essential Criterion	**The legal framework of the jurisdiction under review establishes clear and transparent mechanisms or processes through which actions by a foreign resolution authority can be given prompt legal effect in the jurisdiction under review, either by way of recognition or by taking supportive measures under the domestic resolution regime. Those mechanisms or processes are sufficient to enable such legal effect to be achieved whatever the form of a foreign firm's establishment or operations in the jurisdiction under review (for example, subsidiary, branch or only assets within the jurisdiction) and, where a firm is being resolved under the law of a foreign jurisdiction, enable the foreign resolution authority to gain rapid control over the firm (branch or shares in a subsidiary) or its assets that are located in the jurisdiction under review.**
Federal Response	The FDIC, as receiver for a failed financial company, is required under Title II of the Dodd-Frank Act to coordinate, to the maximum extent possible, with the appropriate foreign financial authorities regarding the resolution of any failed financial company that has assets or operations in a country other than the United States.[221] Similarly, the FDIC, as receiver for an IDI, is empowered to coordinate with foreign regulatory authorities in the exercise of its authorities as receiver.[222] In addition, supervisory authorities may make use of their supervisory powers to support actions taken by foreign resolution authorities. For example, as noted in the Federal Response to EC 7.4 below, State and Federal receivers for branches of FBOs generally have the legal power and capacity to support a resolution carried out by a

[221] *See* Section 210(a)(1)(N) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(N).

[222] *See* 12 U.S.C. §§ 1817(a)(2)(C), 1821(d)(2)(J) and 3109(a).

EC 7.2	Key Attribute 7: Legal Framework Conditions for Cross-Border Cooperation
	foreign home authority principally by not taking independent resolution actions with respect to the branch. In accordance with judicial principles of comity, and assuming U.S. authorities do not take independent resolution action, a U.S. court may recognize and enforce resolution actions by a foreign resolution authority, provided such actions comport with fundamental notions of fairness and equity. Even when U.S. authorities take independent resolution action, situations may arise in which the foreign resolution authority's actions are consistent with actions to be taken under U.S. law. In these situations, U.S. creditors may be less likely to challenge actions of foreign resolution authorities in U.S. courts, U.S. authorities may be less likely to take independent resolution action and, in the event that U.S. authorities do take independent resolution action, cooperation with foreign authorities, and harmonization of the foreign actions and U.S. actions, may be possible. Aside from relying on general judicial principles of comity, a foreign resolution authority may also obtain recognition of a foreign resolution proceeding pursuant to Chapter 15 of the Bankruptcy Code,[223] which is the primary tool within the Bankruptcy Code for addressing cross-border insolvency proceedings.[224] Chapter 15 is the codification of the 1997 Model Law on Cross-Border Insolvency as promulgated by the United Nations Commission on International Trade Law. The purpose of the Model Law on Cross-Border Insolvency—and Chapter 15—is to provide effective mechanisms for dealing with insolvency cases involving debtors, assets, claimants, and other parties of interest in more than one country. Through the recognition process (described below), Chapter 15 operates as the principal mechanism through which a foreign representative may access Federal and State courts.[225] A case is commenced under Chapter 15 when the authorized representative of a foreign insolvency proceeding files a petition for recognition in a Bankruptcy Court.[226] Upon filing the petition, the foreign representative may request, and the Bankruptcy Court may grant, provisional relief where such relief is urgently needed to protect the assets of the debtor or the interests of the creditors.[227] After notice and a hearing, the Bankruptcy Court may issue an order recognizing the

[223] 11 U.S.C. § 1501 *et seq*.

[224] Although FBOs are generally eligible for relief under Chapter 15, a FBO that has a branch or agency in the United States is excluded from eligibility. *See* 11 U.S.C. § 1501(c)(1).

[225] 11 U.S.C. § 1509.

[226] 11 U.S.C. § 1504.

[227] 11 U.S.C. § 1519(a).

EC 7.2	Key Attribute 7: Legal Framework Conditions for Cross-Border Cooperation
	foreign proceeding as either (i) a "foreign main proceeding" (a proceeding pending in a country where the debtor's center of main interests are located); or (ii) a "foreign non-main proceeding" (a proceeding pending in a country where the debtor merely has an "establishment").[228] Immediately upon recognition of a foreign main proceeding, the automatic stay and selected other provisions of the Bankruptcy Code take effect within the United States.[229] Upon recognition, the foreign representative is also authorized to operate the debtor's business in the ordinary course of business.[230] Upon recognition as a foreign non-main proceeding, the Bankruptcy Court has discretion with respect to the relief it may grant.[231] Once recognition is granted, a foreign representative may seek additional relief from the Bankruptcy Court or from other Federal or State courts in support of the foreign insolvency proceeding.[232] Importantly, Chapter 15 expressly requires Federal and State courts to grant comity and cooperation to the foreign representative once recognition is granted.[233] Recognition and the granting of comity are not, however, without limits. In particular, Chapter 15 authorizes a Bankruptcy Court to refuse to take any action under Chapter 15 if the action would be "manifestly contrary to the public policy of the United States."[234] Additionally, when granting provisional relief upon the filing of a petition for recognition and when granting discretionary relief after recognition of a foreign proceeding, including entrusting the distribution of the debtor's assets to a foreign representative, a Bankruptcy Court must determine that creditors in the United States are sufficiently protected.[235] Chapter 15 also provides foreign creditors the right to participate in cases under the Bankruptcy Code,[236] prohibits discrimination against foreign creditors (except certain foreign government and tax claims, which may be governed by

[228] 11 U.S.C. § 1517.

[229] 11 U.S.C. § 1520(a)(1).

[230] 11 U.S.C. § 1520(a)(3).

[231] 11 U.S.C. § 1521.

[232] 11 U.S.C. § 1509.

[233] 11 U.S.C. § 1509(b)(3).

[234] 11 U.S.C. § 1506.

[235] 11 U.S.C. §§ 1521(b) and 1522(a).

[236] 11 U.S.C. § 1513(a).

EC 7.2	Key Attribute 7: Legal Framework Conditions for Cross-Border Cooperation
	treaty),[237] and requires notice to foreign creditors concerning a case under the Bankruptcy Code, including notice of the right to file claims.[238]
State Insurance Response	See the State Insurance Response to EC 7.1.

EC 7.3	Key Attribute 7: Legal Framework Conditions for Cross-Border Cooperation
Essential Criterion	**Recognition or support of foreign measures is provisional on equitable treatment in the foreign resolution proceeding of creditors of the firm in resolution that are located in the jurisdiction under review.**
Federal Response	U.S. resolution authorities generally will take into account whether foreign resolution proceedings provide for equitable treatment of U.S. creditors in making decisions regarding recognition or support of such proceedings. Chapter 15 of the Bankruptcy Code, discussed in greater detail in the Federal Response to EC 7.3 above, authorizes a Bankruptcy Court to refuse to take any action under Chapter 15, including recognizing a foreign proceeding, if the action would be "manifestly contrary to the public policy of the United States."[239] Additionally, when granting provisional relief upon the filing of a petition for recognition and when granting discretionary relief after recognition of a foreign proceeding, including entrusting the distribution of the debtor's assets to a foreign representative, a Bankruptcy Court must determine that creditors in the United States are sufficiently protected.[240]

[237] 11 U.S.C. § 1513(b).

[238] 11 U.S.C. § 1514.

[239] 11 U.S.C. § 1506.

[240] 11 U.S.C. §§ 1521(b) and 1522(a).

EC 7.3	Key Attribute 7: Legal Framework Conditions for Cross-Border Cooperation
State Insurance Response	See the State Insurance Response to EC 7.1.

EC 7.4	Key Attribute 7: Legal Framework Conditions for Cross-Border Cooperation
Essential Criterion	**The resolution regime enables the resolution authority to exercise resolution powers with respect to the local branch of a foreign firm to support a resolution carried out by a foreign home authority and on its own initiative where the home authority is not taking effective action or is acting in a manner that does not take sufficient account of the need to preserve financial stability in the local jurisdiction.**[241]
Federal Response	A branch of a FBO is generally resolved in accordance with State law if it is licensed by a State and is resolved in accordance with the IBA if it has a Federal license. In both cases, the applicable resolution authority generally has the legal power and capacity to support a resolution carried out by a foreign home authority principally by not taking independent resolution actions with respect to the branch. Furthermore, the applicable resolution authority has the legal power and capacity to exercise its resolution powers on its own initiative and independently of actions taken by the foreign home authority.
State Insurance Response	The resolution regime enables the host authority to exercise resolution powers with respect to a local branch of a foreign firm in cooperation and coordination with the home authority. This can be done through resolution planning within the supervisory college context or by other means.

