

# U.S. SELF-ASSESSMENT AGAINST THE CORE PRINCIPLES FOR EFFECTIVE DEPOSIT INSURANCE SYSTEMS

2019

**IMPORTANT:** This document reflects the U.S. framework as of March 2019 and has not been updated to include changes since that time.

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## Abbreviations

AI	assuming institution
AML/CFT	anti-money laundering/combating the financing of terrorism
CFPB	Consumer Financial Protection Bureau
C.F.R.	Code of Federal Regulations
CP	Core Principle
DIF	Deposit Insurance Fund
DINB	deposit insurance national bank
EC	Essential Criterion
EDIE	Electronic Deposit Insurance Estimator
EGRPRA	Economic Growth and Regulatory Paperwork Reduction Act
FDI Act	Federal Deposit Insurance Act
FDIC	Federal Deposit Insurance Corporation
FFIEC	Federal Financial Institutions Examination Council
FSOC	Financial Stability Oversight Council
FTCA	Federal Tort Claims Act
GAO	Government Accountability Office
GSIB	global systemically important bank
GSIFI	global systemically important financial institution
IAP	institution-affiliated parties
IDI	insured depository institution
OCC	Office of the Comptroller of the Currency
OCOM	Office of Communication (FDIC)
OIG	Office of Inspector General
P&A	purchase and assumption
PCA	Prompt Corrective Action
U.S.C.	United States Code

# Preamble

## I. BACKGROUND INFORMATION ON THE ASSESSMENT

The Federal Deposit Insurance Corporation (FDIC) conducted this self-assessment of compliance with the International Association of Deposit Insurers Core Principles for Effective Deposit Insurance Systems (Core Principles or CPs). An interdisciplinary team with representation from across the FDIC's divisions performed the assessment.

## II. METHODOLOGY USED FOR THE ASSESSMENT

The evaluation of compliance with the Core Principles adhered to the methodology in the International Association of Deposit Insurers "Handbook for the Assessment of Compliance With the Core Principles for Effective Deposit Insurance Systems." The assessment was based on a review of laws, regulations, policies, and practices governing the U.S. deposit insurance system.

This assessment includes a review of the preconditions for effective deposit insurance systems, including an overview of the organizational structure and the division of responsibilities among the U.S. agencies with authority over regulation and supervision of the U.S. banking sector, and a detailed assessment of compliance with each of the Core Principles.<sup>1</sup>

## III. INSTITUTIONAL AND MACROECONOMIC SETTING AND MARKET STRUCTURE OVERVIEW

### Macroeconomic Stability

The current U.S. economic expansion that began in June 2009 is now the longest on record since the 1850s, according to the National Bureau of Economic Research business cycle dating committee.<sup>2</sup> The consensus among business cycle forecasters is for the U.S. economy to continue to expand over the near-term, with GDP growth forecasts generally ranging from 2 percent to 3 percent per year.<sup>3</sup> Standard economic indicators, including disposable personal income, consumption, and investment have recorded steady growth.<sup>4</sup> A strong labor market with historically low unemployment

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<sup>1</sup> For the purposes of this self-assessment, the meaning of the term bank is limited to a bank (or a savings association) that is insured by the FDIC and does not include credit unions or uninsured deposit-taking institutions or entities. Institutions that are insured by the FDIC may also be termed insured depository institutions (IDIs).

<sup>2</sup> U.S. Business Cycle Expansions and Contractions Data, National Bureau of Economic Research business cycle dating committee, <https://www.nber.org/cycles/cyclesmain.html>.

<sup>3</sup> Blue Chip Economic Indicators, <https://developers.refinitiv.com/content/blue-chip-economic-indicators%C2%AE>.

<sup>4</sup> U.S. Bureau of Economic Analysis, data on personal income, personal consumption expenditures, and business investment, <https://www.bea.gov/data>.

rates and sustained gains in payrolls has helped support consumer spending.<sup>5</sup> U.S. equity market indices have performed well during the cycle, with the Dow Jones Industrial Average up more than three times its level ten years earlier as of June 2019.<sup>6</sup>

Overall, economic growth during this cycle has been weaker than in previous cycles, with weaker business investment and consumption spending. This trend is a continuation of slower economic growth during each of the recent expansions and reflects factors such as slower productivity growth and an aging population. Interest rates are at historically low levels in many countries, including the United States, posing challenges to the banking sector.

In the event of recession, historical data suggest there will be an increase in loan losses and some deterioration in banking conditions, including generally weaker financial performance. Based on the experience of past crises, the FDIC and other federal banking agencies are sensitive to the importance of identifying potential asset bubbles or other imbalances that could contribute to a more disruptive end to the expansion.

The FDIC Chairman is a member of the Financial Stability Oversight Council (FSOC). One responsibility of the FSOC is to monitor potential systemic risks and vulnerabilities in the U.S. economy and financial system. An issue identified by the FSOC in recent annual reports is the increase in leveraged lending and an increasing proportion of leveraged loans without strong protective covenants.

### **Banking Industry Performance**

The banking industry has reported strong financial results over the past five years.<sup>7</sup> Adjusting for the effects of recent tax reform, the annual growth rate for net income was close to 14 percent, which reflects strong growth in net interest income and noninterest income. The average return on assets was 1.35 percent in 2018, the highest level since 2003. During 2018, eight new bank charters were added and there were no bank failures. At year-end 2018, the number of problem institutions declined to 60, which is the lowest since first quarter 2007.

FDIC-insured institutions have extended credit to borrowers to support economic activity. Since 2014, the average annual growth rate for loan and lease balances was almost 5.2 percent. Most of this growth was driven by business loans, commercial real estate loans, and consumer loans, which include credit card loans.

Asset quality indicators have improved since 2014. Nonperforming loans as a percentage of total loans have declined since 2014 and were less than 1 percent as of

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<sup>5</sup> Labor market indicators are from U.S. Bureau of Labor Statistics, <https://www.bls.gov/bls/newsrels.htm>.

<sup>6</sup> Equity indices include the S&P 500 Index and the Dow Jones Industrial Average.

<sup>7</sup> FDIC data from Reports of Condition and Income (Call Reports), <https://cdr.ffiec.gov/public/>.

first quarter 2019. Net charge-offs as a percentage of total loans have remained relatively stable since 2014 and are now well below crisis levels.

Community banks also have reported strong results.<sup>8</sup> In 2018, their net income totaled \$26.1 billion and the percentage of unprofitable community banks was the lowest on record. Even after adjusting for effects of tax reform, their net income grew by almost 11 percent in 2018. Loan growth at community banks continues to outpace the industry. In 2018, loan and lease balances grew by 6.5 percent at community banks, led by commercial real estate loans, residential mortgages, and business loans.

Until recently, the banking industry has benefited from the rise in short-term interest rates, but is now challenged by a flatter yield curve. The average net interest margin for all FDIC-insured institutions has risen from just more than 3.1 percent at year-end 2014 to 3.4 percent at year-end 2018, but is largely unchanged for the first quarter of 2019. Larger financial institutions have benefited more than community banks from the rise in short-term rates, as larger institutions hold a greater share of assets that reprice more quickly.

The banking industry today is better capitalized and holds more liquid assets than it did pre-crisis. However, an extended period of low interest rates and an increasingly competitive lending environment have led some institutions to “reach for yield” by increasing the maturities of their loan and investment portfolios and sometimes by relaxing loan standards. These factors have led to heightened exposure to interest-rate, liquidity, and credit risk. With the relatively recent flattening of the yield curve, new challenges may emerge for institutions in lending and funding. Competition to attract loan customers remains strong, and therefore banks must maintain their underwriting discipline and credit standards. They must prudently manage the risks they face to sustain lending through the downside of this economic cycle when it occurs.<sup>9</sup>

### **Sound Governance of Authorities Comprising the Financial Safety-Net**

The United States operates under a “dual banking system.” A bank charter may be issued by the federal government or by a state. Federal bank charters for “national banks” and “federal savings associations” are issued by the Office of the Comptroller of the Currency (OCC). A banking authority in each state may also issue a charter under its own laws and regulations. Entities with a state charter are generally called “state banks” or “state savings associations” and are supervised by the state regulatory authority in coordination with the applicable primary federal regulator.

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<sup>8</sup> Community banks refers to banks that meet the criteria that were developed for the [FDIC Community Banking Study](#), published in December 2012.

<sup>9</sup> FDIC, Opening Statement First Quarter 2019 Quarterly Banking Profile, <https://www.fdic.gov/news/news/speeches/spmay2919.html>.

All banks, whether chartered under state or federal law, are subject to regulation, supervision, and examination by a primary federal regulator. Three agencies (hereafter called the “federal banking agencies”) provide primary federal supervision over banks:

- the OCC supervises national banks and federal savings associations
- the Federal Reserve System (Federal Reserve) supervises state banks that choose to be members of the Federal Reserve (state member banks)
- the FDIC supervises state banks that choose not to become members of the Federal Reserve (state nonmember banks) and state savings associations.

The FDIC is the provider of deposit insurance for these institutions regardless of the type of bank charter.

Holding companies that own banks are supervised by the Federal Reserve, regardless of the nature of the bank charters of their subsidiaries. Foreign banking organizations may operate in the United States with the prior approval of the Federal Reserve. Under the International Banking Act of 1978 and the Foreign Bank Supervision Enhancement Act of 1991, the Federal Reserve has broad supervisory oversight of a foreign banking organization’s U.S. banking operations. Depending on the charter or license granted to a foreign banking organization, the Federal Reserve generally relies on either the OCC or state banking authorities to examine and supervise these institutions. The Consumer Financial Protection Bureau (CFPB) examines institutions with more than \$10 billion in assets for consumer protection compliance issues. Credit unions in the United States are supervised and separately insured by the National Credit Union Administration.

In addition to its role as the deposit insurer for all banks and the supervisor of state nonmember banks, the FDIC may accept appointment and act as conservator or receiver for any insured depository institution (IDI) under the Federal Deposit Insurance Act (FDI Act) and, in cases in which the financial stability of the United States may be at risk, the resolution authority for financial companies under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). It is important to note that Title II of the Dodd-Frank Act expressly excludes banks from resolution under Title II; the FDI Act remains the resolution regime for banks in all cases. The responses in this self-assessment focus on the FDIC’s roles as they relate to banks and deposit insurance. However, when reference to the Dodd-Frank Act is relevant to a particular Core Principle or Essential Criterion, such reference is included for the purpose of completeness.

## **Legal Framework**

The United States has a well-developed legal framework. The rule of law is firmly established and legal authorities proceed from the U.S. Constitution, which establishes separation of powers between the executive, legislative, and judicial branches of government. Federal legislation is enacted by the U.S. Congress and implemented by the executive branch of government; the powers of each are constrained by the Constitution and their actions are subject to review by and the binding decisions of the federal judiciary. There is a defined legal basis for regulation and supervision of banks

operating in the United States. Agency rulemaking is subject to procedural requirements intended to foster public and stakeholder participation in the formulation of standards. The U.S. federal banking agencies issue and regularly update regulations and guidelines implementing their statutory authority and supplement these with policy statements, formal and informal interpretations, and supervisory guidance and manuals.

The statutes and regulations provide for chartering banks and, among other things, address permissible bank and nonbank affiliations, acquisitions, and activities. The statutes and regulations establish a framework of minimum prudential standards that banks must meet. For example, standards address capital adequacy, internal controls and audits, accounting, liquidity, and anti-money laundering and combatting the financing of terrorism (AML/CFT) efforts. Bank holding companies and financial holding companies (collectively referred to herein as holding companies) also are subject to prudential requirements under statutes and regulations consistent with the principle that holding companies should serve as a source of financial and managerial strength for insured bank subsidiaries.<sup>10</sup>

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<sup>10</sup> Under the Bank Holding Company Act, a bank holding company may elect to be a financial holding company. In addition to banking, a financial holding company offers non-bank financial products.



# Core Principles and Compliance Assessment

## PRINCIPLE 1 PUBLIC POLICY OBJECTIVES

**The principal public policy objectives for deposit insurance systems are to protect depositors and contribute to financial stability. These objectives should be formally specified and publicly disclosed. The design of the deposit insurance system should reflect the system’s public policy objectives.**

**Essential Criterion 1 The public policy objectives of the deposit insurance system are clearly and formally specified and made public, for example through legislation or documents supporting legislation.**

The FDIC was created by Congress to protect depositors and maintain stability and public confidence in the nation’s financial system.<sup>11</sup> The FDIC promotes financial stability through its statutory functions as deposit insurer, supervisor, and as receiver or conservator of failed IDIs under the FDI Act and failed financial companies under Title II of the Dodd-Frank Act.<sup>12</sup>

**Essential Criterion 2 The design of the deposit insurance system is consistent with the system’s public policy objectives.**

The design of the deposit insurance system is consistent with the system’s policy objectives. Congress granted the FDIC statutory authority consistent with its mission, as discussed in greater detail in CP-2. Among other things, the FDIC is authorized to approve applications for deposit insurance, collect assessments and maintain a fund, hire staff, prescribe regulations, examine banks, compel banks to comply with their legal obligations under the deposit insurance system, and manage receiverships and conservatorships of failed banks. The FDIC also has the authority to examine for insurance purposes any bank, either directly or in cooperation with state or other federal supervisory authorities.<sup>13</sup>

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<sup>11</sup> FDI Act §§ 1(a), 5(a), 11(a); 12 U.S.C. §§ 1811(a), 1815(a), 1821(a). See generally FDI Act, 12 U.S.C. § 1811 and following. Legislative history also confirms these policy objectives: “Added coverage may help in achieving more fully both of the major objectives of deposit insurance—protection of the individual depositor and promotion of stability in the economy as a whole through protection of the money supply and maintenance of public confidence in banks.” Amendments to Federal Deposit Insurance Act: Hearings Before the S. Subcommittee on Federal Reserve Matters, 81 Cong. 108 (1950) (statement of Thomas McCabe, Chairman, Board of Governors of the Federal Reserve).

<sup>12</sup> FDI Act § 10, 11(c)-(d), 12 U.S.C. §§ [1820](#), [1821\(c\)-\(d\)](#); Section 210 of the Dodd-Frank Act, [12 U.S.C. § 5390](#).

<sup>13</sup> FDI Act § 10(b)(3), [12 U.S.C. § 1820\(b\)\(3\)](#).

### Essential Criterion 3

**There is a review of the extent to which a deposit insurance system meets its public policy objectives. This involves both an internal review conducted on a regular basis by the governing body and an external review conducted periodically by an external body (e.g. the body to which the deposit insurer is accountable or an independent entity with no conflicts of interest, such as an auditor general). Any review must take into consideration the views of key stakeholders.**

The U.S. deposit insurance system is subject to regular internal and external reviews to ensure that it is satisfying public policy objectives.

**Internal Reviews**—The FDIC Board of Directors publicly reports annually on the FDIC’s performance on policy objectives for each of its major program areas, including deposit insurance, supervision, and receivership management.<sup>14</sup> The FDIC’s performance is evaluated against measurable targets—for example, whether insured depositors of a failed bank were able to access their funds within one business day. The Board of Directors uses a variety of similar performance objectives to evaluate the FDIC’s performance of each of its major functions.<sup>15</sup>

**External Reviews**—The FDIC Office of Inspector General (OIG) is an independent unit established by the Inspector General Act of 1978 as amended.<sup>16</sup> The FDIC OIG conducts audits, evaluations, investigations, and other reviews of FDIC programs and operations. The FDIC OIG’s mission is to promote the economy, efficiency, and effectiveness of FDIC programs and operations, and to prevent, deter, and detect waste, fraud, abuse, and misconduct in FDIC programs and operations. The FDIC OIG aims to prompt and encourage improvements and efficiencies, to help preserve the integrity of the agency and the banking system, and to protect depositors and financial consumers. Under Section 5 of the Inspector General Act of 1978, the FDIC OIG reports to the U.S. Congress semiannually on the FDIC’s performance, including problems or deficiencies in FDIC programs and operations, and provides recommendations for corrective action.<sup>17</sup> The FDI Act

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<sup>14</sup> The Board produces and publishes these annual reports as required by several federal statutes, including the [Government Performance and Results Act of 1993](#) and the FDI Act § 17(a), [12 U.S.C. § 1827\(a\)](#).

<sup>15</sup> See for example [2018 FDIC Annual Report, Section II, Performance Results Summary](#).

<sup>16</sup> 5 U.S.C. App. § 1 and following.

<sup>17</sup> Pub. L. No. 95-452, 92 Stat. 1101 (1978), [5 U.S.C. App.](#) Section 5 (a) of the Inspector General Act of 1978 provides that the scope of the FDIC OIG’s review is not limited to the items enumerated in the statute. The FDIC OIG’s reports to Congress are available online at: <https://www.fdicigoig.gov/semiannual-reports>.

also requires that if the FDIC is appointed receiver of a bank that failed, and the failure caused a material loss to the Deposit Insurance Fund (DIF), the Inspector General of the institution's supervising federal banking agency must review the failure and prepare a material loss review report.<sup>18</sup>

The FDIC is also subject to external reviews conducted by the Government Accountability Office (GAO), an independent, nonpartisan agency. The GAO supports the U.S. Congress in efforts to improve the performance and ensure the accountability of the federal government. The GAO publishes reports that are intended to help Congress make effective oversight, policy, and funding decisions.<sup>19</sup>

The reviews described above and the periodic testimony required of FDIC officials at Congressional hearings support Congressional oversight of the deposit insurance system and the FDIC. Every year the FDIC must submit a full report of its operations, activities, budget, receipts, and expenditures for the preceding 12 months. This information is contained in the FDIC Annual Report and is submitted to the President of the United States and the U.S. Congress.

#### Essential Criterion 4

**If additional public policy objectives are incorporated, they do not conflict with the two principal objectives of protecting depositors and contributing to the stability of the financial system.**

As discussed in EC-1, the FDIC's mission is to protect depositors and maintain stability and public confidence in the nation's financial system. Aside from the FDIC's responsibilities under the FDI Act, as noted above the FDIC may in certain circumstances be appointed receiver of a systemically important financial company under Title II of the Dodd-Frank Act. In its role as receiver under Title II, 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 this 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
- the FDIC and other appropriate agencies will take all steps necessary and appropriate to assure that all parties, including

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<sup>18</sup> FDI Act § 38(k), [12 U.S.C. § 1831o\(k\)](#).

<sup>19</sup> GAO reports are available online at <https://www.gao.gov/>.

management, directors, and third parties, that have 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.

This mandate is consistent with the policy objectives described in the response to EC-1 above.

## PRINCIPLE 2                      MANDATE AND POWERS

**The mandate and powers of the deposit insurer should support the public policy objectives and be clearly defined and formally specified in legislation.**

**Essential Criterion 1                      The mandate and powers of the deposit insurer are formally and clearly specified in legislation, and are consistent with stated public policy objectives.**

The FDIC's enabling statute, the FDI Act, clearly articulates the FDIC's mandate as a risk minimizer and provides the FDIC with the powers necessary to fulfill this mandate and the policy objectives discussed under CP-1 (please see the response to EC-3 below and the responses in CP-14 for detailed discussion of the FDIC's powers).

**Essential Criterion 2                      The mandate clarifies the roles and responsibilities of the deposit insurer and is aligned with the mandates of other safety-net participants.**

The objective of the federal banking agencies is to promote safe and sound banking practices in the United States and to maintain stability and public confidence in the banking system.

The FDIC's roles and responsibilities are congruent with the mandates of other U.S. safety-net participants, including the Federal Reserve and the OCC. The FDIC's mandate to maintain stability and confidence in the U.S. financial system aligns with the Federal Reserve's mandate to provide the nation with a safer, more flexible, and more stable monetary and financial system and with the OCC's mission to ensure a safe-and-sound federal banking system.

Each bank, whether chartered under state or federal law, is subject to regulation, supervision, and examination by a primary federal banking regulator who shares responsibility for determining the safety and soundness of the U.S. banking system. Depositor protection and resolution are within the scope of the FDIC's responsibilities.

As discussed in more detail in the responses under CP-4, the federal banking agencies maintain a formal and comprehensive framework for coordination, including through the Federal Financial Institutions Examination Council (FFIEC).<sup>20</sup> The FFIEC is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by

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<sup>20</sup> Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. L. No. 95-630, 92 Stat. 3641, 3694 (codified at [12 U.S.C. 3301](#) and following).

the Federal Reserve, the FDIC, the OCC, and certain other federal financial regulatory agencies. In 2006, a State Liaison Committee, composed of five representatives of state agencies that supervise financial institutions, was added to the Council as a voting member. The FFIEC makes recommendations to promote uniformity in the supervision of financial institutions.

### Essential Criterion 3

#### **The powers of the deposit insurer support its mandate and enable the deposit insurer to fulfill its roles and responsibilities.**

The FDIC has appropriate powers to support its mandate to maintain stability and public confidence in the nation's financial system and to fulfill its roles and responsibilities as deposit insurer, bank examiner and supervisor, and receiver or conservator of failed IDIs.

