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TECHNICAL NOTE—FINANCIAL CRISIS PREPAREDNESS AND DEPOSIT INSURANCE

This Technical Note on Financial Crisis Preparedness and Deposit Insurance for the United States FSAP was prepared by a staff team of the International Monetary Fund as background documentation for the periodic consultation with the member country. It is based on the information available at the time it was completed in July 17, 2020.

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July 27, 2020

TECHNICAL NOTE

FINANCIAL CRISIS PREPAREDNESS AND DEPOSIT INSURANCE

Prepared By
Monetary and Capital Markets Department

This Technical Note was prepared for the IMF Financial Sector Assessment Program (FSAP) mission in the United States held during February–March 2020. It was led by Ms. Michaela Erbenová. It contains technical analysis and detailed information underpinning the FSAP's findings and recommendations. Further information on the FSAP can be found at http://www.imf.org/external/np/fsap/fssa.aspx

CONTENTS

FIGURE

TABLE

APPENDIX

Glossary

BAU	Business-as-Usual
BHC	Bank Holding Company
CARES Act	Coronavirus Aid, Relief, and Economic Security Act
CAS	Claims Administration System
CIGFO	Council of Inspectors General on Financial Oversight
CISR	Division of Complex Institution Supervision and Resolution
CMG	Crisis Management Group
COAG	Cooperation Agreement
CP	Core Principles for Effective Deposit Insurance Systems
DFA	Dodd-Frank Wall Street Reform and Consumer Protection Act
DIF	Deposit Insurance Fund
DIS	Deposit Insurance System
EGRRCPA	Economic Growth, Regulatory Relief and Consumer Protection Act
EPS	Enhanced Prudential Standards
FBO	Foreign Banking Organization
FDI Act	Federal Deposit Insurance Act
FDIC	Federal Deposit Insurance Corporation
FIO	Federal Insurance Office
FRB	Board of Governors of the Federal Reserve System
FSAP	Financial Sector Assessment Program
FSB	Financial Stability Board
FSSA	Financial System Stability Assessment
GFC	Global Financial Crisis
GSIB	Global Systemically Important Bank
IBA	International Banking Act
IDI	Insured Depository Institution
IHC	Intermediate Holding Company
KA	Key Attributes of Effective Resolution Regimes for Financial Institutions
LAC	Loss-Absorbing Capacity
LISCC	Large Institution Supervision Coordinating Committee
MOU	Memorandum of Understanding
NCUA	National Credit Union Administration
NCUSIF	National Credit Union Share Insurance Fund
OCC	Office of the Comptroller of the Currency
OIG	Office of Inspector General
P&A	Purchase and Assumption
RRP	Recovery and Resolution Plan / Planning
RWA	Risk-Weighted Asset
SEC	Securities and Exchange Commission
SPOE	Single Point of Entry
TLAC	Total Loss-Absorbing Capacity
UST	U.S. Department of the Treasury

EXECUTIVE SUMMARY

The U.S. authorities should preserve the considerable progress in the resiliency, recoverability, and resolvability of financial companies and insured depository institutions (IDIs), and intensify financial crisis preparedness efforts. After a decade of resolution planning, the development of the U.S. resolution regime is more advanced than in other major economies. This regime, together with the strong track record of the deposit insurance system (DIS) for banks and the federal banking agencies' (FBAs) preparation for resolution, provide a strong foundation for crisis preparedness. Bank holding companies (BHCs) have integrated recovery and resolution planning (RRP) into business-as-usual (BAU) activities, increasing their resiliency; this process has deepened the FBAs' understanding of the BHCs' business models and RRP capabilities. The FBAs should continue their own annual resolution planning and mitigate the recent changes that reduced the BHCs' RRP. These efforts should be complemented by further interagency crisis preparedness, including particularly with the U.S. Department of the Treasury (UST), given its essential role in critical aspects of crisis responses. Finally, further refinements relating to cross-border resolution also deserve attention.

RRP for and by the largest and most complex BHCs under the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA) is the centerpiece of orderly resolution. RRP has improved these BHCs' capabilities to recover from financial distress and to be resolved in an orderly manner under court-governed bankruptcy procedures. When such a resolution would adversely affect the U.S. economy, the orderly liquidation authority (OLA) vested in the Federal Deposit Insurance Corporation (FDIC) is available. The initial requirement to submit annual comprehensive resolution plans has had far-reaching effects. The largest and most complex BHCs have reconfigured financial, legal, and operational structures, underpinned by strengthened governance arrangements. These BHCs increasingly assess business decisions through a "resolution lens," ensuring that acquisitions and new activities do not adversely affect resolvability. BHCs' resolution planning under DFA Title I has helped the FBAs better prepare for administrative resolution under DFA Title II. Whereas resolution under the U.S. Bankruptcy Code must be carried out without extraordinary government support, the orderly liquidation fund (OLF) is an important temporary public backstop under OLA.

Deposit insurance by the FDIC is an effective tool to limit the damage caused by IDI failures. For failed IDIs, the FDIC's preferred resolution method is a purchase and assumption (P&A) transaction, which is a time-tested and cost-effective resolution method. Supported by effective recordkeeping by IDIs for timely deposit insurance determination, P&A transactions have provided access to insured—and often also uninsured—deposits within, typically, one business day. This was also the case during the global financial crisis (GFC), when the FDIC managed 489 IDI failures. To support its preparedness, since 2012 the FDIC requires large IDIs to submit annual resolution plans under the Federal Deposit Insurance Act (FDI Act). By 2009Q3, the FDIC-administered deposit insurance fund (DIF) was fully depleted; by 2018Q3, the DIF completed a multi-year restoration plan. At end-2019, the DIF balance stood at US$110 billion and the reserve ratio at 1.41 percent of insured deposits, the highest level since 1999, and well above its statutory minimum level. The DIF also has over US$200 billion in public backstops and the ability to collect prepaid premiums.

Requirements for financial companies' RRP were reduced since the previous FSAP. The Economic Growth, Regulatory Relief and Consumer Protection Act of 2018 (EGRRCPA) increased the thresholds established under the DFA for mandatory Title I plans from US$50 billion to US$250 billion, while giving the Board of Governors of the Federal Reserve System (FRB) discretion—which it has exercised—to apply the requirement to BHCs with assets between US$100 billion and US$250 billion. Under rule changes in 2019 by the FRB and the FDIC, the 74 financial companies subject to resolution planning—including the 8 U.S. global systemically important banks (GSIBs) and several large regional U.S. BHCs and foreign banking organizations (FBOs)— follow longer two- or three-year cycles (depending on their size and complexity), alternating full and targeted plans, or even less extensive reduced plans. Dovetailing these changes, the Office of the Comptroller of the Currency (OCC) increased the threshold for its recovery planning guidelines, reducing the number of national banks to which the guidelines apply from 25 to 8. The FRB's recovery planning requirements continue to apply to only the eight U.S. GSIBs (including the BHC parents of four banks subject to OCC guidelines). For other national banks, elements of formal recovery planning are part of regular risk management supervision, without additional or enhanced requirements.

Exercising their discretion actively, the FBAs should continue to keep a wider array of firms focused on improving critical capabilities for resiliency, recoverability, and resolvability. The FBAs retain discretion to prescribe more comprehensive and frequent RRP, and to apply these to financial companies with assets above US$100 billion. They should continue to exercise this discretion actively, including with targeted plan requirements to keep a wider array of financial companies focused on improving critical capabilities for resiliency, recoverability, and resolvability. The FDIC should continue to review the resolvability of financial companies under its DFA Title II resolution planning annually, or sooner in case of material changes, and promptly discuss the plans and resolvability assessments in crisis management groups (CMGs). All BHCs and IDIs that are subject to resolution plan requirements should also be subject to recovery plan requirements; other firms should adopt credible, enhanced contingency funding plans—emulating recovery plans—subject to the FBAs' critical supervisory assessment. Any increase of the threshold (from US$50 billion) for IDI resolution plans should be very limited. Ensuring the credibility of recovery plans—as is now being done for resolution plans—and the complementarity between recovery and resolution plans is an important priority.

Loss-absorbing capacity (LAC) additional to regular capital requirements should be considered for some non-GSIB U.S. financial companies. So far, the United States has focused on total loss-absorbing capacity (TLAC) for GSIBs. However, the simultaneous failure of smaller or less complex financial companies could also impact financial stability, at least at the regional level. The large number of failures during the GFC (with heavy DIF losses) illustrates that this is a practical reality. In a Title II resolution, OLF funds deployed to provide liquidity cannot be used for capital and would need to be repaid. Such considerations suggest that there could be benefits in some non-GSIB U.S. financial companies holding LAC additional to regular capital requirements, in the form of subordinated debt or otherwise. This would improve resolvability and reduce the DIF's exposure.

Further refinements relating to cross-border resolution also deserve attention. Alignment of the U.S. resolution regime with international standards on cross-border cooperation should be further strengthened, as the 2015 FSAP pointed out. OLA powers do not cover FBOs' U.S. branches. While judicial recognition of a foreign resolution action may be possible under the doctrine of comity, a specific statutory mechanism in the United States to recognize and support foreign resolution actions does not exist. This is particularly problematic for FBOs, including foreign GSIBs, with U.S. branches and agencies. The depositor preference rule discriminates based on the jurisdiction where deposits are payable: at best, deposits in U.S. banks' foreign branches are on par with uninsured U.S. deposits. Finally, as in many jurisdictions, there remains the prospect of ring-fencing the assets of U.S. branches of foreign institutions, to preserve such assets to the primary satisfaction of U.S. creditors, which may undermine cross-border cooperation.

The Financial Stability Oversight Council (FSOC) should more actively engage in and oversee crisis preparedness work. So far, the FSOC has focused less on how interagency cooperation would function in contingencies where risk reduction has not succeeded, and a full-blown crisis has materialized. The FSOC should devote greater attention to ensuring that the FBAs and the UST have comprehensive and complementary crisis preparedness plans, supported by robust governance frameworks within the agencies. The FSOC should also prepare the modalities for crisis cooperation, particularly where crisis responses would require far more than individual agencies' regular planning. This applies to, for example, national financial crisis management communications, and in the rare possibility of a DFA Title II resolution without prior Title I planning. The FBAs should also prepare mitigating actions for a case in which several (larger) institutions will need to simultaneously activate their recovery or contingency funding plans. It is critical to crisis preparedness and decisive action in crisis, that the modalities for the interactions between the UST and the FBAs be operationalized, documented, and regularly reviewed and tested. The FSOC should prioritize this work.