[241] EC 7.4 does not apply to the extent that jurisdictions are required by the applicable legal framework to recognise resolution of financial institutions under the law of, and carried out by the authorities of their home jurisdiction (for example, the EU Directives on the Winding up and Reorganisation of credit institutions and of insurance undertakings). However, EC 7.4 applies in an assessment of such jurisdictions in relation to branches of foreign firms that are not covered by such an obligation to recognise resolution actions by the home jurisdiction of that firm.

EC 7.5	Key Attribute 7: Legal Framework Conditions for Cross-Border Cooperation
Essential Criterion	**The resolution regime requires that, prior to exercising resolution powers in relation to a local subsidiary or branch of a foreign firm on its own initiative and independently of action taken by the home authority, the resolution authority give prior notice of the intended measures to and consult the home resolution authority of the firm.**
Federal Response	Resolution authorities in the United States have been negotiating with home and other host authorities for certain cross-border financial institutions the terms of cooperation agreements that are consistent with the essential elements of Appendix I-Annex 2 to the Key Attributes, including element 5.1 concerning alerting home authorities when it becomes apparent that a domestic branch or incorporated entity is likely to enter resolution. U.S. authorities has also executed numerous memoranda of understanding and statements of cooperation with foreign authorities concerning, among other issues, the provision of appropriate notice of material developments, changes, or actions to be taken in connection with a hosted operation of a non-U.S.-based financial institution.
State Insurance Response	Prior notice occurs in the ongoing monitoring and discussion of the firm within the supervisory college context.

EC 7.6	Key Attribute 7: Legal Framework Conditions for Cross-Border Cooperation
Essential Criterion	**The resolution regime does not discriminate between creditors of the same class on the basis of their nationality, the location of their claim or the jurisdiction where their claim is payable.**

EC 7.6	Key Attribute 7: Legal Framework Conditions for Cross-Border Cooperation
Federal Response	National laws and regulations in the United States do not discriminate against depositors and other creditors on the basis of their nationality.[242] The location and jurisdiction in which a depositor claim is payable may have an impact on payment.[243] Specifically, a deposit payable solely at a non-U.S. branch of a U.S.-chartered bank is not considered a "deposit liability" for purposes of the creditor hierarchy established under the FDI Act, and is therefore generally treated as a general unsecured claim.[244] A U.S.-chartered bank may, however, provide in the deposit agreement governing a deposit in a non-U.S. branch that such deposit is payable at both the non-U.S. branch and at an office of the U.S-chartered bank in the United States.[245] Should a U.S.-chartered bank do so, such deposit would be treated as a deposit liability for purposes of the creditor hierarchy established under the FDI Act and thus treated the same as domestic uninsured deposits.[246] In addition, as discussed in the Federal Response to EC 5.2, there could be circumstances in which the FDIC as receiver could, in accordance with statutory requirements, deviate from the payment scheme described above, particularly in the case of the resolution of a systemic IDI.[247]
State Insurance Response	U.S. State insurance laws and regulations for receivership provide for a priority order of distribution of claims, which does not discriminate between creditors of the same class on the basis of their nationality, the location of their claim, or the jurisdiction where their claim is payable.

Key Attribute 8: Crisis Management Groups (CMGs)

KA 8.1 Home and key host authorities of all G-SIFIs should maintain CMGs with the objective of enhancing preparedness

[242] *See*, *e.g.*, 12 C.F.R. § 330.3(c) (regarding the payment of claims of insured depositors of different nationalities).

[243] FDI Act, 12 U.S.C. § 1813(*l*)(5); 78 Fed. Reg. 56583 (September 13, 2013).

[244] FDI Act, 12 U.S.C. §§ 1813(*l*)(5) and 1821(d)(11)(A); 78 Fed. Reg. 56583 (September 13, 2013).

[245] FDI Act, 12 U.S.C. § 1813(*l*)(5); 78 Fed. Reg. 56583 (September 13, 2013).

[246] FDI Act, 12 U.S.C. §§ 1813(*l*)(5) and 1821(d)(11)(A); 78 Fed. Reg. 56583 (September 13, 2013).

[247] FDI Act, 12 U.S.C. § 1821(i)(3).

Key Attribute 8: Crisis Management Groups (CMGs)	
	for, and facilitating the management and resolution of, a cross-border financial crisis affecting the firm. CMGs should include the supervisory authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for guarantee schemes of jurisdictions that are home or host to entities of the group that are material to its resolution, and should cooperate closely with authorities in other jurisdictions where firms have a systemic presence.
KA 8.2	**CMGs should keep under active review, and report as appropriate to the FSB and the FSB Peer Review Council on:** **(i) progress in coordination and information sharing within the CMGs and with host authorities that are not represented in the CMGs;** **(ii) the recovery and resolution planning process for G-SIFIs under institution-specific cooperation agreements; and** **(iii) the resolvability of G-SIFIs.**

EC 8.1	Key Attribute 8: Crisis Management Groups (CMGs)
Essential Criterion	**If the jurisdiction under review is home jurisdiction of one or more G-SIFIs, a CMG is established and maintained for each such G-SIFI which includes the authorities with a role in resolution of the G-SIFI and a policy, process and criteria are maintained for determining which jurisdictions are host to entities that are material for a group-wide resolution of the firm and should be represented in the CMG.**
Federal Response	The U.S. authorities have established CMGs for seven U.S. G-SIBs with significant cross-border operations. U.S. G-SIB CMG membership includes the FDIC, the Federal Reserve Board, the relevant Federal Reserve Bank, the OCC (for G-SIBs with significant nationally chartered banks), and the SEC (for U.S. G-SIBs with large broker/dealer activity). Host authorities which participate in the CMG include the supervisory authorities, central banks, resolution authorities, and the public authorities responsible for guarantee schemes from jurisdictions in which U.S. G-SIBs have significant activities or assets. CMG membership is reviewed annually by the Federal Reserve Board in consultation with the FDIC.

EC 8.1	Key Attribute 8: Crisis Management Groups (CMGs)
	The U.S. authorities have also established CMGs for two G-SIIs. Membership includes the FDIC, the Federal Reserve Board, the relevant Federal Reserve Bank, FIO, and relevant State and foreign insurance authorities.
State Insurance Response	See ICP 26 of the self-assessment for a discussion of regulatory cooperation in crisis management situations.

EC 8.2	Key Attribute 8: Crisis Management Groups (CMGs)
Essential Criterion	**If the jurisdiction under review is the home jurisdiction of one or more FMIs that are systemically important in more than one jurisdiction, it maintains for each such FMI a CMG or other arrangements that achieve an equivalent outcome.**
Federal Response	No response has been provided to EC 8.2 as FMIs are outside the scope of the FSAP and thus not addressed in the self-assessment.

EC 8.3	Key Attribute 8: Crisis Management Groups (CMGs)
Essential Criterion	**If the jurisdiction under review is the home jurisdiction of one or more G-SIFIs, it has processes to ascertain which jurisdictions that are not represented in the CMG assess the local operations of the G-SIFI as systemically important to the local financial system. There is a documented process for cooperation, or other evidence of efforts to cooperate with relevant authorities in those jurisdictions that have been identified through this process.**
Federal	U.S. authorities regularly review the foreign operations of U.S. G-SIFIs, including operations in jurisdictions not

EC 8.3	Key Attribute 8: Crisis Management Groups (CMGs)
Response	represented in the CMG. U.S. authorities have engaged in a variety of cooperative efforts with relevant authorities from such jurisdictions, including entering into multilateral and bilateral cooperative arrangements with those authorities, and holding bilateral meetings on resolution-related issues. Future cooperation will take place in accordance with FSB guidance related to cooperation with host authorities that are not CMG members.
State Insurance Response	See ICP 26 of the self-assessment for discussion of regulatory cooperation in crisis management situations.