#### **Deposit Insurer Powers**

The FDI Act provides the FDIC powers and authorities to carry out its role as deposit insurer, including powers to:

- review and approve or deny applications for deposit insurance from banks engaged in the business of receiving deposits, other than trust funds, or any insured branch of a foreign bank which is not a federal branch<sup>21</sup>
- terminate a bank's deposit insurance based upon any unsafe or unsound practice or condition or any violation specified in the required notice<sup>22</sup>
- make determinations of amounts of insured deposits that are due any depositor.<sup>23</sup>

The FDI Act contains a broad array of deposit insurance powers discussed more fully in EC-4.

#### **Bank Supervisory Powers**

As discussed in EC-1, the FDIC has the authority to:

- examine state nonmember banks
- examine any bank for insurance purposes through the FDIC's secondary examination authority<sup>24</sup>
- take direct enforcement action or recommend that another federal banking agency take enforcement action against a bank

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<sup>21</sup> FDI Act § 5, [12 U.S.C. § 1815](#).

<sup>22</sup> FDI Act § 8, [12 U.S.C. § 1818](#).

<sup>23</sup> FDI Act § 11(a), [12 U.S.C. § 1821\(a\)](#).

<sup>24</sup> FDI Act § 10(b)(3), [12 U.S.C. § 1820\(b\)\(3\)](#).

in appropriate circumstances and may take such action directly against the bank if the other agency does not take action.<sup>25</sup>

### **Receivership and Resolution Powers**

As discussed in greater detail in CP-14, the FDIC is statutorily required to accept appointment to act as the receiver for a failed federally chartered IDI.<sup>26</sup> In all other cases, the FDIC may accept appointment as conservator or receiver for any IDI.<sup>27</sup> The FDIC is provided a number of powers as receiver or conservator, including succeeding to all rights, titles, powers, and privileges of the institution; conducting the business of the institution; merging the institution with another IDI; or transferring assets or liabilities of the institution to another IDI or to a bridge depository institution.<sup>28</sup>

### **Corporate Powers**

The general corporate powers of the FDIC enable the FDIC to fulfill its roles and responsibilities, including those of deposit insurer.

These include the powers to:

- make contracts
- sue and be sued, and complain and defend, by and through its own attorneys, in any state or federal court of law or equity
- hire officers and employees
- conduct business
- exercise all powers specifically granted by the provisions of the FDI Act, and incidental powers necessary to carry out the granted powers
- make examinations of and require information and reports from insured banks
- act as receiver
- prescribe such rules and regulations as it may deem necessary to carry out the provisions of the FDI Act or of any other law which it has the responsibility of administering or enforcing.<sup>29</sup>

#### **Essential Criterion 4**

**The powers of the deposit insurer include, but are not limited to:**

- (a) assessing and collecting premiums, levies, or other charges**
- (b) transferring deposits to another bank**
- (c) reimbursing insured depositors**

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<sup>25</sup> FDI Act § 8, [12 U.S.C. § 1818](#) and FDI Act § 8(t), [12 U.S.C. § 1818\(t\)](#).

<sup>26</sup> FDI Act § 11(c)(2)(A)(ii), [12 U.S.C. § 1821\(c\)\(2\)\(A\)\(ii\)](#).

<sup>27</sup> FDI Act § 11(c)(1), [12 U.S.C. § 1821\(c\)\(1\)](#).

<sup>28</sup> FDI Act § 11(d), [12 U.S.C. § 1821\(d\)](#).

<sup>29</sup> FDI Act § 9(a), [12 U.S.C. § 1819\(a\)](#).

- (d) obtaining directly from banks timely, accurate, and comprehensive information necessary to fulfill its mandate**
- (e) receiving and sharing timely, accurate, and comprehensive information within the safety-net, and with applicable safety-net participants in other jurisdictions**
- (f) compelling banks to comply with their legally enforceable obligations to the deposit insurer (e.g. provide access to depositor information), or requesting that another safety-net participant do so on behalf of the deposit insurer**
- (g) setting operating budgets, policies, systems, and practices**
- (h) entering into contracts.**

The FDIC's authority includes each of the powers listed in EC-4 above:

- (a) Any institution that becomes insured by the FDIC must pay the FDIC any fee that the FDIC may by regulation prescribe to maintain the reserve ratio of the DIF.<sup>30</sup> The FDIC is statutorily required to establish by regulation a risk-based assessment system for banks, and each institution must pay assessments imposed under such system.<sup>31</sup> See the responses to CP-9 (Sources and Uses of Funds) for further discussion of the deposit insurance assessment system.
- (b) The FDIC may, as resolution authority of a bank, transfer any asset or liability of the institution in default (including assets and liabilities associated with any trust business) without any approval, assignment, or consent; however, a transfer to a bank other than a new institution established pursuant to 12 U.S.C. § 1821(m) or a bridge bank requires the approval of the appropriate federal banking agency.<sup>32</sup>
- (c) In case of liquidation, closing, or winding up of the affairs of any bank, payment of the insured deposits in the institution shall be made by the FDIC as soon as possible either by cash or by making available to each depositor a transferred deposit in a new bank in the same community or in another bank in an amount equal to the insured deposit of such depositor.<sup>33</sup>
- (d) As a general matter, the FDIC has access to information in connection with its responsibility to conduct examinations of banks and its authority to take enforcement actions against

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<sup>30</sup> FDI Act § 5(d), [12 U.S.C. § 1815\(d\)](#).

<sup>31</sup> FDI Act § 7(b)-(c), [12 U.S.C. § 1817\(b\)-\(c\)](#) and [12 C.F.R. § 327.9](#).

<sup>32</sup> FDI Act § 11(d)(2)(G), [12 U.S.C. § 1821\(d\)\(2\)\(G\)](#), [12 C.F.R. § 360.1\(b\)](#); FDI Act § 11(d)(2)(G)(ii), [12 U.S.C. § 1821\(d\)\(2\)\(G\)\(ii\)](#).

<sup>33</sup> FDI Act § 11(f)-(g), [12 U.S.C. § 1821\(f\)-\(g\)](#) and [12 C.F.R. §§ 360.3-360.4](#).



banks, bank holding companies, and affiliates under statutorily prescribed conditions.<sup>34</sup> Each insured state nonmember bank and each foreign bank having an insured branch which is not a federal branch shall make to the FDIC reports of condition and include their deposit liabilities as directed in those reports. The FDIC may occasionally require additional reports.<sup>35</sup> As discussed in the response to (e) below, the FDIC has access to reports of examination made by, and reports of condition made to, the OCC, the Federal Housing Finance Agency, any Federal Home Loan Bank, and any Federal Reserve Bank.<sup>36</sup>

- (e) The FDIC shall have access to reports of examination made by, and reports of condition made to, the OCC, the Federal Housing Finance Agency, any Federal Home Loan Bank, or any Federal Reserve Bank. The FDIC may accept any report made by or to any commission, board, or authority having supervision of a depository institution (including state banking entities), and may furnish to the OCC; the Federal Housing Finance Agency; and any Federal Home Loan Bank, Federal Reserve Bank, commission, board, or authority reports of examination made on behalf of, and reports of condition made to, the FDIC.<sup>37</sup>
- (f) Any bank which fails to make or publish any report required within the period of time specified by its primary federal banking supervisor or submits or publishes any false or misleading report or information shall be subject to a penalty for each day during which such failure continues or such false or misleading information is not corrected.<sup>38</sup>
- (g) As discussed in EC-3, the FDIC has the power to conduct business, prescribe rules and regulations, and the ability to exercise incidental powers necessary to carry out its statutory powers.<sup>39</sup>
- (h) As discussed in EC-3, the FDIC's power to make contracts is one of the statutory powers enumerated in the FDI Act.<sup>40</sup>

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<sup>34</sup> See FDI Act, §§ 8 and following, 10(b) 12 U.S.C. §§ [1818](#) and following, and [1820\(b\)](#).

<sup>35</sup> FDI Act § 7(a), [12 U.S.C. § 1817\(a\)](#); [12 C.F.R. § 304.3](#).

<sup>36</sup> FDI Act § 7(a)(2)(A), [12 U.S.C. § 1817\(a\)\(2\)\(A\)](#).

<sup>37</sup> FDI Act § 7(a), [12 U.S.C. § 1817\(a\)](#); [12 C.F.R. § 304.3](#).

<sup>38</sup> [12 U.S.C. §§ 161, 164](#) (for national banks); Federal Reserve Act § 9, [12 U.S.C. § 324](#) (for state member banks); FDI Act § 7, [12 U.S.C. § 1817](#) (for insured state nonmember commercial and savings banks).

<sup>39</sup> FDI Act § 9(a), [12 U.S.C. § 1819\(a\)](#).

<sup>40</sup> FDI Act § 9(a), [12 U.S.C. § 1819\(a\)](#).

## **PRINCIPLE 3                      GOVERNANCE**

**The deposit insurer should be operationally independent, well-governed, transparent, accountable, and insulated from external interference.**

**Essential Criterion 1                      The deposit insurer is operationally independent. It is able to use its powers without interference from external parties to fulfill its mandate. There is no government, central bank, supervisory, or industry interference that compromises the operational independence of the deposit insurer.**

The FDIC is empowered to act without interference from external parties to fulfill its mandate.

The management of the FDIC is vested in a Board of Directors consisting of five members. One is the Comptroller of the Currency. One is the Director of the CFPB. Three are independent directors appointed by the President with the advice and consent of the Senate for terms of six years. Not more than three Board members may be of the same political party. One of the appointed members is designated by the President, with the advice and consent of the Senate, as Chairman of the Board.<sup>41</sup>

In addition, the FDIC receives no Congressional appropriations. It is funded by premiums that banks pay for deposit insurance coverage and from earnings on investments in U.S. Treasury securities.

**Essential Criterion 2                      The governing body of the deposit insurer is held accountable to a higher authority.**

The FDIC is managed by a five-member Board of Directors and is primarily accountable to the U.S. Congress.<sup>42</sup> FDIC management regularly testifies at oversight and other hearings before Congressional committees. The GAO, an independent, nonpartisan agency that works for Congress, conducts periodic audits of the FDIC. The FDIC OIG conducts regular internal audits of the agency.<sup>43</sup>

**Essential Criterion 3                      The deposit insurer has the capacity and capability (e.g. human resources, operating budget, and salary scales sufficient to**

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<sup>41</sup> FDI Act § 2, [12 U.S.C. § 1812](#).

<sup>42</sup> FDI Act § 2, [12 U.S.C. § 1812](#).

<sup>43</sup> The OIG's mission is to prevent, deter, and detect waste, fraud, abuse, and misconduct in FDIC programs and operations and to promote economy, efficiency, and effectiveness at the agency. See Inspector General Act of 1978, [5 U.S.C. App.](#)

**attract and retain qualified staff) to support its operational independence and the fulfillment of its mandate.**

The FDIC is not subject to the congressional budget process or congressional appropriations. The FDIC Board ensures that the FDIC has the capacity and capability to support its operational independence and fulfill its mandate. The operations of the FDIC acting in its corporate capacity (including that of deposit insurer) are generally funded by the DIF, which is funded through regular assessments on banks. The operations of the FDIC as receiver of failed banks are funded by the assets of the failed institution and, if necessary, the DIF.<sup>44</sup>

#### **Essential Criterion 4**

**The deposit insurer is well-governed and subject to sound governance practices, including appropriate accountability, internal controls, transparency and disclosure regimes. The institutional structure of the deposit insurer minimizes the potential for real or perceived conflicts of interest.**

The FDIC complies with the Government Performance and Results Act of 1993, which requires federal agencies, in consultation with the U.S. Congress and outside stakeholders, to prepare a strategic plan covering a multiyear period and to submit an annual performance plan and performance report.<sup>45</sup> The performance plan and report are incorporated in the FDIC annual report, which is required to be made public. The FDIC also reports annually on regulatory and supervisory actions taken during the year. These requirements provide transparent measures of agency performance against statutory and stated performance targets. Moreover, federal agencies, including the FDIC, are subject to the Freedom of Information Act, which gives the public the right to access certain federal government records.<sup>46</sup> Finally, as discussed in the response to EC-2, the GAO, an independent, nonpartisan agency that works for Congress, may conduct periodic audits of the FDIC and the FDIC OIG conducts regular internal audits of the agency.

The FDIC requires that its agency heads and all staff maintain high professional standards and exhibit high integrity. Federal laws and regulations, including the Standards of Ethical Conduct for

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<sup>44</sup> FDI Act § 13(d), [12 U.S.C. § 1823\(d\)](#).

<sup>45</sup> [5 U.S.C. § 306](#); [31 U.S.C. § 1115](#).

<sup>46</sup> Freedom of Information Act, [5 U.S.C. § 552](#).

Employees of the Executive Branch and the Supplemental Standards of Ethical Conduct for Employees of the Federal Deposit Insurance Corporation, help to ensure these standards are met.<sup>47</sup> For example, FDIC employees are prohibited from acquiring, owning, or controlling stock in any FDIC-insured institution or holding company owning an FDIC-insured institution. Senior examination staffs of the FDIC generally are subject to a one-year post-employment cooling off period for entities they supervised.<sup>48</sup> Violators are subject to civil monetary penalties, can be removed from office, and can be prohibited from participating in the affairs of the supervised entity for up to five years.

Examiners also are prohibited from accepting loans or gratuities from banks they examine.<sup>49</sup> These standards are reinforced by a number of criminal statutes, including those prohibiting corruption, bribery, theft, and fraud by agency employees. Members of the FDIC Board of Directors are prohibited from holding any office, position, or employment in any bank or holding company that owns a bank during their time in office and for two years after they leave office, subject to certain exceptions.<sup>50</sup>

## Essential Criterion 5

**The deposit insurer operates in a transparent and responsible manner. It discloses and publishes appropriate information for stakeholders on a regular basis.**

The FDIC has instituted a *'Trust through Transparency'* initiative to foster a deeper culture of openness with stakeholders. The initiative unites each business area across the FDIC behind the goals of being accessible, understandable, and responsive. A key feature of the initiative is the publication of performance metrics, such as turnaround times for examinations and bank charter applications, call center usage and response times, and data on the status of supervisory and assessment appeals.

The FDIC continues to provide information and resources to promote better understanding of the way it does business, including, as discussed in the response to EC-4, preparation of a multiyear strategic plan, an annual performance plan, and a performance report, which are incorporated into the FDIC annual reports and

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<sup>47</sup> 5 C.F.R. §§ [2635](#), [3201](#).

<sup>48</sup> See for example FDI Act § 10(k), [12 U.S.C. § 1820\(k\)](#).

<sup>49</sup> [18 U.S.C. § 213](#).

<sup>50</sup> FDI Act, § 2, [12 U.S.C. § 1812](#).

made public. The FDIC also reports annually on regulatory and supervisory actions taken during the year. Together, these reports provide responsible and transparent measures of agency performance against statutory and stated performance targets. The FDIC holds Board meetings that are open to the public and the FDIC has placed much information about FDIC operations on its website. The FDIC also communicates regularly with its stakeholders and the public through a variety of means, including conferences, bankers' meetings, press releases, policy statements, guidance, and frequently asked questions. Finally, federal agencies, including the FDIC, are subject to the Freedom of Information Act, which gives the public the right to access certain federal government records.

## Essential Criterion 6

### **The governing statutes or other relevant laws and policies governing the deposit insurer specify that:**

- (a) the governing body and management are “fit and proper” persons;**
- (b) members of the governing body and the head(s) of the deposit insurer (with the exception of ex officio appointees) is/are subject to fixed terms and the fixed terms are staggered;**
- (c) there is a transparent process for the appointment and removal of the members of the governing body and head(s) of the deposit insurer. Members of the governing body and head(s) of the deposit insurer can be removed from office during their term only for reasons specified or defined in law, internal statutes, or rules of professional conduct, and not without cause; and**
- (d) members of the governing body and employees are subject to high ethical standards and comprehensive codes of conduct to minimize the potential for real or perceived conflicts of interest.**

The FDIC is managed by a five-member Board of Directors, all of whom are appointed by the President and confirmed by the Senate. No more than three members may be from the same political party. One Board member is the Comptroller of the Currency and one is the Director of the CFPB. The three remaining Directors are appointed from among individuals who are citizens of the United States and serve for a fixed term of six years, although one of the appointed members is designated by the President to serve as Chairman for a five-year term. One appointed Director must have state bank supervisory experience. There is no expectation that the appointed

FDIC Directors, including the Chairman, will resign at the conclusion of the term of the President who appointed them.<sup>51</sup>

As discussed in the response to EC-4, the FDIC requires that its agency heads and all staff maintain high professional standards and exhibit high integrity. FDIC employees are subject to both the Standards of Ethical Conduct for Employees of the Executive Branch and the Supplemental Standards of Ethical Conduct for Employees of the Federal Deposit Insurance Corporation. Additionally FDIC Board of Directors are subject to restrictions during and after service.<sup>52</sup> While serving, no Board member can be employed by or hold stock in an insured institution or holding company that owns an insured institution.<sup>53</sup>

**Essential Criterion 7**

**The deposit insurer is regularly assessed on the extent to which it meets its mandate, and the deposit insurer is subject to regular internal and external audits.**

As discussed in the response to EC-2, the FDIC is primarily accountable to the U.S. Congress. The FDIC is also subject to periodic audit by the GAO, an independent, nonpartisan agency that works for Congress. The FDIC OIG conducts regular internal audits of the agency.

**Essential Criterion 8**

**The composition of the governing body minimizes the potential for real or perceived conflicts of interest. In order to maintain operational independence, representatives of the other financial safety-net organizations that participate in the governing body do not serve as Chair or constitute a majority.**

As discussed in the response to EC-6, the FDIC is managed by a five-member Board of Directors appointed by the President and confirmed by the Senate. No more than three members shall be of the same political party. One Board member is the Comptroller of the Currency and one is the Director of the CFPB, neither of whom may serve as Chairman. One of the three remaining appointed Directors is designated by the President as Chairman for a five-year term. No Board member can be employed by or hold stock in an insured institution or holding company that owns an insured institution during their service.<sup>54</sup>

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<sup>51</sup> FDI Act § 2, [12 U.S.C. § 1812](#).

<sup>52</sup> FDI Act § 2, [12 U.S.C. § 1812](#); 5 C.F.R. §§ [2635](#), [3201](#).

<sup>53</sup> FDI Act § 2(e), [12 U.S.C. § 1812\(e\)](#).

<sup>54</sup> FDI Act § 2(e), [12 U.S.C. § 1812\(e\)](#).

**Essential Criterion 9**

**The governing body holds regular meetings to oversee and manage the affairs of the deposit insurer (e.g. on a quarterly basis and more frequently as deemed necessary).**

The FDIC Board of Directors meets regularly in both open and closed sessions. These meetings typically take place monthly, or as necessary to manage the FDIC's affairs.

## **PRINCIPLE 4                      RELATIONSHIPS WITH OTHER SAFETY-NET PARTICIPANTS**

**In order to protect depositors and contribute to financial stability, there should be a formal and comprehensive framework in place for the close coordination of activities and information sharing, on an ongoing basis, between the deposit insurer and other financial safety-net participants.**

**Essential Criterion 1                      Ongoing information sharing and the coordination of actions is explicit and formalized through legislation, regulation, memoranda of understanding, legal agreements or a combination thereof.**

U.S. banking regulators have established a formal and comprehensive framework that ensures effective information sharing and close and routine coordination. Information sharing and inter-agency coordination is routine, explicit, formalized through a long history of practices governed by interagency agreements, and supported by statutory powers.

The federal banking agencies 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.<sup>55</sup> The five supervisory agencies that comprise the FFIEC (the OCC, the FDIC, the Federal Reserve, the CFPB, and the NCUA), in addition to the Securities and Exchange Commission, the Federal Trade Commission, and the Commodity Futures Trading Commission, 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.<sup>56</sup> In addition to interagency cooperation agreements with other federal and foreign bank authorities, the FDIC maintains agreements with each of the state banking regulatory agencies.<sup>57</sup> These agreements govern information sharing and alternate examination programs for state-chartered institutions that are not members of the Federal Reserve.

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<sup>55</sup> FDI Act, 12 U.S.C. § 1817(a)(2)(C).

<sup>56</sup> See 12 U.S.C. § 3303(a). 12 U.S.C. § 3412(e).

<sup>57</sup> The agreements with state banking regulatory agencies are maintained by the Internal Review and Control Section of the Division of Risk Management and Supervision of the FDIC.



## Essential Criterion 2

**Rules regarding confidentiality of information apply to all safety net participants and the exchange of information among them. Confidentiality of information is protected by law or through agreements so as not to prevent information sharing within the safety net.**

There are no impediments to information sharing between the FDIC and relevant safety-net participants and the confidentiality of privileged information is well-guarded.

The U.S. federal banking agencies have broad statutory powers that allow them to share information with other domestic and foreign banking authorities.<sup>58</sup> The importance and necessity of maintaining the confidentiality of the information are highlighted in several statutory and regulatory provisions, as is the requirement that the information be used for lawful supervisory purposes.<sup>59</sup>

Federal banking agencies and the CFPB, in any capacity, are allowed to share information without waiving privilege. Each of the U.S. federal banking agencies has promulgated rules and policies implementing the civil and criminal statutes relating to the treatment of confidential supervisory and bank information.<sup>60</sup>

The confidentiality of sensitive bank information is protected by law and in practice. Unless authorized by law, it is a crime for an employee of the U.S. government to divulge, disclose, or make known in any manner trade secrets or other confidential business information collected in the course of employment or official duties.<sup>61</sup>

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.<sup>62</sup> In addition, each agency's regulations, which have the force of law, require confidential treatment of a broad range of non-public information.