Table 1. United States: Recommendations on Crisis Preparedness and Deposit Insurance

Recommendations and Responsible Authorities	Timing[1]	Priority[2]
Intensify interagency preparedness for crisis responses that would require far more than individual agencies' regular planning, such as national crisis communications, and a DFA Title II resolution without prior Title I planning (FSOC, FBAs; ¶49).	I	H
Operationalize, document, and regularly review and test the modalities for the interactions between the UST and the FBAs under the DFA and the FDI Act (FSOC, FBAs; ¶49).	I	H
Plan to mitigate simultaneous recovery and contingency funding actions by several firms (FSOC, FBAs; ¶49).	I	H
Continue to actively use agency discretion to subject a wider array of firms to recovery and resolution planning (FBAs; ¶29).	I	H
Continue to use (targeted) DFA Title I plan requirements to strengthen firms' resiliency, recoverability, and resolvability between full plan submissions (FBAs; ¶28).	I	H
Continue to undertake DFA Title II planning and resolvability assessments at least once a year and discuss RRPs and assessments for each firm at least once a year in CMGs (FRB, FDIC; ¶28).	I	H
Adopt policies and instructions for FBA staff to identify, as part of regular work, material changes and loss of integration between RRP and firms' BAU (FBAs; ¶28).	I	H
Implement all FDIC OIG recommendations in its 2020 'crisis readiness report' (FDIC; ¶46, Box 6).	ST	H
Extend OLA powers to FBOs' U.S. branches (U.S. Congress; ¶35).	MT	H
Introduce specific statutory provisions to give prompt and predictable legal effect in the U.S. to foreign resolution measures (U.S. Congress; ¶36–40).	MT	H
Ensure equal depositor preference ranking for overseas branch deposits with domestic deposits (U.S. Congress, FDIC; ¶41).	MT	H
Continue to ensure that staffing levels and expertise are commensurate with the agencies' mandates, and that decisive surge staffing, with adequate training, is possible in times of distress in the financial system (FDIC, FRB; ¶20, ¶45).	I	M
Restrict (a) crossholdings of TLAC instruments between financial firms, and (b) holdings by retail investors, to reduce contagion risks (FBAs; ¶32).	ST	M
Identify the disclosure requirements that may warrant waivers for an effective DFA Title II resolution; adopt supporting regulations (FBAs; Appendix I, item 8).	ST	M
Enhance the early intervention framework with policy limits for, e.g., concentration and interest rate risks (FBAs; ¶21).	MT	M
Adopt policies and methodologies to determine which non-GSIBs' resolvability can be enhanced with LAC additional to regular capital requirements (FBAs; ¶33).	MT	M
Assess the effectiveness of public awareness outreach on deposit insurance by undertaking a survey, focusing on, for example, complex trust account holders and depositors with low financial and limited language skills (FDIC; ¶42).	MT	M
Reform the deposit insurance system for credit unions by removing the cap, targeting a significantly higher level of paid-in funds, and making membership mandatory for all credit unions (U.S. Congress; ¶44).	MT	L
Amend the DFA and the FDI Act to further ensure consistency with the Key Attributes (U.S. Congress; ¶6–7, Appendix I, items 4, 7, 10–12, 17).	MT	L

[1] I: immediate (<1 year); ST: short term (1–2 years); MT: medium term (3–5 years).
[2] H: High; M: Medium; L: Low.

BACKGROUND

A. Scope of the Review

1. This note sets out the analysis and detailed recommendations of the 2020 FSAP pertaining to financial crisis preparedness and deposit insurance in the United States.[1] The note summarizes the FSAP findings, including the mission undertaken in February–March 2020, during which time meetings were held with officials and senior staff of the FDIC, OCC, FRB, UST, the National Credit Union Administration (NCUA), and the U.S. Government Accountability Office; the mission also met with private-sector stakeholders, including banks, trade associations, and audit and law firms. The note considers developments since the 2015 FSAP, and is based on the regime in place and the practices employed as of March 10, 2020. The FSAP thanks the authorities for the constructive dialogue and the many insights that they shared.

2. The note focuses on large financial companies and IDIs, and the largest credit unions. Separate FSAP notes discuss other financial institutions (including insurers, securities firms, and financial market infrastructures) and liquidity issues in resolution.

3. The FSAP analyzed the U.S. financial crisis preparedness and deposit insurance arrangements,[2] considering the U.S. financial sector landscape, U.S.-specific challenges, international standards, and emerging best practices. While the note does not formally assess compliance with any standard,[3] in particular two international standards informed the analysis: the Key Attributes of Effective Resolution Regimes for Financial Institutions (KAs);[4] and the Core Principles for Effective Deposit Insurance Systems (CPs); and their assessment methodologies.[5]

4. The international standards identify several preconditions for effective resolution and deposit insurance that are covered by other FSAP workstreams: (1) a well-established framework for financial stability, surveillance, and policy formulation; and (2) an effective system of supervision, regulation, and oversight of banks. The standards also call for a robust accounting, auditing, and disclosure regime, and a well-developed legal framework and judicial system; the 2015 FSAP judged the U.S. arrangements favorably on these two preconditions and no update was done in 2020.

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[1] Authors: Atilla Arda (Senior Financial Sector Expert, IMF, Monetary and Capital Markets Department); and Patrick Honohan (external IMF expert; former governor of the Central Bank of Ireland).

[2] The FSAP did not assess the pertinent agencies' business continuity planning, that aims to ensure the continuity of their operations, staff, and facilities when these are affected by external events.

[3] The 2015 FSAP assessed the United States against the final 2014 Key Attributes, using the October 2014 draft Assessment Methodology that was finalized in 2016 with only a few material changes. This note supplements and complements the 2015 report (IMF Country Report No. 15/171).

[4] Most of the Key Attributes apply to resolution regimes for any financial institution that could be systemically significant or critical if it fails, and not only to GSIBs—see, for example, Chapter IV of the KA Assessment Methodology for the Banking Sector).

[5] Consistent with the methodologies, the team did not have access to confidential firm-specific RRPs and, accordingly, the team made no judgment on individual firms' resolvability.

B. Developments Since the 2015 FSAP

5. The 2015 FSAP pointed to some gaps in the U.S. bank resolution regime vis-à-vis the international standards. The FSAP made recommendations, particularly on (1) the regime's coverage of foreign banks' U.S. branches; (2) cross-border cooperation, including prompt effect in the United States for foreign resolution decisions, the effects of U.S. resolution decisions on financial stability abroad, and depositor preference for overseas deposits; and (3) removing impediments to resolution and triggering resolution at a sufficiently early stage. The 2015 FSAP recommended to reforming the DIS for credit unions, to expedite the timetable for the long-term DIF target, and that the FSOC assume responsibility for crisis preparedness and management cooperation.

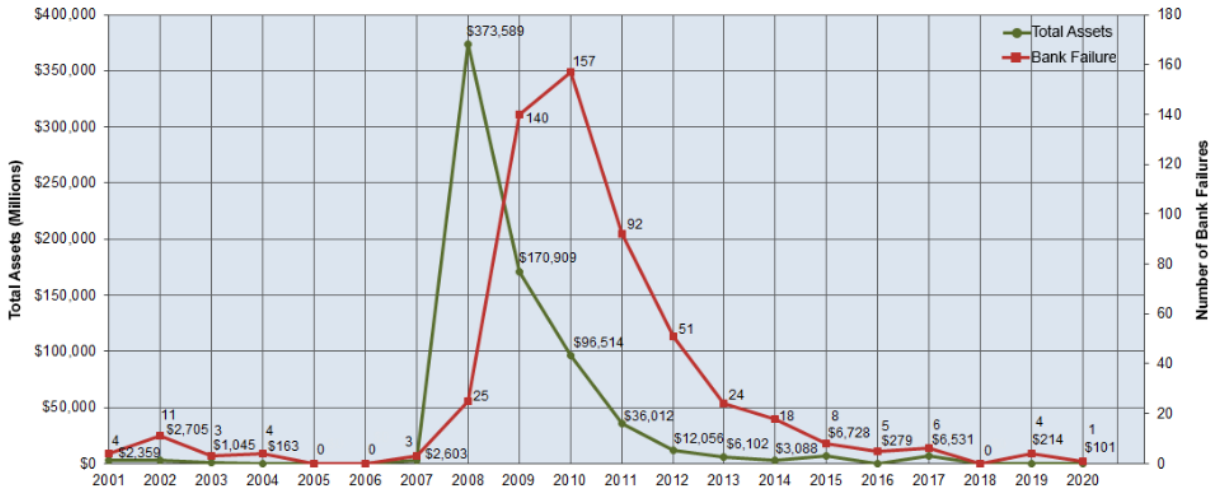
6. The authorities have addressed several of the 2015 FSAP recommendations (Appendix 1). A few recommendations were (partially) overtaken by clarifications in the final KA Assessment Methodology and subsequent guidance from the Financial Stability Board (FSB). The authorities noted that several recommendations addressed primarily the FDI Act, whereas they consider the DFA to be the primary way that the United States adheres to the KA requirements. The authorities also argued that they materially comply with most of the other outstanding recommendations. While the FSAP team is receptive to the latter argument, it continues to believe that there is merit in codifying good practice in statute; the FSAP team also notes that, in many instances, the KA explicitly require statutory provisions and not only KA-compliant practice.

7. The FSAP takes a holistic view on the several statutes underpinning the U.S. bank resolution regime. The DFA is particularly relevant for certain large BHCs; the FDI Act for IDIs; the International Banking Act (IBA) for federally licensed U.S. branches of FBOs; and state banking laws for state-licensed branches. The DFA and the FDI Act are the main pillars of the resolution regime. The DFA resolution approach to BHCs benefits from the FDIC's decades-long experience with resolving IDIs under the FDI Act. IDI resolution under the FDI Act is the only statutory basis for IDI resolution and complements—and is a useful backstop to—BHC resolution under the DFA in case the latter is not feasible.[6] When the opportunity presents itself, Congress should bring both the FDI Act and the DFA into closer alignment with the Key Attributes.

8. While the authorities have shown an impressive ability to resolve IDIs without cost to the U.S. taxpayer, no financial company has been resolved yet under the DFA. In the last 20 years, 558 FDIC-insured IDIs failed, 489 of which were during the GFC; in 2018 no IDI failed—a first since 2006 (Figure 1). Since the enactment of the DFA, 270 IDIs failed. None of these failures was resolved at the BHC level under OLA, which to date has not yet been tested; these IDIs were resolved under the FDI Act.

[6] "The [IDI] Rule is intended to complement the resolution plan requirements of the Dodd-Frank Act." (Federal Register. Vol. 77, No. 14 p. 3076, January 23, 2012) This was recently reiterated in Federal Register, Vol. 84, No. 77 p. 16623, April 22, 2019. See also Federal Register. Vol. 75, No. 94 p. 27466, May 17, 2010, discussing the G20 Leaders' call at the 2009 Pittsburgh Summit for "firm-specific contingency and resolution plans" (for which the FSB developed the Key Attributes), noting that the IDI Rule "supports and complements" and "enhances and complements" these international initiatives and efforts.

Figure 1. United States: U.S. Bank Failures 2001–2020



Source: https://www.fdic.gov/bank/historical/bank/

9. The FSAP risk analysis identified pockets of vulnerabilities in the banking sector, particularly among U.S. non-GSIBs. While the banking system has solid capital buffers to withstand the simulated shocks in an adverse scenario, capital depletion would be relatively high in such scenario, and several banks' capital would fall below the minimum level for Common Equity Tier 1 Capital (4.5 percent)—or even fall below 2 percent. Especially U.S. non-GSIBs with lower initial capital buffers and higher loan exposures would need additional capital buffers.

10. The 2018 EGRRCPA was the first major revision of the DFA, reducing its scope and application. Importantly, this regulatory relief effort raised the asset threshold for the mandatory DFA title I resolution plan requirement from US$50 billion to US$250 billion, while giving the FRB discretion—which it has exercised—to apply the requirement to BHCs with assets between US$100 billion and US$250 billion. Related FBA actions exempted some BHCs and FBOs from this resolution plan requirement, while regulatory capital and liquidity requirements and stress testing were also being scaled down.[7] In response to the COVID-19 pandemic, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was enacted. The Act includes the U.S. Congress' approval for the FDIC to create a widely available program guaranteeing the obligations of solvent IDIs, BHCs, and any affiliates thereof. The FDIC has not exercised this authority, and any program and related guarantee under the CARES Act is required to expire by end-2020. To reduce delays due to political processes, Congress should remove the approval requirement or extend the deadline for the current preauthorization until the economic implications of the COVID-19 pandemic have been mitigated.

[7] For an in-depth discussion, see the FSAP technical note on banking supervision and regulation.