EC 8.4	Key Attribute 8: Crisis Management Groups (CMGs)
Essential Criterion	**The jurisdiction under review (if it is not itself the home jurisdiction) participates in the CMG for one or more G-SIFIs or FMIs when invited.**
Federal Response	Several U.S. authorities participate in CMGs for non-U.S. G-SIFIs, as follows: four U.K. G-SIFIs; one German G-SIFI, two Swiss G-SIFIs, two French G-SIFIs, two Spanish G-SIFIs, and three Japanese G-SIFIs.
State Insurance Response	As stated, U.S. State insurance regulators have experience with cross-border crisis management situations, including certain States' involvement in Crisis Management Groups (CMGs) for certain insurers. Supervisors are able to coordinate with other relevant authorities, through supervisory colleges or otherwise, such that a cross-border crisis involving a specific insurer can be managed effectively. As discussed in ICP 26 of the self-assessment, recent coordination efforts have demonstrated that the U.S. lead States coordinate not only with other U.S. States, but with material international regulators. This cooperation and coordination is made possible through broad-based authority that all States have in their statutes based upon the NAIC Model Law on Examinations, which provides States with the ability to share and receive any information with and from international regulators. Further, State regulators actively participate in international standard setting at the IAIS Resolution Working Group.

EC 8.4	Key Attribute 8: Crisis Management Groups (CMGs)
	U.S. State insurance regulators believe that increased communication, coordination, and cooperation among relevant regulators both within the U.S. and internationally at supervisory colleges, or other international fora, is vital to understanding risk trends that could impact domestic insurers and policyholders in an increasingly global insurance market. Communication and coordination between regulators has always been an important component of State-based solvency regulation. For instance, information-sharing procedures between States are a component of the NAIC Financial Regulation Standards and Accreditation Program.

Key Attribute 9: Institution-Specific Cross-Border Cooperation Agreements

KA 9.1 **For all G-SIFIs, at a minimum, institution-specific cooperation agreements, containing the essential elements set out in Annex I, should be in place between the home and relevant host authorities that need to be involved in the planning and crisis resolution stages. These agreements should, inter alia:**

(i) **establish the objectives and processes for cooperation through CMGs;**

(ii) **define the roles and responsibilities of the authorities pre-crisis (that is, in the recovery and resolution planning phases) and during a crisis;**

(iii) **set out the process for information sharing before and during a crisis, including sharing with any host authorities that are not represented in the CMG, with clear reference to the legal bases for information sharing in the respective national laws and to the arrangements that protect the confidentiality of the shared information;**

(iv) **set out the processes for coordination in the development of the RRPs for the firm, including parent or holding company and significant subsidiaries, branches and affiliates that are within the scope of the agreement, and for engagement with the firm as part of this process;**

(v) **set out the processes for coordination among home and host authorities in the conduct of resolvability**

Key Attribute 9: Institution-Specific Cross-Border Cooperation Agreements		
		assessments;
	(vi)	**include agreed procedures for the home authority to inform and consult host authorities in a timely manner when there are material adverse developments affecting the firm and before taking any significant action or crisis measures;**
	(vii)	**include agreed procedures for the host authority to inform and consult the home authority in a timely manner when there are material adverse developments affecting the firm and before taking any discretionary action or crisis measure;**
	(viii)	**provide an appropriate level of detail with regard to the cross-border implementation of specific resolution measures, including with respect to the use of bridge institution and bail-in powers;**
	(ix)	**provide for meetings to be held at least annually, involving top officials of the home and relevant host authorities, to review the robustness of the overall resolution strategy for G-SIFIs; and**
	(x)	**provide for regular (at least annual) reviews by appropriate senior officials of the operational plans implementing the resolution strategies.**
KA 9.2	**The existence of agreements should be made public. The home authorities may publish the broad structure of the agreements, if agreed by the authorities that are party to the agreement.**	

EC 9.1	Key Attribute 9: Institution-Specific Cross-Border Cooperation Agreements
Essential Criterion	**If the jurisdiction under review is home to a G-SIFI it maintains institution-specific cross-border cooperation agreements (COAGs) with all members of the CMG in the form of either a multilateral agreement, bilateral agreements, or a combination of multilateral and bilateral agreements and publicly discloses the existence of those agreements.**
Federal	Institution-specific cooperation agreements for all U.S. G-SIBs that have cross-border CMGs are multilateral, to be

EC 9.1	Key Attribute 9: Institution-Specific Cross-Border Cooperation Agreements
Response	entered into by all members of the CMG. Execution of the cooperation agreements for such firms is pending approval from all host authorities. The current forms of cooperation agreements provide for all of the required Essential Elements identified in KA 9 and in Appendix I-Annex 2 of the Key Attributes.

EC 9.2	Key Attribute 9: Institution-Specific Cross-Border Cooperation Agreements
Essential Criterion	**If the jurisdiction under review is home to an FMI that is systemically important in more than one jurisdiction, it maintains COAG with the relevant authorities in those jurisdictions that are consistent with the requirements set out in Part I, paragraph 9.3 of II-Annex 1 on Resolution of FMIs and FMI Participants.**
Federal Response	No response has been provided to EC 9.2 as FMIs are outside the scope of the FSAP and thus not addressed in the self-assessment.

EC 9.3	Key Attribute 9: Institution-Specific Cross-Border Cooperation Agreements
Essential Criterion	**If the jurisdiction under review is invited by the home jurisdiction to be party to a COAG for a G-SIFI or an FMI that is systemically important in more than one jurisdiction, it has concluded or is engaging in good faith negotiations towards the conclusion of an agreement with other members of the CMG.**
Federal Response	The U.S. authorities have been invited by several home jurisdictions to be party to cooperation agreements for their respective G-SIFIs. The U.S. authorities have actively participated in reviewing and commenting on the respective cooperation agreements and are engaging in good faith negotiations towards the conclusion of the agreements.

Key Attribute 10: Resolvability Assessments

KA 10.1 **Resolution authorities should regularly undertake, at least for G-SIFIs, resolvability assessments that evaluate the feasibility of resolution strategies and their credibility in light of the likely impact of the firm's failure on the financial system and the overall economy. Those assessments should be conducted in accordance with the guidance set out in Annex II.**

KA 10.2 **In undertaking resolvability assessments, resolution authorities should in coordination with other relevant authorities assess, in particular:**

- **(i)** **the extent to which critical financial services, and payment, clearing and settlement functions can continue to be performed;**
- **(ii)** **the nature and extent of intra-group exposures and their impact on resolution if they need to be unwound;**
- **(iii)** **the capacity of the firm to deliver sufficiently detailed accurate and timely information to support resolution; and**
- **(iv)** **the robustness of cross-border cooperation and information sharing arrangements.**

KA 10.3 **Group resolvability assessments should be conducted by the home authority of the G-SIFI and coordinated within the firm's CMG taking into account national assessments by host authorities.**

KA 10.4 **Host resolution authorities that conduct resolvability assessments of subsidiaries located in their jurisdiction should coordinate as far as possible with the home authority that conducts resolvability assessment for the group as a whole.**

KA 10.5 **To improve a firm's resolvability, supervisory authorities or resolution authorities should have powers to require, where necessary, the adoption of appropriate measures, such as changes to a firm's business practices, structure or organisation, to reduce the complexity and costliness of resolution, duly taking into account the effect on the soundness and stability of on-going business. To enable the continued operations of systemically important functions, authorities should evaluate whether to require that these functions be segregated in legally and operationally independent entities that are shielded from group problems.**

EC 10.1	Key Attribute 10: Resolvability Assessments
Essential Criterion	**If the jurisdiction under review is home to one or more G-SIFIs, FMIs that are systemically important in more than one jurisdiction or domestically incorporated firms that are subject to a requirement for resolution plans, arrangements and processes are in place whereby the resolution authorities undertake, in cooperation with members of the firm's CMG (or equivalent arrangement), group resolvability assessments annually or when there are material changes to a firm's business or structure).**
Federal Response	U.S. authorities view the resolvability assessments as an iterative process to be conducted in coordination with each firm's CMG. In accordance with FSB requirements set forth in Appendix I-Annex 3 and timelines, and in conjunction with the CMGs, U.S. authorities have undertaken initial resolvability assessments for each of the U.S. G-SIBs with significant cross-border operations. U.S. authorities are engaged in the process of refining firm-specific resolution strategies for these U.S. G-SIBs. As noted in the Federal Response to EC 8.1, the U.S. authorities have established CMGs for two G-SIIs. Firm-specific resolution strategies that will serve as the basis for upcoming resolvability assessments are being developed.