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<sup>58</sup> See for example FDI Act § 7(a)(2)(A), (C), [12 U.S.C. § 1817\(a\)\(2\)\(A\), \(C\)](#) (sharing with FDIC, a state or federal agency with supervisory or regulatory authority over the bank or other entity, or any appropriate person). See also International Banking Act of 1978 § 15(a), [12 U.S.C. § 3109\(a\)](#).

<sup>59</sup> FDI Act § 11(t), [12 U.S.C. 1821\(t\)](#).

<sup>60</sup> 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).

<sup>61</sup> 18 U.S.C. § 1905.

<sup>62</sup> 18 U.S.C. § 1905.

### Essential Criterion 3

#### **Safety-net participants exchange information on an ongoing basis, and in particular when material supervisory actions are being taken in respect of member banks.**

Domestically, the U.S. federal banking agencies collaborate and share information with each other, including in matters involving routine prudential supervision and in the event material supervisory actions have been considered.<sup>63</sup>

Information sharing between safety-net participants occurs throughout the life cycle of a bank. Coordination typically begins at the formation of a banking group, authorization of a new activity, or changes in a banking group's structure where the primary federal (or state) banking authority considers applications to obtain a bank or savings association charter or license. Information sharing continues throughout normal supervisory activities, where examination findings are shared between the agencies, as appropriate, and agencies refer suspected criminal violations to law enforcement authorities. Additionally, interagency collaboration and coordination occurs in crisis situations, including when material supervisory actions are taken.

Monthly interagency meetings are held among the FDIC and the other federal banking agencies to discuss problem banks. Quarterly, the Financial Risk Committee, an interagency group composed of the FDIC and other federal banking agencies, meets to exchange information on banks at risk of failing.

Information exchange is reciprocal. The Federal Reserve, for example, as prudential supervisor for holding companies, provides information to other bank regulatory agencies and functional regulators regarding the financial condition, risk-management policies, and operations of regulated holding companies that may have a material impact on an individual regulated subsidiary. Other bank regulatory agencies make information about bank subsidiaries of holding companies available to the Federal Reserve and to each other. The U.S. federal banking agencies exchange information with functional regulators, such as the Securities and Exchange Commission and the Commodity Futures Trading Commission, related to securities companies that are part of a banking group or a financial conglomerate that includes a bank.

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<sup>63</sup> International information sharing and coordination is discussed under CP-5.

#### Essential Criterion 4

**In situations where there are multiple deposit insurers operating in the same national jurisdiction, appropriate information sharing and coordination arrangements among those deposit insurers are in place.**

The FDIC is the sole federal insurer of bank deposits in the United States.<sup>64</sup> In the state of Massachusetts, two private insurance funds provide coverage for deposits in excess of the FDIC deposit insurance limit.<sup>65</sup> These programs do not affect the FDIC's deposit insurance regulations or coverage. FDIC has agreements with the private insurers that facilitate the determination of the amount of excess deposits and the payment of insurance by the private insurers.

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<sup>64</sup> A separate authority—the National Credit Union Administration—charters, regulates, insures, and resolves federally insured credit unions. It is also an independent federal agency.

<sup>65</sup> For more information about the two insurance funds in Massachusetts, see <http://www.coopcentralbank.com/> and <https://www.difxs.com/dif/home.aspx>.

## **PRINCIPLE 5                      CROSS-BORDER ISSUES**

**Where there is a material presence of foreign banks in a jurisdiction, formal information sharing and coordination arrangements should be in place among deposit insurers in relevant jurisdictions.**

**Essential Criterion 1                      Where there is a material presence of foreign banks (i.e. foreign bank subsidiaries or branches), formal information sharing and coordination arrangements are in place among relevant deposit insurers and relevant safety net participants, subject to confidentiality provisions.**

The U.S. federal banking agencies have broad authority to share information with foreign banking authorities and formal information sharing and coordination arrangements in place to facilitate sharing and coordination.<sup>66</sup>

The FDIC is a party to a number of Memoranda of Understanding, Statements of Cooperation, and other agreements establishing frameworks for cooperation and the exchange of information with foreign authorities. These agreements contain a number of provisions governing confidentiality. These provisions generally cover information sharing to the extent reasonable, subject to relevant statutes or regulations; grounds for denial; restricting use to lawful supervisory purposes; holding information confidential; requesting prior consent before sharing with third parties; disclosures required by statute or legal process; and consenting to onward sharing with stated authorities pursuant to lawful supervisory responsibilities.

In addition, the FDIC and other relevant federal banking agencies participate as host authorities in crisis management groups (CMGs) for certain foreign banking organizations.

**Essential Criterion 2                      In circumstances where a deposit insurer is responsible for coverage of deposits in a foreign jurisdiction, or where more than one deposit insurer is responsible for coverage in a jurisdiction, bilateral or multilateral agreements exist to determine which deposit insurer(s) is/are responsible for the reimbursement process, setting levies and premiums, and public awareness.**

As discussed in the response to CP-14, EC-7, the FDIC is generally not responsible for insuring deposits in foreign jurisdictions.

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<sup>66</sup> International Banking Act of 1978, § 15(a), 12 U.S.C. § 3109(a).

**PRINCIPLE 6                      DEPOSIT INSURER’S ROLE IN CONTINGENCY PLANNING  
AND CRISIS MANAGEMENT**

**The deposit insurer should have in place effective contingency planning and crisis management policies and procedures, to ensure that it is able to effectively respond to the risk of, and actual, bank failures and other events. The development of system-wide crisis preparedness strategies and management policies should be the joint responsibility of all safety-net participants. The deposit insurer should be a member of any institutional framework for ongoing communication and coordination involving financial safety-net participants related to system-wide crisis preparedness and management.**

**Essential Criterion 1                      The deposit insurer has its own effective contingency planning and crisis management policies and procedures in place, to ensure that it is able to effectively respond to the risk of, and actual, bank failures and other events.**

The FDIC has effective contingency planning and crisis management policies and procedures in place that allow it to effectively respond to the risk of bank failure, actual bank failures, and other events. The FDIC’s ability to deal with bank failures is demonstrated through its 85 years of experience in the resolution of thousands of banks, including during periods when elevated numbers of bank failures constituted a system-wide crisis. For example, from 2008 to 2013, 489 banks failed and were successfully resolved by the FDIC.

In connection with this contingency planning and crisis preparedness, the FDIC requires certain banks to submit plans that should enable the FDIC to:

- resolve the institution in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution’s failure (two business days if the failure occurs on a day other than Friday)
- maximize the net present value return from the sale or disposition of its assets
- minimize the amount of any loss realized by the creditors in the resolution.<sup>67</sup>

In addition, the Large-Bank Deposit Insurance Determination Modernization Rule—which applies to banks with at least \$2 billion in deposits and at least either (1) 250,000 deposit accounts or (2) \$20 billion in total assets, regardless of the number of deposit accounts—requires these banks to have in place practices and

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<sup>67</sup> [12 C.F.R. § 360.10](#).

procedures to provide the FDIC at the end of any business day with depositor and customer data for all deposit accounts held in domestic and foreign offices and interest-bearing investment accounts connected with sweep and automated credit arrangements.<sup>68</sup>

For severely distressed institutions for which failure appears imminent, the FDIC develops institution-specific strategies for potential resolution of the failed bank under the FDI Act. In advance of the failure, FDIC personnel establish an on-site presence in the failing institution and begin gathering information and analyzing the institution's financial and operational structure in preparation for the potential closing. Through this review, FDIC staff determines the optimal type of resolution transaction and, in most cases, begins the process of confidentially marketing the institution to potential acquirers. The entire resolution process, including the closing event, generally takes 90 days or less, not including post-closing activities. These processes are more fully explained in the *Resolutions Handbook*.<sup>69</sup> Refer to CP-14 for additional information about FDIC processes for resolving failed banks.

The FDIC also could be called upon to resolve other types of institutions under Title II of the Dodd-Frank Act if their failure could threaten U.S. financial stability. In the years since enactment of the Dodd-Frank Act, the FDIC has made significant progress in developing the operational capabilities to carry out a resolution if needed and has undertaken institution-specific strategic planning.

## Essential Criterion 2

### **The deposit insurer develops and regularly tests its own contingency planning and crisis management plans.**

The FDIC regularly tests its contingency planning in a variety of ways to ensure that procedures and systems are effective. The most effective method of testing is actually resolving failed banks under the FDI Act. Other methods include exercises to evaluate the effectiveness of existing procedures and systems. The FDIC's extensive experience with resolution of failed banks has provided the opportunity for testing of its resolution processes. As noted in CP-6, EC-1, the FDIC resolved 489 banks between 2008 and 2013. The resolution of these failed banks, many of which occurred simultaneously, tested many of the components of the FDIC's contingency and crisis management plans.

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<sup>68</sup> [12 C.F.R. § 360.9](#).

<sup>69</sup> See for example FDIC, [Resolutions Handbook](#), Chapter 3.

Aside from actual resolutions, the FDIC employs scenario planning and tabletop exercises to test resolution processes. For institutions whose resolution would be conducted under the FDI Act, the FDIC conducts liquidity crisis simulations involving closure of banks with assets of \$5 billion to \$50 billion, and holds planning sessions for setting up and running bridge banks. The FDIC also regularly tests covered banks' implementation of the requirements of the Large-Bank Deposit Insurance Determination Modernization Rule, discussed in the response to CP-6, EC-1 above.

### **Essential Criterion 3**

**The deposit insurer is a member of any institutional framework for ongoing communication and coordination involving safety-net participants related to system-wide crisis preparedness and management.**

The FDIC is a member of the FFIEC, an interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions.<sup>70</sup> The FDIC Chairman is a voting member of the FSOC, established in 2010 by the Dodd-Frank Act, which is responsible for identifying risks to the financial stability of the United States, promoting market discipline, and responding to emerging risks to the stability of the U.S. financial system. To achieve this mission, the FSOC is involved in facilitating coordination and information sharing among financial regulators.<sup>71</sup>

The FSOC also advises Congress and makes recommendations in such areas that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets; facilitate information sharing and coordination among the member agencies and other federal and state agencies; and identify gaps in regulation that could pose risks to the financial stability of the United States. The FSOC must annually report to and testify before Congress on, among other things, significant financial market and regulatory developments and potential threats to U.S. financial stability.<sup>72</sup>

### **Essential Criterion 4**

**The deposit insurer participates in regular contingency planning and simulation exercises related to system-wide crisis preparedness and management involving all safety net participants.**

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<sup>70</sup> For information about the FFIEC's structure, purpose, and ongoing activities see <https://www.ffiec.gov/about.htm>.

<sup>71</sup> More information about the FSOC is available at <https://www.treasury.gov/initiatives/fsoc/Pages/home.aspx>.

<sup>72</sup> See Dodd-Frank Act § 112(a)(2), [12 U.S.C. § 5322\(a\)\(2\)](#).

The FDIC participates in regular contingency planning and simulation exercises related to system-wide crisis preparedness and management. The FDIC, as deposit insurer and receiver and conservator for IDIs, participates in monthly interagency meetings with banking supervisors to discuss troubled banks. In addition, the FDIC meets frequently with both state and federal chartering authorities to discuss resolution processes and to ensure appropriate contacts are maintained.

Given the size of the U.S. banking sector, it is possible that a system-wide crisis may also involve the exercise of the FDIC's authority as resolution authority for financial companies under Title II of the Dodd-Frank Act. In this regard, the FDIC collaborates with other relevant authorities to discuss processes and ensure mechanisms for coordination during times of crisis are in place.

## Essential Criterion 5

**The deposit insurer participates in the development of pre- and post-crisis management communication plans involving all safety-net participants, to ensure comprehensive and consistent public awareness and communications.**

Given the FDIC's long history of resolving failed banks, the FDIC Office of Communications (OCOM) has developed standardized practices for providing information to the public upon placement of an institution into resolution under the FDI Act. For every bank failure, including during crisis situations, the FDIC executes a comprehensive public communications strategy.<sup>73</sup> This includes issuing press releases, use of social media, providing detailed information and frequently asked questions on the FDIC website (<http://www.fdic.gov/>), and establishing a customer service hotline.

In crisis situations, FDIC has used other tools, including:

- press conferences
- public service announcements
- television, radio, and print advertisements
- video news releases.

In crisis periods, the FDIC engages with other safety-net participants to develop press releases and participates in briefings to inform the public about actions to address the crisis. More detailed information regarding communication strategies is in the response to CP-10.

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<sup>73</sup> The FSOC would also coordinate communication strategies among the federal banking agencies during a widespread financial crisis. There have been no systemic crises since the creation of the FSOC in 2010.



## PRINCIPLE 7                      MEMBERSHIP

**Membership in a deposit insurance system should be compulsory for all banks.**

**Essential Criterion 1                      Membership in a deposit insurance system is compulsory for all banks, including state-owned banks (with or without explicit guarantees), and all banks are subject to sound prudential regulation and supervision.**

State and federal agencies that charter banks condition approval of a new bank on receiving deposit insurance coverage. Often, chartering authorities and the FDIC will conduct joint reviews of related chartering and deposit insurance applications.

**Essential Criterion 2                      If, upon entry to a newly established deposit insurance system, a bank does not comply with all the supervisory or membership requirements and is allowed entry into the system, it is required to have a credible plan to address any deficiencies within a prescribed time frame (e.g. one year).**

This EC is not applicable because there is no newly established deposit insurance system.

**Essential Criterion 3                      The conditions, process, and time frame for attaining membership are explicitly stated and transparent.**

The conditions for attaining membership in the deposit insurance system are explicitly stated in federal law.<sup>74</sup> The FDIC website provides several resources that detail the conditions, process, and time frame for attaining membership, including a handbook that organizers of new banks can consult on the deposit insurance application process.<sup>75</sup>

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<sup>74</sup> FDI Act § 6, [12 U.S.C. § 1816](https://www.fdic.gov/regulations/applications/depositinsurance/). Factors to be considered by the FDIC in authorizing deposit insurance coverage are:

- (1) the financial history and condition of the depository institution
- (2) the adequacy of the depository institution's capital structure
- (3) the future earnings prospects of the depository institution
- (4) the general character and fitness of the management of the depository institution
- (5) the risk presented by such depository institution to the DIF
- (6) the convenience and needs of the community to be served by such depository institution
- (7) whether the depository institution's corporate powers are consistent with the purposes of the FDI Act.

<sup>75</sup> See <https://www.fdic.gov/regulations/applications/depositinsurance/> and the Deposit Insurance Applications Procedures Manual, <https://www.fdic.gov/regulations/applications/depositinsurance/procmanual.pdf>.

#### Essential Criterion 4

**If the deposit insurer is not responsible for granting membership in the deposit insurance system, the law or administrative procedures describe a clear and reasonable time frame within which the deposit insurer is consulted or informed in advance, and is given sufficient information about an application for a new license.**

The FDIC grants membership in the deposit insurance system.<sup>76</sup>

#### Essential Criterion 5

**When membership is cancelled upon the revocation or surrender of a bank's license, immediate notice is given to depositors to inform them that existing deposits will continue to be insured up to a specified deadline.**

When a bank's charter is revoked or surrendered and deposit insurance is terminated either voluntarily or involuntarily, the FDI Act and FDIC regulations provide for notice to depositors and the public. The FDI Act establishes statutory requirements for the voluntary termination of insurance by a bank without its deposit liabilities being assumed by another institution.<sup>77</sup> FDIC regulations provide for prior written notice to depositors, subject to prior approval of the FDIC.<sup>78</sup> These regulations also incorporate a form of notice to depositors, which includes an explicit reference to the effective date of termination of FDIC insurance.<sup>79</sup>

Upon closure of the financial institution, it is the policy of the FDIC to publish and to mail proper notices to creditors and depositors advising how they may receive payment of their insured deposit accounts and the process of claiming their remaining balances under federal law and regulations.<sup>80</sup>

#### Essential Criterion 6

**When membership is terminated by the deposit insurer, arrangements are in place to coordinate the immediate withdrawal of the bank's deposit-taking license by the relevant authority. Upon termination, immediate notice is given to depositors to inform them that existing deposits will continue to be covered up to a specified deadline.**

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<sup>76</sup> FDI Act § 5, [12 U.S.C. § 1815](#).

<sup>77</sup> FDI Act § 8(a)(1), [12 U.S.C. § 1818\(a\)\(1\)](#) (voluntary termination of insurance); FDI Act § 8(p), [12 U.S.C. § 1818\(p\)](#) (institution that is not in the business of receiving deposits).

<sup>78</sup> [12 C.F.R. § 307.3\(a\)-\(b\)](#).

<sup>79</sup> [12 C.F.R. § 307.3\(c\)](#); [12 C.F.R. § 307, App. B](#).

<sup>80</sup> See CP-10, EC-2 for more information on depositor notification in the event of a bank failure.

Arrangements are in place to coordinate the termination of deposit insurance, the withdrawal of a bank's charter, and the notice to depositors. In some instances, the FDIC can terminate deposit insurance before the chartering agency revokes a bank's charter.<sup>81</sup> These actions are rare. The FDIC also is required to provide timely notice to the institution of its intention to terminate insurance.<sup>82</sup> The FDIC may publish notice of termination and the depository institution must give prompt notice to each of its depositors and publish notice in a newspaper of general circulation.<sup>83</sup> After involuntary termination of insured status, deposits of each depositor on the date of termination continue to be insured for a period of six months to two years, depending on the type of deposit.<sup>84</sup>

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<sup>81</sup> FDI Act § 8(a), (w), [12 U.S.C. § 1818\(a\)\(2\), \(w\)](#).

<sup>82</sup> FDI Act § 8(a)(2)(B), [12 U.S.C. §§ 1818\(a\)\(2\)\(B\)](#).

<sup>83</sup> FDI Act § 8(a)(6), [12 U.S.C. §§ 1818\(a\)\(6\)](#); [12 C.F.R. § 308.123](#). See discussion of notice to depositors under EC-5.

<sup>84</sup> FDI Act § 8(a)(7), [12 U.S.C. §§ 1818\(a\)\(7\)](#).

## PRINCIPLE 8            COVERAGE

**Policymakers should define clearly the level and scope of deposit coverage. Coverage should be limited, credible, and cover the large majority of depositors but leave a substantial amount of deposits exposed to market discipline. Deposit insurance coverage should be consistent with the deposit insurance system’s public policy objectives and related design features.**

**Essential Criterion 1            Insured deposits are clearly and publicly defined in law or regulation and reflect the public policy objectives. This definition includes the level and scope of coverage. If certain types of deposits and depositors are ineligible for deposit protection, they are clearly specified, easily determined and do not affect the speed of reimbursement.**

Insured deposits are clearly and publicly defined in laws and regulations and reflect the public policy objectives. Deposits that are ineligible for deposit protection are clearly specified and easily determined. The standard deposit insurance coverage limit is \$250,000 per depositor, per institution, for each account ownership category.<sup>85</sup>

Statute or regulation defines ownership categories, including single accounts, joint accounts, certain retirement accounts, revocable trust accounts, irrevocable trust accounts, business accounts, employee benefit plan accounts, mortgage servicing accounts, accounts held by a depository institution as trustee of an irrevocable trust, annuity contract accounts, public bond accounts, custodian accounts for Native Americans, government accounts, and accounts deposited by a bank pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy.<sup>86</sup>

**Essential Criterion 2            The level and scope of coverage are limited and are designed to be credible, so as to minimize the risk of runs on banks and do not undermine market discipline. The level and scope of coverage are set so that the large majority of depositors across banks are fully protected while leaving a substantial proportion of the value of deposits unprotected. In the event that a substantial proportion of the value of deposits is**

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<sup>85</sup> FDI Act § 11(a), [12 U.S.C. § 1821\(a\)](#); [12 C.F.R. § 330](#).

<sup>86</sup> FDI Act §§ 7(i)(3), 11(a), 12 U.S.C. §§ [1817\(i\)\(3\)](#), [1821\(a\)](#); [12 C.F.R. § 330](#) and FDIC, “Financial Institution Employee’s Guide to Deposit Insurance,” 25, <https://www.fdic.gov/deposit/diguidebankers/documents/financial-institution-employees-guide-to-deposit-insurance.pdf>.

**protected, moral hazard is mitigated by strong regulation and supervision, as well as by the other design features of the deposit insurance system**

Statute and regulation limit the level and scope of coverage to provide appropriate levels of protection without creating moral hazard or undermining market discipline. The level and scope of coverage are set to fully protect the large majority of depositors, while leaving a substantial proportion of the value of deposits unprotected. As of December 31, 2018, the value of total deposits in domestic offices was \$12.61 trillion and the value of total FDIC-insured deposits was \$7.53 trillion, or 59.7 percent of total domestic deposits.<sup>87</sup>

**Essential Criterion 3**

**The deposit insurer applies the level and scope of coverage equally to all its member banks.**

The FDIC applies the level and scope of coverage (as discussed in the responses to EC-1 and EC-2 above) equally to all member banks.