Box 1. U.S. RRP and TLAC Thresholds

US GSIBs: JPMorgan Chase;[1] Citigroup;[2] Bank of America;[3] Goldman Sachs;[3] Wells Fargo;[3] Bank of New York Mellon;[4] Morgan Stanley;[4] State Street[4]	• DFA Title 1 Resolution Plan Requirement 2-Year Cycle Alternating Full/Targeted Plans • DFA Title 2 Resolution Plan by FDIC • FRB Recovery Plan Requirement • TLAC Requirement
US non-GSIB Holding Companies: Capital One; Northern Trust; PNC Financial; U.S. Bancorp *Foreign GSIB US Holding Companies*: HSBC;[2] Barclays;[3] Deutsche Bank;[3] MUFG;[3] Credit Suisse;[4] Mizuho;[4] Royal Bank of Canada;[4] Toronto-Dominion;[4] UBS[4]	• DFA Title 1 Resolution Plan Requirement 3-Year Cycle Alternating Full/Targeted Plans • DFA Title 2 Resolution Plan by FDIC • TLAC Requirement for U.S. IHCs of foreign GSIBs[5]
53 FBOs with global assets ≥$250 billion	• DFA Title 1 Resolution Plan Requirement 3-Year Cycle Reduced Plans • DFA Title 2 Resolution Plan by FDIC • FDIC IDI Rule Resolution Plan Requirement • TLAC Requirement for U.S. IHCs of foreign GSIBs[5]
US/FBO IDIs with assets ≥$250 billion: JPMorgan Chase Bank; Bank of America; Wells Fargo Bank; Citibank; US Bank; PNC Bank Capital One; TD Bank	• FDIC IDI Rule Resolution Plan Requirement • OCC Recovery Plan Requirement
Other IDIs with assets ≥ $50 billion	• FDIC IDI Rule Resolution Plan Requirement • Regular prudential risk management requirements—no enhanced recovery planning requirements

Source: IMF Staff

[1] FSB GSIB Bucket 4

[2] FSB GSIB Bucket 3

[3] FSB GSIB Bucket 2

[4] GSIB Bucket 1

[5]FBOs with U.S. non-branch assets of US$50 billion or more must establish a U.S. IHC.

11. The FBAs have amended their rules and guidance to reflect the EGRRCPA changes, reducing RRP by BHCs. A joint FRB-FDIC final rule in 2019 specified DFA Title I resolution plan requirements under the EGRRCPA (Box 1): the 8 U.S. GSIBs must submit resolution plans every 2 years, alternating full and less extensive targeted plans[8]; 13 larger U.S. BHCs and FBOs will follow a 3-year cycle, alternating full and targeted plans; and 53 FBOs with over US$250 billion global assets must submit reduced plans every 3 years. Financial companies with assets under US$100 billion are not required to submit resolution plans. Dovetailing these changes, per 2019, the OCC increased the assets threshold for its recovery planning guidelines from US$50 billion to US$250 billion, reducing the number of national banks to which these guidelines apply from 25 to 8. The FRB's recovery planning requirements continue to apply to only the eight GSIBs (including the BHC parents of four banks subject to OCC guidelines). For other financial institutions, regular supervision includes overseeing aspects of recovery capabilities; for example, through contingency planning and capital management requirements, without additional or enhanced, formal "recovery planning" requirements.

12. Crisis preparedness continues to be a high priority challenge for the U.S. authorities. Since the GFC, the Council of Inspectors General on Financial Oversight (CIGFO),[9] has been identifying readiness for financial crises among the top challenges for financial regulatory organizations.[10] Similarly, the FDIC Office of Inspector General (OIG) has "crisis readiness" among the FDIC's top challenges. In October 2018, the FDIC OIG announced that it was undertaking an overall assessment of the FDIC's crisis readiness planning efforts,[11] including its crisis readiness plans, its tools and mechanisms to implement the plans, roles and responsibilities, crisis response training, and actions to evaluate and improve readiness.[12] The FDIC OIG assessment was finalized during the FSAP and informed the FSAP assessment—see paragraph 46 below.[13]

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[8] Targeted plans will focus on the most material topics identified by the FDIC and the FRB, including capital and liquidity, and any material changes to the firm that have occurred since the last plan submission. The agencies also retain authority to require interim updates between plans, if they believe additional information is necessary. The full plans will also cover, for example, interconnectedness and interdependencies, management information systems, and corporate governance for resolution planning—targeted and reduced plans will not include these critical components of resolution planning. BHCs continue to be required to provide a "notice of extraordinary events" within 45 days of any "material merger, acquisition of assets or similar transaction" (12 CFR 381.4(d)(4)).

[9] The DFA established the CIGFO to oversee the FSOC and comprises the Inspector Generals of nine financial regulatory agencies, including the FBAs, and the UST.

[10] Most recently in, "Top Management and Performance Challenges Facing Financial Regulatory Organizations," CIGFO, July 2019. The CIGFO uses the term "crisis readiness" instead of "crisis preparedness."

[11] In September 2018, the Group of Thirty observed, "Of greatest concern, some of the tools available to fight extreme crises, when and if they recur, have been weakened, especially in the United States." See "Managing the Next Financial Crisis—An Assessment of Emergency Arrangements in the Major Economies," G30, September 2018.

[12] "Semiannual Report to the Congress," FDIC OIG, October 2018.

[13] FDIC OIG is now assessing the FDIC's enterprise risk management framework, aiming to ensure that the FDIC has increased awareness of emerging and key risks and an opportunity to address them proactively. Considering "the ongoing coronavirus pandemic and resulting strains on the global financial system," three U.S. Congress oversight committees urged the FDIC "to act immediately to establish robust crisis readiness," and requested a briefing on

DOMESTIC ORGANIZATION

A. Oversight Architecture

13. Three FBAs are responsible for dealing with (potentially) failing banks. Each U.S. bank, whether chartered under federal or state law, is subject to regulation and supervision, including prompt corrective action (PCA) and recovery planning, by a primary federal banking supervisor.[14]

- ***FDIC***: state-chartered banks and savings associations that are not members of the Federal Reserve System. The FDIC administers the DIF and has backup supervisory authority for all IDIs.
- ***FRB***: state-chartered banks that are members of the Federal Reserve System; BHCs, and savings and loan holding companies; and U.S. operations of FBOs, including state-licensed branches.
- ***OCC***: national banks, federal savings associations, and federally licensed branches of FBOs.

14. The DFA strengthened the UST's role in responding to distress in the financial system (Box 2). The Treasury Secretary's agreement is required for triggering Title II resolution, using OLA powers and OLF funding, establishing an FDIC guarantee program for IDI obligations, and giving FRB liquidity support to nonbanks. Under the FDI Act, the Secretary decides on backstopping the DIF and invoking the systemic risk exception to the least-cost test for FDIC resolution measures.

B. Domestic Cooperation

15. The FBAs work closely on supervision and on guidance and rules for, and assessment of, DFA Title I resolution plans. They have enhanced coordination and established formal and informal mechanisms for information sharing and supervisory cooperation.[15] Particularly, the FRB and the FDIC work closely on joint rule making for DFA Title I resolution plans. Staff of the FRB and the FDIC also coordinate recommendations to their respective Boards on the feedback letters in response to firms' DFA Title I resolution plans. This promotes common positions on whether the firms' plans have shortcomings or deficiencies. The FDIC has sole authority on DFA Title II resolution planning, albeit with input from the FRB and the OCC.

16. The so-called "three keys process" for triggering OLA under DFA Title II requires close interagency cooperation. The use of these powers requires a recommendation of two-thirds of the members of both the FRB and the FDIC Board,[16] and agreement of the Treasury Secretary, in

steps the FDIC is taking to "prepare for the potential impact of the coronavirus crisis on FDIC's critical role" (letter dated April 13, 2020).

[14] Most domestic banks have several federal supervisors. For example, an insured national bank owned by a BHC is subject to supervision by the OCC, the FRB, and the FDIC.

[15] For an in-depth discussion, see the FSAP technical note on banking supervision and regulation.

[16] Depending on the type of financial company or its largest domestic subsidiary, a recommendation from the Securities and Exchange Commission (SEC) or the Federal Insurance Office (FIO) is needed instead of the FDIC.

consultation with the U.S. President.[17] All authorities involved in this process regularly refresh and confirm their responsibilities and pursue readiness to execute their responsibilities. This engagement includes interagency operational exercises, meetings, and teach-ins.

17. Resolution under the FDI Act too requires close cooperation between the FDIC and the other federal or state supervisors, depending on where or in what manner a bank is chartered. The cooperation starts during regular supervision, including on recovery planning, and intensifies as a bank deteriorates, which may require recovery and resolution action. Close cooperation between the FDIC and the other supervisors is critical for advance resolution preparation by the FDIC, and coordination of charter withdrawal by the chartering authority and resolution action by the FDIC.

Box 2. The U.S. Treasury Secretary's Role in Selected FDIC Crisis Responses[1]

Orderly Liquidation Authority
The Treasury Secretary decides to make OLA available to the FDIC, in consultation with the U.S. President, and on a recommendation of two-thirds of the members of both the FRB and the FDIC Board (or, in certain cases, the SEC or FIO).

Orderly Liquidation Fund
The Treasury Secretary (1) decides whether to acquire any FDIC obligations issued under the OLF, and (2), jointly with the FDIC and in consultation with the FSOC, sets the maximum amount for these OLF obligations. The Secretary's agreement is needed for the OLF policies, procedures, terms, and conditions.

FDIC Guarantees for Banks' Obligations
The Treasury Secretary
- approves the determination of a liquidity event, based on a recommendation—at the Secretary's request—by two-thirds of the members of both the FRB and the FDIC Board;
- approves the policies, procedures, terms, and conditions of any program; and
- decides on the amount of outstanding guaranteed debt, in consultation with the U.S. President, and on a recommendation—at the Secretary's request—of two-thirds of the members of both the FRB and the FDIC Board.

The FDIC may issue guarantees after approval by both chambers of the U.S. Congress upon a request from the U.S. President, giving the President and Congress a veto.

Systemic Risk Exception to the FDIC's Least-Cost Test
The Treasury Secretary decides, in consultation with the U.S. President, and on a recommendation of two-thirds of the members of both the FRB and the FDIC Board.

Backstop for DIF
The Treasury Secretary approves lending to the FDIC up to the statutory limit, subject to terms agreed to by the Secretary and the FDIC Board after congressional consultations on repayments, schedules, and special assessments on banks.

[1] This box does not cover, for example, UST and FRB lending, guarantees, and asset purchases.

[17] Those decisions are subject to immediate, though limited, judicial review.

18. The FSOC is a formal forum for the leadership of the FBAs and the UST to coordinate their analysis and activities. The DFA created the FSOC as a collaborative body under UST chairmanship, with collective responsibility for identifying systemic risks and responding to emerging threats to financial stability.[18] The FSOC aims to deliver on this mandate, including by facilitating regulatory coordination and information collection and sharing. A small staff of 14 supports the FSOC. Of its five committees, the "regulation and resolution" committee supports the FSOC on resolution plan requirements and OLA rules and regulations. For example, the committee has discussed joint FRB and FDIC feedback on DFA Title I plans, and RRP rule and guidance changes.

C. Staffing

19. Mid-2019, the FDIC centralized its supervision and resolution activities for the largest and most complex IDIs. The new Division of Complex Institution Supervision and Resolution (CISR) is responsible for IDIs with assets greater than US$100 billion, for which the FDIC is not the primary federal regulator.[19] CISR plans and will execute resolution for these IDIs—and for other firms, if so decided by the FSOC. As the FDIC is not the primary federal regulator for these institutions, potential policy conflicts between its supervisory and resolution responsibilities are expected to be minimal. CISR is budgeted to have 275 staff members,[20] which it has filled mostly with staff from the Division of Risk Management Supervision, the Division of Resolutions and Receiverships, and the former Office of Complex Financial Institutions.

20. Some FBAs are facing staffing challenges. In 2019, the CIGFO highlighted staffing challenges,[21] reiterating its 2018 findings, particularly at the FRB and the FDIC. Because of regular staff attrition, both at expert and management levels, in combination with the low number of bank failures in recent years, staff with first-hand experience in bank resolution, let alone a financial crisis, is diminishing.[22,23] In February 2020,[24] the FDIC OIG warned that "the FDIC faces significant risks

[18] For an in-depth discussion, see the FSAP technical note on systemic risk oversight and systemic liquidity.

[19] The Division of Risk Management Supervision continues to be responsible for firms—including some large and complex firms—for which the FDIC is the primary federal regulator.

[20] CISR comprises three branches: Risk Assessment (assessing banks' DFA Title I plans); Resolution Readiness (ensuring the FDIC is ready for DFA Title II and FDI Act work); and Policy and Data Analytics.