EC 10.2	Key Attribute 10: Resolvability Assessments
Essential Criterion	**If the jurisdiction under review is host to one or more G-SIFIs, FMIs that are systemically important in more than one jurisdiction or domestically incorporated firms that are subject to a requirement for resolution plans, it has in place arrangements and processes whereby the resolution authorities cooperate with the home jurisdiction and contribute to the development of the resolvability assessments where invited to do so by the home jurisdiction, including by sharing results of local resolvability assessments with the home authority.**
Federal Response	U.S. authorities are working with the relevant foreign home authorities to complete resolvability assessments for G-SIFIs headquartered in countries other than the United States.

EC 10.3	Key Attribute 10: Resolvability Assessments
Essential Criterion	**The supervisory authorities or resolution authorities have the power to require changes to a firm's business practices, legal, operational or financial structures or organisation that are necessary to improve the resolvability of the firm.**
Federal Response	Supervisory authorities or resolution authorities have powers to require, where necessary, the adoption of appropriate measures, such as changes to the business practices, legal structure or organization of an institution (including at the level of the group), in order to improve the resolvability of a firm. The Federal financial supervisory authorities have a number of statutory powers to require adoption of appropriate measures to reduce the complexity and costliness of a resolution in the interest of improving the resolvability of a firm. Under 12 U.S.C. § 1818(b) and (c), the Federal financial supervisory authorities may impose cease and desist orders to halt a financial firm's unsafe and unsound practices, and may also mandate changes to a firm's business practices, structure and organization. Under 12 U.S.C. § 1823(c)(2), the FDIC may facilitate a merger or consolidation of an IDI facing default with another IDI, or the sale of any or all of the IDI's assets and/or the assumption of its liabilities. Under 12 U.S.C. § 1831o, the Federal financial supervisory authorities may take prompt corrective action to correct an IDI's weakened capital condition. Additionally, pursuant to Section 165(d) of the Dodd-Frank Act[248] and Section 5(b) of the 165(d) Rule, if a firm files a resolution plan that the Federal Reserve Board and the FDIC jointly determine is not credible or would not facilitate an orderly resolution of the firm under the Bankruptcy Code, those agencies must notify the firm in writing of such determination and identify the aspects of the resolution plan that the Federal Reserve Board and the FDIC jointly determine to be deficient. If the firm fails to submit a revised resolution plan that addresses the jointly-identified deficiencies within 90 days of receiving such notice (subject to any extensions granted jointly by the Federal Reserve

[248] 12 U.S.C. § 5365(d).

EC 10.3	Key Attribute 10: Resolvability Assessments
	Board and the FDIC), the Federal Reserve Board and the FDIC may impose, among other things, restrictions on the growth, activities, or operations of the firm.[249] If the Federal Reserve Board and the FDIC have jointly imposed such restrictions (or other requirements specified in Section 6(a) of the 165(d) Rule) and the firm fails to submit a resolution plan that remedies the deficiencies within two years, Section 165(d)(5)(B) of the Dodd-Frank Act[250] and Section 6(c) of the 165(d)Rule further permit the Federal Reserve Board and the FDIC, in consultation with the FSOC, to order the company to divest certain assets or operations. Prior to issuing any notice of deficiencies, determining to impose requirements or restrictions, or issuing a divestiture order with respect to a firm that is likely to have a significant impact on a functionally regulated subsidiary or depository institution subsidiary of the firm, the Federal Reserve Board must consult with each FSOC member that primarily supervises such subsidiary and may consult with any other Federal, State or foreign supervisor as the Federal Reserve Board considers to be appropriate.[251] Furthermore, pursuant to Section 165(b) of the Dodd-Frank Act,[252] the Federal Reserve Board may impose additional prudential standards on bank holding companies with consolidated assets of greater than $50 billion and nonbank financial companies supervised by the Federal Reserve Board. Such standards could include elements that would improve the resolvability of a firm. Before doing so, if any such additional prudential standards are likely to have a significant impact on a functionally regulated subsidiary or depository institution subsidiary, the Federal Reserve Board must consult with each FSOC member that primarily supervises any such subsidiary.[253]

Key Attribute 11: Recovery and Resolution Planning

KA 11.1 Jurisdictions should put in place an on-going process for recovery and resolution planning, covering at a minimum

[249] Section 165(d)(5)(A) of the Dodd-Frank Act, 12 U.S.C. § 5365(d)(5)(A), and Section 6(a) of the 165(d) Rule.

[250] 12 U.S.C. § 5365(d)(5)(B).

[251] Section 7 of the 165(d) Rule.

[252] 12 U.S.C. § 5365(b).

[253] Section 165(b)(4) of the Dodd-Frank Act, 12 U.S.C. § 5365(b)(4).

domestically incorporated firms that could be systemically significant or critical if they fail.

KA 11.2 Jurisdictions should require that robust and credible RRPs, containing the essential elements of Recovery and Resolution Plans set out in Annex III, are in place for all G-SIFIs and for any other firm that its home authority assesses could have an impact on financial stability in the event of its failure.

KA 11.3 The RRP should be informed by resolvability assessments (see Key Attribute 10) and take account of the specific circumstances of the firm and reflect its nature, complexity, interconnectedness, level of substitutability and size.

KA 11.4 Jurisdictions should require that the firm's senior management be responsible for providing the necessary input to the resolution authorities for (i) the assessment of the recovery plans; and (ii) the preparation by the resolution authority of resolution plans.

KA 11.5 Supervisory and resolution authorities should ensure that the firms for which a RRP is required maintain a recovery plan that identifies options to restore financial strength and viability when the firm comes under severe stress. Recovery plans should include:

(i) credible options to cope with a range of scenarios including both idiosyncratic and market wide stress;

(ii) scenarios that address capital shortfalls and liquidity pressures; and

(iii) processes to ensure timely implementation of recovery options in a range of stress situations.

KA 11.6 The resolution plan is intended to facilitate the effective use of resolution powers to protect systemically important functions, with the aim of making the resolution of any firm feasible without severe disruption and without exposing taxpayers to loss. It should include a substantive resolution strategy agreed by top officials and an operational plan for its implementation and identify, in particular:

(i) financial and economic functions for which continuity is critical;

(ii) suitable resolution options to preserve those functions or wind them down in an orderly manner;

(iii) data requirements on the firm's business operations, structures, and systemically important functions;

Key Attribute 11: Recovery and Resolution Planning

(iv) potential barriers to effective resolution and actions to mitigate those barriers;

(v) actions to protect insured depositors and insurance policy holders and ensure the rapid return of segregated client assets; and

(vi) clear options or principles for the exit from the resolution process.

KA 11.7 Firms should be required to ensure that key Service Level Agreements can be maintained in crisis situations and in resolution, and that the underlying contracts include provisions that prevent termination triggered by recovery or resolution events and facilitate transfer of the contract to a bridge institution or a third party acquirer.

KA 11.8 At least for G-SIFIs, the home resolution authority should lead the development of the group resolution plan in coordination with all members of the firm's CMG. Host authorities that are involved in the CMG or are the authorities of jurisdictions where the firm has a systemic presence should be given access to RRPs and the information and measures that would have an impact on their jurisdiction.

KA 11.9 Host resolution authorities may maintain their own resolution plans for the firm's operations in their jurisdictions cooperating with the home authority to ensure that the plan is as consistent as possible with the group plan.

KA 11.10 Supervisory and resolution authorities should ensure that RRPs are updated regularly, at least annually or when there are material changes to a firm's business or structure, and subject to regular reviews within the firm's CMG.

KA 11.11 The substantive resolution strategy for each G-SIFI should be subject, at least annually, to a review by top officials of home and relevant host authorities and, where appropriate, the review should involve the firm's CEO. The operational plans for implementing each resolution strategy should be, at least annually, reviewed by appropriate senior officials of the home and relevant host authorities.

KA 11.12 If resolution authorities are not satisfied with a firm's RRP, the authorities should require appropriate measures to address the deficiencies. Relevant home and host authorities should provide for prior consultation on the actions contemplated.