**Essential Criterion 4**

**The deposit insurer does not incorporate co-insurance.**

The FDIC does not incorporate co-insurance.

**Essential Criterion 5**

**The level and scope of coverage are reviewed periodically (e.g. at least every five years) to ensure that it meets the public policy objectives of the deposit insurance system.**

The FDIC reviews the level and scope of coverage every five years to ensure that they meet the public policy objectives of the deposit insurance system and to ensure parity between insured banks and insured credit unions. The Board of Directors of the FDIC and the Board of Directors of the National Credit Union Administration jointly consider the factors set forth under the law. If they determine that an inflation adjustment is appropriate, they jointly prescribe the amount by which the standard maximum deposit insurance amount should be increased.<sup>88</sup>

**Essential Criterion 6**

**In the event of, or prior to, a merger or amalgamation of separate banks that are members of the same deposit insurance system, depositors of the merged or amalgamated banks enjoy**

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<sup>87</sup> FDIC, *Quarterly Banking Profile*, Fourth Quarter 2018, <https://www.fdic.gov/bank/analytical/qbp/2018dec/qbp.pdf>.

<sup>88</sup> FDI Act § 11(a)(1)(F)(i), [12 U.S.C. § 1821\(a\)\(1\)\(F\)\(i\)](#); Federal Credit Union Act § 207(k), [12 U.S.C. § 1787\(k\)](#).

**separate coverage (up to the maximum coverage limit) for each of the banks for a limited but publicly stated period, as defined in law or regulation. Merging banks must be held responsible for notifying the affected depositors, including informing them of the date on which the separate coverage will expire.**

The separate insurance of deposits that are assumed in a merger continues for six months from the date the merger takes effect or, in the case of a time deposit, the earliest maturity date after the six-month period.<sup>89</sup> In the case of time deposits which mature within six months of the date that the deposits are assumed, and which are renewed at the same dollar amount, and for the same term as the original deposit, the separate insurance applies to the renewed deposits until the first maturity date after the six-month period. Time deposits that mature within six months of the deposit assumption and that are renewed on any other basis, or those that are not renewed and thereby become demand deposits, are separately insured only until the end of the six-month period.

The FDIC provides online and printed brochures that explain deposit insurance coverage. The FDIC provides the brochures for free to any member bank or depositor. Banks also distribute FDIC brochures to the public. One brochure explains the separate deposit insurance coverage that applies after two banks merge, and states that depositors need to restructure their accounts to maintain full insurance coverage.<sup>90</sup>

See CP-10, EC-1 for discussion of the FDIC's public awareness efforts.

#### **Essential Criterion 7**

**The residency status or nationality of depositors has no effect on coverage.**

U.S. laws and regulations do not limit the availability of deposit insurance to citizens and residents of the United States.<sup>91</sup> All deposits in banks located within the United States and its territories are covered by deposit insurance up to the specified limits.

#### **Essential Criterion 8**

**In situations where there are multiple deposit insurers operating in the same national jurisdiction, any differences in coverage across banks operating within that jurisdiction do not**

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<sup>89</sup> FDI Act § 1, [12 U.S.C. § 1811](#); [12 C.F.R. § 330.4](#).

<sup>90</sup> FDIC, "Your Insured Deposits," 24, <https://www.fdic.gov/deposit/deposits/brochures/your-insured-deposits-english.pdf>.

<sup>91</sup> FDI Act § 1, [12 U.S.C. 1811](#); [12 C.F.R. § 330.3](#).

**adversely affect overall deposit insurance system effectiveness and financial stability.**

The FDIC is the only federal insurer of bank deposits operating in the United States. See CP-4, EC-4, in which the two private deposit insurers in Massachusetts, which provide excess coverage, are discussed.

**Essential Criterion 9**

**Foreign currency deposits are insured if they are widely used in a jurisdiction.**

Deposits denominated in a foreign currency are insured.<sup>92</sup> Deposit insurance for such deposits shall be determined and paid in the amount of U.S. dollars equal in value to the amount of the deposit denominated in the foreign currency as of close of business on the date of default of the bank. The exchange rates to be used for such conversions are the “noon buying rates for cable transfers” quoted for major currencies by the Federal Reserve Bank of New York on the date of default of the bank, unless the deposit agreement specifies that some other widely recognized exchange rates are to be used. In that case the rates specified will be used for conversions.<sup>93</sup>

**Essential Criterion 10**

**In cases where there is a blanket guarantee in place, there is a credible plan to transition from the blanket guarantee to a limited coverage deposit insurance system. This includes:**

- (a) an assessment of the economic environment as it affects the financial system, which is conducted before a jurisdiction begins the transition from a blanket guarantee to limited coverage.**
- (b) the pace of the transition to limited coverage is consistent with the state of the financial industry, prudential regulation and supervision, the legal and judicial framework, and accounting and disclosure regimes.**
- (c) policymakers have effective communication strategies to mitigate adverse public reaction to the transition.**
- (d) where there is a high level of capital mobility, and/or a regional integration policy, the decision to lower coverage limits and/or scope considers the effects of different jurisdictions’ protection levels and related policies.**

No blanket guarantee is in place.

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<sup>92</sup> [12 C.F.R. § 330.3\(c\)](#).

<sup>93</sup> [12 C.F.R. § 330.3\(c\)](#).

## **PRINCIPLE 9                      SOURCES AND USES OF FUNDS**

**The deposit insurer should have readily available funds and all funding mechanisms necessary to ensure prompt reimbursement of depositors' claims, including assured liquidity funding arrangements. Responsibility for paying the cost of deposit insurance should be borne by banks.**

**Essential Criterion 1                      Funding for the deposit insurance system is provided on an ex ante basis. Funding arrangements are clearly defined and established in law or regulation.**

By law, the FDIC is required to maintain the DIF, which shall be used to carry out its insurance purposes.<sup>94</sup> As of March 31, 2019, the DIF balance was \$104.9 billion.

The DIF is funded primarily by assessment income, supplemented by investment returns on securities held by the DIF. Banks pay assessments based on the particular bank's risk to the DIF, including the probability that the institution will cause a loss to the DIF, and the likely amount of any loss.

When setting assessments, the FDI Act requires the FDIC to consider:

- the DIF's estimated operating expenses
- the DIF's estimated case resolution expenses and income
- the projected effects of the payment of assessments on the capital and earnings of banks
- risk factors and other factors taken into account under Section 7(b)(1) of the FDI Act when establishing the risk-based assessment system, including the requirement under that paragraph to maintain a risk-based system
- any other factors the FDIC Board of Directors may determine to be appropriate.<sup>95</sup>

FDIC regulations set forth the rules for the implementation of the risk-based assessment system.<sup>96</sup>

**Essential Criterion 2                      Funding the deposit insurance system is the responsibility of the member banks.**

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<sup>94</sup> FDI Act § 7(b)(3)(B), [12 U.S.C. § 1817\(b\)\(3\)\(B\)](#) and FDI Act § 11(a)(4)(A), [12 U.S.C. § 1821\(a\)\(4\)\(A\)](#).

<sup>95</sup> FDI Act § 7(b)(2)(B), [12 U.S.C. § 1817\(b\)\(2\)\(B\)](#).

<sup>96</sup> [12 C.F.R. Part 327](#).



The FDI Act requires that each bank pay assessments imposed under a risk-based assessment system established by the FDIC.<sup>97</sup> All amounts assessed against banks by the FDIC must be deposited into the DIF.<sup>98</sup>

### Essential Criterion 3

**Initial “start-up” or “seed” funding (e.g. from government or international donor organizations) is permitted to help establish a deposit insurer. Any start-up funding provided by a government should be fully repaid before the deposit insurer reduces any or all bank premiums.**

The Banking Act of 1933 established the FDIC with initial capital from the U.S. Treasury and the 12 Federal Reserve Banks.<sup>99</sup> All of the initial capital was repaid by 1948.<sup>100</sup>

### Essential Criterion 4

**Emergency funding arrangements for the deposit insurance system, including pre-arranged and assured sources of liquidity funding, are explicitly set out (or permitted) in law or regulation. Sources may include a funding agreement with the government, the central bank or market borrowing. If market borrowing is used it is not the sole source of funding. The arrangement for emergency liquidity funding is set up in advance, to ensure effective and timely access when required.**

The FDIC may borrow from the U.S. Treasury, banks, and Federal Home Loan Banks. The FDIC also has the authority to impose special assessments on banks.

The FDIC has the authority to borrow from the U.S. Treasury under two separate statutory provisions. First, with the Secretary of the Treasury’s approval, the FDIC may borrow up to \$100 billion on an interest-bearing basis from the U.S. Treasury.<sup>101</sup> This borrowing authority requires an agreement to be in effect between the Secretary of the Treasury and the FDIC which (a) provides a schedule for the repayment of the outstanding amount of any borrowing and (b) demonstrates that income to the FDIC from assessments will be sufficient to amortize the outstanding balance within the period established in the repayment schedule and pay

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<sup>97</sup> FDI Act § 7(c)(2), [12 U.S.C. § 1817\(c\)\(2\)](#).

<sup>98</sup> FDI Act § 11(a)(4), [12 U.S.C. § 1821\(a\)\(4\)](#).

<sup>99</sup> Banking Act of 1933, [Pub. L. 73-66, 48 Stat. 162, 168](#) (1933); FDIC, “[A Brief History of Deposit Insurance in the United States](#),” 28 (1998).

<sup>100</sup> “[A Brief History](#),” 59.

<sup>101</sup> FDI Act § 14(a), [12 U.S.C. § 1824\(a\)](#).

the interest accruing on such balance.<sup>102</sup> The Secretary of the Treasury and the FDIC are required to consult with the Financial Services Committee of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the terms of any repayment schedule agreement.<sup>103</sup> Second, the FDIC may borrow up to \$100 billion from the U.S. Treasury's Federal Financing Bank.<sup>104</sup>

The FDIC may also borrow from banks or, with concurrence of the Federal Housing Finance Agency, from a Federal Home Loan Bank.<sup>105</sup> Borrowing from banks or Federal Home Loan Banks, while available under statute, has not occurred. The FDIC's "maximum obligation limitation" limits the amount of obligations the DIF can incur to the total of the sum of its cash, 90 percent of the fair market value of other assets, and the amount authorized to be borrowed from the Treasury.<sup>106</sup>

In addition to these borrowing authorities, the FDIC has the authority under Section 7(b)(5) of the FDI Act to impose special assessments on banks if necessary to repay amounts borrowed from the Treasury as discussed above, to repay amounts borrowed from banks, or for any other purpose that the FDIC deems necessary.<sup>107</sup>

## Essential Criterion 5

### After establishing an ex ante deposit insurance fund:

- a) the target fund size is determined on the basis of clear, consistent and transparent criteria, which are subject to periodic review; and
- b) a reasonable time frame is set to achieve the target fund size.

Section 7 of the FDI Act requires the FDIC Board to annually establish and publish a designated reserve ratio.<sup>108</sup> The current designated reserve ratio is 2.0 percent.<sup>109</sup> In setting the designated

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<sup>102</sup> FDI Act § 14(c), [12 U.S.C. § 1824\(c\)](#).

<sup>103</sup> FDI Act § 14(c)(2)(A), [12 U.S.C. § 1824\(c\)\(2\)\(A\)](#).

<sup>104</sup> FDI Act § 14(b), [12 U.S.C. § 1824\(b\)](#). Under section 14(b) of the FDI Act, the FDIC is authorized to sell the Corporation's obligations, on behalf of the DIF, to the Federal Financing Bank. On December 15, 2006, the FDIC entered into a Note Purchase Agreement with the Federal Financing Bank that provides a contingency borrowing line of \$40 billion. The parties amended this agreement on September 16, 2008, to increase the borrowing line to \$100 billion. The agreement is extended on an annual basis and currently runs through September 30, 2019.

<sup>105</sup> FDI Act § 14(e), [12 U.S.C. § 1824\(e\)](#).

<sup>106</sup> FDI Act § 15(c)(5), [12 U.S.C. § 1825\(c\)\(5\)](#).

<sup>107</sup> FDI Act § 7(b)(5), [12 U.S.C. § 1817\(b\)\(5\)](#).

<sup>108</sup> FDI Act § 7(b)(3)(A), [12 U.S.C. § 1817\(b\)\(3\)\(A\)](#).

<sup>109</sup> [12 C.F.R. § 327.4\(g\)](#).

reserve ratio each year, the FDIC Board is required to:

- take into account the risk of losses to the DIF that year and future years, including historic experience and potential and estimated losses from banks
- take into account economic conditions generally affecting banks to allow the designated reserve ratio to increase during more favorable economic conditions and to decrease during less favorable economic conditions, notwithstanding the increased risks of loss that may exist during less favorable conditions, as determined to be appropriate by the FDIC Board
- seek to prevent sharp swings in the assessment rates for banks
- take into account other factors the FDIC Board may determine to be appropriate, consistent with these requirements.<sup>110</sup>

The FDIC Board's consideration of these criteria is described each year as part of the publication establishing the targeted or designated reserve ratio.<sup>111</sup> As of March 31, 2019, the DIF's actual reserve ratio was 1.36 percent. Section 7 of the FDI Act establishes requirements for a restoration plan when the reserve ratio of the DIF falls below 1.35 percent. The restoration plan is required to be completed within eight years of implementation, or longer if necessary if there are extraordinary circumstances.<sup>112</sup>

## Essential Criterion 6

**The deposit insurer has responsibility for the sound investment and management of its funds. The deposit insurer has a defined investment policy for its funds that aims at ensuring:**

- a) the preservation of fund capital and maintenance of liquidity; and**
- b) that adequate risk management policies and procedures, internal controls, and disclosure and reporting systems are in place.**

The FDIC's Corporate Investment Policy defines how the FDIC invests funds in the DIF. The policy outlines the legal basis for the Corporate Investment Program, investment objectives and guidelines, and reporting requirements.<sup>113</sup> The policy is consistent with Section 13(a) of the FDI Act, which requires that the DIF funds

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<sup>110</sup> FDI Act § 7(b)(3)(C), [12 U.S.C. § 1817\(b\)\(3\)\(C\)](#).

<sup>111</sup> For example, see Notice of Designated Reserve Ratio for 2019, [84 Fed. Reg. 716](#), January 31, 2019.

<sup>112</sup> FDI Act § 7(b)(3)(E), [12 U.S.C. § 187\(b\)\(3\)\(E\)](#).

<sup>113</sup> FDIC, FDIC Annual Report (2018), p 100,

<https://www.fdic.gov/about/strategic/report/2018annualreport/2018ar-final.pdf>.

be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.<sup>114</sup> The Secretary of the Treasury must approve all such investments in excess of \$100,000 and has granted the FDIC approval to invest the DIF funds only in U.S. Treasury obligations that are purchased or sold exclusively through the Treasury's Bureau of the Fiscal Service's Government Account Series program.<sup>115</sup>

#### **Essential Criterion 7**

**The deposit insurer may hold funds in the central bank. The deposit insurer establishes and complies with rules to limit significant investments in banks.**

Under Section 13(b) of the FDI Act, the depository accounts of the FDIC must be kept with the U.S. Treasury or, with the approval of the Secretary of the Treasury, with a Federal Reserve Bank or a depository institution designated as a depository or fiscal agent of the United States. The Secretary of the Treasury has the authority to waive this requirement. The FDIC may also temporarily hold up to \$50,000 in depository accounts at any one bank, and may establish or maintain depository accounts at a bank to facilitate the paying of insured deposits, or making loans to, or purchasing of assets of, a bank.<sup>116</sup>

#### **Essential Criterion 8**

**Where the deposit insurer is not the resolution authority, it has the option within its legal framework to authorize the use of its funds for resolution of member institutions other than liquidation. In such situations the following conditions are met:**

- (a) the deposit insurer is informed and involved in the resolution decision-making process;**
- (b) the use of the deposit insurer's funds is transparent and documented, and is clearly and formally specified;**
- (c) where a bank is resolved through a resolution process other than liquidation, the resolution results in a viable, solvent and restructured bank, which limits the exposure of the deposit insurer to contribute additional funding in respect of the same obligation;**
- (d) contributions are restricted to the costs the deposit insurer would otherwise have incurred in a payout of insured depositors in a liquidation net of expected recoveries;**
- (e) contributions are not used for the recapitalization of resolved institutions unless shareholders' interests are reduced to**

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<sup>114</sup> FDI Act § 13(a)(1), [12 U.S.C. § 1823\(a\)\(1\)](#).

<sup>115</sup> FDI Act § 13(a)(2), [12 U.S.C. § 1823\(a\)\(2\)](#).

<sup>116</sup> FDI Act § 13(b), [12 U.S.C. § 1823\(b\)](#).

- zero and uninsured, unsecured creditors are subject to parri passu losses in accordance with the legal claim priority;
- (f) the use of the deposit insurer’s funds is subject to an independent audit and the results reported back to the deposit insurer; and**
- (g) all resolution actions and decisions using the deposit insurer’s funds are subject to ex post review.**

FDIC is the resolution authority for all IDIs.

**Essential Criterion 9**

**Should deposit insurer income/revenue (e.g. premiums received, recoveries from failed banks and interest accrued on investment funds) be taxed by the government, it is at a rate which is neither punitive nor disproportionate to other corporate taxation, nor unduly hinders the accumulation of the deposit insurance fund. Any remittances to the government by the deposit insurer are limited to repayment of government-provided start-up funding and government-provided liquidity funding.**

The FDIC is not subject to corporate taxation.

**Essential Criterion 10**

**If the deposit insurer uses differential premium systems:**

- (a) the system for calculating premiums is transparent to all participating banks;**
- (b) the scoring/premium categories are significantly differentiated; and**
- (c) the ratings and rankings resulting from the system pertaining to individual banks are kept confidential.**

The Federal Deposit Insurance Corporation Improvement Act of 1991 mandated that the FDIC adopt a risk-based assessment system. As codified in Section 7 of the FDI Act, the FDIC must base a bank’s assessment on:

- (i) the probability that the DIF will incur a loss with respect to the institution, taking into consideration the risks attributable to:
  - (I) different categories and concentrations of assets
  - (II) different categories and concentrations of liabilities, both insured and uninsured, contingent and noncontingent
  - (III) any other factors the FDIC determines are relevant to assessing such probability

- (ii) the likely amount of any such loss
- (iii) the DIF's revenue needs.<sup>117</sup>

The FDIC's risk-based assessment system is transparent to the public and all participating banks. Modifications to the risk-based assessment system are made only after public notice and opportunity for comment.

To calculate a bank's quarterly deposit insurance assessment, the institution's assessment rate is multiplied by its assessment base. The calculation of assessments and assessment rate schedules are transparent and published in regulation. Current initial assessment rates range from 3 basis points to 30 basis points.

Participating banks can estimate their risk-based assessment using online calculators that describe how assessments are determined.<sup>118</sup> Under Section 7 of the FDI Act, the FDIC Board may establish separate risk-based assessment systems for large and small institutions.<sup>119</sup>

The FDIC has separate pricing methods to differentiate risk among:

- small institutions—generally those with less than \$10 billion in total assets
- large institutions—generally those with \$10 billion or more in total assets
- highly complex institutions—generally those with \$50 billion or more in total assets for four consecutive quarters and which are controlled by a U.S. holding company with \$500 billion or more in assets for four consecutive quarters.

Small banks are assigned an individual assessment rate based on a pricing method using several financial measures and supervisory ratings. Large and highly complex banks are assigned an individual assessment rate based on a scorecard, a pricing method that also incorporates financial measures and supervisory ratings. Statistical analyses performed when each system was adopted show how the pricing methodologies improve accuracy in differentiating risk among small and large banks.

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<sup>117</sup> FDI Act § 7(b)(1)(C), [12 U.S.C. § 1817\(b\)\(1\)\(C\)](#).

<sup>118</sup> FDIC, Current Assessment Calculators, <https://www.fdic.gov/deposit/insurance/calculator.html>.

<sup>119</sup> FDI Act § 7(b), [12 U.S.C. § 1817\(b\)](#).

The FDIC's assessment regulations include restrictions on disclosure of an institution's assessment risk classification.<sup>120</sup> The assessment systems for large and highly complex institutions and small institutions each use confidential supervisory evaluations as an input.

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<sup>120</sup> [12 C.F.R. § 327.4\(d\)](#).

## PRINCIPLE 10 PUBLIC AWARENESS

**In order to protect depositors and contribute to financial stability, it is essential that the public be informed on an ongoing basis about the benefits and limitations of the deposit insurance system.**

**Essential Criterion 1      The deposit insurer is responsible for promoting public awareness of the deposit insurance system, using a variety of communication tools on an ongoing basis as part of a comprehensive communication program.**

Since 1934, the FDIC has promoted public awareness of the deposit insurance system using several communication tools to help maintain public confidence and stability in the U.S. financial system. The FDIC's comprehensive communication program includes information about open and operating banks and information for depositors in the event of a bank failure.