[21] "Top Management and Performance Challenges Facing Financial Regulatory Organizations," CIGFO, July 2019. The potential retirement of experienced staff is a challenge for the entire federal government. In its March 2019 report, "Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas," the U.S. Government Accountability Office recognized strategic human capital management as a continuing government-wide area of high risk.

[22] The financial sector is facing the same challenge. In the words of Bank of America chief, Brian Moynihan: "One of the big questions for our industry is we now have a substantial amount of our employee base that weren't here [for the GFC]. And so you have to think about how do you get those teammates to understand all of what happened [during the GFC]." 'Focused on Remembering the Financial Crisis,' Financial Times, January 19, 2020.

[23] While the FRB centrally manages resolution planning, over 50 staff in the Federal Reserve System are actively involved in resolution plan reviews across the large bank portfolio.

[24] "Top Management and Performance Challenges Facing the Federal Deposit Insurance Corporation," FDIC OIG, February 2020.

regarding retirement eligibility in key Divisions involved in crises readiness efforts [and] a significant number of employees responsible for ensuring the safety and soundness of institutions and protecting consumers are also eligible to retire." The OIG noted particularly the retirement eligibility by 2024 of two-thirds of FDIC staff responsible for resolutions and receiverships, including ensuring prompt deposit payouts, and 35 percent of the CISR Division. In response to the OIG 'crisis readiness report' (paragraph 46 below) and the FDIC's 'GFC response report' (footnote 70 below), in March 2020, the FDIC announced a buyout and early-retirement offer to 20 percent of its staff.[25] With this offer, the FDIC aims to increase its agility and effectiveness, and to ensure that it can appropriately adapt the skills, tools, and leadership necessary to fulfill mission-critical readiness. The authorities should continue to ensure that staffing levels and expertise are commensurate with their mandates.

FIRMS' RESILIENCY

A. Early Intervention

21. The early intervention framework should be enhanced. Responding to the savings and loan crisis in the 1980s and 1990s, the PCA framework was introduced in 1991 to help prevent DIF losses by prescribing mandatory, and increasingly intrusive, supervisory action by FBAs when a bank's capital falls below certain thresholds; the framework also includes earlier discretionary actions. The low capital thresholds at first adopted for the PCA did not trigger sufficiently early intervention. During the fast-moving GFC, the PCA did not prevent the DIF from large losses, with the Fund's total assets falling from US$52.4 billion at end-2007 to minus US$20.9 billion less than two years later.[26] Since then, the FBAs have increased the PCA capital thresholds and re-emphasized forward-looking supervisory guidance.[27] Complementing the PCA framework's capital thresholds with mandatory policy action in response to other dimensions of bank soundness, such as concentration and interest rate risks, could further enhance the effectiveness of the early intervention framework.[28]

[25] "FDIC to offer buyouts, early retirements for 20% of its workforce," Federal News Network, March 5, 2020. Due to the COVID-19 pandemic, this program has been suspended until further notice.

[26] In its June 2011 report, "Modified Prompt Corrective Action Framework Would Improve Effectiveness," the U.S. Government Accountability Office concluded that the PCA framework "did not prevent widespread losses to the DIF—a key goal of PCA," and found that "PCA's triggers limit its ability to promptly address bank problems, and although regulators had discretion to address problems sooner, they did not consistently do so." See also, Balla, Mazur, Prescott, and Walter, "A Comparison of Small Bank Failures and FDIC Losses in the 1986–92 and 2007–13 Banking Crises," Federal Reserve Bank of Cleveland, Working Paper no. 17-19, November 2017.

[27] "Risk-Focused, Forward-Looking Safety and Soundness Supervision," FDIC Financial Institution Letter FIL-47-2019, August 27, 2019. This update to the FDIC Risk Management Manual of Examination Policies was a response to the FDIC-OIG evaluation report on 'Forward-Looking Supervision' in August 2018. The OIG concluded that while "examiners substantially achieved the intended outcomes of the Forward-Looking Supervision approach…the FDIC did not have a comprehensive policy guidance document on Forward-Looking Supervision. The OIG recommended that the FDIC adopt supporting guidance "to institutionalize the Forward-Looking Supervision approach and to help to ensure its application regardless of economic conditions and FDIC management prerogatives."

[28] See further, the FSAP technical note on banking supervision and regulation.

B. Recovery and Resolution Planning

22. While supervision does not aim to prevent bank failures altogether, supervisory oversight aims to reduce the probability and the impact of bank failures.[29] Accordingly, Basel Core Principle 15 prescribes that banks have comprehensive management processes for their capital and liquidity risk, supported by contingency arrangements, including robust and credible recovery plans.[30] KA11.1 elaborates on the matter by prescribing recovery (and resolution) planning for, at a minimum, domestically incorporated firms that could be systemically significant or critical if they fail. KA11.5 complements this by prescribing that all firms subject to RRP maintain a recovery plan.

23. Each FBA has its own recovery planning framework (Box 1).

- ***FDIC***: elements of a formal recovery are part of regular supervisory risk management requirements, without enhanced recovery planning requirements, and IDIs with assets over US$50 billion are subject to IDI Rule resolution planning.

- ***FRB***:[31] recovery planning guidance applies to the eight GSIBs and not to the three other financial companies in the portfolio of the FRB's Large Institution Supervision Coordinating Committee (LISCC),[32] nor other large banking organizations (assets over US$100 billion) or large FBOs (U.S. assets over US$50 billion), all of which are subject to DFA Title I resolution planning and enhanced prudential standards (EPS).

- ***OCC***:[33] recovery planning guidance applies to eight national banks with assets over US$250 billion, which are all subject to IDI Rule resolution planning and subsidiaries of holding companies: four U.S. GSIBs, one foreign GSIB, and three other U.S. BHCs—the latter are not subject to FRB recovery planning.[34]

24. Three resolution planning requirements are in place (Box 1).[35]

- *DFA Title I (165(d) Rule)*[36]—Certain BHCs must submit plans, commonly known as "living wills," to the FRB and the FDIC, describing in detail the firms' strategy for rapid and orderly resolution

[29] "Core Principles for Effective Banking Supervision," Basel Committee on Banking Supervision, December 2019 (Basel Core Principles), Section 01.20.

[30] Section 01.20 of the Basel Core Principles distinguishes between "contingency funding plans" and "recovery plans."

[31] "Heightened Supervisory Expectations for Recovery and Resolution Preparedness for Certain Large Bank Holding Companies," FRB, SR 14-1

[32] These are the U.S. operations of three foreign GSIBs: Barclays; Credit Suisse Group; and Deutsche Bank. Early March 2020, UBS was moved from the LISCC to the Large and Foreign Banking Organizations portfolio—see footnote 44.

[33] "Recovery Planning Guidelines: Final Revised Guidelines," OCC Bulletin 2018-47, December 27, 2018.

[34] Wells Fargo Bank; Citibank; Bank of America; JP Morgan Chase; TD Bank; Capital One; U.S. Bancorp; PNC Bank.

[35] The public sections of resolution plans can be found here: https://www.fdic.gov/regulations/reform/resplans/

[36] https://www.federalreserve.gov/supervisionreg/resolution-plans.htm

under the U.S. Bankruptcy Code, which is a court-governed process. These plans aim to reduce the likelihood that a BHC's financial distress or failure has systemic effects.

- *DFA Title II (OLA)*—This is an administrative procedure under FDIC receivership. The FDIC uses firms' DFA Title I plans to develop its own DFA Title II plans in case financial stability considerations do not allow for a resolution under the U.S. Bankruptcy Code.[37]

- *IDI Rule*[38]—The Rule requires IDIs with US$50 billion or more in total assets to periodically submit resolution plans that should enable the FDIC, as receiver under the FDI Act, to resolve an IDI in the event of its failure in a manner that ensures that depositors receive access to their insured deposits within one business day (or two business days of the failure occurs on a day other than a Friday), maximizes the net present value return from the sale or disposition of its assets, and minimizes the amount of any loss realized by the creditors in the resolution.[39]

25. The DFA Title I plan process has evolved to demonstrate BHCs' capabilities. To enhance their plans' credibility, firms have reconfigured financial, legal, and operational structures, underpinned by strengthened governance arrangements. Especially the largest and most complex BHCs increasingly assess strategic and business decisions through a "resolution lens," ensuring that acquisitions and new activities do not adversely affect resolvability. Through the agencies' capabilities testing, firms seek to demonstrate their capabilities to support their orderly resolution under the U.S. Bankruptcy Code. Firms' resolution planning under Title I has helped the FBAs to better understand banks' business models and RRP capabilities, allowing the FDIC to prepare for administrative resolution under DFA Title II when the U.S. Bankruptcy Code approach is not feasible.

26. Recently, the coverage and frequency of BHCs' DFA Title I and recovery plans were reduced. A combination of DFA amendments through the EGRRCPA, and the FBA's subsequent rule and guidance changes,[40] reduced the number of firms subject to recovery and DFA Title I resolution

[37] There are parallels with arrangements in other key jurisdictions. A similar regime exists in Switzerland, where firms' own "emergency plans" inform the resolution authority's "resolution plans." In the United Kingdom, the resolution plans are developed by the Bank of England based on banks' 'resolution packs' containing information on their financial, legal, and operational structures, and the critical functions they provide. In the European Union, the Single Resolution Board prepares resolution plans based on information and analysis submitted by the banks for this purpose about their structure, and critical functions or interconnections, the resolution strategy's operational consequences, and the processes and arrangements for effectively providing information in resolution.

[38] https://www.fdic.gov/regulations/laws/rules/2000-7800.html#fdic2000part360.10.

[39] The IDI Rule was proposed in 2010 (before the DFA was enacted) and came into effect in 2012 in response to the G20 Leaders' call at the 2009 Pittsburgh Summit for "firm-specific contingency and resolution plans." See footnote 6.

[40] https://www.fdic.gov/news/board/2019/2019-10-15-notice-dis-b-fr.pdf.

plan requirements, and the content and frequency of the latter.[41] While not required by the EGRRCPA, in April 2019 the FDIC announced that it is considering an IDI Rule change.[42]

27. The KAs prescribe annual RRP for any firm that could have an impact on financial stability in the event of its failure. The KA require resolution authorities to undertake RRP updates, resolvability assessments, and evaluations of resolution strategies' feasibility and credibility, at least annually, and sooner in the event of material changes (KAs 10.1, 11.3, 11.10); top officials of home and host resolution authorities review annually firm-specific resolution strategies and operational resolution plans (KA11.11); RRP covers, at a minimum, firms that could be systemically significant or critical if they fail (KAs 11.1, 11.2); and recovery planning for all firms subject to resolution planning (KA11.5), implying the same coverage for recovery and resolution plans.

28. The FBAs should ensure that firms' focus on resiliency does not weaken, and that DFA Title II resolution planning by the FDIC remains KA-consistent. The authorities are determined to monitor and enhance resolvability on an ongoing basis. While there are practical reasons for lengthening the BHCs' DFA Title I planning cycle, there is a risk that leaving as much as six years between full plan submissions could lower financial companies' focus and resource allocation, weakening the impact of resolution plan requirements under DFA Title I. The targeted plans between full plan submissions (every four or six years) should be used to preserve firms' resiliency. The FBAs should adopt policies and instructions for their staff on identifying, as part of their regular oversight, material changes and loss of integration between RRP and firms' BAU activities. IDI resolution planning under the FDI Act is a critical backstop. Any increase of the IDI Rule threshold (from the current US$50 billion) should be very limited. The FDIC should continue to undertake DFA Title II planning and resolvability assessments at least once a year or sooner in case of material changes. CMGs for U.S. GSIBs should continue to discuss at least annually, firms' recovery plans, resolution strategy, Title I and II plans, and supporting resolvability assessments.

29. The authorities should subject a wider array of firms to RRP planning requirements. The FBAs retain discretion to prescribe more comprehensive and frequent RRP, and to apply these to BHCs with assets above US$100 billion.[43,44] They should continue to exercise this discretion

[41] Firms are still required to report material changes as they occur, and the FBAs can request that firms focus on specific topics, as needed, allowing targeted reviews of core elements of resolvability. See footnote 8 above for more detail. The authorities suggest that the new rules reflect the maturation in both he FBAs' and firms' consideration of certain resolution planning issues, allowing the FBAs to focus on core elements of resolvability and firms' capabilities.