EC 11.1	Key Attribute 11: Recovery and Resolution Planning

EC 11.1	Key Attribute 11: Recovery and Resolution Planning
Essential Criterion	**The resolution regime requires the development and maintenance of RRPs for all G-SIFIs for which the jurisdiction is the home country, systemically important FMIs, and any other firm that could have an impact on financial stability in the event of its failure.**
Federal Response	Under Title II of the Dodd Frank Act, the FDIC is the resolution authority for bank holding companies, insurance company holding companies and other financial companies and certain of their subsidiaries, the resolution of which under otherwise applicable law would have serious adverse effects on financial stability in the United States. To fulfill its mandate under the Dodd Frank Act, the FDIC has been developing what has become known as the Single Point of Entry, or SPOE, strategy after consultation with public and private sector stakeholders. On December 10, 2013, the FDIC published a Federal Register Notice entitled "Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy,"[254] which provides greater detail on the SPOE strategy and discusses the key issues that could be faced in the resolution of a SIFI. The FDIC has also coordinated with domestic and international supervisory and resolution authorities, as well as other constituents, in bilateral and multilateral settings, including the CMG meetings, in developing and maintaining firm-specific plans for resolving G-SIFIs under Title II of the Dodd-Frank Act. U.S. G-SIBs submit recovery plans and update those plans at least annually. No response has been provided with respect to FMIs as they are outside the scope of the FSAP and thus not addressed in the self-assessment.

EC 11.2	Key Attribute 11: Recovery and Resolution Planning
Essential	**The development and maintenance of RRPs for firms covered by EC 11.1 that are not G-SIFIs takes into account the specific circumstances of individual firms, including their nature, complexity, interconnectedness, level of**

[254] 78 Fed. Reg. 76614.

EC 11.2	Key Attribute 11: Recovery and Resolution Planning
Criterion	**substitutability and size and the extent of cross-border operations and involves appropriate arrangements for cross-border cooperation.**
Federal Response	As noted above, to implement the FDIC's resolution authority under Title II of the Dodd-Frank Act, the FDIC is developing resolution plans for the largest U.S. financial institutions, the resolution of which under otherwise applicable law would have serious adverse effects on financial stability in the United States. In the institution-specific resolution plans, the FDIC takes into account the specific circumstances of individual firms, including their nature, complexity, interconnectedness, level of substitutability and size and the extent of cross-border operations and involves appropriate arrangements for cross-border cooperation. With respect to recovery plans, the U.S. supervisory authorities expect that the level of detail and analysis in a recovery plan should vary based on the particular firm's risk profile and scope of operations. Detailed guidance on recovery plans is currently limited to G-SIBs.[255]

EC 11.3	Key Attribute 11: Recovery and Resolution Planning
Essential Criterion	**The resolution regime imposes the responsibility for the development and maintenance of firms' recovery planning process on the board and senior management, subject to regular review by supervisory or resolution authorities. Maintenance includes reviewing and updating the recovery plan at least annually, and sooner in the event of material changes to the firm's business or structure.**
Federal Response	The U.S. supervisory authorities place responsibility for the recovery planning process on the firm's senior management. The board of directors of the firm is responsible for oversight of the firm's recovery planning process. Recovery plans are updated at least annually.

[255] *See* Federal Reserve SR Letter 14-8, "Consolidated Recovery Planning for Certain Large Domestic Bank Holding Companies."

EC 11.4	Key Attribute 11: Recovery and Resolution Planning
Essential Criterion	**The legal framework requires recovery plans to:** **(i) include measures for addressing capital shortfalls and liquidity pressures;** **(ii) set out credible recovery options to deal with a range of stress scenarios covering both idiosyncratic and market wide stress; and** **(iii) define clear backstops and escalation procedures, identifying the quantitative and qualitative criteria that would trigger implementation of the plan by the firm.**
Federal Response	Under U.S. supervisory guidance, G-SIB recovery plans include options designed to remedy financial weakness and restore market confidence in the firm without extraordinary governmental support. The recovery plan should include options to conserve or restore liquidity and capital. Overall, the options should prepare the firm to respond to a broad range of internal or external stresses of different levels of severity. The firm's recovery plan is expected to identify recovery triggers and escalation procedures, and the recovery planning process is expected to lead to the timely implementation of options or other remediating actions in a stress situation.[256]

EC 11.5	Key Attribute 11: Recovery and Resolution Planning
Essential Criterion	**The resolution regime sets out the requirements for the content of resolution plans which, at a minimum, include a substantive resolution strategy and an operational plan that meets the requirements set out in points (i) to (vi) of KA 11.6 (for all firms) and, additionally, for insurers, paragraph 9.10 of II-Annex 2 on Resolution of Insurers and, for FMIs, Part I, paragraphs 11.6 and 11.7 of II-Annex 1 on Resolution of FMIs and FMI Participants.**
Federal	To prepare for the implementation of its resolution authority under Title II of the Dodd-Frank Act, the FDIC has

[256] *See* Federal Reserve SR Letter 14-8, "Consolidated Recovery Planning for Certain Large Domestic Bank Holding Companies."

EC 11.5	Key Attribute 11: Recovery and Resolution Planning
Response	developed resolution plans for G-SIFIs and has included in each plan a substantive resolution strategy and an operational plan that meets the requirements of the applicable Key Attributes and annexes.

EC 11.6	Key Attribute 11: Recovery and Resolution Planning
Essential Criterion	**If the jurisdiction is home to a G-SIFI, an FMI that is systemically important in more than one jurisdiction or any other firm that could, in the judgement of its home authority, have an impact on financial stability in the event of its failure, the home resolution authority has a process in place for the authorities represented on the CMG or equivalent arrangement to review the substantive resolution strategy for the firm and for the agreement of that strategy by top officials of those authorities.**
Federal Response	The FDIC, as the home resolution authority of U.S. G-SIFIs, works with CMG members of each U.S. G-SIFI in the review of substantive resolution strategy in bilateral and multilateral settings. The FDIC presents updated resolution strategies and resolution plans for each G-SIFI to CMG members at the respective CMG meeting. The U.S. authorities also engage with authorities represented in the CMG on firm-specific resolution plans through the FSB's Resolvability Assessment Process. The FDIC has also engaged CMG members in bilateral discussions regarding substantive resolution issues.

EC 11.7	Key Attribute 11: Recovery and Resolution Planning
Essential Criterion	**The resolution regime requires firms to ensure that their Service Level Agreements that are required to maintain continuity of critical functions or critical shared services can be maintained in crisis situations and in resolution, and that the underlying contracts include provisions that prevent termination from being triggered by recovery or resolution events and facilitate transfer of the contract to a bridge institution or a third party acquirer.**
Federal	Under the legal framework in the United States, the U.S. authorities require firms to ensure the continuation in resolution

EC 11.7	Key Attribute 11: Recovery and Resolution Planning
Response	of services that are necessary for the continuity of critical operations and shared services, including, for example, by entering into appropriate Service Level Agreements.[257] In addition, subject to limited exceptions parties to such contracts with a failed financial institution are prohibited from exercising any right to terminate, accelerate or declare a default under such contracts or to obtain possession or exercise control over any property of the failed financial institution or affect any contractual rights of the failed financial institution without the consent of the FDIC as receiver during the 90-day period commencing on the date of appointment of the FDIC as receiver.[258] Moreover, with respect to recovery plans, under U.S. supervisory guidance on recovery and resolution preparedness, G-SIBs should have robust arrangements in place for the continued provision of shared or outsourced services needed to maintain critical operations.[259]

EC 11.8	Key Attribute 11: Recovery and Resolution Planning
Essential Criterion	**If the jurisdiction is home to a G-SIFI or to an FMI that is systemically important in more than one jurisdiction, the resolution authority has a process in place to develop a group-wide resolution strategy and plan for the G-SIFI in coordination with all members of the firm's CMG [or equivalent arrangements for an FMI], and gives all members of the CMG access to the firm's RRP and information on measures that would have an impact on their jurisdiction.**
Federal Response	The FDIC has been developing group-wide resolution strategies and plans for U.S. G-SIFIs since the enactment of the Dodd-Frank Act. Those strategies and plans, including information on measures that would have an impact on cross-border operations, have been shared with members of the firms' CMGs in annual meetings that have taken place since the publication of the Key Attributes.

257 *See, e.g.*, Section 2(g) and (o) of the 165(d) Rule.

258 FDI Act, 12 U.S.C. § 1821(e)(13)(C)(i), and Section 210(c)(13)(C)(i) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(13)(C)(i).

259 *See* Federal Reserve SR Letter 14-1, "Heightened Supervisory Expectations for Recovery and Resolution Preparedness for Certain Large Bank Holding Companies."

EC 11.8	Key Attribute 11: Recovery and Resolution Planning
	At the same CMG meetings, U.S. authorities have been sharing their views regarding U.S. G-SIBs' recovery plans and have invited firms to provide CMG members with updates regarding the development of their recovery plans.