The FDIC publishes deposit insurance brochures to explain insurance coverage and limits. Examples include *Your Insured Deposits*, *Deposit Insurance at a Glance*, and *When a Bank Fails—Facts for Depositors, Creditors, and Borrowers*.<sup>121</sup> The FDIC provides brochures online or on paper. The paper copy brochures are provided free of charge to any depositor or bank, which often distribute FDIC brochures to the public. Since 1993, the FDIC has published *FDIC Consumer News*, a free quarterly newsletter that promotes deposit insurance and increases financial awareness.<sup>122</sup> Today the web-based publication has more than 19,000 subscribers. The FDIC has maintained a website since 1995, and in 2018, the website received about 15 million visitors and 25 million page views.

The FDIC maintains a toll-free telephone number (1-877-ASK-FDIC) so consumers, depositors, and bankers can ask questions about deposit insurance coverage. In 2018, the toll-free consumer hotline received 96,703 telephone calls, and 38,681 were identified as deposit insurance-related inquiries. The FDIC Call Center handled 20,102 inquiries and deposit insurance subject matter experts handled 18,579 complex telephone calls identifying a total of 50,548 deposit insurance issues. The FDIC also answers written requests about deposit insurance coverage from bankers and the public. In 2018, the

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<sup>121</sup> See "Your Insured Deposits," <https://www.fdic.gov/deposit/deposits/brochures/your-insured-deposits-english.pdf>; "Deposit Insurance at a Glance," <https://www.fdic.gov/deposit/deposits/brochures/deposit-insurance-at-a-glance-english.pdf>; and "When a Bank Fails—Facts for Depositors, Creditors, and Borrowers," <https://www.fdic.gov/consumers/banking/facts/>.

<sup>122</sup> <https://www.fdic.gov/consumers/consumer/news/index.html>.



FDIC received 1,339 written inquiries from consumers and bankers that identified a total of 2,248 deposit insurance issues.

The FDIC also promotes public awareness of the deposit insurance system by hosting a voluntary webinar for bankers, typically four to six times annually. The webinar content is tailored to the bankers who attend and includes a question and answer session. More than 300,000 bankers have attended these seminars since 2008.

In 2001, the FDIC created a free financial literacy tool called Money Smart to teach consumers about key financial concepts, skills, and safe, affordable banking services. The tool fosters greater financial stability for people and communities.<sup>123</sup> Between 2001 and 2008, more than 3 million people took the curriculum, and in 2018, Money Smart products were ordered or downloaded more than 125,000 times.

In 2008, the FDIC celebrated its 75th anniversary and embarked on a public awareness campaign that included public service announcements and paid-placement advertising in print media and on radio. The agency partnered with a well-known personal finance advisor to be the face of the campaign.

In the event of a bank's failure, the FDIC has additional communication tools to promote public awareness of the deposit insurance system. FDIC policies and procedures address notifying depositors of record about the failure and the FDIC maintains a "Failed Bank List" on the FDIC website.<sup>124</sup> The list includes detailed information about each bank failure.

## Essential Criterion 2

**In the event of a bank failure, the deposit insurer must notify depositors, as appropriate and as described in law, via media such as press releases, print advertising, websites and other media outlets, of the following details:**

- (a) where, how and when insured depositors will be provided with access to their funds;**
- (b) the information that an insured depositor must provide in order to obtain payment;**
- (c) if advance or interim payments are being made; and**
- (d) whether any depositors will lose funds, and procedures whereby uninsured depositors can make claims to the liquidator for their uninsured portion.**

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<sup>123</sup> FDIC, Money Smart, <https://www.fdic.gov/consumers/consumer/moneysmart/>.

<sup>124</sup> FDIC, Failed Bank List, <https://www.fdic.gov/bank/individual/failed/banklist.html>.

The FDI Act requires the FDIC to mail notices to the depositors and creditors of a failed financial institution.<sup>125</sup> The purpose of the notice to the depositors is to advise how they may receive payments for their insured deposit accounts, and the process of claiming their accounts.

The notice details vary with the type of closing transaction.<sup>126</sup> In all cases, depositors are notified about the insured status of their accounts, whether any portion of their funds are not insured, how to access funds, and the procedure for claiming uninsured deposits.

Advance dividends may be approved by the FDIC Board of Directors as part of the resolution case.<sup>127</sup> Advance dividends are declared and paid to uninsured depositors with allowed claims and Receivership Certificates. Payment is made shortly after the closing of the bank and provides an immediate return of a portion of the uninsured deposit.<sup>128</sup>

The FDIC also publishes notices in newspapers of general circulation in the city or town where the financial institution and branches are located. Notices in languages other than English are provided as needed. As noted in EC-1, the FDIC maintains the Failed Bank List on the FDIC website with detailed information about each bank failure. Finally, the FDIC issues a press release for each bank failure to help notify the public.<sup>129</sup> The FDIC Office of Communications sends bank failure press releases to media representatives in the cities and towns where the bank had branches. The press release is also published on the FDIC website and an email notification is sent to almost 90,000 subscribers, many of whom are members of the media. The FDIC also posts information about every failed bank on social media.

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<sup>125</sup> FDI Act § 11(d)(3)(B)-(C), [12 U.S.C. § 1821\(d\)\(3\)\(B\)-\(C\)](#). See also FDIC, *Resolutions Handbook*, 27, <https://www.fdic.gov/bank/historical/reshandbook/resolutions-handbook.pdf>.

<sup>126</sup> Closing transactions include payout, insured deposit purchase and assumption, all deposit purchase and assumption, and insured deposit transfer. See FDIC, *Resolutions Handbook*, 16-22, <https://www.fdic.gov/bank/historical/reshandbook/resolutions-handbook.pdf>.

<sup>127</sup> An advance dividend is a payment made to an uninsured depositor after a bank or thrift failure. The amount of the advance dividend represents the FDIC's conservative estimate of the ultimate value of the receivership. Cash dividends equivalent to the Board-approved advance dividend percentage (of total outstanding deposit claims) are paid to uninsured depositors, thereby giving them an immediate return of a portion of their uninsured deposit. Sometimes when it is projected that all depositor claims will be paid in full an advance dividend will be provided to unsecured creditors.

<sup>128</sup> See FDIC, *Resolutions Handbook*, 27-28, <https://www.fdic.gov/bank/historical/reshandbook/resolutions-handbook.pdf>.

<sup>129</sup> See for example FDIC, Press Release, "Royal Savings Bank, Chicago, Illinois, Acquires the Insured Deposits of Washington Federal Bank for Savings, Chicago, Illinois," December 15, 2017, <https://www.fdic.gov/news/news/press/2017/pr17096.html>.

### Essential Criterion 3

**The public awareness program or activities convey information about the following:**

- (a) the scope (i.e. which types of financial instruments and depositors are covered by deposit insurance, and which are not);**
- (b) a list of which banks are members and how they can be identified;**
- (c) deposit insurance coverage level limits; and**
- (d) other information, such as the mandate of the deposit insurer.**

As discussed in more detail in the response to EC-1 above, the FDIC's public awareness program and activities are primarily focused on defining the scope of deposit insurance coverage and insurance limits and explaining the FDIC's dual role as deposit insurer and resolution authority. The FDIC's deposit insurance brochures and on-line materials clearly distinguish deposit products from non-deposit investment products, which are not insured.<sup>130</sup>

In 1994, the FDIC issued guidance stating that sales of any non-deposit products should be performed away from the FDIC logo, with clear disclosures that the non-deposit product is not FDIC-insured and may involve loss of principal. The guidance also states that banks should have a customer sign a statement when a customer opens an investment account, acknowledging that the customer has received and understands the disclosures. The guidance also states that investment sales personnel should be properly qualified and trained in the difference between insured and uninsured accounts.<sup>131</sup>

The FDIC's public awareness program also helps consumers correctly identify FDIC-member banks. Depositors can use BankFind, a database on the FDIC website, to verify whether an entity is an FDIC member bank.<sup>132</sup> BankFind can be searched by entity name, FDIC Certificate number, branch address, or URL. Furthermore, each

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<sup>130</sup> At each FDIC-member IDI, FDIC insurance applies to all deposit products: checking accounts, savings accounts, negotiable order of withdrawal accounts, money market deposit accounts, certificates of deposit and other time deposits, and official items such as cashier's checks. The FDIC clearly states that deposit insurance coverage does not apply to non-deposit products such as stocks, bonds, mutual funds, annuities, safe deposit box contents, or U.S. Treasury bills, bonds, or notes.

<sup>131</sup> FDIC, Press Release: Regulators Issue Uniform Guidance on Mutual Fund Sales (1994), <https://www.fdic.gov/news/news/press/1994/pr9412.html>.

<sup>132</sup> FDIC, BankFind, <https://research.fdic.gov/bankfind/>.

bank is required to post the FDIC logo in each branch and next to each teller station where deposits are accepted.<sup>133</sup> Customers do not have to apply or sign up for deposit insurance; it is provided automatically at no cost to the customer upon opening an account at an FDIC-insured institution.

Deposit insurance coverage limits are also discussed in FDIC's brochures and throughout the website. This material is supplemented by the FDIC's Electronic Deposit Insurance Estimator (EDIE), which allows depositors to enter non-personal information and calculate their insurance coverage.<sup>134</sup> EDIE generates a printable report showing whether a depositor is fully insured or partially uninsured.

#### **Essential Criterion 4**

**The objectives of the public awareness program (e.g. target awareness levels) are clearly defined and consistent with the public policy objectives and mandate of the deposit insurance system.**

The longstanding mission and public policy objective of the FDIC are to maintain public confidence and stability in the U.S. financial system. For open and operating banks, the FDIC supports this objective by promoting public awareness and understanding of FDIC deposit insurance coverage and seeking to ensure depositors and bankers have ready access to information about deposit insurance rules and requirements. The FDIC fosters public confidence in the banking system by helping depositors make informed decisions about their deposit insurance coverage, which will minimize the risk to depositors of uninsured funds should their bank fail.

The objectives of the public awareness program are the same as the FDIC's overall policy objectives: protecting depositors and maintaining public confidence and stability in the U.S. financial system. The objectives of the public awareness program include clearly defined operational goals, such as responding to 95 percent of written requests for deposit insurance information within 14 calendar days.

#### **Essential Criterion 5**

**The deposit insurer sets a long-term strategy to meet its public awareness objectives, and makes budget allocations to build and maintain a target level of public awareness about deposit insurance.**

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<sup>133</sup> [12 C.F.R. § 328.2\(a\)](#).

<sup>134</sup> FDIC, Electronic Deposit Insurance Estimator (EDIE), <https://www5.fdic.gov/edie/>.

The FDIC's 2018–2022 Strategic Plan includes a long-term strategy to meet its public awareness objectives. Strategic Goal 1.5 is that the public and banks have accurate and easily understood information about FDIC deposit insurance coverage. As noted in the plan, a significant rise in bank failures can undermine confidence and increase demand for information about deposit insurance coverage.

For example, in 2008, the FDIC received 18,953 written deposit insurance inquiries from consumers and bankers, 360 percent more than in 2007. After the sharp increase in the number of inquiries in 2008, the FDIC allocated a portion of its budget to hire temporary staff to, among other things, explain deposit insurance coverage to the public and, more broadly, to instill confidence. Public demand for information waned in 2009, with total inquiries falling from 100,932 in 2008 to 46,041 in 2009, which allowed the FDIC to reduce temporary staffing levels.<sup>135</sup>

## Essential Criterion 6

**The deposit insurer works closely with banks and other safety-net participants to ensure the consistency and accuracy of the information provided to depositors and to maximize awareness on an ongoing basis. Law or regulation requires banks to provide information about deposit insurance in a format/language prescribed by the deposit insurer.**

The FDIC ensures that consistent and accurate information about deposit insurance coverage is provided to depositors. The primary mechanism is the dissemination of deposit insurance brochures, either directly to the public or through banks. Banks, in coordination with the FDIC, may reprint FDIC deposit information for their marketing material provided they do not alter the substantive content. The FDIC also provides a tool called “Brandable EDIE” which allows member banks to incorporate the FDIC’s insurance estimator on the bank’s website.

To help ensure accuracy and consistency, the FDIC also publishes “The Financial Institution Employee’s Guide to Deposit Insurance,” which is an in-depth explanation of deposit insurance coverage for bankers and financial professionals. As a matter of practice, banks often refer depositors directly to the FDIC’s website or publications for information on deposit insurance coverage.

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<sup>135</sup> FDIC, “FDIC Annual Report” at 41 (2009), <https://www.fdic.gov/about/strategic/report/2009annualreport/AR09final.pdf>.

The FDI Act and the FDIC's regulations describe the official sign of the FDIC and prescribe its use by banks.<sup>136</sup> The official sign clearly states the deposit insurance limit and states that FDIC deposit insurance is backed by the full faith and credit of the United States government. Part 328 also prescribes the official advertising statement banks must include in their advertisements.

## Essential Criterion 7

**The deposit insurer monitors, on an ongoing basis, its public awareness activities and arranges, on a periodic basis, independent evaluations of the effectiveness of its public awareness program or activities.**

Since 1934, the FDIC has refined its public awareness activities to ensure the public can easily identify which entities are FDIC members, distinguish deposit from non-deposit financial products, and determine the extent of their deposit insurance coverage. The FDIC monitors its public awareness activities on an ongoing basis.

FDIC continuously monitors how quickly it responds to requests for deposit insurance information and reports results in its annual report to Congress.<sup>137</sup> When the FDIC sends a written explanation about deposit insurance coverage, the depositor or banker who receives the response also receives a survey. Through survey data, the FDIC can review direct feedback from depositors and bankers and modify its approach to public awareness.

The FDIC offers its most comprehensive deposit insurance brochure, "Your Insured Deposits," free to bankers and depositors in several languages, including English, Spanish, Simplified Chinese, Traditional Chinese, Korean, Tagalog, and Vietnamese. The English and Spanish versions are also available in large print formats. The FDIC tracks demand for each language and format. Online distribution is tracked by website visits and similar metrics, and the FDIC tracks the number of page visits to EDIE, an online insurance estimator used by depositors and bankers to calculate insurance coverage.

FDIC deposit insurance specialists who provide the public with written explanations of deposit insurance coverage are trained in

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<sup>136</sup> FDI Act § 18(a)(1), 12 U.S.C. § 1828(a)(1) and [12 C.F.R. Part 328](#).

<sup>137</sup> In 2018 the FDIC Call Center received 96,703 telephone calls and 38,681 were deposit insurance-related inquiries. The FDIC Call Center handled approximately 20,102 inquiries. Deposit insurance subject matter experts handled 18,579 complex telephone calls identifying 50,548 deposit insurance issues. The FDIC received 1,339 written inquiries from consumers and bankers identifying 2,248 deposit insurance issues. Of these, 100 percent received responses within two weeks, as required by corporate policy.

plain writing for effective communication. For quality control, each draft response is reviewed by senior staff and modified if necessary. An internal review function compares responses with the statutory requirements in the Plain Writing Act of 2010. More broadly, the FDIC tracks the number of deposit insurance inquiries and adjusts staffing levels accordingly.

To date, the FDIC has not identified a significant deficiency in its public awareness activities that would justify a budgetary expenditure for an independent evaluation.

In addition to internal monitoring, the FDIC is subject to oversight by independent, outside entities such as the GAO. See the responses under CP-3 for more discussion regarding external oversight.

## **Essential Criterion 8**

**Depositors in jurisdictions affected by cross-border banking arrangements conducted through foreign bank branches or subsidiaries are provided with clear information on the existence and identification of the deposit insurer legally responsible for reimbursement, and the limits and scope of coverage.**

The FDIC's "Your Insured Deposits" brochure, readily available to all consumers, states: "The FDIC protects depositors of insured banks located in the United States against the loss of their deposits if an insured bank fails." This statement reflects the FDIC's regulation on deposits payable outside the United States.<sup>138</sup>

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<sup>138</sup> 12 C.F.R. § 330.3(e).

## PRINCIPLE 11            LEGAL PROTECTION

**The deposit insurer and individuals working both currently and formerly for the deposit insurer in the discharge of its mandate must be protected from liability arising from actions, claims, lawsuits or other proceedings for their decisions, actions or omissions taken in good faith in the normal course of their duties. Legal protection should be defined in legislation.**

**Essential Criterion 1            Legal protection is specified in legislation and provided to the deposit insurer, its current and former directors, officers, and employees and any individual currently or previously retained or engaged by the deposit insurer, for decisions made and actions or omissions taken in good faith in the normal course of their duties.**

FDIC current and former employees, officers, and board members (employees) have legal protections and these protections are specified in law. The FDIC and its employees, but not its contractors, are generally protected from any liability resulting from claims or lawsuits for acts and omissions made while discharging their duties in good faith.

Under the Federal Tort Claims Act (FTCA), no claims can be brought against the FDIC or its employees 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.<sup>139</sup> In FTCA cases, the United States, not the FDIC or the employee, is the proper defendant. Federal statutory and regulatory provisions authorize the United States to defend the FDIC and federal employees sued in tort for acts within the scope of their employment.<sup>140</sup>

Under the FDI Act, employees are immune from liability under the Securities Act of 1933 for claims arising out of any act or omission within the scope of the person's employment involving the disposition of assets by the FDIC.<sup>141</sup>

**Essential Criterion 2            Legal protection precludes damages or other awards against such individuals and covers costs, including funding defense costs as incurred (and not just reimbursement after a successful defense).**

FDIC employees are generally shielded from liability for legal actions brought against them, provided the claim arises from conduct within

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<sup>139</sup> [28 U.S.C. § 1346\(b\)\(1\)](#).

<sup>140</sup> [28 U.S.C. § 2679\(c\)](#); [28 C.F.R. § 50.15](#).

<sup>141</sup> FDI Act § 2(f)(1), [12 U.S.C. § 1812\(f\)\(1\)](#), [15 U.S.C. § 77a](#) and following.



the scope of their official duties. Tort claims against the FDIC or its employees must be filed under the FTCA against the United States.<sup>142</sup> If a money damage claim under the FTCA is ultimately proven, the FDIC pays the judgment or claim.

In addition to protection an employee might be entitled to under federal statutes or by contract, under the FDIC's indemnity policy, the FDIC will indemnify present or past employees against any liability and expenses that may be incurred because of any claim for wrongful acts resulting from performing their official duties.

### Essential Criterion 3

**The operating policies and procedures of the deposit insurer require individuals with legal protection to disclose real or perceived conflicts of interest and to adhere to relevant codes of conduct, to ensure that they remain accountable.**

The FDIC requires employees to maintain high professional standards and exhibit high integrity. Federal laws and regulations and individual conflict-of-interest rules and codes of conduct help ensure these standards are met. Examples include:

- Current FDIC employees are generally prohibited from owning stock in any FDIC regulated entity.<sup>143</sup>
- Current FDIC employees are prohibited from purchasing the assets of failed institutions owned or controlled by the FDIC in any capacity.<sup>144</sup>
- Members of the FDIC Board of Directors are generally prohibited from holding any office, position, or employment in any bank or bank holding company during their time in office and for two years after they leave office, subject to certain exceptions.<sup>145</sup>
- Senior examination staff generally are subject to a one-year post-employment cooling off period for entities they supervise.<sup>146</sup> Violators are subject to civil monetary penalties, can be removed from office, and can be prohibited from participating in the affairs of the bank, the bank holding company, or any other company for up to five years.
- Examiners are prohibited from accepting loans or gratuities from banks they examine.<sup>147</sup>

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<sup>142</sup> [28 U.S.C. § 2679\(a\)](#); *Fed. Deposit Ins. Corp. v. Meyer*, [510 U.S. 471, 476](#) (1994).

<sup>143</sup> [5 C.F.R. § 3201.103](#).

<sup>144</sup> [5 C.F.R. § 3201.104](#).

<sup>145</sup> FDI Act § 2(e), [12 U.S.C. § 1812\(e\)](#).

<sup>146</sup> See for example FDI Act § 10(k), [12 U.S.C. § 1820\(k\)](#).

<sup>147</sup> [18 U.S.C. § 213](#).

#### Essential Criterion 4

#### **Legal protections do not prevent depositors or other individual claimants or banks from making legitimate challenges to the acts or omissions of the deposit insurer in public or administrative review (e.g. civil action) procedures.**

Depositors, individual claimants, and banks are able to legitimately challenge the acts or omissions of the deposit insurer in public or administrative review (civil action) procedures. Depositors' primary interactions with the deposit insurer occur when a bank fails and the FDIC makes determinations regarding claims for insurance coverage. A final FDIC determination on a claim for insurance coverage is a final agency action reviewable under the Administrative Procedure Act.<sup>148</sup> A depositor may challenge an insurance coverage determination by filing a complaint in federal court.

A claimant's interactions with the deposit insurer similarly occur most commonly when a bank fails and the FDIC, as receiver for the failed institution, responds to the claim. Such claims can arise in many contexts. For example, the claimant might assert damages for the institution's breach of a contract or an act or omission giving rise to a tort claim. Or the claim might concern the receiver's repudiation of a contract or lease, retention of property, or other action. In such situations, a claimant may file a claim with the receiver. If the receiver disallows the claim, in whole or in part, the claimant may sue in federal court to seek a *de novo* determination of the claim.<sup>149</sup>

Financial institutions may challenge the FDIC's acts or omissions, provided that the act is not fully committed to agency discretion. Final actions affecting a bank will generally be reviewable under the Administrative Procedure Act.<sup>150</sup> For example, a bank may sue in federal court to challenge as arbitrary and capricious the FDIC's decision to issue a cease-and-desist order or to adopt a rule that adversely affects the institution.