[42] https://www.fdic.gov/news/news/press/2019/pr19034.html

[43] The FRB generally has discretion to apply any or all EPS to firms with total consolidated assets between US$100 billion and US$250 billion. The FRB would need to determine that the EPS are appropriate to prevent or mitigate risks to U.S. financial stability or to promote a firm's safety and soundness, considering risk factors that the FRB deems appropriate. The OCC can apply its recovery plan requirement to national banks with total consolidated assets below US$250 billion, if it determines that a bank is highly complex or otherwise presents a heightened risk.

[44] On March 6, 2020, the FRB and FDIC invited the public to comment on proposed changes to the DFA Title I resolution plan guidance for large FBOs. As of the date of the proposal, the firms that meet the proposed criteria are the U.S. operations of Barclays, Credit Suisse, and Deutsche Bank; UBS does no longer meet the criteria.

actively, and require, for example, recovery plans from all financial institutions subject to EPS and resolution planning under both the DFA and the FDI Act. All BHCs and IDIs that are subject to resolution plan requirements should also be subject to recovery plan requirements (KA11); other firms, including firms with assets under US$100 billion, should adopt credible, enhanced contingency funding plans—emulating recovery plans—subject to the FBAs' critical supervisory assessment. Ensuring the credibility of recovery plans—as is now being done for resolution plans—and the complementarity between recovery and resolution plans is an important priority.

C. Loss-Absorbing Capacity

30. As per January 2019, all covered BHCs and intermediate holding companies (IHCs) comply with the 2016 U.S. regime for external TLAC.[45] The U.S. TLAC rule (Box 3) establishes minimum requirements for (i) the external TLAC amount that each U.S. top-tier BHC (covered BHC) identified as a U.S. GSIB must issue; and (ii) the internal TLAC amount that must be issued by each top-tier U.S. IHC (covered IHC) of a foreign GSIB with at least US$50 billion in U.S. non-branch assets. The external TLAC requirement applies uniformly to each U.S. GSIB's covered BHC, consistent with a groupwide SPOE resolution strategy.

Box 3. U.S. Regime for Total Loss-Absorbing Capacity

Under the U.S. TLAC rules, all covered BHCs[1] are subject to an external TLAC requirement of 18 percent of risk-weighted assets and 7.5 percent of total leverage exposures (in each case, not including applicable U.S. Basel III regulatory capital buffers, which must be met in addition to the minimum TLAC amount). The U.S. TLAC rules do not provide an alternative calibration for the external TLAC requirement.

The U.S. TLAC rules do not impose any requirements on the allocation of internal loss absorbency among the subsidiaries of covered BHCs and IHCs, but expressly left open the possibility for a future proposal. However, U.S. banks have pre-positioned liquidity and capital in certain subsidiaries based on estimates, for the Resolution Liquidity Execution Need, Resolution Liquidity Adequacy and Positioning, Resolution Capital Adequacy and Positioning; and Resolution Capital Execution Need.

The U.S. TLAC rules also established "clean holding company requirements" that restrict a covered BHC or covered IHC from issuing certain liabilities and entering certain arrangements in order to, among other things, preserve the structural subordination of a covered holding company's liabilities to the liabilities of its subsidiaries in a parent company-focused resolution (i.e., a global or local SPOE resolution).

[1] Covered IHCs with foreign parents that have identified a single-point-of-entry (SPOE) resolution strategy for the group resolution ("non-resolution covered IHC") would have a lower minimum TLAC requirement (16 percent of RWAs) and may issue only internal TLAC to their foreign parent (or another foreign affiliate). Alternatively, resolution covered IHCs with foreign parents that have identified a multiple-point-of-entry resolution strategy for the group resolution are subject to a higher minimum TLAC requirement (18 percent of RWAs) and may satisfy their internal TLAC requirement with a combination of internal and external TLAC instruments.

[45] https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20161215a1.pdf

31. The authorities are considering calibrating internal TLAC toward the lower end of the FSB-prescribed 75–90 percent range. In its July 2019 review of TLAC implementation,[46] the FSB observed that the United States fixed internal TLAC by regulation, thus constraining flexibility to calibrate internal TLAC based on CMG discussions and the findings of the FSB resolvability assessment process findings. For most covered IHCs, the risk-weighted assets (RWA) component of the minimum internal TLAC requirement is calibrated at 16 percent RWA (16/18 percent = 88.9 percent internal).[47] Consequently, the U.S. internal TLAC calibration is on the high-end of the 75 percent–90 percent range. Interagency discussions to calibrate the requirement closer to 75 percent are ongoing. The calibration should balance home and host interests and support the group's resolution strategy.

32. The FBAs are working on rules for TLAC disclosures and crossholdings among financial institutions. In April 2019, the FBAs started the public consultation on these two issues,[48] which were highlighted in the aforementioned July 2019 FSB review report as the only two outstanding issues where the United States needed to make further progress. Under the proposed rules, certain banking organizations would need to deduct (from regulatory capital) some investments in unsecured debt securities—irrespective whether they qualify as TLAC—issued by U.S. and foreign GSIBs. The proposed deduction would be implemented by revising the existing deduction framework for certain investments in regulatory capital instruments under U.S. Basel III capital rules. While the authorities have not undertaken a comprehensive TLAC holding survey—and they do not consider this a priority—they expect that the new rule would help ensure that the largest U.S. banking firms will hold no more than a de minimis amount of TLAC instruments issued by GSIBs. Based on SEC disclosures and third-party information, the authorities estimate that the majority of TLAC holdings are non-retail holdings, including high-wealth clients. The authorities should ensure that restrictions on crossholdings between financial companies and on retail holdings adequately reduce contagion risk. The proposals would also require that BHCs and IHCs disclose information long-term debt and TLAC instruments to demonstrate compliance with the U.S. TLAC rules.

33. LAC additional to regular capital requirements should be considered for some non-GSIB U.S. financial companies. So far, the United States has focused on GSIBs' TLAC. However, the simultaneous failure of smaller or less complex financial companies could also impact financial stability, at least at the regional level. The large number of failures during the GFC (with heavy DIF losses) illustrate that this is a practical reality. In a DFA Title II resolution, OLF funds deployed to provide liquidity cannot be used for capital and would need to be repaid. Such considerations suggest that there could be benefits in some non-GSIB U.S. financial companies—

[46] "Review of the Technical Implementation of the Total Loss-Absorbing Capacity (TLAC) Standard," FSB, July 2, 2019.

[47] More specifically, if the covered IHC's foreign parent has adopted a group-wide SPOE resolution strategy, then the covered IHC would be required to maintain minimum internal TLAC not less than the greater of 16 percent RWA, 6 percent total leverage exposures, and 8 percent U.S. tier 1 leverage ratio. Alternatively, if the covered IHC's foreign parent has adopted a group-wide multiple-point-of-entry resolution strategy, then the covered IHC would be required to maintain minimum internal TLAC not less than the greater of 18 percent RWA, 6.75 percent total leverage exposures, and 9 percent U.S. tier 1 leverage ratio.

[48] https://www.federalreserve.gov/newsevents/pressreleases/bcreg20190402a.htm

prioritizing firms that are subject to resolution planning or have a large regional presence—holding LAC additional to regular capital requirements, in the form of subordinated debt or otherwise. This is the practice in other major jurisdictions, such as the European Union and the United Kingdom; it is consistent with KA10 and KA11, would improve resolvability, and reduce the DIF's exposure. The authorities should adopt policies and methodologies to determine which financial companies' resolvability would benefit from enhanced LAC.

GLOBAL COOPERATION

34. The United States has taken a leadership role in developing and applying international standards on resolution planning and deposit insurance. Using the FDIC's decades-long experience, the United States has played an important role in developing and advocating international standards and good practices for bank resolution and deposit insurance. Particularly the FDIC's international outreach is worth noting with its seminars, technical assistance and training programs, and advocacy for self-assessments on the Core Principles for Effective Deposit Insurance Systems. The FRB and the FDIC jointly chair the CMGs for the eight U.S. GSIBs; as the United States hosts many foreign GSIBs, the agencies participate in the workings of several other CMGs. The FDIC actively reaches out to host jurisdictions where U.S. GSIBs and other internationally active U.S. banks have a systemic presence.[49] These exchanges are supported by Memoranda of Understanding (MOUs) or similar arrangements. The FDIC also engages on request in high-level discussions with non-CMG hosts on resolution strategies, and challenges and opportunities for cooperation. These engagements are broadly in line with pertinent FSB guidance.[50]

A. FBO Branches at Home

35. Extending OLA powers to cover U.S. branches of FBOs could help protect U.S. financial stability. The resolution of FBO branches is subject to the FDI Act for federally and state-licensed federally insured branches, the IBA for uninsured federally licensed branches, and state banking laws for uninsured state-licensed branches (Box 4).[51] Of these regimes, the FDI Act is most closely aligned with the Key Attributes; the DFA is silent on FBO branches. KA 1.1(iii) explicitly requires that the resolution regime cover foreign branches unless certain exceptions apply under EN(1)(e)—the United States does not meet these exceptions.[52] Such coverage would also ensure consistency with

[49] See "Cross-border resolution cooperation and information-sharing: an overview of home and host authority experience," BIS, January 2020.

[50] "Guidance on Cooperation and Information Sharing with Host Authorities of Jurisdictions where a G-SIFI has a Systemic Presence that are Not Represented on its CMG," FSB, November 2015.

[51] In her October 10, 2019, statement, Fed Governor Lael Brainard noted that during the GFC, some foreign branches were among the most active users of discount window borrowing when wholesale funding markets were stressed. She also noted that branch assets have grown as a percentage of foreign bank activities in the United States since the DFA introduced the IHC requirements for FBOs.

[52] EN(1)(e) stipulates that the resolution "regime is not required to apply to domestic branches of foreign banks in cases where resolution of such branches falls within a regime [that] requires the host resolution authorities to recognize or grant automatic mutual recognition of a resolution of the financial institution and all its branches carried out by the home resolution authority."

EC 7.5, prescribing that the resolution regime enable the resolution authority to take resolution action against FBO branches to support a foreign resolution or where the home authority is not acting, or is acting in a manner that does not take sufficient account of the need to preserve financial stability in the host jurisdiction. Importantly, where the SPOE resolution strategy for the foreign parent of an FBO branch would not be feasible, U.S. authorities will need to take resolution action. To ensure that all financial firms that could be systemic or critical at the time of failure can be resolved consistent with the KA, the DFA should be amended, as recommended by the 2015 FSAP, to subject FBO branches to a Title II regime similar to that for other "covered financial companies."

Box 4. Resolution Regimes for U.S. Branches of Foreign Banks

At end-June 2019, 173 FBO branches held total U.S. assets of about US$2.3 trillion, of which about US$1.8 trillion was held by state-licensed branches. The two largest federally licensed branches had assets of about US$134 and US$123 billion. The six largest state-licensed branches were New York licensed; the three largest branches held assets ranging from US$101 billion to US$175 billion.

Since December 19, 1991, foreign firms cannot establish insured branches in the United States. Certain insured branches operating on that date were grandfathered, 10 of which are still in business. At end-June 2019, the largest two of the six insured state-licensed branches had assets over US$10 billion each; the largest of the four insured federally licensed branches had assets of about US$51 billion.

Insured FBO branches. Statute requires that the OCC and state supervisors appoint the FDIC as receiver. The FDI Act would govern the FDIC's receivership.

Uninsured federally licensed FBO branches. Under the IBA, the OCC appoints a receiver—not necessarily the FDIC—who takes possession of the foreign bank's assets in the United States The receiver has the same authorities exercised by receivers of failed national banks under the National Banking Act (12 U.S.C. § 3102 (i) and (j)), which are limited to winding up the business and the distribution of assets to creditors (12 U.S.C. § 197).