EC 11.9	Key Attribute 11: Recovery and Resolution Planning
Essential Criterion	**If the jurisdiction is home to a G-SIFI or to an FMI that is systemically important in more than one jurisdiction, the home resolution authority has a process in place to cooperate with authorities of jurisdictions where the G-SIFI or FMI has a systemic presence that are not members of the CMG (or equivalent arrangements for an FMI), and provide authorities in those jurisdictions with access to relevant material from the RRPs and information on resolution strategies or measures that the home resolution authority judges would have an impact on their jurisdiction.**
Federal Response	The Dodd Frank Act requires that the FDIC as receiver under Title II of the Dodd-Frank Act coordinate, to the maximum extent possible, with the appropriate foreign financial authorities.[260] To fulfill this mandate, the FDIC has reached out to authorities in jurisdictions where U.S. G-SIFIs have a systemic presence to establish communication channels and information sharing and cooperative arrangements. In addition, the U.S. supervisory authorities have existing channels of communication with authorities in jurisdictions in which the firms operate which can be employed in the event of resolution. The U.S. authorities have also held bilateral discussions with host authorities in jurisdictions that are not CMG members in which U.S. G-SIFIs have a systemic presence. Future cooperation will take place in accordance with FSB guidance related to cooperation with host authorities that are not CMG members.

EC 11.10	Key Attribute 11: Recovery and Resolution Planning
Essential	**If the jurisdiction under review is a host to a firm that is subject to a requirement for a group-wide resolution**

[260] Section 210(a)(1)(N) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(N).

EC 11.10	Key Attribute 11: Recovery and Resolution Planning
Criterion	**plan and maintains its own resolution plans for the firm's operations in its jurisdiction, there is a clear process for coordination with the home authority to ensure that the plan is as consistent as possible with the group plan.**
Federal Response	The home and host authorities of U.S. G-SIFIs have been working in bilateral and multilateral settings, including CMG meetings and the Resolvability Assessment Process, to establish mechanisms for potential coordination and cooperation in connection with the resolution of cross-border G-SIFIs headquartered outside the United States.

EC 11.11	Key Attribute 11: Recovery and Resolution Planning
Essential Criterion	**The resolution regime requires authorities and firms to review and, to the extent necessary, update resolution plans at least annually, and sooner upon the occurrence of an event that materially changes the firm's business or structure, including its operations, strategy or risk exposure.**
Federal Response	The FDIC reviews and updates each firm's resolution plan upon the occurrence of an event that materially changes the firm's business or structure.

EC 11.12	Key Attribute 11: Recovery and Resolution Planning
Essential Criterion	**If the jurisdiction under review is home to a G-SIFI or an FMI that is systemically important in more than one jurisdiction, it has in place a process for coordination with authorities participating in the CMG (or equivalent arrangement for FMIs) for the review, at least annually, of:** **(i) the resolution strategy by top officials of home and relevant host authorities, involving the firm's CEO where appropriate; and** **(ii) the operational plans for the implementation of resolution the strategy by senior officials of the relevant**

EC 11.12	Key Attribute 11: Recovery and Resolution Planning
	(home and host) authorities.
Federal Response	U.S. authorities work with CMG members for each U.S. G-SIFI in the review of substantive resolution strategies and operational plans, principally through CMG meetings and the Resolvability Assessment Process. The Resolvability Assessment Process includes a discussion of the resolution plan for the firm with senior officials of the relevant home and host authorities.

EC 11.13	Key Attribute 11: Recovery and Resolution Planning
Essential Criterion	**The supervisory or resolution authority has the power to require a firm to take measures to address deficiencies in its recovery plan or inputs to their resolution plan, and in cases where authorities require firms to prepare an initial resolution plan, its initial resolution plan.**
Federal Response	The Federal Reserve Board and the OCC have and will continue to use their supervisory powers to identify deficiencies in firms' recovery plans and require firms to address those deficiencies. In addition to existing supervisory authorities, as noted in the Federal Response to EC 10.3 above, the resolution planning provisions of the Dodd-Frank Act provide the Federal Reserve Board and the FDIC with the authority to impose additional requirements on firms that present resolution plans that fail to meet the requirements of the 165(d) Rule and fail to correct such deficiencies.[261]

[261] Section 165(d)(5)(A) of the Dodd-Frank Act, 12 U.S.C. § 5365(d)(5)(A), and Section 6(a) of the 165(d) Rule

Key Attribute 12: Access to Information and Information Sharing

KA 12.1 **Jurisdictions should ensure that no legal, regulatory or policy impediments exist that hinder the appropriate exchange of information, including firm-specific information, between supervisory authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for guarantee schemes. In particular:**

(i) **the sharing of all information relevant for recovery and resolution planning and for resolution should be possible in normal times and during a crisis at a domestic and a cross-border level;**

(ii) **the procedures for the sharing of information relating to G-SIFIs should be set out in institution-specific cooperation agreements (see Annex I); and**

(iii) **where appropriate and necessary to respect the sensitive nature of information, information sharing may be restricted, but should be possible among the top officials of the relevant home and host authorities.**

KA 12.2 **Jurisdictions should require firms to maintain Management Information Systems (MIS) that are able to produce information on a timely basis, both in normal times for recovery and resolution planning and in resolution. Information should be available at the group level and the legal entity level (taking into account information needs under different resolution scenarios, including the separation of individual entities from the group). Firms should be required, in particular, to:**

(i) **maintain a detailed inventory, including a description and the location of the key MIS used in their material legal entities, mapped to their core services and critical functions;**

(ii) **identify and address exogenous legal constraints on the exchange of management information among the constituent entities of a financial group (for example, as regards the information flow from individual entities of the group to the parent);**

(iii) **demonstrate, as part of the recovery and resolution planning process, that they are able to produce the essential information needed to implement such plans within a short period of time (for example, 24 hours); and**

(iv) **maintain specific information at a legal entity level, including, for example, information on intra-group**

EC 12.1	Key Attribute 12: Access to Information and Information Sharing
Essential Criterion	**The resolution authority has the power under the legal framework to access any information from firms that is material for the planning, preparation and implementation of resolution measures in a timely manner.**
Federal Response	The FDIC as resolution authority has the power under the legal framework in the United States to access any information from firms that is material for the planning, preparation and implementation of resolution measures in a timely manner. As a general matter, the FDIC as the resolution authority has access to firms' information in connection with its responsibility to conduct on-site examinations of IDIs and its authority to take enforcement actions against IDIs, bank holding companies, and affiliates thereof under statutorily prescribed conditions.[262] The FDIC also has special examination authority with respect to any IDI, any nonbank financial company supervised by the Federal Reserve Board, and any bank holding company with total consolidated assets equal to or greater than $50 billion. The FDIC may exercise this special examination authority with respect to any IDI for which the FDIC is not the primary Federal regulator whenever the FDIC determines that a special examination of any such IDI is necessary to determine the condition of such IDI for insurance purposes. The FDIC coordinates with such IDI's primary Federal regulator in connection with the exercise of this special examination authority. The FDIC may exercise this special examination authority with respect to any nonbank financial company supervised by the Federal Reserve Board or bank holding company with total consolidated assets equal to or greater than $50 billion for the purpose of implementing the FDIC's authority under Title II of the Dodd-Frank Act, provided that the FDIC must coordinate any such special examination to the maximum extent practicable with the Federal Reserve Board and that such special examination

[262] *See* FDI Act, 12 U.S.C. §§ 1818(t) and 1820(d).

EC 12.1	Key Attribute 12: Access to Information and Information Sharing
	authority may not be used with respect to any such nonbank financial company or bank holding company that is in a generally sound condition.[263] In connection with the exercise of this special examination authority, the FDIC also has the authority to examine the affairs of any affiliate of any depository institution as may be necessary to disclose fully (i) the relationship between any such depository institution and any such affiliate; and (ii) the effect of such relationship on the depository institution.[264] In addition, the FDIC has access to information through (i) its review of plans submitted pursuant to 12 C.F.R. § 360.10 by IDIs with $50 billion or more in total assets and (ii) its review, conducted jointly with the Federal Reserve Board, of plans submitted pursuant to Section 165(d)(1) of the Dodd-Frank Act[265] and the 165(d) Rule by certain large, complex nonbank financial institutions that could pose a threat to the financial stability of the United States, as determined by the FSOC,[266] and bank holding companies with $50 billion or more in total consolidated assets. These plans are required to provide a broad range of information relevant to resolution planning and implementation including, for example, detailed descriptions of organizational structures, credit exposures and cross-guarantees, as well as supporting data.
State Insurance Response	U.S. State insurance laws and regulations provide for the power under the legal framework to access any information from firms that is material for the planning, preparation and implementation of resolution measures in a timely manner. See ICP 3.1 of the self-assessment, describing that State insurance regulators have broad authority to obtain information from regulated insurers upon request or at specific times, hold hearings and compel the attendance of witnesses, command the production of documents, and examine the insurer at any time and at designated intervals.