For some actions, judicial review is authorized by statute. For example, if the FDIC terminates an institution's insured status, the institution may seek judicial review by filing a petition for review in federal court.<sup>151</sup>

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<sup>148</sup> FDI Act § 11(f)(4), [12 U.S.C. § 1821\(f\)\(4\)](#); [5 U.S.C. § 701](#) and following; [12 C.F.R. § 330](#).

<sup>149</sup> FDI Act § 11(d)(6), [12 U.S.C. § 1821\(d\)\(6\)](#).

<sup>150</sup> [5 U.S.C. § 701](#) and following.

<sup>151</sup> FDI Act § 8(h), [12 U.S.C. § 1818\(h\)](#).

## **PRINCIPLE 12            DEALING WITH PARTIES AT FAULT IN A BANK FAILURE**

**The deposit insurer, or other relevant authority, should be provided with the power to seek legal redress against those parties at fault in a bank failure.**

**Essential Criterion 1            The conduct of parties responsible for, or contributing to, the failure of a bank (e.g. officers, directors, managers, owners), as well as the conduct of related parties and professional service providers (e.g. auditors, accountants, lawyers and asset appraisers), is subject to investigation. The investigation of the conduct of such parties may be carried out by one or more of the following: the deposit insurer, supervisor or regulatory authority, criminal or investigative authorities, or any other professional or disciplinary body, as applicable.**

The U.S. resolution framework for failed banks includes tools and resources to ensure that parties who may have caused losses to banks are investigated for civil claims. Where appropriate, the FDIC may make referrals to the federal or state banking or financial agency responsible for the failed institution for consideration of administrative enforcement action.

The FDIC conducts a professional liability program to “recover funds for FDIC receiverships and to hold accountable directors, officers, and professionals who caused losses to insured depository institutions ... that are later placed in FDIC receivership.”<sup>152</sup> The FDIC in its receivership capacity investigates potential professional liability claims arising from every failure of an IDI. The FDIC pursues claims that are both meritorious and expected to be cost-effective.<sup>153</sup> The investigators may send their results to FDIC in its corporate capacity or to the federal or state banking or financial agency responsible for the failed institution for consideration of administrative enforcement action. See EC-2 under “FDIC in Its Corporate Capacity” and “Federal Reserve and OCC” for a discussion of administrative enforcement actions and under “FDIC OIG” for a discussion of criminal investigations.

**Essential Criterion 2            The relevant authority takes the appropriate steps to pursue those parties that are identified as culpable for the failure of the bank. The culpable parties are subject to sanction and/or redress. Sanction or redress may include personal or**

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<sup>152</sup> Professional Liability Program, <https://www.fdic.gov/bank/individual/failed/pls/>.

<sup>153</sup> Professional Liability Program, <https://www.fdic.gov/bank/individual/failed/pls/>.

**professional disciplinary measures (including fines or penalties), criminal prosecution, and civil proceedings for damages.**

### **FDIC in Its Capacity as Receiver for Failed IDIs**

The FDI Act provides that a director or officer of a failed IDI can be held “personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the” FDIC, including when the FDIC is acting as conservator or receiver of the failed institution.<sup>154</sup> From 1986 through 2018, the FDIC and the Resolution Trust Corporation, a former agency responsible for asset management during the savings and loan crisis, recovered approximately \$9.8 billion from professional liability claims at a cost of approximately \$2.4 billion for the investigations and litigation.

### **FDIC in Its Corporate Capacity**

The FDIC in its corporate capacity is the deposit insurer for all IDIs and the federal banking agency responsible for supervising state-chartered IDIs that are not members of the Federal Reserve and FDIC-insured branches of foreign banks. The FDIC’s supervisory authority extends to the “institution-affiliated parties” of these entities, a term defined to include a director, officer, employee, or controlling shareholder of, or agent for, an institution, and an independent contractor (such as an attorney, appraiser, or accountant).<sup>155</sup> The FDIC pursues enforcement actions for violations of laws, rules, or regulations, unsafe or unsound banking practices, breaches of fiduciary duty, and violations of final orders, conditions imposed in writing, or written agreements. The FDIC as supervisor has a number of remedies when wrongdoing is committed by parties affiliated with the failed IDI. These remedies include consent orders, assessments of civil money penalties, restitution orders, cease-and-desist orders, and barring of institution-affiliated parties from the banking industry. For example, the FDI Act authorizes the FDIC (or another federal banking regulator, if the FDIC is not the primary regulator) to issue cease-and-desist orders requiring institution-

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<sup>154</sup> FDI Act § 11(k), [12 U.S.C. § 1821\(k\)](#).

<sup>155</sup> Offices of Inspectors General of the FDIC, Federal Reserve, CFPB, and the Department of the Treasury, “Enforcement Actions and Professional Liability Claims Against Institution-Affiliated Parties and Individuals Associated With Failed Institutions” at 9 (2014) [hereinafter Offices of Inspectors General], <https://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIGCA14012.pdf>.

affiliated parties to make restitution of losses incurred by a bank through their actions.<sup>156</sup>

### **Federal Reserve and OCC**

The Federal Reserve and the OCC have similar supervisory authority under the FDI Act.<sup>157</sup> The Federal Reserve is the appropriate federal banking agency responsible for supervising state-chartered banks that are members of the Federal Reserve and bank holding companies. The Federal Reserve's authority to issue enforcement actions extends to those entities and to institution-affiliated parties.<sup>158</sup>

The OCC is the appropriate federal banking agency responsible for supervising national banks, federal branches and agencies of foreign institutions, and federally chartered savings associations and their subsidiaries. The OCC's authority to issue enforcement actions extends to those entities and to institution-affiliated parties.<sup>159</sup>

### **FDIC OIG**

The FDIC OIG is responsible, among other things, for investigating criminal conduct in relation to a failed IDI, including criminal acts of an institution's former officers, directors, and agents. The FDIC OIG's investigators routinely work with the Federal Bureau of Investigation, the Internal Revenue Service, the Department of Homeland Security, and state law enforcement.

Investigations are pursued under federal and state law. When an investigation leads to evidence of criminal wrongdoing, the FDIC OIG typically works with U.S. Attorneys in the Department of Justice to pursue a criminal case.

## **Essential Criterion 3**

**The deposit insurer, or other relevant authority, has policies and procedures in place to ensure that insiders, related parties, and professional service providers acting for the failed bank are appropriately investigated for wrongdoing and for possible culpability in a bank failure.**

The FDIC has policies and procedures in place to ensure that insiders, related parties, and professional service providers that acted for the failed IDI are appropriately investigated for wrongdoing.

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<sup>156</sup> FDI Act § 8(b)(6), [12 U.S.C. § 1818\(b\)\(6\)](#).

<sup>157</sup> FDI Act § 8, [12 U.S.C. § 1818](#).

<sup>158</sup> [Offices of Inspectors General](#), 6–7.

<sup>159</sup> [Offices of Inspectors General](#), 7.

### **FDIC in Its Capacity as Receiver for Failed IDIs**

As discussed above, the FDIC in its receivership capacity investigates potential professional liability claims based on losses caused to failed IDIs. Claims are pursued if they are both meritorious and expected to be cost-effective. Written policies and procedures govern the investigation and pursuit of professional liability claims. The process followed by the Professional Liability Program is summarized in the OIGs' Report.<sup>160</sup>

### **FDIC in Its Corporate Capacity**

The FDIC in its corporate capacity is the deposit insurer for all banks and is the appropriate federal banking agency responsible for state-chartered banks that are not members of the Federal Reserve and for FDIC-insured branches of foreign banks. The FDIC's supervisory authority extends to institution-affiliated parties of the foregoing entities, including a director, officer, employee, controlling shareholder, agent, or independent contractor (such as an attorney, appraiser, or accountant). The FDIC has secondary enforcement authority over banks that are supervised and regulated by the Federal Reserve and the OCC and over persons affiliated with those institutions.

The FDIC has a formal process for pursuing enforcement actions, beginning with identification of issues that may warrant enforcement action. Potential grounds for enforcement actions are identified with information volunteered by institution employees and customers, from contact with other supervisory agencies or law enforcement officials, and in routine oversight activities such as conducting examinations and reviewing suspicious activity reports. The process followed for FDIC enforcement actions related to institution-affiliated parties is summarized in the OIGs' Report.<sup>161</sup>

### **The Federal Reserve and the OCC**

Formal processes of the Federal Reserve and the OCC for pursuing enforcement actions related to institution-affiliated parties are summarized in the report by the Offices of Inspectors General.

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<sup>160</sup> [Offices of Inspectors General](#), Appendix 2: Regulators' Processes for Pursuing EAs and PLCs, FDIC: Professional Liability Claims Process, 50.

<sup>161</sup> [Offices of Inspectors General](#), Appendix 2: Regulators' Processes for Pursuing EAs and PLCs, FDIC: Enforcement Actions Process Pertaining to IAPs, 47.

## **PRINCIPLE 13            EARLY DETECTION AND TIMELY INTERVENTION**

**The deposit insurer should be part of a framework within the financial safety net that provides for the early detection of, and timely intervention in, troubled banks. The framework should provide for intervention before the bank becomes nonviable. Such actions should protect depositors and contribute to financial stability.**

**Essential Criterion 1            The deposit insurer is part of an effective framework within the financial safety net that provides for the early detection of, and timely intervention in, banks in financial difficulty before the bank becomes nonviable.**

The FDIC is effectively integrated into the early detection and intervention functions of the financial safety-net framework. The safety-net's early warning systems and intervention mechanisms for troubled banks are timely and effective.

### **Integration of the FDIC Into an Effective Safety-Net Framework**

The FDIC is part of a framework within the financial safety-net that provides for the early detection of, and timely intervention in, troubled banks. Through review of examination reports, use of off-site monitoring tools, and participation in examinations conducted by other federal regulators (either through agreements with these regulators or, in limited circumstances, under the exercise of the FDIC's authority to conduct special (backup) examination activities), the FDIC regularly monitors the potential risks at all insured institutions, including those for which it is not the primary federal supervisor.<sup>162</sup> The division of responsibility for prudential supervision of U.S. banks is discussed further in CP-2, EC-2.

Coordination among the financial safety-net participants, including the FDIC, OCC, and Federal Reserve, is facilitated primarily by the FFIEC, of which each is a member.<sup>163</sup> The FDIC Chairman is also a member of the FSOC, which identifies and responds to risks to the financial stability of the United States and promotes market discipline.<sup>164</sup> For additional information regarding coordination and information sharing in bank supervision, refer to CP-4.

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<sup>162</sup> [12 U.S.C. § 1820\(b\)\(3\)](#); [12 C.F.R. 327.4\(f\)](#) and [12 U.S.C. § 1818\(t\)](#).

<sup>163</sup> For information about the FFIEC's structure, purpose, and activities, see <https://www.ffiec.gov/about.htm>.

<sup>164</sup> For information about the FSOC's structure, purpose, and activities, see <https://www.treasury.gov/initiatives/fsoc/about/Pages/default.aspx>.

## Early Detection of Troubled Banks

Federal banking agencies detect troubled banks early on with offsite surveillance, onsite examinations, and a forward-looking and risk-focused supervisory strategy.<sup>165</sup> This approach enables the agencies to develop a thorough understanding of the operations of individual banks. The agencies evaluate and ensure bank safety, soundness, and compliance with laws and regulations, and monitor the stability of banks and the financial system.

Statutes require onsite examinations every 12 to 18 months, depending on the bank's condition, supervisory history, and asset size.<sup>166</sup> Full-scope examinations address these components, which are scored in a system known as CAMELS:

- Capital adequacy
- Asset quality
- Management strength, including quality of oversight by the board of directors and the bank's audit function, internal control structure, and compliance
- Earnings quality and sustainability
- Liquidity sources to support cash needs
- Sensitivity of earnings and capital position to market risk.

For the largest, most complex institutions, federal banking agencies maintain a full-time, on-site examination staff to monitor the banking organization's condition and activities. The FDIC maintains a permanent on-site presence at the largest, most complex institutions as secondary supervisor.

Each of the federal banking agencies uses well-defined off-site surveillance procedures for measuring and monitoring the risk profiles of individual banks and bank holding companies.

## Timely Intervention in Troubled Banks

If a federal banking agency notes supervisory concerns, the agency will undertake appropriate and timely follow-up to verify that the bank has implemented required corrective actions. Typically,

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<sup>165</sup> See for example [Federal Reserve Supervision and Regulation \(SR\) Letter 97-24](#), "Risk-Focused Framework for Supervision of Large Complex Institutions," and [Federal Reserve SR Letter 97-25](#), "Risk-Focused Framework for the Supervision of Community Banks," which describe examination procedures developed by the Federal Reserve and the FDIC. See also OCC, "[Large Bank Supervision](#)" and "[Community Bank Supervision](#)," Federal Reserve, "[Commercial Bank Examination Manual](#)," Section 1000.1; and FDIC, "[Risk Management Manual of Examination Policies](#)," Section 1.1.

<sup>166</sup> FDI Act § 10(d), [12 U.S.C. § 1820\(d\)](#).



weaknesses and deficiencies are communicated to the management and directors of a bank during the examination process and in a written report. Management and directors are expected to address all problems and take measurable actions to ensure that the problems are corrected and will not recur. If a review identifies a material supervisory determination, the agency may address it with a variety of supervisory approaches, including informal and nonbinding commitments by bank management, and formal enforcement actions. Formal enforcement actions may be pursued with or without the cooperation of the bank or the IAP.<sup>167</sup> Additionally, the Prompt Corrective Action (PCA) framework serves to promote early identification of problems and prompt intervention. See PCA discussion in EC-3 for detailed explanation.

If an institution or IAP fails to comply with a final formal enforcement action, the agency can terminate deposit insurance coverage or remove the IAP. When the FDIC terminates deposit insurance, the chartering authority will generally revoke the institution's charter and place the bank into a resolution managed by the FDIC.<sup>168</sup>

## Essential Criterion 2

### **Safety-net participants have the operational independence and power to perform their respective roles in the framework for early detection and timely intervention.**

The legal authority, operational independence, and roles of safety-net participants are established in laws. Reliable systems ensure the collection of timely, accurate, and relevant information to evaluate individual banks and the banking sector, and the criteria used to identify problem banks are transparent. Discretionary and mandatory intervention powers are available for timely and effective intervention in troubled banks (see more information under EC-1 above and EC-3 below). In certain circumstances, institutions have limited legal means to oppose supervisory actions, but use of these has not caused undue interference in addressing troubled banks.

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<sup>167</sup> Additional information about formal actions and the process for imposing them is in the agencies' handbooks and examination manuals. See OCC, "[Large Bank Supervision](#)," and "[Community Bank Supervision](#);" Federal Reserve System, "[Commercial Bank Examination Manual](#)" (Section 5040); and FDIC, "[Risk Management Manual of Examination Policies](#)" (Section 15).

<sup>168</sup> See FDI Act § 11(c)(2), [12 U.S.C. § 1821\(c\)\(2\)](#). Cessation of deposit insurance coverage is an enumerated ground for appointing a conservator or receiver under the FDI Act. See FDI Act § 11(c)(5)(I), [12 U.S.C. § 1821\(c\)\(5\)\(I\)](#).

## **Operational Independence of the Federal Banking Agencies**

Federal statutes provide for the operational independence of each federal banking agency. Operational independence of safety-net participants is ensured through statutory provisions for appointing and removing agency heads, the self-funding nature of the FDIC and the Federal Reserve, and the legal protections for staff acting within the scope of their employment. These laws minimize the opportunity for government or industry interference that could compromise an agency's independence or impede an agency's ability to obtain and deploy the resources to carry out its mandate. See CP-3 for more information regarding governance and CP-11 for more information regarding legal protection.

## **Authority of Federal Banking Agencies to Exercise Supervisory Powers**

Each federal banking agency operates under statutory authority and has clearly defined objectives and responsibilities.<sup>169</sup> As discussed under CP-2, statutes and regulations provide the FDIC and other federal banking agencies with clear and broad authority to address compliance with laws and ensure the safety and soundness of institutions under their jurisdiction. The criteria used as the basis for intervention in troubled banks are established in statutes and regulations. These authorities provide supervisors with proactive and remedial measures to address matters of concern and the discretion to determine when to use them. As described under CP-13, EC-1, the agencies may take prompt remedial action and impose penalties through legally binding formal enforcement actions to address unsafe or unsound practices, violations of laws or regulations, or breaches of any written agreement signed between the agency and the bank.

Appropriate actions undertaken by the federal banking agencies have not been unduly delayed or overturned by courts. The statutes and regulations governing the ability of federal banking agencies to intervene in a timely manner also contain due process protections for banks and IAPs. Those provisions for notice of a proposed enforcement action, the opportunity for an agency hearing, and subsequent judicial review are nonetheless structured to allow for

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<sup>169</sup> See for example National Bank Act, [12 U.S.C. § 1](#) and following (OCC); Federal Reserve Act, [12 U.S.C. § 221](#) and following (Federal Reserve); [12 U.S.C. § 5491](#) and following (CFPB); FDI Act, [12 U.S.C. § 1811](#) and following (FDIC).

prompt agency resolution of problems (and immediate agency intervention when necessary).<sup>170</sup> Likewise, in the event of a recalcitrant bank or IAP, a federal banking agency may apply to court for the judicial enforcement of any effective and outstanding enforcement notice or order.

There are also legal avenues available to oppose the appointment of the FDIC as receiver or conservator when a bank fails. These legal options have been used infrequently and have not caused undue interference in the FDIC's ability to carry out its receivership authorities. Refer to CP-14 for more information.

### **Systems for Collecting Timely, Accurate, and Relevant Banking Information**

The federal banking agencies maintain robust systems to ensure collection of timely, accurate, and relevant information to assess individual banks and the overall banking sector. These data are critical for early detection and timely intervention. Each quarter, every bank must submit comprehensive financial data known as Consolidated Reports of Condition and Income (Call Reports). The data include financial, operational, prudential, and structural information and must adhere to uniform instructions that ensure consistency and reliability. During bank examinations, examiners review Call Report data to verify integrity and accuracy.

The data are available to the public, and the federal banking agencies use the data for offsite monitoring of individual banks and the banking sector. Federal banking agencies have the authority to request and receive at any time any information from banks and bank holding companies if the agency believes it is material to the financial situation or the assessment of the risks of the bank or bank holding company.<sup>171</sup>

## **Essential Criterion 3**

**The framework includes a set of clearly defined qualitative and/or quantitative criteria that are used to trigger timely intervention or corrective action. The criteria:**

- (a) are clearly defined in law, regulation, or agreements;**
- (b) include safety and soundness indicators such as the institution's capital, asset quality, management, earnings, liquidity, and sensitivity to market risk; and**

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<sup>170</sup> See for example FDI Act § 8(b)(1) (notice of violation and agency hearing), (c)(1)-(2) (temporary cease and desist orders and judicial review of those orders), (h) (agency hearings and orders), [12 U.S.C. § 1818](#)(b)(1), (c)(1)-(2), (h).

<sup>171</sup> For example, for national banks, see Revised Statutes § 5211, [12 U.S.C. § 161\(a\), \(c\)](#).

**(c) are reviewed periodically, and the procedure for this review is formalized.**

The framework for corrective action includes qualitative and quantitative criteria defined in laws and regulations and used to trigger timely intervention or corrective action. The criteria are based on safety and soundness indicators. The effectiveness of the supervisory approach to troubled banks is formally and regularly reviewed, including how effectively the regulations were implemented. The appropriateness of the criteria is reviewed and updated as needed.<sup>172</sup>

**Timely Intervention Resulting From Qualitative Determinations**

As noted in EC-1, the federal banking agencies have the authority to take formal enforcement actions under many circumstances. Qualitative criteria are used to support formal enforcement actions when unsafe or unsound conditions exist. The term “unsafe or unsound practices or conditions” is not defined in statute or regulation because a single definition would not capture the broad spectrum of practices or conditions in the term. The FDIC’s “Risk Management Manual of Examination Policies” states that “generally, an unsafe or unsound practice encompasses any action, or lack of action, by an institution or an IAP which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would result in abnormal risk of loss or damage to an institution, its shareholders, or the” DIF. Precedent may also be considered to determine whether unsafe or unsound conditions or practices exist, and the FDIC’s “Risk Management Manual of Examination Policies” lists practices and conditions determined in past proceedings of the FDIC Board to be unsafe or unsound. “Unsafe or unsound practices or conditions” may also be determined when an inadequately capitalized institution breaches quantitative thresholds in statutes, which are discussed below.