Uninsured state-licensed FBO branches. These branches are subject to state liquidation regimes.[1] In the State of New York, the Superintendent of Financial Services must first satisfy the claims of creditors who had transactions with the branch. Court authorization is required to transfer liquidation proceeds to parent FBO. The Superintendent, or any receiver or liquidator appointed by the Superintendent, may without court approval, sell assets of the branch, other than real estate, with a value of up to US$50,000. Statute is silent on consent for transfers that may be required under contract law and on the regime governing the transfer of liabilities. Common law would, however, generally require the obligee's consent. Upon a court challenge, the Superintendent's decision to take possession of the failed branch can be stayed. The New York Banking Law does not provide for a temporary stay of counterparties' early termination rights. In practice, such a stay is often provided by contract.

[1] Where an FBO has one or more state-licensed branches or agencies, and one or more federally licensed branches or agencies, and the OCC appoints a receiver for the federal branch or agency, the receiver takes possession of all the U.S. property and assets of such FBO—not only the federal branch's property and assets (12 U.S.C. 3102(j)).

B. Foreign Resolution Decisions

36. International standards prescribe speedy, transparent, and predictable procedures to give effect to foreign resolution measures. The KA Preamble, item (vi), explicitly expresses these

three related expectations for effective resolution regimes and orderly resolution. The FSB Principles for Cross-border Effectiveness of Resolution Actions ('Cross-Border Principles'),[53] paragraph 5 explicitly stipulates that national authorities should ensure that the procedures for giving effect to foreign resolution actions with a recognition process or supportive measures can be carried out with the necessary "speed and predictability;" paragraph 7 stresses the importance of "legal certainty and predictability." The KA Assessment Methodology (EN7(e)) clarifies that KA7.5 (on giving effect to foreign resolution measures) pertains to "statutory," as opposed to "contractual" approaches,[54] and may, "in addition to primary legislation," comprise also legal precedent; EN7(f) notes that the objectives of KA7.5 could be achieved through administrative or judicial processes, or a combination thereof, provided that these processes are "established ex ante" and ensure speedy measures.[55] EN7(e) clarifies that "recognition and supportive measures complement each other and in practice, both may be required to achieve the desired outcome," adding that the "combination of recognition and support measures available in a jurisdiction should enable the resolution authority, supervisory authority, or court in the jurisdiction under review to give effect to [foreign] resolution measures."

37. The U.S. regime for recognition and support for foreign resolution measures comprises mainly court-based processes and supervisory measures. The U.S. authorities do not consider DFA, Title II, to be the avenue through which recognition or supportive measures generally would be effectuated in the United States. Chapter 15 of the U.S. Bankruptcy Code is the primary legal basis for recognition of foreign insolvency proceedings[56] for FBOs, including GSIBs, with any U.S. branches or agencies, the general doctrine of comity offers a legal avenue to seek recognition instead. The authorities expect that supportive measures would most likely take the form of supervisory measures or forbearance from taking supervisory action.

38. The DFA and the FDI Act lack a specific mechanism that would give prompt and predictable legal effect to foreign resolution measures by way of recognition or support. Neither law provides for recognition. Under the DFA—but not the FDI Act—the FDIC, as receiver for a failed BHC, is required to "coordinate" with foreign financial authorities. However, any possible support under the DFA for foreign resolution decisions is only available after activating Title II and the FDIC being appointed as receiver for the failed BHC, which requires political decision-making and could delay support measures. Any support for foreign resolution decisions based on the DFA is

[53] FSB, November 3, 2015: https://www.fsb.org/wp-content/uploads/Principles-for-Cross-border-Effectiveness-of-Resolution-Actions.pdf

[54] International standards do not consider contractual approaches as a substitute for judicial and administrative approaches. The Cross-Border Principles note that contractual recognition approaches offer a workable solution "until comprehensive statutory regimes for giving cross-border effect to resolution action are adopted" and are a way to "fill the gap until statutory approaches have been fully implemented and to complement such approaches by reinforcing the legal certainty and predictability of cross-border recognition under statutory frameworks."

[55] The KA, its Methodology, and the Cross-Border Principles stress that where courts are involved in the recognition process, jurisdictions must ensure that the effective implementation of resolution measures is not compromised. Interestingly, Annex I of the Cross-Border Principles highlights three national examples of statutory recognition frameworks (Singapore, Switzerland, European Union), all of which use an administrative recognition approach.

[56] Chapter 15 (2005) incorporates the UNCITRAL Model Law on Cross-Border Insolvency into U.S. law.

further constrained by the objectives of Title II, concerning only the stability of the U.S. financial system, excluding consideration for financial stability in foreign jurisdictions. In any case, the DFA does not apply to U.S. branches of FBOs, further limiting its application.

39. Chapter 15 of the U.S. Bankruptcy Code and the doctrine of comity do not meet the expectations set by KA7.5. Chapter 15 does not explicitly refer to foreign resolution decisions, and, importantly, it excludes FBOs, including GSIBs, with any U.S. branch or agency from its scope of coverage.[57] While U.S. courts could recognize a foreign proceeding pursuant to the doctrine of comity, the standards for such recognition are unclear regarding entities that are explicitly excluded under Chapter 15, and, importantly, the doctrine's effectiveness in the resolution of a large and complex financial company is untested. Arguably, FBOs, including GSIBs, with U.S. branches and agencies cannot rely on Chapter 15;[58] and the effectiveness of comity in resolution cases is unclear.

40. Statutory changes are needed to ensure giving prompt and predictable legal effect in the U.S. to foreign resolution measures through an administrative and/or judicial framework. Anticipating the complexities of cross-border resolution, international standards advocate a comprehensive and complementary regime for recognition and support, with supervisory and resolution measures, and administrative and judicial processes, all laid down in primary legislation and supported by other components of the legal framework, such as, legal precedent. Considering the constraints and limitations of the U.S. recognition and support regime, statutory changes are required to ensure prompt and predictable legal effect in the U.S. for foreign resolution measures. Introducing express provisions on support measures—and possibly also recognition processes—in both the DFA and the FDIC Act would help; so would extending OLA powers to cover U.S. branches of FBOs. Bringing FBOs with U.S. branches or agencies within the scope of the U.S. Bankruptcy Code, and introducing therein express provisions on the recognition of foreign resolution decisions, would further improve the current recognition and support regime.

C. Depositor Preference Abroad

41. The 2015 FSAP recommended that the depositor preference rule be extended to depositors of U.S. branches abroad, irrespective of where the deposits are payable. In 2013, the FDIC clarified,[59] in line with a 1994 advisory opinion by the then Acting General Counsel,[60] that the term "deposit liability," as used for the purposes of the depositor preference regime, includes a foreign branch deposit only if it is a "dually payable deposit"; i.e. payable at both the foreign branch

[57] 11 USC. § 109 (b) and 11 USC. § 1501(c)(1).

[58] See Paul L. Lee, Cross-Border Resolution of Banking Groups: International Initiatives and U.S. Perspectives - Part III, 10 PRATT'S J. BANKR. L. 291, 335 (2014), p. 297. Others have suggested amending Chapter 15 to increase the certainty that U.S. courts will recognize foreign resolution decisions. See "Too Big to Fail: The Path to a Solution—A Report of the Failure Resolution Task Force of the Financial Regulatory Reform Initiative of the Bipartisan Policy Center," May 2013, supported by five industry associations in a comment letter to the FDIC (February 18, 2014).

[59] https://www.fdic.gov/news/news/press/2013/pr13081a.pdf.

[60] FDIC Advisory Opinion 94-1, Letter of Acting General Counsel Douglas H. Jones (Feb. 28, 1994).

and at a U.S. office of the failed IDI.[61] Deposits that are dually payable enjoy depositor preference, though only as an uninsured deposit. Consequently, national depositor preference in the United States discriminates based on the jurisdiction where deposits are payable. This is inconsistent with KA7.4.[62] Moreover, the FDIC's clarification has not been tested in courts. Greater certainty for such depositors could reduce the U.S. banking system's exposure to contagion from a loss of depositor confidence at U.S. banks' branches abroad.[63] This issue can be resolved with a statutory provision giving equal ranking to foreign branch deposits and domestic deposits.[64]

DEPOSIT INSURANCE

A. Bank Deposits: Access in a Day Ensured

42. Operational effectiveness of the U.S. DIS remained impressive during the 2008–2013 surge in failures. For failed IDIs, the FDIC's preferred resolution method is a P&A transaction.[65] The P&A transaction is a time-tested and cost-effective resolution method. Supported by effective recordkeeping by IDIs for timely deposit insurance determination (Box 5), P&A transactions have provided access to insured—and often also uninsured—deposits within typically one business day.[66] This was also the case during the GFC, when the FDIC managed 489 IDI failures. The ability to ensure access to deposits in practice within one business day maintained the FDIC's high standing for depositor protection. Inquiries by the public and anecdotal evidence from a recent IDI failure demonstrate that a public awareness survey, focusing on, for example, complex trust account holders and depositors with low financial and limited language skills would be useful.

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[61] The rule's main purpose was to clarify the treatment of deposits in foreign branches of U.S. chartered IDIs. By modifying 12 C.F.R. § 330.3 (e), the FDIC clarified that it does not insure such deposits, even when they are payable at an office within the United States. The clarification on the treatment of foreign branch deposits for the purposes of the deposit preference rule was not made in the final rule, but rather in the explanatory text accompanying the revised regulations on deposit insurance. See Federal Register, 78 F. R. 56583 (September 13, 2013).

[62] KA7.4 prescribes that national laws and regulations should not discriminate against creditors on the basis of, i.a., the location of their claim or the jurisdiction where it is payable. See also Paul L. Lee, Cross-Border Resolution of Banking Groups: International Initiatives and U.S. Perspectives—Part IV, 11 Pratt's J. Bankr. L. 59 (2015), p. 78: "The FDIA depositor preference provision, as construed by the FDIC, is in direct conflict with Key Attribute 7.4."

[63] See also a joint paper by the law firms Sullivan & Cromwell, Cleary Gottlieb, and Davis Polk on January 2, 2013, observing that "the subordination of foreign branch deposits also increases the liquidity risk for banks, and could even precipitate a bank failure, as subordinated foreign branch depositors have a strong incentive to flee."

[64] As an interim step, the FDIC could issue a formal interpretation or regulation defining the term "deposit liability" as including foreign branch deposits; the joint paper referenced in the previous footnote deemed this "the most legally sustainable interpretation."

[65] See the FDIC Resolutions Handbook for a description of some P&A variations, including Basic P&A, Whole Bank P&A, P&A with Optional Shared Loss, and Bridge Bank P&A. If needed, P&A is executed in combination with a temporary bridge bank. The bridge bank option is rarely used but remains an important resolution tool, particularly for large financial companies and in system-wide crises, to provide time for arranging a permanent transaction and for prospective purchasers to assess the failed bank's condition in order to submit their offers. For use of P&A transactions and payouts since 1934, see the 'Bank Failures and Assistance Data' section on the FDIC website: https://banks.data.fdic.gov/explore/failures.

[66] P&A transactions require several months of preparation by the FDIC—prior to the so-called "resolution weekend"—including marketing the troubled IDI to healthy IDIs and due diligence by prospective bidders.

Box 5. FDIC Recordkeeping Rules for IDIs

The FDIC uses the claims administration system (CAS) to identify insured and uninsured deposits in failing and failed IDIs. This mission-critical system helps the FDIC to make prompt and accurate payments, and to estimate the amount of uninsured deposits in determining the least costly resolution option. FDIC rules and procedures complement CAS enhancement efforts and mitigate limitations in CAS capability.[1] Particularly two rules address IDIs that are so large as to potentially exceed the capacity of the CAS:

- Recordkeeping for Timely Deposit Insurance Determination Rule (12 C.F.R. Part 370). As of end-2019, 30 IDIs (at end-2019) are either subject to or voluntarily comply with this Rule. These IDIs have either more than 2 million deposit accounts for two consecutive quarters or are affiliated with a qualifying IDI and have chosen to opt into the Rule.[2] These IDIs do not have to follow the following Rule.
- Large - Bank Deposit Insurance Determination Modernization Rule (12 C.F.R. §360.9). As of May 1, 2020, this Rule applies to 148 IDIs with more than US$2 billion in deposits and at least either 250,000 deposit accounts or US$20 billion in total assets for two consecutive quarters.