EC 12.2	Key Attribute 12: Access to Information and Information Sharing

[263] FDI Act, 12 U.S.C. § 1820(b)(3).

[264] FDI Act, 12 U.S.C. § 1820(b)(4)(A).

[265] 12 U.S.C. § 5365(d)(1).

[266] Sections 113(a)(1) and 165(d)(1) of the Dodd-Frank Act, 12 U.S.C. §§ 5323(a)(1) and 5365(d)(1).

EC 12.2	Key Attribute 12: Access to Information and Information Sharing
Essential Criterion	**The legal framework permits and contains adequate legal gateways for the disclosure, in normal times and during a crisis, of non-public information (including firm-specific information) necessary for recovery and resolution planning and for carrying out resolution to domestic and foreign authorities that could have a role in resolution, including as appropriate supervisory authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for guarantee schemes. Disclosure under those legal gateways is conditional on the recipient authority being subject to adequate confidentiality requirements and safeguards that are appropriate to the nature and sensitivity of the information to be disclosed.**
Federal Response	The legal framework in the United States permits and contains adequate legal gateways for the disclosure, in normal times and during a crisis, of non-public information (including firm-specific information) necessary for recovery and resolution planning and for carrying out resolution to domestic and foreign authorities that could have a role in resolution. As a general matter, the Federal banking agencies are subject to a general statutory prohibition on disclosing certain types of confidential financial information unless such sharing is specifically authorized by law.[267] The Federal banking agencies, however, are statutorily authorized, at their discretion, to disclose any report of examination or other confidential supervisory information concerning any depository institution or other entity examined by such agency under authority of any Federal law, to any other Federal or State agency or authority with supervisory or regulatory authority over the depository institution or other entity, and any other person that the Federal banking agency determines to be appropriate.[268] In addition, the five supervisory agencies that comprise the Federal Financial Institutions Examination Council,[269] the SEC, the Federal Trade Commission, the CFTC and the CFPB are authorized to exchange financial records, examination reports and other information with respect to a financial institution, holding company or any subsidiary of a depository institution or holding company.[270] In addition, the Federal banking agencies have statutory authority to disclose information obtained in the course of

[267] 18 U.S.C. § 1905.

[268] FDI Act, 12 U.S.C. § 1817(a)(2)(C).

[269] The Federal Financial Institutions Examination Council comprises the OCC, the FDIC, the Federal Reserve Board, the CFPB, and the NCUA. *See* 12 U.S.C. § 3303(a).

[270] 12 U.S.C. § 3412(e).

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	exercising their supervisory or examination authority to any foreign bank regulatory or supervisory authority, provided that the disclosure must be appropriate and must not prejudice the interests of the United States.[271] Further, the Federal banking agencies have the authority to assist foreign banking authorities by investigating and collecting information and evidence in connection with any investigation to determine whether a person has violated, is violating, or is about to violate any law or regulation relating to banking matters or currency transactions administered or enforced by the requesting foreign banking authority.[272] As noted above, the Federal banking agencies are subject to a general statutory prohibition on disclosing certain types of confidential financial information unless such sharing is specifically authorized by law.[273] Each of the Federal banking agencies has promulgated regulations governing the disclosure of non-public information.[274] These regulations generally require that the applicable Federal banking agency, prior to disclosing confidential information, obtain assurances that the information disclosed will be kept confidential. In addition, with respect to the Federal banking agencies' statutory authority to disclose information obtained in the course of exercising their supervisory or examination authority to any foreign bank regulatory or supervisory authority, such disclosure is conditioned, to the extent necessary, on the receipt of such foreign authority's agreement to maintain the confidentiality of such information to the extent possible under applicable law.[275] Pursuant to the authorities outlined above, the Federal banking agencies have entered into a number of memoranda of understanding, statements of cooperation, and other arrangements establishing frameworks for cooperation and the exchange of information in connection with their respective supervisory, resolution, and other responsibilities with foreign authorities. These memoranda of understanding and statements of cooperation between the Federal banking agencies and foreign regulatory counterparts contain a number of requisite provisions to govern the confidentiality of information. These conditions generally include sharing to the extent reasonable, subject to relevant statutes, and grounds for denial; restricting usage to lawful supervisory purposes while holding information confidential; requesting prior

[271] 12 U.S.C. § 3109(a).

[272] FDI Act, 12 U.S.C. § 1818(v)(2).

[273] 18 U.S.C. § 1905.

[274] 12 C.F.R. Part 4 (OCC); 12 C.F.R § 211.27 and 12 C.F.R. Part 261 (Federal Reserve Board); 12 C.F.R. § 309.6 and 12 C.F.R. § 347.207 (FDIC); and 12 C.F.R. Part 1070 (CFPB).

[275] 12 U.S.C. § 3109(b).

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	consent before sharing with third parties; reacting to disclosures required by statute or legal process; and consenting to onward sharing with stated authorities pursuant to lawful supervisory responsibilities. As discussed above, the Federal banking agencies are, however, authorized to share relevant supervisory information with foreign authorities even in the absence of a formal arrangement such as a memorandum of understanding, and in practice the Federal banking agencies share significant information with foreign authorities in both a home and host capacity. As noted above, all sharing is subject to certain statutory requirements including those relating to the ability of the foreign authority to maintain the confidentiality of information provided to it.
State Insurance Response	See ICP 3 of the self-assessment regarding information exchange and confidentiality requirements. U.S. State insurance laws generally provide for the Commissioner to share confidential information pursuant to statutory authorization. In some instances, State insurance laws will provide general authorization for the Commissioner to share with other governmental entities; in more common instances, State insurance laws will provide for specific authorization to share certain types of information (e.g., examination information and holding company information) with other governmental entities. The range of governmental entities with which the Commissioner may be authorized to share information include other State, Federal and international regulators and State, Federal and international law enforcement authorities.

EC 12.3	Key Attribute 12: Access to Information and Information Sharing
Essential Criterion	**The legal framework or resolution regime incorporates adequate safeguards to protect the confidentiality of non-public information received from other domestic or foreign authorities. Such safeguards:** **(i) require authorities to keep such information confidential and to use it only in accordance with the terms on which the information was provided;** **(ii) prohibit domestic authorities from disclosing such information to other domestic or foreign authorities or other third parties without the prior express consent of the authority that provided it, unless such disclosure is compelled by law; and** **(iii) exclude information received from foreign authorities from mandatory disclosure pursuant to freedom**

EC 12.3	Key Attribute 12: Access to Information and Information Sharing
	of information or similar legislation that may exist in that jurisdiction, or treat such information as falling under an exemption from disclosure requirements.
Federal Response	The legal framework in the United States incorporates adequate safeguards to protect the confidentiality of non-public information received from other domestic or foreign authorities. (i) As noted in the Federal Response to EC 12.2 above, the Federal banking agencies are subject to a general statutory prohibition on disclosing certain types of confidential financial information unless such sharing is specifically authorized by law.[276] Each of the Federal banking agencies has promulgated regulations governing the disclosure of non-public information.[277] The confidentiality obligations imposed by U.S. law and each of the Federal banking agencies' regulations operate to require the Federal banking agencies to keep non-public information received from domestic or foreign authorities confidential. When disclosure is not legally compelled, the Federal banking agencies generally do not share information received from foreign authorities unless the providing authority consents to the disclosure. (ii) The Federal banking agencies are able to deny demands for non-public information in their possession, including non-public information received from domestic or foreign authorities, except in limited situations in which the Federal banking agencies can be legally compelled to disclose otherwise non-public information pursuant to a subpoena or court order. Such non-public information may be subpoenaed by a court, a grand jury, or a committee of Congress. If a Federal banking agency receives a subpoena from a litigant, a government agency, or Congress for non-public information and declines to produce the information, the party that obtained the subpoena may go to court to enforce it. Each Federal banking agency has a process by which litigants and others may request disclosure of confidential supervisory information. If a Federal banking agency declines to release the requested information, the requester may file an action under the Administrative Procedure Act,[278] in which the Federal banking agency's decision may be reviewed to determine whether it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[279] When feasible, a Federal banking agency that is being compelled to provide non-public information received

[276] 18 U.S.C. § 1905.