The federal banking agencies have established minimum operational and managerial standards (including internal controls and audit, loan documentation, credit underwriting, interest rate exposure, and asset growth); compensation standards; and standards relating to

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<sup>172</sup> Each of the federal banking agencies makes its examination guidance public through its handbooks and examination policy manuals. See OCC, “[Large Bank Supervision](#)” and “[Community Bank Supervision](#),” Federal Reserve, “[Commercial Bank Examination Manual](#),” and FDIC, “[Risk Management Manual of Examination Policies](#).”

asset quality, earnings, stock valuation, and information security.<sup>173</sup> If a federal banking agency determines that an institution fails to meet any of these established standards, the agency may require the institution, through formal enforcement actions, to submit to the agency an acceptable plan, known as a safety and soundness plan, to comply with the standard.

### **Timely Intervention Resulting From Quantitative Determinations**

Every bank operating in the United States must maintain minimum levels of capital or be subject to restrictions, enforcement actions, or revocation of its banking charter and deposit insurance. While qualitative assessments of the adequacy of capital levels are made throughout the supervisory process, the federal banking agencies have also established minimum capital thresholds which can trigger mandatory or discretionary supervisory interventions.

U.S. capital rules generally follow the framework adopted by the Basel Committee on Banking Supervision. In 2013, the federal banking agencies issued regulations for banks that align with the Basel III capital standards for all U.S. banks. For FDIC-supervised institutions, the capital rules are contained in Part 324 of the FDIC Rules and Regulations. Part 324 defines capital elements, establishes risk-weighting guidelines for determining capital requirements under standardized and advanced approaches, and prescribes PCA for institutions not adequately capitalized.

Any bank which has less than its minimum leverage capital requirement may be deemed engaged in unsafe and unsound practice unless the institution has signed and complies with an agreement or has submitted and complies with an approved plan to increase its leverage capital ratio and take other necessary actions. Any bank with a Tier 1 capital to total assets ratio less than 2 percent may be deemed in unsafe and unsound condition. Institutions that fail to maintain minimum leverage capital requirements may be subject to a capital directive and other formal enforcement actions.

In addition, the federal banking agencies established the PCA framework to impose capital-preservation measures if thresholds are breached. Under the PCA framework, each bank's capital ratios are used to place banks into one of five capital categories, ranging from "well-capitalized" to "critically undercapitalized." Supervisory

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<sup>173</sup> [12 C.F.R. § 364](#) (FDIC); [12 C.F.R. § 30](#) (OCC); [12 C.F.R. § 208](#) (FRB).

actions are permitted or prescribed, based on the bank's PCA category. The PCA framework generally requires that a bank that is critically undercapitalized be recapitalized, sold, merged, liquidated, or placed into receivership or conservatorship within 90 days.<sup>174</sup> The PCA framework ensures early intervention at banks that have problems, and the timely closure of failing institutions.

The Basel III capital standards incorporated into federal banking agency regulations include a capital conservation buffer rule designed to strengthen an institution's financial resilience during economic cycles. Under the rule, banks must maintain a buffer of at least 2.5 percent above each ratio corresponding to the "adequately capitalized" level in the PCA framework or the agency may restrict distributions and discretionary payments. Banks that exceed asset- or activity-based thresholds are also required to maintain an additional leverage buffer to avoid restrictions on capital distributions and discretionary bonus payments to executive officers.

### **Periodic Review of Criteria That Trigger Intervention and Corrective Action**

Federal banking agency laws and procedures require formal reviews of the effectiveness of the criteria that trigger corrective action. The FDI Act requires a formal review whenever a bank failure results in a material loss to the DIF.<sup>175</sup> The review and a Material Loss Review report are completed by the Inspector General of the federal banking agency that is the bank's primary regulator.<sup>176</sup> The report's objective is to show why the material loss occurred and to recommend ways to prevent similar losses. The report includes an analysis of whether PCA actions were appropriately and effectively carried out. Federal banking agencies have also implemented other formal procedures that are not mandated by statute. The FDIC conducts internal audits of each of its regional offices every three years, including a review of a sample of downgraded institutions to assess the effectiveness of efforts to initiate corrective actions promptly.

The appropriateness of the criteria that trigger timely intervention or corrective action is subject to review and revision as needed. In

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<sup>174</sup> FDI Act § 38(h)(3), [12 U.S.C. § 1831o\(h\)\(3\)](#).

<sup>175</sup> FDI Act § 38(k), [12 U.S.C. § 1831o\(k\)](#). "Material loss" is defined as a loss to the DIF that exceeds either \$50 million or \$75 million, depending on criteria in the statute.

<sup>176</sup> Material Loss Reviews by the FDIC are publicly available at <https://www.fdicog.gov/reports-bank-failures>.

2013, the FDIC made extensive changes to capital measurement methodologies and preservation tools to align with Basel III capital standards. In addition, the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) mandates that federal banking agencies and the FFIEC review agency regulations and policies every ten years.<sup>177</sup> In this review, criteria may be revised. The most recent review, in 2017, included several proposals to revise definitions used to calculate risk-weighted capital ratios. The federal banking agencies' compliance with the Basel III capital standards and EGRPRA initiatives show commitment to review and revise criteria when appropriate.

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<sup>177</sup> [12 U.S.C. § 3311](#); see for example FFIEC, Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act (2017), [https://www.ffiec.gov/pdf/2017 FFIEC EGRPRA Joint-Report to Congress.pdf](https://www.ffiec.gov/pdf/2017%20FFIEC%20EGRPRA%20Joint-Report%20to%20Congress.pdf); FFIEC, Economic Growth and Regulatory Paperwork Reduction Act, <https://egrpra.ffiec.gov/about/the-law.html>.

## **PRINCIPLE 14            FAILURE RESOLUTION**

**An effective failure resolution regime should enable the deposit insurer to provide for protection of depositors and contribute to financial stability. The legal framework should include a special resolution regime.**

**Essential Criterion 1            The deposit insurer has the operational independence and sufficient resources to exercise its resolution powers consistent with its mandate.**

The FDIC has a high degree of operational independence and access to sufficient resources to execute its resolution powers, as it is a self-funded independent agency with a strong internal governance system. The FDIC operates under the FDI Act to maintain financial stability and public confidence in the nation's financial system. Under the FDI Act, the FDIC is the resolution authority for all IDIs in the United States, including systemically important banks. Please see the responses under CP-3 regarding governance for a more detailed discussion of the FDIC's operational independence and the responses under CP-9 regarding sources of funds for a more detailed discussion of the FDIC's resources.

**Essential Criterion 2            The resolution regime ensures that all banks are resolvable through a broad range of powers and options.**

The FDIC's resolution regime is flexible enough to resolve small, medium, and large banks. It is authorized to exercise a variety of resolution authorities that with its special powers ensure that the FDIC can promptly and effectively execute resolutions.

Once the FDIC has been appointed receiver of a failed IDI, it succeeds to all rights, titles, powers, and authorities of that institution, its shareholders, and its management.<sup>178</sup> The FDIC as receiver has broad authority to manage the assets and operations of the failed bank 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.<sup>179</sup> The FDIC also is responsible for paying insured depositors, administering a claims process, and marshalling the assets of the institution to pay those creditors under the statutorily prescribed hierarchy.<sup>180</sup>

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<sup>178</sup> FDI Act § 11(d), [12 U.S.C. § 1821\(d\)](#).

<sup>179</sup> FDI Act, 12 U.S.C. § 1821(d)(2)(B), (E) and (G); (e) and (n).

<sup>180</sup> FDI Act § 11(d)(11), [12 U.S.C. § 1821\(d\)\(11\)](#).



## Resolution Strategies

The FDI Act provides the FDIC as receiver with the tools to resolve small, medium, and large banks. Absent a systemic risk determination under the FDI Act, the FDIC as receiver must resolve a failed IDI, regardless of its size, in a manner that is least costly to the DIF.<sup>181</sup> In most cases—particularly where the FDIC has sufficient advance warning, as when the capital condition of an institution deteriorates over a period of time—the FDIC will seek to market the assets and liabilities of the failed IDI to an assuming institution (AI) through one or more purchase and assumption (P&A) transactions.<sup>182</sup> P&A is the method the FDIC has used most often to resolve a failing institution and it is the least disruptive to local communities. In a P&A transaction a healthy institution agrees to purchase some or all of the assets of the failing institution and assumes some or all of its liabilities, including all insured deposits.

The resolution transaction can vary based on factors such as the time available to arrange the transaction, the location and size of the financial institution, the nature of its deposits, and the assets available for sale.<sup>183</sup> If there are no bids for a P&A transaction, or if the bids received would not yield the least-costly resolution, the

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<sup>181</sup> FDI Act § 13(c)(4), [12 U.S.C. § 1823\(c\)\(4\)](#).

<sup>182</sup> FDIC, FDIC Resolution Handbook, <https://www.fdic.gov/bank/historical/reshandbook/resolutions-handbook.pdf>.

<sup>183</sup> P&A transactions include:

*Basic P&A*—assets that pass to acquirers generally are limited to cash, cash equivalents, and marketable securities. The liabilities assumed by the acquirers will include the portion of the deposit liabilities covered by FDIC insurance and may also include all deposits, if that is the least-costly option.

*Whole Bank P&A*—this variation emerged as the result of an effort to persuade acquirers to purchase the maximum amount of a failed institution’s assets. This type of transaction minimizes FDIC’s one-time cash outlay by having the acquirer purchase all assets, eliminates the FDIC’s further financial obligation to the acquirer, and reduces the assets held by the FDIC for liquidation.

*P&A With Shared Loss*—the FDIC, as receiver, agrees to share losses on certain types of assets with the acquirer. Shared loss assets are typically distressed assets that might not appeal to potential acquirers without protection from losses. The shared loss option also reduces the FDIC’s immediate cash needs, is operationally simpler, and moves assets quickly to the private sector.

*Bridge Bank P&A*—used when a P&A transaction cannot be concluded before the failure. A new, temporary national bank is organized by the FDIC and chartered by the OCC, and the FDIC manages certain assets and operations of the failed insured depository institution. This new institution exists until the FDIC markets the institution to a third party. A bridge bank can be operated for two years, with three one-year extensions. Before establishing a bridge bank, a cost analysis must show that the failing institution has franchise value and that this alternative is least-costly for the DIF (subject to a systemic risk exception from this least-cost requirement).

FDIC can execute a deposit payout and must pay depositors of the failed institution their insured deposits.<sup>184</sup>

### Special Powers

The FDI Act grants the FDIC special powers that allow the receiver to resolve failed IDIs without prior judicial approval. For example, the FDIC as receiver may disaffirm or repudiate any contract or lease to which the failed institution is a party if the receiver determines that performance of the contract or lease would be burdensome, and that repudiation would promote the orderly administration of the institution's affairs.<sup>185</sup> The FDIC as receiver may, under certain circumstances, enforce contracts and prevent other parties from terminating agreements if preserving the contract is in the best interest of the receivership.<sup>186</sup>

The FDIC also has special powers in litigation. When the FDIC as receiver is substituted as a party for litigation related to the failed institution, the FDIC may request that the court stay the litigation for up to 90 days, and the court cannot decline to issue the stay.<sup>187</sup> The FDIC also has the right to remove that litigation from state court to federal court.<sup>188</sup>

The FDIC has the power to organize one or more bridge institutions, and has the power to enter into legally enforceable agreements by which the FDIC can transfer, and the bridge

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<sup>184</sup> The three most common versions of a deposit payout are:

*Straight Deposit Payout*—used when the liquidation, closing, or winding down of affairs is determined to be the least-costly resolution. The FDIC pays insured depositors, retains all assets and other liabilities, and the receivership bears the responsibility and cost of liquidating all of the assets.

*Insured Deposit Transfer*—the insured and secured deposits of a failed institution are transferred to an agent institution in the community. The agent institution pays customers of the failed institution, or the customer may request a new account in the agent institution.

*Deposit Insurance National Bank (DINB)*—a bank of limited life and powers that is organized by the FDIC and chartered by the OCC. The FDIC may create a DINB to ensure that depositors, particularly those in underserved areas, have continued access to their insured funds, and time to open accounts at other insured institutions, when no other bank has agreed to assume the insured deposits. The FDI Act enables the FDIC to operate a DINB for up to two years. However, the majority of recent DINBs operated for only 30 days. All assets and non-deposit liabilities of the failed institution remain in receivership.

<sup>185</sup> FDI Act § 11(e)(1), [12 U.S.C. § 1821\(e\)\(1\)](#).

<sup>186</sup> FDI Act § 11(e)(13), [12 U.S.C. § 1821\(e\)\(13\)](#).

<sup>187</sup> FDI Act § 11(d)(12)(A)-(B), [12 U.S.C. § 1821\(d\)\(12\)\(A\)-\(B\)](#).

<sup>188</sup> FDI Act § 11(d)(13), [12 U.S.C. § 1821\(d\)\(13\)](#).

institution can receive, assets and liabilities of the failed firm as selected by the FDIC.<sup>189</sup>

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.<sup>190</sup>

### **Essential Criterion 3**

**Where there are multiple safety-net participants responsible for resolution, the legal framework provides for a clear allocation of objectives, mandates, and powers of those participants, with no material gaps, overlaps or inconsistencies. Clear arrangements for coordination are in place.**

The FDIC is the sole resolution authority for all banks in the United States, including systemically important banks. The legal framework in the United States provides for a clear allocation of objectives, mandates, and powers of all safety-net participants. The U.S. federal banking agencies have in place several formal and informal mechanisms for cooperation and information sharing in connection with resolution.

State banking authorities are responsible for the resolution of state-licensed uninsured branches of foreign banks. The OCC is responsible for the resolution of federally licensed uninsured branches of foreign banks. The FDIC would coordinate with federal and state banking regulators, as the case may be, in circumstances in which the FDIC is appointed receiver with respect to a subsidiary of a foreign bank. A comprehensive discussion relevant to safety-net participants is provided under CP-4, EC-1.

### **Essential Criterion 4**

**Resolution and depositor protection procedures are not limited to depositor reimbursement. The resolution authorities have effective resolution tools designed to help preserve critical bank functions and to resolve banks. These include, but are not limited to, powers to replace and remove senior management, terminate contracts, transfer and sell assets and liabilities, write down or convert debt to equity and establish a temporary bridge institution.**

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<sup>189</sup> FDI Act, 12 U.S.C. § 1821(n)(1)(A) and FDI Act, 12 U.S.C. § 1821(n)(3)(A).

<sup>190</sup> FDI Act, 12 U.S.C. § 1821(d)(2)(G) and (n)(1)(A) and (B).

The FDIC has successfully demonstrated the use of various resolution tools to help preserve critical bank functions and to resolve failed IDIs in an orderly manner. The FDIC has the ability and legal powers supported by policies, procedures, and standards to resolve failing institutions.

### **FDIC Has Many Tools and Legal Powers to Resolve Failed IDIs**

The FDIC as receiver has been granted through statute many powers that can be used to resolve failed IDIs that extend beyond depositor payouts. Under the FDI Act, the FDIC as receiver succeeds to all rights, titles, powers, and privileges of the failed IDI and of any stockholder, member, officer, or director, and therefore can perform all functions of the bank, including the removal and replacement of senior management and directors.<sup>191</sup> The FDIC also has the authority to repudiate contracts, transfer and sell assets and liabilities, manage the claims process, and establish a temporary bridge institution.<sup>192</sup>

The FDIC has successfully used its bridge bank power to help preserve critical bank functions and to resolve failed banks in an orderly manner. Using a bridge bank provides an effective resolution tool when there is franchise value in the failing institution. This tool enables the FDIC to establish a new temporary national bank (chartered by the OCC) to bridge the gap in time between the failure of the institution and the time it takes the FDIC to evaluate and market the institution to a third party. The FDIC as receiver can preserve critical bank functions because it succeeds to all rights, titles, powers, and privileges of the failed institution and therefore can perform all functions of the failed IDI. See CP-14, EC-2 for more discussion of resolution tools and strategies and the FDIC's special powers.

### **FDIC Use of Its Powers Is Supported by Policies, Procedures, and Guidance**

The FDIC's exercise of its statutorily granted resolution and receivership powers is supported by a variety of sources.<sup>193</sup> The FDIC also publishes statements of policy that address receivership

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<sup>191</sup> FDI Act § 11(d)(2), [12 U.S.C. § 1821\(d\)\(2\)](#).

<sup>192</sup> FDI Act § 11(e), [12 U.S.C. § 1821\(e\)](#); FDI Act § 11(d)(2)(G), [12 U.S.C. § 1821\(d\)\(2\)\(G\)](#); FDI Act § 11(d)(3)-(10), [12 U.S.C. § 1821\(d\)\(3\)-\(10\)](#); FDI Act § 11(n)(1)(A), [12 U.S.C. § 1821\(n\)\(1\)\(A\)](#).

<sup>193</sup> See for example [12 C.F.R. Part 360](#).

and resolution issues.<sup>194</sup> In addition, the *Resolutions Handbook* addresses resolution and receivership processes and practices.<sup>195</sup>

### **FDIC Assesses Whether Resolution Tools Are Used Appropriately**

The FDI Act requires the Inspector General of the appropriate federal banking agency to conduct a review and prepare a report when the DIF incurs a material loss related to a bank for which the FDIC is appointed receiver.<sup>196</sup> These reviews consider whether the FDIC properly implemented the PCA provisions of the FDI Act and how the resolution of the failed institution was handled. The reviews inform the FDIC's approach to future resolutions.

The FDIC is also subject to external review by the GAO, including an annual audit of the FDIC and the DIF.<sup>197</sup> The GAO also conducts reviews of the FDIC's resolution activities.

## **Essential Criterion 5**

### **One or more of the available resolution methods allows the flexibility for resolution at a lesser cost than otherwise expected in liquidation net of expected recoveries.**

Generally, the FDIC is required to pursue the resolution option that is least costly to the DIF.<sup>198</sup> The FDIC has many methods it can use to resolve failed institutions. While the FDIC has used deposit payouts in many forms, the FDIC most commonly pursues a P&A transaction strategy to resolve a failed institution. There are different P&A transactions that the agency can pursue, ranging from transfer of some assets of the failed IDI to the AI all the way to whole bank P&A. (See the response to EC-2 for a more detailed discussion of P&A transactions.) There is an exception to the least-costly resolution requirement when a statutory determination is made by the FDIC, the Federal Reserve, and the Secretary of the Treasury that compliance with the least-cost test would have serious adverse effects on economic conditions or financial stability in the United States.<sup>199</sup>

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<sup>194</sup> FDIC statements of policy are available at <https://www.fdic.gov/regulations/laws/rules/5000-100.html>.

<sup>195</sup> FDIC, *Resolutions Handbook*, <https://www.fdic.gov/bank/historical/reshandbook/resolutions-handbook.pdf>.

<sup>196</sup> FDI Act § 38(k)(1), [12 U.S.C. § 1831o\(k\)\(1\)](#).

<sup>197</sup> FDI Act § 17(d)(1), [12 U.S.C. § 1827\(d\)\(1\)](#).

<sup>198</sup> FDI Act § 13(c)(4), [12 U.S.C. § 1823\(c\)\(4\)](#).

<sup>199</sup> FDI Act § 13(c)(4)(G), [12 U.S.C. § 1823\(c\)\(4\)\(G\)](#).

For a full discussion of FDIC resolution tools and powers, see responses to EC-2 and EC-4. For a discussion of how the FDIC determines which resolution strategy to use, see the response to EC-9.

**Essential Criterion 6**

**Resolution procedures follow a defined creditor hierarchy in which insured deposits are protected from sharing losses and shareholders take first losses.**

The FDI Act provides a statutory hierarchy of claims that protects insured deposits and subjects shareholders to the first losses when a bank fails. Under the FDI Act, amounts realized from the liquidation or other resolution of any bank by the receiver shall be distributed to pay claims (other than secured claims) in this order:

- (i) administrative expenses of the receiver
- (ii) any deposit liability of the institution
- (iii) any other general or senior liability of the institution [which is not described in clause (iv) or (v)]
- (iv) any obligation subordinated to depositors or general creditors [which is not described in clause (v)]
- (v) any obligation to shareholders or members arising because of their status as shareholders or members [including any depository institution holding company or any shareholder or creditor of such company].<sup>200</sup>

**Essential Criterion 7**

**The resolution regime does not discriminate against depositors on the basis of their nationality or residence.**

The U.S. resolution regime does not discriminate against depositors on the basis of their nationality or residence.<sup>201</sup>

**Essential Criterion 8**

**The resolution regime is insulated against legal action that aims at the reversal of decisions related to resolving non-viable banks. No court can reverse such decisions. The legal remedy for successful challenges is limited to monetary compensation.**

The FDI Act sets forth the limited scope of judicial review of FDIC's operations as receiver of failed IDIs. The FDI Act provides that courts may not restrain or affect the exercise of powers or functions of the receiver or issue any attachment or execution upon assets in the possession of the FDIC as receiver.<sup>202</sup>

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<sup>200</sup> FDI Act § 11(d)(11)(A), [12 U.S.C. § 1821\(d\)\(11\)\(A\)](#).

<sup>201</sup> [12 C.F.R. § 330.3](#); FDI Act § 1, [12 U.S.C. § 1811](#).

<sup>202</sup> FDI Act § 11(d)(13)(C)-(D), (j), [12 U.S.C. § 1821\(d\)\(13\)\(C\)-\(D\), \(j\)](#).