The remaining more than 3,000 IDIs are subject to a standard data request. FDIC staff works with these IDIs to ensure technical compliance and proper processing of the data. The IDIs' systems and data are subject to regular FDIC testing and audits to ensure accuracy and compliance.

[1] For an in-depth discussion and assessment of the CAS capacity, timeliness, and accuracy, see "Claims Administration System Functionality," FDIC OIG, March 2018.

[2] Of these 30 IDIs, 14 have over 5 million deposit accounts each.

43. The DIF is above its statutory minimum level (1.35 percent) and is progressing toward its long-term target (2 percent). By 2009Q3, the FDIC-administered DIF was fully depleted; by 2018Q3, the DIF completed a multi-year restoration plan. At end-2019, the DIF balance stood at US$110 billion and the reserve ratio at 1.41 percent of insured deposits, the highest level since 1999, and well above the 1.35 percent minimum level set by the DFA. The DIF also has over US$200 billion in public backstops and the ability to collect prepaid premiums from IDIs.[67] As part of a comprehensive fund management plan, the FDIC determined that a 2-percent long-term target is the minimum level needed to withstand future crises of the magnitude of past crises. Extrapolating its performance over the last six years, the FSAP team estimates that the DIF could meet this target in about six years, but this is unlikely due to a number of one-time factors over the last 5–6 years, including one-time assessment surcharges, a higher assessment rate schedule than currently in place, and low bank failure rates.

B. Credit Union Deposits: Flexibility Needed

44. Funding rules for the credit union DIS should be reformed to ensure a higher level of paid-in funds for all credit unions. Despite challenges faced during the GFC when it had to borrow from the UST to prevent its funds from full depletion, the National Credit Union Share Insurance Fund (NCUSIF) was not reformed after the GFC. At end-2019, the NCUA insured around

[67] The backstops include US$100 billion from the UST, which requires consultation with committees of each chamber of the U.S. Congress on the terms for repayment schemes and any special assessments on banks that are needed.

US$1.2 trillion in deposits for over 120 million depositors. The NCUSIF balance stood at US$16.7 billion at that time. Its largest member had over US$112 billion in assets at end-2019—up from around US$50 billion in 2015; the second largest members had over US$41 billion in assets at end-2019. The NCUSIF funding structure is highly procyclical. The first 1 percent of the NCUSIF balance is not paid-in but booked as deposits from credit union members, which become impaired on credit union balance sheets when the NCUSIF balance falls below 1 percent. In times of stress, this could become a channel for potential contagion. Furthermore, the NCUSIF remains capped at 1.5 percent, and, as a result, only 0.5 percent could at most be paid in. As recommended by the 2015 FSAP, this regime needs legislative reform, including mandatory membership for all credit unions (to ensure consistency with principle 8 of the Core Principles for Effective Deposit Insurance Systems),[68] targeting a much higher level of paid-in funds not constrained by a cap.

CONTINGENCY PLANNING

45. Since the 2015 FSAP, the authorities have continued their financial crisis preparedness efforts. They have undertaken tabletop and playbook exercises at principals' level, including with authorities from the European Union and the United Kingdom. Failed bank reviews and material loss reviews by their OIGs provide the FBAs ongoing learning.[69] The FDIC has undertaken several staff-level exercises, including, for example, on bridge banks, large bank failures, and mid-day liquidity failures. The FDIC is using the lessons learned from these exercises to improve its crisis readiness, including for communications strategies and logistics. In response to the challenges in surge staffing at the start of the GFC, the FDIC developed a surge staffing plan for its Division of Resolutions and Receiverships,[70] and it has an alumni network to quickly employ a qualified pool of former staff who can be placed into duty with minimal training. The FDIC regularly recruits former bankers who could staff bridge and failing banks; it also continues to improve access to contracting resources in support of an increase in resolution activity (for examples, lawyers and auditors).

[68] While all federally chartered credit unions are required to be insured by the NCUSIF (12 U.S.C. § 1781(a)), 10 states allow their state-chartered credit union to obtain primary deposit insurance from a private company.

[69] These reviews are published on the website of each FBA's OIG.

[70] The FDIC's own comprehensive analysis of the GFC concluded that "the FDIC "was shorthanded during the early phase of the crisis," consequently "from 2008 to 2010 some scarce [FDIC] resources were necessarily diverted from resolution activities to infrastructure development," including hiring staff, opening new offices, and developing and updating contracts and information technology systems, and "only a few" of the 1,900 staff contracted between mid-2008 and end-2010 "were veterans of the bank and thrift crisis of 1980 through 1994." See "Crisis and Response: An FDIC History, 2008–2013," FDIC, November 2017." In its 2020 'crisis readiness' assessment, the FDIC OIG found that the FDIC lacks an agency-wide surge staffing plan.

Box 6. Planned FDIC Action to Improve Crisis Preparedness

FDIC OIG Recommendation	FDIC Planned Corrective Action
Establish and implement a policy providing senior management's crisis readiness directives.	The FDIC will develop a corporate-wide crisis readiness directive that establishes policy for crisis planning and readiness, defines roles and responsibilities, and sets expectations for basic information that readiness plans should address.
Establish a committee to guide and oversee FDIC crisis readiness planning.	The FDIC will assign responsibility to its Operating Committee for overseeing crisis readiness planning efforts. This designation and responsibility will be addressed in the crisis readiness policy.
Establish and implement procedures supporting an agency-wide process for crisis readiness planning.	The FDIC will develop a crisis readiness procedures document that expands on the crisis readiness policy. The procedures will discuss the FDIC's methods of response, communicate roles and responsibilities, define general expectations for readiness plan content and testing, and raise FDIC employee awareness of crisis planning and response processes.
Establish and implement an agency-wide all-hazards readiness plan that identifies and integrates FDIC readiness activities common to all crises impacting insured depository institutions.[1]	The FDIC will engage a crisis readiness consulting firm to obtain advice and recommendations on improving the agency's crisis planning framework and maturing the existing crisis readiness program. Based on this feedback and advice, the FDIC will develop and implement agency-wide readiness plan(s) appropriate for the FDIC's mission and responsibilities.
Establish and implement agency-wide hazard-specific readiness plans, as needed, to identify and integrate FDIC readiness plans and activities unique to specific hazards impacting insured depository institutions.	Based on discussions with subject matter experts and crisis readiness consultants, the FDIC will develop criteria for determining when agency-wide hazard-specific plans are needed. The FDIC will document that criteria in the crisis readiness procedures. The FDIC will then apply that criteria to existing readiness plans and expand plans meeting the criteria to be agency-wide.
Establish and implement a process for ensuring periodic training of responsible personnel on their task-related responsibilities in executing readiness plans.	The crisis readiness policy and procedures will require that readiness plans explicitly state whether staff require any specialized training or skills in order to execute the readiness plan. Further, the FDIC will look for additional opportunities to train staff to conduct operations in a stressful environment.
Establish and implement a process for regularly documenting readiness plan exercise results and related recommendations, and retain that documentation for use in readiness improvement activities.	The FDIC will address expectations for documenting the results of readiness plan exercises and significant follow-on recommendations in the crisis readiness procedures. Documentation will be retained consistent with the FDIC's record retention policy

Box 6. Planned FDIC Action to Improve Crisis Preparedness (Concluded)

Establish and implement a monitoring process for lessons learned that prioritizes and tracks recommendations to improve readiness activities.	The FDIC will establish, in the crisis readiness procedures, criteria for which priority recommendations resulting from plan exercises should be tracked.
Establish and implement a process to ensure that the FDIC reviews and updates readiness plans on a recurring basis.	The FDIC will develop a process for ensuring that plans remain current. The FDIC envisions having division and office directors periodically certify to the Operating Committee that plans are up-to-date or have been revised. The crisis readiness procedures will address this expectation.
Establish and maintain a central repository of up-to-date readiness plans.	The FDIC will ensure that readiness plans remain up-to-date and are readily available. The FDIC plans to further explore how best to maintain readiness plans with the crisis readiness consultant, including whether a central repository represents the most effective operational response. The FDIC will address expectations for keeping readiness plans up-to-date and readily available in the crisis readiness procedures.
Establish and implement a process to assess and report regularly on the state of the FDIC's Agency-wide readiness to address crises impacting IDIs.	The FDIC will develop a process for periodically assessing and reporting on the state of the FDIC's agency-wide readiness. The FDIC will address this recommendation through the periodic certification and reporting process to the Operating Committee and consideration of action items and recommendations resulting from plan testing. Reporting expectations will be addressed in the crisis readiness procedures.

[1] According to the FDIC OIG report, the term "all-hazards" concerns "all conditions that have the potential to cause injury, illness, or death; damage to or loss of equipment, infrastructure services, or property; or alternatively cause social, economic, or environmental damage." An all-hazards plan "should identify the necessary critical common functions and tasks, and individuals responsible for accomplishing them, regardless of the crisis scenario…while supplemental plans describe any unique requirements for specific hazard scenarios, as necessary based on risk."

46. Despite the FDIC's progress, the FDIC OIG found several critical shortcomings in the FDIC governance framework for crisis readiness.[71] Notably, the FDIC OIG found that "FDIC personnel could not identify any other crisis readiness planning procedures" than a 2015 document titled "Draft Procedure for Identification and Planning for External Risk Events," which the FDIC never finalized and had not updated since 2015; the OIG concluded that the FDIC does not "have

[71] "The FDIC's Readiness for Crises," FDIC OIG, April 2020. The OIG assessment was informed by guidance from the Department of Homeland Security and the Federal Emergency Management Agency on planning for crisis events; The OIG identified seven elements of a crisis readiness framework that are relevant to the FDIC. The OIG did not assess the FDIC's business continuity planning nor its resolution planning for individual firms.

documented procedures to provide for a consistent crisis readiness planning process." While the FDIC OIG recognized that since the GFC the FDIC has "continued to enhance its readiness for crises impacting IDIs," the OIG found that "the FDIC does not have an overarching framework for integrating and coordinating crisis readiness activities across the [FDIC's] Divisions and Offices," concluding that the FDIC lacks a "holistic Agency-wide approach" and a "common planning template to provide for integrated, comprehensive, and consistent plan development." The FDIC OIG recalled that a 2012 "FDIC Crisis Resources Report" by FDIC staff too recommended "a cooperative, collaborative, multi-divisional Agency approach to readiness activities." The OIG observed that the FDIC had implemented only some lessons learned and recommendations made by the 2012 report.[72] The FDIC OIG made 11 recommendations, which the FDIC agreed to implement by end-March 2022 (Box 6), prioritizing agency-wide crisis preparedness and assigning responsibility to its Operating Committee for overseeing crisis readiness planning efforts.[73]

47. The FSOC should more actively oversee and engage in crisis preparedness work. The DFA established the FSOC to respond to emerging risks to U.S. financial stability. Yet, its activities on more traditional crisis preparedness have been limited and none of the five FSOC committees is responsible for crisis preparedness. Thus, the FSOC has focused less on how interagency cooperation would function in contingencies where risk reduction has not succeeded, and a crisis has materialized. It is not easy to foresee the nature of a next financial crisis and the way in which the agencies, potentially including some beyond the FSOC's purview, may need to interact in crisis management; moreover, the FSOC's design constrains its operations.[74] This reinforces the need for advance collective crisis preparation and fine-tuning the governance to ensure decisive and coordinated responses from the entire FSOC community as per a national crisis management plan.