[277] 12 C.F.R. Part 4 (OCC); 12 C.F.R § 211.27 and 12 C.F.R. Part 261 (Federal Reserve Board); 12 C.F.R. § 309.6 and 12 C.F.R. § 347.207 (FDIC); and 12 C.F.R. Part 1070 (CFPB).

[278] 5 U.S.C. § 701 *et seq*.

[279] 5 U.S.C. § 706(2)(A).

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	from another domestic or foreign authority will notify such authority and make reasonable efforts to resist disclosure. The Federal banking agencies also must notify and provide information to U.S. law enforcement authorities if information comes to their attention that indicates a possible violation of criminal law. However, under the IBA, non-public information provided by a foreign authority to a Federal banking agency will have broad protection from compelled onward disclosure where, among other things, the non-public information is obtained pursuant to a memorandum of understanding or similar arrangement or pursuant to procedures established by the Federal banking agency for use in connection with the administration and enforcement of Federal banking laws, and where the foreign authority has made a written representation to the Federal banking agency that public disclosure of the information would violate the laws applicable to the foreign authority.[280] If these statutory requirements are satisfied, a Federal banking agency cannot be compelled to disclose such information except to duly authorized committees of Congress or to comply with a validly issued order of a court of the United States in an action commenced by the United States or such Federal banking agency.[281] (iii) As noted above, under the IBA, non-public information provided by a foreign authority to a Federal banking agency will have broad protection from compelled onward disclosure where, among other things, the non-public information is obtained pursuant to a memorandum of understanding or similar arrangement or pursuant to procedures established by the Federal banking agency for use in connection with the administration and enforcement of Federal banking laws, and where the foreign authority has made a written representation to the Federal banking agency that public disclosure of the information would violate the laws applicable to the foreign authority.[282] If these statutory requirements are satisfied, a Federal banking agency cannot be compelled to disclose such information except to duly authorized committees of Congress or to comply with a validly issued order of a court of the United States in an action commenced by the United States or such Federal banking agency.[283] Importantly, this statutory protection from disclosure constitutes a statute within the meaning of exemption 3 of the Freedom of Information Act,[284] which provides that information specifically

[280] 12 U.S.C. § 3109(c)(1).

[281] 12 U.S.C. § 3109(c)(3).

[282] 12 U.S.C. § 3109(c)(1).

[283] 12 U.S.C. § 3109(c)(3).

[284] 12 U.S.C. § 3109(c)(2).

EC 12.3	Key Attribute 12: Access to Information and Information Sharing
	exempted from disclosure by statute may not be disclosed.[285] Even in the absence of the IBA's protections, information received from foreign authorities could be exempt from disclosure under two of the eight other exemptions to disclosure contained in the Freedom of Information Act. Exemption 4 protects "trade secrets and commercial or financial information obtained from a person [that is] privileged and confidential."[286] This exemption is intended to protect the interests of submitters of information to Federal agencies; the term "submitter" (*i.e.*, the "person") has been construed to include agencies of foreign governments.[287] Exemption 8 protects matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.[288] Exemption 8 has two principal purposes—ensuring the security of financial institutions, which could be undermined by disclosure of information containing frank evaluations of such institutions, and safeguarding the relationship between the financial institutions and their supervising agencies. Exemption 8 is broadly construed by the courts and its protection of examination-related information would likely extend to any such material that the Federal banking agencies received from a foreign authority.[289]
State Insurance Response	U.S. State insurance laws and regulations incorporate adequate safeguards to protect the confidentiality of non-public information received from other domestic or foreign authorities including the safeguards listed in EC 12.3. See ICP 3 of the self-assessment for a description of the legal framework for protecting the confidentiality of non-public information received from other domestic or foreign authorities.

[285] 5 U.S.C. § 552(b)(3)

[286] 5 U.S.C. § 552(b)(4).

[287] *See* United States Department of Justice, *Guide to the Freedom of Information Act* (2009 ed.) at 271, n. 45.

[288] 5 U.S.C. § 552(b)(8).

[289] Although there is no court decision directly addressing the application of exemption 8 to examination-related material received from a foreign authority, courts have held that exemption 8 applies to such material received from State government banking agencies. *See*, *e.g.*, *Atkinson v. F.D.I.C.*, No. Civ.A. 79-1113m 1980 WL 355660 at *1 (D.D.C. February 13, 1980) (affirming the withholding of an examination report prepared by a State banking authority).

EC 12.4	Key Attribute 12: Access to Information and Information Sharing
Essential Criterion	**The resolution authority has policies and procedures in place to control and monitor the dissemination within the authority of non-public information received from a foreign home or host authority.**
Federal Response	The FDIC as resolution authority has policies, procedures and mechanisms in place to control and monitor the use and dissemination within the FDIC of non-public information received from a foreign home or host authority. As a general matter, it is the policy of the FDIC as resolution authority to use non-public information received from foreign authorities only in accordance with the terms on which it was provided. In the first instance, this may include making such non-public information available to relevant staff on a need-to-know basis. The FDIC has also instituted procedures designed to limit access to non-public information to specific employees. These procedures include the use of computer software platforms to serve as secure repositories for non-public information to which only specific staff may be granted access by a limited number of authorized officials, where such access is routinely monitored. With respect to physical copies of non-public information, these procedures include the use of designated rooms and storage facilities access to which is restricted to authorized staff.
State Insurance Response	U.S. State insurance departments have policies and procedures in place to control and monitor the dissemination within the authority of non-public information received from a foreign home or host authority. See ICP 3 of the self-assessment for more information regarding information exchange and confidentiality requirements.

EC 12.5	Key Attribute 12: Access to Information and Information Sharing
Essential Criterion	**Firms subject to a recovery and resolution planning requirement are required to maintain management information systems that are capable of producing information necessary for recovery and resolution planning, assessing resolvability and the conduct of resolution, including the items specified in KA 12.2, and delivering that information to authorities on a timely basis.**
Federal	In the United States, firms subject to a recovery and resolution planning requirement are required to maintain

EC 12.5	Key Attribute 12: Access to Information and Information Sharing
Response	management information systems that are capable of producing information necessary for recovery and resolution planning, assessing resolvability and the conduct of resolution, including the items specified in KA 12.2, and delivering that information to authorities on a timely basis. These requirements are established pursuant to ongoing safety and soundness supervision and exam processes. In particular, the Federal Reserve Board's Supervision and Regulation Letter 14-1[290], "Heightened Supervisory Expectations for Recovery and Resolution Preparedness for Certain Large Bank Holding Companies," describes in detail for the largest firms with recovery and resolution planning requirements the capabilities that should be maintained for effective recovery or resolution preparedness. The capability to demonstrate "management information systems capabilities for producing certain key data on a legal entity basis that is readily retrievable and controls in place to ensure data integrity and reliability" is further elaborated upon in the attachment to the Federal Reserve Board's Supervision and Regulation Letter 14-1, "Principles and Practices for Recovery and Resolution Preparedness."[291] Furthermore, the Federal Reserve Board's Supervision and Regulation Letter 14-8,[292] "Consolidated Recovery Planning for Certain Large Domestic Bank Holding Companies," provides guidance to the largest firms subject to recovery planning requirements regarding the standard of information systems that are required for such purposes.

EC 12.6	Key Attribute 12: Access to Information and Information Sharing
Essential Criterion	**The jurisdiction has in place processes (for example, through regular examinations) to test the firm's capability to produce information for recovery and resolution planning and in resolution quickly.**
Federal Response	The United States has in place processes to test the firm's capability to produce information for recovery and resolution planning and in resolution quickly. These processes include the safety and soundness examination process that exists for regulated firms in the United States. In addition, the Federal Reserve Board and FDIC recently highlighted the

[290] http://www.federalreserve.gov/bankinforeg/srletters/sr1401.pdf

[291] http://www.federalreserve.gov/bankinforeg/srletters/sr1401a1.pdf

[292] http://www.federalreserve.gov/bankinforeg/srletters/sr1408.pdf

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	importance of information production capabilities in feedback to certain of the largest firms required to file resolution plans pursuant to the Dodd-Frank Act.[293]

[293] http://www.federalreserve.gov/newsevents/press/bcreg/20140805a.htm