There are legal means available to challenge the appointment of a receiver for a bank under both federal law (for a bank closed by a federal agency) and state law (for a state-chartered bank closed by its state regulator). Challenge procedures under state law vary from state to state, and are usually brought in state court against the state regulator. When the appointment is under federal law, a bank placed into a receivership or conservatorship may, within 30 days, apply in federal court for the FDIC to be removed as receiver or conservator.<sup>203</sup> Regardless of the state or federal forum or the applicable law, the regulators have typically been able to present overwhelming factual evidence about a bank's troubled condition and the need to close it, making any challenge unsuccessful.

The resolution process generally would not be interrupted by the challenge being considered by the court. In most cases, the resolution process would involve the rapid transfer of deposits to another institution or direct payments to depositors and sale of a substantial amount of the institution's assets. Once these actions have been taken, there is generally no feasible means of reversing them to restore the institution intact to its owners. As a result, even if the court found against the appointment of the FDIC as receiver or conservator, the relief available to aggrieved parties will generally not include reversal of actions taken in receivership; rather it would be limited to monetary damages. Most failing banks are resolved without legal opposition.

## Essential Criterion 9

**The resolution regime keeps the period between depositors losing access to their funds and implementation of the selected resolution option (e.g. depositor reimbursement) as short as possible.**

The FDI Act requires the FDIC to make payments of insured deposits as soon as possible upon the failure of a bank. The FDIC may make payments of insured deposits either by cash or by providing to each depositor a transferred deposit in another bank in the same community.<sup>204</sup> Other than "as soon as possible," Congress has not imposed any time limit for paying deposit insurance.

In practice, the FDIC has provided customers access to insured deposits within one business day of the institution's failure or within two business days if the failure occurs on a day other than

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<sup>203</sup> FDI Act § 11(c)(7), [12 U.S.C. § 1821\(c\)\(7\)](#).

<sup>204</sup> FDI Act § 11(f)(1), [12 U.S.C. § 1821\(f\)\(1\)](#).

Friday. This is facilitated by pre-resolution planning and standard policies and procedures that the FDIC follows in making deposit insurance payments.

The majority of bank failures result in a P&A transaction in which the failed IDI's deposits are transferred to another bank after the FDIC is appointed receiver. This approach results in a relatively seamless process that minimizes disruption for depositors, as proven during the recent financial crisis. From 2008 to 2013, the FDIC resolved 489 banks. Of these resolutions, 463 were P&A transactions; only 26 involved deposit payouts or the creation of a deposit insurance national bank (DINB). Of the P&A transactions, 80 were whole bank P&A transactions in which both insured and uninsured deposits were transferred to the AI and no deposit insurance determination was necessary. Another 304 P&A transactions involved loss share agreements, which are similar to whole bank P&A transactions, except that the FDIC as receiver shares losses on certain types of assets.<sup>205</sup>

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<sup>205</sup> "Crisis and Response," 200.



## **PRINCIPLE 15 REIMBURSING DEPOSITORS**

**The deposit insurance system should reimburse depositors' insured funds promptly, in order to contribute to financial stability. There should be a clear and unequivocal trigger for insured depositor reimbursement.**

**Essential Criterion 1            The deposit insurer is able to reimburse most insured depositors within seven working days. If the deposit insurer cannot currently meet this target, the deposit insurer has a credible plan in place to do so.**

The FDI Act requires the FDIC to make payments of insured deposits as soon as possible upon the failure of an insured institution either by cash or by providing to each depositor a transferred deposit in a new bank equal to the insured deposit.<sup>206</sup> While every bank failure is unique, there are standard policies and procedures that the FDIC follows in making deposit insurance payments as soon as possible. In practice, the FDIC is able to provide customers access to insured deposits on the business day following an institution's failure.

In certain cases, depositors may be required to provide supplemental documentation about their deposits, such as for accounts linked to a formal written trust agreement, funds placed by a fiduciary on behalf of an owner such as a deposit broker, or deposits placed by an administrator of an employee benefit plan. The deposit insurance determination may take longer in such cases. The timing for completing the deposit insurance determination is based solely on the depositor providing the required documentation needed by the FDIC to determine insurance coverage.

**Essential Criterion 2            To be credible, the reimbursement plan:**

- a) has a clear time frame for implementation (e.g. within two years);**
- b) is supported by relevant laws, regulations, systems, and processes (e.g. intervention and resolution manuals); and**
- c) has clear and measurable deliverables.**

The FDI Act requires the FDIC to make payments of insured deposits as soon as possible after the failure of an insured institution. In practice the FDIC does so.

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<sup>206</sup> FDI Act § 11(f)(1), [12 U.S.C. § 1821\(f\)\(1\)](#).

### Essential Criterion 3

**In situations where reimbursement is triggered and there may be extended delays in reimbursements, the deposit insurer may make advance, interim, or emergency partial payments.**

The legal framework in the United States allows the FDIC to reimburse insured deposits without extended delays. The FDIC has broad powers to manage the capacity and practical ability to pay claims for insured deposits as soon as possible by drawing upon the failed institution's assets, and, if necessary, the DIF. Advance dividends for uninsured deposits may also be approved by the FDIC Board of Directors.

### Essential Criterion 4

**In order to provide depositors with prompt access to their funds, the deposit insurer:**

- (a) has access to depositors' records at all times, which includes the authority to require banks to maintain depositor information in a format prescribed by the deposit insurer in order to expedite insured depositor reimbursement;**
- (b) has the authority to undertake advance or preparatory examinations (e.g. on-site and independently or in conjunction with the supervisory authority) on the reliability of depositor records, and has tested member institution's IT systems and data to ensure the capability to produce such records; and**
- (c) has a range of reimbursement options.**

The FDIC:

- (a) can directly access the bank's deposit records and it has the authority to require banks to maintain depositor information in a format prescribed by the FDIC to expedite insured depositor reimbursement.<sup>207</sup> FDIC regulations include recordkeeping requirements that vary depending on the size of the institution.<sup>208</sup> The FDIC's examination authority allows for the review of deposit records to ensure they are maintained in a manner that would facilitate depositor reimbursement.<sup>209</sup>
- (b) maintains the Claims Administration System, which has the

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<sup>207</sup> [12 C.F.R. Part 370.1](#), [12 C.F.R. § 370.3](#).

<sup>208</sup> See for example [12 C.F.R. § 360.9](#) (requirements for banks that have at least \$2 billion in deposits and at least either 250,000 deposit accounts or \$20 billion in total assets); [12 C.F.R. Part 370](#) (requirements for banks that have 2 million or more deposit accounts).

<sup>209</sup> FDI Act § 10(b), [12 U.S.C. § 1820\(b\)](#).

ability to interface with an institution's information technology system to quickly calculate deposit insurance coverage. The largest banks are required to implement and maintain the information technology capability to process their own deposit account records and calculate the deposit insurance coverage available for each depositor if a failure occurs.<sup>210</sup> The FDIC has implemented regulations and provided guidance regarding the file formats for depositor records.<sup>211</sup> The FDIC has special examination authority for any bank.<sup>212</sup> Accordingly, the FDIC has the authority to undertake advance or preparatory examinations on the reliability of depositor records, and it has the authority to test an institution's IT systems and data to ensure the capability to produce records and deposit insurance determinations where those banks are required to maintain those capabilities.<sup>213</sup> As part of standard bank examinations, FDIC examiners conduct IT examinations to determine the validity and reliability of the records produced by an institution's system.<sup>214</sup> During pre-failure preparations, FDIC examination and resolution staff gather information about the institution's deposits, IT systems, and other aspects relevant to resolution planning.<sup>215</sup> The FDIC uses the Claims Administration System prior to an institution's failure to estimate the amount of insured and uninsured deposits held by an institution.<sup>216</sup>

(c) pays claims for insured deposits as soon as possible either in cash or by providing to each depositor a transferred deposit in another bank.<sup>217</sup> In most cases, the FDIC satisfies its obligation to pay insured deposits by transferring them to an AI through a P&A transaction. As noted in EC-2, the payout can also be made in cash or facilitated through several means, including the establishment of a DINB or by using a paying agent.<sup>218</sup>

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<sup>210</sup> [12 C.F.R. § 370.3](#).

<sup>211</sup> See for example [12 C.F.R. Part 360, Appendices A-H](#) (detailing file format requirements for insured institutions subject to 12 C.F.R. § 360.9); [12 C.F.R. Part 370, Appendices A and B](#); and FDIC, 12 CFR Part 370 Recordkeeping Information Technology Functional Guide, <https://www.fdic.gov/regulations/resources/recordkeeping/index.html>.

<sup>212</sup> FDI Act § 10(b)(3), [12 U.S.C. § 1820\(b\)\(3\)](#).

<sup>213</sup> [12 C.F.R. § 360.9\(h\)](#); [12 C.F.R. § 370.10\(b\)](#).

<sup>214</sup> FDIC, Risk Management Manual of Examination Policies, <https://www.fdic.gov/regulations/safety/manual/>.

<sup>215</sup> [Resolutions Handbook](#), 9-11.

<sup>216</sup> FDIC, Freedom of Information Act Service Center—Major Information Systems, <https://www.fdic.gov/about/freedom/systems.html>.

<sup>217</sup> FDI Act § 11(f)(1), [12 U.S.C. § 1821\(f\)\(1\)](#).

<sup>218</sup> FDI Act § 11(m), [12 U.S.C. § 1821\(m\)](#); and [Resolutions Handbook](#), 19-20.

## Essential Criterion 5

**The deposit insurer has the capacity and capability to promptly carry out the reimbursement process, including:**

- a) adequate resources and trained personnel (in-house or contractors) dedicated to the reimbursement function and supported with reimbursement documentation or manuals;**
- b) information systems to process depositor information in a systematic and accurate manner;**
- c) pre- and post-closing activities specified in closing documentation or manuals; and**
- d) scenario planning and simulations, including simulations on bank closings with supervisory and resolution authorities.**

The FDIC:

- (a) has adequate in-house personnel and access to contractor personnel to carry out its reimbursement functions effectively. The FDI Act requires the FDIC to have a division of asset disposition to handle liquidation of banks, which the FDIC has satisfied through its Division of Resolutions and Receiverships. This division is responsible for resolving failed IDIs and managing the resulting receiverships. The FDIC has established claims determination and payments processes supported by reimbursement documentation and manuals.<sup>219</sup>
- (b) has information systems to process depositor information in a systematic and accurate manner through the Claims Administration System, a centralized, automated repository for depositor information used when an IDI fails. It interfaces with an institution's information technology system to quickly calculate deposit insurance coverage. FDIC regulations also require large banks to implement and maintain the capabilities to perform deposit insurance determinations using their own IT systems.<sup>220</sup>
- (c) has developed policies, procedures, standards, and manuals for pre- and post-closing activities, including a claims manual, the *Resolutions Handbook*, and others.<sup>221</sup>
- (d) is the sole resolution authority for all IDIs in the United States. The FDIC works with other supervisory authorities to plan for future resolutions, including regular meetings with federal banking supervisory authorities to discuss troubled institutions.

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<sup>219</sup> [Resolutions Handbook](#).

<sup>220</sup> [12 C.F.R. § 370](#) (recordkeeping and IT capability requirements for banks that have 2 million or more deposit accounts).

<sup>221</sup> [Resolutions Handbook](#).

## Essential Criterion 6

**A review (e.g. post mortem) following a bank failure is performed to determine and analyze elements of the reimbursement process (including the resolution procedures where applicable) which were successful or unsuccessful.**

The FDIC regularly conducts informal reviews of actions taken during the course of the resolution of a failed IDI. In addition, the FDI Act requires the Inspector General of the appropriate federal banking agency to conduct a review and prepare a report when the DIF incurs a material loss related to a bank for which the FDIC is appointed receiver.<sup>222</sup> These reviews consider how the resolution of the failed institution was handled and they inform the FDIC's approach to future bank failures. The FDIC also conducts regional audits on a three-year cycle to review the effectiveness of resolutions.

## Essential Criterion 7

**An independent party conducts a periodic audit of the reimbursement process to confirm that appropriate internal controls are in place.**

The FDIC is accountable through a transparent framework for the review of its discharge of its statutory responsibilities, including its management of the reimbursement process. The FDIC is required to maintain full accounting of receiverships undertaken under the FDI Act and make an annual accounting available to the Secretary of the Treasury and the Comptroller General of the United States, among others.<sup>223</sup>

The FDIC is also subject to external review by the GAO, including an annual audit of the FDIC and the DIF.<sup>224</sup> Finally, the FDI Act requires the Inspector General of the appropriate federal banking agency to conduct a review and prepare a report when the DIF incurs a material loss related to a bank for which the FDIC is appointed receiver.<sup>225</sup>

## Essential Criterion 8

**If set-off of insured deposits against past-due claims (e.g. debt service and arrears) or matured loans is applied, such application is timely and does not delay prompt reimbursement of insured depositors' claims or undermine financial stability.**

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<sup>222</sup> FDI Act § 38(k)(1), [12 U.S.C. § 1831o\(k\)\(1\)](#). The FDI Act defines a material loss as any estimated loss to the DIF in excess of \$50 million if the loss occurs on or after January 1, 2014.

<sup>223</sup> FDI Act § 11(d)(15), [12 U.S.C. § 1821\(d\)\(15\)](#).

<sup>224</sup> FDI Act § 17(d)(1), [12 U.S.C. § 1827\(d\)\(1\)](#).

<sup>225</sup> FDI Act § 38(k)(1), [12 U.S.C. § 1831o\(k\)\(1\)](#). The FDI Act defines a material loss as any estimated loss to the DIF in excess of \$50 million on or after January 1, 2014.

The FDIC may withhold payment of a portion of an insured deposit to a depositor to provide for the payment of a liability of the depositor which is due and owing to the failed institution or its receiver.<sup>226</sup> The FDIC has established procedures for the timely application of any offset transactions to ensure prompt reimbursement of insured depositors' claims.<sup>227</sup>

**Essential Criterion 9**

**Working arrangements and/or agreements are in place with relevant clearing and settlement system agencies and liquidators, to ensure that transit items are dealt with in an appropriate, consistent and timely manner.**

The FDIC receivership management process has addressed the treatment of items in transit when a bank fails. While the ultimate treatment of these items will depend on the strategy used to resolve the failed institution, the FDIC's goal is to cause the least amount of disruption possible under the circumstances. For example, in a resolution handled through a P&A transaction, the institution accepting the transferred deposits will also likely clear items in transit. With an insured deposit transfer, the agent bank handling the deposit payout will clear items in transit. If a DINB is established following the failure, then items in transit will clear when they are presented to the DINB while it remains active.

**Essential Criterion 10**

**In cases where the deposit insurer does not have the authority to act as a liquidator, the liquidator is obliged by law or regulation to cooperate with the deposit insurer to facilitate the reimbursement process.**

The FDIC has sole responsibility for liquidating failed IDIs.<sup>228</sup>

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<sup>226</sup> FDI Act § 12(d), [12 U.S.C. §1822\(d\)](#).

<sup>227</sup> The FDIC's primary goal as the receiver is to protect the depositors. The FDIC has established procedures to allow depositors to offset the uninsured portion of a deposit against loan amounts owed to a failed bank. In the case of a depositor with large deposit balances and loans at the bank, the deposit amounts greater than the insurance limit could be used to pay off any loans owed by the depositor to a failed bank.

<sup>228</sup> FDI Act § 11(c)(13)(B), [12 U.S.C. § 1821\(c\)\(13\)\(B\)](#).

## PRINCIPLE 16 RECOVERIES

The deposit insurer should have, by law, the right to recover its claims in accordance with the statutory creditor hierarchy.

**Essential Criterion 1**                    **The deposit insurer’s role in the recovery process is clearly defined in law. The deposit insurer is clearly recognized as a creditor of the failed bank by subrogation.**

Under the FDI Act, the FDIC, upon the payment of claims for insured deposits, becomes subrogated to all rights of the depositor against the bank to the extent of the payment or assumption.<sup>229</sup>

**Essential Criterion 2**                    **The deposit insurer has at least the same creditor rights or status as a depositor in the treatment in law of the estate of the failed bank.**

Once the FDIC pays claims for insured deposits, the FDIC is then subrogated to all rights of such insured depositors against the estate of the failed institution.<sup>230</sup> The FDIC’s subrogated claim is classified as a deposit liability and has the same rights and status as an uninsured depositor.

**Essential Criterion 3**                    **The deposit insurer, in its capacity as creditor, has the right of access to information from the liquidator, so that it can monitor the liquidation process.**

The FDIC, acting as receiver, has primary responsibility for liquidating failed IDIs.<sup>231</sup> The FDIC as receiver has access to information regarding the failed institution, including information necessary to administer the claims process. The FDI Act does not restrict the FDIC in its receivership capacity from sharing relevant information with the FDIC in its deposit insurer (creditor) capacity.

**Essential Criterion 4**                    **The management and disposition of the assets of a failed bank in its asset management and recovery approaches is guided by commercial and economic considerations.**

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<sup>229</sup> FDI Act §§ 11(f)-(g), 13(c)-(d), [12 U.S.C. §§ 1821\(f\)-\(g\), 1823\(c\)-\(d\)](#).

<sup>230</sup> FDI Act §§ 11(f)-(g), 13(c)-(d), [12 U.S.C. §§ 1821\(f\)-\(g\), 1823\(c\)-\(d\)](#).

<sup>231</sup> FDI Act § 11(d)(2), [12 U.S.C. § 1821\(d\)\(2\)](#).

The FDI Act grants the FDIC broad powers to conduct the liquidation, management, and disposition of assets of a failed IDI.<sup>232</sup> Upon appointment as receiver, the FDIC succeeds to all rights, titles, powers, and privileges of the institution. The FDIC may take over the institution's assets and operate the entity with all of the powers of the members or shareholders, directors, and officers, and conduct all business of the entity.<sup>233</sup>

In carrying out its responsibilities in the management and disposition of assets of a failed IDI, the FDIC as receiver may utilize services of outside parties, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services. If the FDIC as receiver utilizes the services of outside parties, it does so only when it determines that the utilization of the services is the most practicable, efficient, and cost-effective option.<sup>234</sup>

In exercising any right, power, privilege, or authority in connection with any sale or disposition of assets of a failed IDI, the FDIC as receiver is required to act in a manner which:

- maximizes the net present value return from the sale or disposition of assets
- minimizes any loss realized in resolving cases
- ensures adequate competition and fair and consistent treatment of offerors
- prohibits discrimination based on race, sex, or ethnic group in the solicitation and consideration of offers
- maximizes the preservation of the availability and affordability of residential real property for low- and moderate-income individuals.<sup>235</sup>

In addition, the FDI Act requires the FDIC as receiver to consider the adverse economic impact its resolution and liquidation actions would have on local communities.<sup>236</sup> After the FDIC is appointed receiver for a failed IDI, and before taking any action in the resolution of an institution, the FDIC evaluates the likely impact that the means of resolution and any action which the FDIC may take in

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<sup>232</sup> FDI Act § 11(d)(2), [12 U.S.C. § 1821\(d\)\(2\)](#).

<sup>233</sup> FDI Act § 11(d)(2), [12 U.S.C. § 1821\(d\)\(2\)](#).

<sup>234</sup> FDI Act § 11(d)(2)(K), [12 U.S.C. § 1821\(d\)\(2\)\(K\)](#).

<sup>235</sup> FDI Act § 11(d)(13)(E), [12 U.S.C. § 1821\(d\)\(13\)\(E\)](#).

<sup>236</sup> FDI Act § 11(h), [12 U.S.C. § 1821\(h\)](#).



resolution may have on the viability of other banks in the same community. The FDIC considers the evaluation in determining the means, terms, and conditions for resolving the institution.<sup>237</sup>

## Essential Criterion 5

**Those working on behalf of the deposit insurer, other financial safety-net participants, and third-party professional service providers providing resolution services are not allowed to purchase assets from the liquidator.**

FDIC employees, their spouses, and their minor children may not directly or indirectly purchase or acquire property held or managed by the FDIC as receiver or liquidator of the assets of a failed IDI.<sup>238</sup> A contractor or its affiliated business entity that has performed services within the previous three years related to the assets that the prospective purchaser might buy is also not eligible to purchase those assets.<sup>239</sup>

An FDIC employee must disqualify himself or herself in writing from participating in the disposition of assets held by the FDIC as receiver or liquidator of an institution upon learning that the employee has a “covered relationship” with a prospective buyer.<sup>240</sup>

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<sup>237</sup> FDI Act § 11(h), [12 U.S.C. § 1821\(h\)](#).

<sup>238</sup> [5 C.F.R. § 3201.104](#).

<sup>239</sup> The FDIC has established guidelines and certification procedures to identify prospective purchasers who are not eligible to purchase assets of the failed financial institutions from the FDIC under the laws, regulations, and policies governing such sales. Prospective buyers must complete a Purchaser Eligibility Certification in order to purchase a failed bank’s assets from the FDIC (<https://www.fdic.gov/buying/owned/documents/pec-7300-06-ore.pdf>).

<sup>240</sup> [5 C.F.R. § 3201.104\(b\)](#); [5 C.F.R. § 2635.502\(b\)\(1\)](#) (explanation of “covered relationships”).