48. Building on the extensive preparation for the resolution of individual large banks, the authorities should consider how a future systemic financial crisis extending beyond the banking system would best be handled. The COVID-19 pandemic, while still unfolding, may be an example of such a scenario. The GFC began in the investment banking sector and although it spilled over into other sectors, the needed crisis management actions were largely within the purview of the FRB and the FDIC, as long as they were prepared to interpret their mandates in a sufficiently broad manner—though they also needed the urgent appropriation of congressional funding. It is widely acknowledged that the ingenuity and shared vision of the several agencies and of the UST facilitated what was sufficiently decisive action at most of the key decision points. Despite the statutory constraints now imposed on the FBAs' toolbox, it is conceivable that a future crisis—if limited largely to banks and other regulated financial firms in closely related sectors of finance—could also be managed by ad hoc collaboration of the same type. But each financial crisis introduces new and unforeseen elements. A next crisis might have its origin and important parts of its transmission in

[72] The FDIC OIG report notes that the 2012 'FDIC Crisis Resources Report' identified 11 summary recommendations or conclusions, and identified other unnumbered lessons learned and recommendations.

[73] An agency-wide approach would help "to create a shared understanding and a common, integrated perspective of readiness across all mission areas." The Operating Committee would be responsible for "prioritizing readiness tasks, and ensuring the cohesiveness of readiness plans and activities addressing potential crises."

[74] For an in-depth discussion, see the FSAP technical note on systemic risk oversight and systemic liquidity.

new types of failure and in new types of financial or nonfinancial firms. Needed action might, sooner or later, involve agencies other than the FBAs; although the FRB would surely still play a leading part, it might have to interact with unfamiliar counterparts and with its freedom of action constrained.

49. The FSOC should devote greater attention to preparing the modalities for crisis coordination that could be activated at the time of a next financial crisis. Such modalities would not substitute for the FBAs' statutory responsibilities, which they should continue to exercise autonomously. Interagency contingency planning would be a fruitful role for the FSOC, particularly where crisis responses would require far more than individual agencies' regular planning, such as national financial crisis communications, and in the rare possibility of a DFA Title II resolution without prior Title I planning.[75] The FSOC should ensure that all member agencies and the UST have comprehensive and complementary organization-wide crisis preparedness plans to support the FSOC mandate and to decisively respond to system-wide contingencies. The FBAs should also assess and put in place potential mitigating actions for a case in which several (larger) institutions will need to simultaneously activate their recovery or contingency funding plans. Furthermore, although the COVID-19 pandemic triggered an urgent need for innovative policy responses, the increased role of the Treasury Secretary, as mandated by the DFA for activating several important crisis response tools, has not yet been tested in an actual crisis. It is critical to crisis preparedness and prompt, decisive, and effective action in crisis, that the modalities for the interactions between the UST and the FBAs be operationalized, documented, and regularly reviewed and tested, all supported by a national financial crisis management communications plan.[76] This work should be prioritized under the auspices of the FSOC.

[75] A Title II resolution would give access to the OLF and allow the FDIC to use DFA powers that are not available under the FDI Act. This may be needed in case of a systemic event involving the failure of one or, simultaneously, some of the many large financial companies where the FBAs would not benefit from prior DFA Title I planning.

[76] The national financial crisis management communications plan should support the actions of the FBAs and the UST, help strike the right tone of voice to transmit confidence—without overpromising—to prevent or end creditor runs, reduce variances in communications of the several agencies and UST, and ensure that, collectively, they speak with one voice to financial markets and the general public, and that all senior officials are using the same facts and assumptions.

Appendix I. Status Update 2015 FSAP Recommendations

2015 Recommendations *Source: the 2015 technical note (Table 1) and the Financial System Stability Assessment (FSSA) report.*	**2020 Implementation Status**
1. Extend the scope of OLA powers to U.S. branches of foreign banks.	The DFA was not changed on this point. The U.S. authorities work closely with foreign resolution authorities in CMGs and through firm-specific cooperation agreements (COAGs) and interagency MOUs, aiming to ensure smooth resolution preparation and execution.
2. Finalize the procedural rules detailing the interaction between the various federal authorities in relation to the commencement of a Title II proceeding under the 'three key process.'	The U.S. authorities undertake regular interagency operational exercises, meetings, teach-ins, and presentations to refresh and confirm their respective roles and responsibilities.
3. Issue guidance on the circumstances (e.g., with scenarios) under which OLA may commence prior to insolvency, with specific examples and which clearly aligns with nonviability.	While the U.S. authorities have flexibility, whether resolution would be triggered sufficiently early, particularly before insolvency and when the firm is no longer viable, will depend on the interpretation of DFA concepts, such as, "in default or in danger of default." In its February 2018 report, "Orderly Liquidation Authority and Bankruptcy Reform," UST recommended to clarify the standard for commencing a DFA Title II proceeding and to particularly specify more clearly when a firm would be considered to be "in danger of default" (pp. 35–36). Such clarification is also required by KA EN(3)(c), prescribing that the "conditions for entry into resolution or exercise of resolution powers should be clear and transparent and set out in law; the standards or suitable indicators of non-viability may be set out in guidance or other policy documents."
4. Adopt powers in the FDI Act to recover compensation, including variable remuneration, from those "substantially responsible" for the failure of the firm.	As receiver, the FDIC has broad powers under the FDI Act to pursue claims and recover monies from directors and officers of an IDI for a variety of reasons, including claims against those substantially responsible for the IDI's failure.
5. Adopt powers under the DFA and FDI Act to require companies in the same group (whether or not they are regulated or are themselves subject to a bankruptcy or resolution proceeding) to continue to provide services, including those not governed by contract, (to the entity in resolution, its successor (including a bridge entity under the SPE strategy) or an acquirer) as necessary to support effective resolution.	In 2016, the KA Assessment Methodology clarified with EN 3(j) that jurisdictions may achieve the objective of KA 3.2(iv) by providing the resolution authority with the power to ensure continuity of critical functions through corporate control over all companies within a financial group. As receiver, the FDIC has such broad powers as required under the KA and recommended by the FSAP. Furthermore, as a result of DFA and IDI Rule resolution planning, all critical services are government by contracts.

2015 Recommendations *Source: the 2015 technical note (Table 1) and the Financial System Stability Assessment (FSSA) report.*	**2020 Implementation Status**
6. Issue a final notice or regulation, clarifying in further detail, key aspects of the SPE approach including with regard to the valuation process, the communication strategy, and the legal mechanics for establishing a new holding company, the treatment of creditors who would not meet the suitability requirements for shareholders, the disclosure and registration requirements and related waivers applying in a Title II proceeding.	The FDIC's SPE Notice for Comments was published in 2013. In subsequent DFA Title I resolution guidance and feedback letters, the FRB and the FDIC clarified and elaborated on their expectations of firms' capabilities to support their chosen resolution strategy, including on the issues noted in the recommendation, except for disclosures and waivers in DFA Title II proceedings. In the above-mentioned 2018 UST report on OLA reform (pp 35–36), it was recommended to finalize the Notice.
7. Amend the FDI Act to provide the power to override early termination rights in contracts of subsidiaries and affiliates of an IDI.	While the FDI Act was not changed—and could be strengthened—on this point, practically the issue was addressed by changes, after the 2015 FSAP, in the ISDA Master Agreement and Protocol.
8. Identify the disclosure requirements that, in the context of a Title II liquidation, may warrant a temporary and limited waiver, and adopt relevant regulatory changes.	Pertinent disclosure rules were not identified. KA 5.6, EC 5.7, EN 5(f), and EN 5(g) explicitly require statutory powers to grant temporary and short-term exemptions on disclosure rules where disclosure could affect the successful implementation of domestic resolution measures and to support foreign resolution measures. The U.S. authorities disagree with the KA; they advocate transparency to enhance market confidence.
9. Introduce statutory mechanisms to give prompt legal effect in the United States to actions taken by foreign resolution authorities, either by recognition or by taking supportive measures of such actions respecting banks.	No changes were made on this point. See paragraphs 36–40 of this note.
10. Introduce a requirement under the FDI Act for the FDIC, as resolution authority, to cooperate with foreign resolution authorities by taking into account the impact of the resolution measure taken by the FDIC on financial stability in the relevant jurisdictions	While the FDI Act was not changed—and the DFA could be clarified—on this point, there are no statutory impediments for the FDIC to consider the impact of U.S. resolution decisions on financial stability abroad.
11. Amend the bank resolution regime to require the authorities involved in the resolution of a U.S. branch (e.g., OCC, Superintendent), to cooperate with a foreign resolution authority.	Federal and state-licensed U.S. branches of foreign banks are subject to federal and state regimes, respectively, and the regimes focus on liquidation rather than resolution. Statutory duties under both regimes may hinder efforts to support actions by foreign resolution authorities.
12. Introduce a requirement under the bank resolution regime to notify and	For GSIBs, the U.S. authorities concluded COAGs with nonbinding obligations to alert home authorities when it

2015 Recommendations *Source: the 2015 technical note (Table 1) and the Financial System Stability Assessment (FSSA) report.*	**2020 Implementation Status**
consult with the home resolution authority of a foreign firm prior to exercising resolution powers in relation to a local subsidiary or branch of such firm.	becomes apparent that a domestic branch or incorporated entity is likely to enter resolution. Similar arrangements for other banks have not been made. KA 7.1 explicitly requires that statutes strongly encourage the resolution authority to act to achieve a cooperative solution with foreign resolution authorities; EC 7.1 adds that there be no statutory material barriers to cooperation. Furthermore, KA 7.3 and EC 7.6 explicitly prescribe statutory requirements for resolution authorities to notify and consult with home authorities prior to exercising resolution powers regarding a branch of a foreign bank on its own initiative or independently of action taken by the home authority.
13. Extend the depositor preference rule to depositors of U.S. branches in foreign jurisdictions, whether or not the deposits are payable in the United States.	The FDIC's 'dual payability' rule clarified—but has yet to be confirmed in court—that dually payable foreign branch deposits are treated as deposit liabilities under the FDI Act's depositor preference rule with equal ranking as domestic uninsured deposits but not insured deposits.
14. Formalize criteria for determining the membership of CMGs.	A 2016 Federal Reserve Administrative Letter details the CMG membership criteria for FRB-supervised U.S. BHCs, banks in the portfolio of the Large Institution Supervision Coordinating Committee, and FSOC-designated nonbank financial firms with significant cross-border operations
15. Align the engagement with host authorities that are not represented on CMGs (but where the local activities of U.S.-based firms could be systemically significant or critical at the point of failure) with relevant FSB guidance.	The FDIC has taken steps to identify non-CMG host jurisdictions where U.S. GSIBs have a systemic presence and engages bilaterally with specific non-CMG host authorities on their initiative. These exchanges are supported by MOUs or similar arrangements. The FDIC also engages on request in high-level discussions with non-CMG hosts on resolution strategies, and on challenges and opportunities for cooperation. The FDIC uses similar bilateral arrangements for cooperation with host authorities of other internationally active U.S. banks.
16. Finalize resolvability assessments for all domestic systemically important firms, where appropriate in cooperation with relevant host authorities.	RRP under the DFA for and by the largest and most complex financial companies has progressed since the 2015 FSAP; large IDIs prepare resolution plans under the FDI Act.
17. Provide the agencies with explicit powers to require changes to IDIs' business practices, legal, operational or financial structures that are deemed necessary to improve their resolvability.	The FDIC has broad powers under the FDI Act that it can and does use to improve resolvability under the IDI Rule resolution planning.
18. Continue to pursue reforms to enhance resolvability, including under Title II, and where necessary invoke	In several rounds of plan filings, where the FRB and the FDIC determined that firms' DFA Title I plans had shortcomings or deficiencies, they exercised their DFA powers to require firms

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regulatory authority to require firms to address identified deficiencies (also see KA10).	to remediate these shortcomings and deficiencies. DFA Title II plans evolved in step with Title I plans. Similarly, the IDI Rule planning has helped to enhance IDIs' resolvability under the FDI Act.
19. Provide the agencies with the authority to require recovery and resolution plans from BHCs and IDIs (irrespective of asset size) in situations where other characteristics (for example in view of their interconnectedness, substitutability and complexity) suggest that they could nonetheless be systemically significant or critical at the point of failure.	The Economic Growth, Regulatory Relief and Consumer Protection Act of 2018 gives the FRB discretion to apply enhanced prudential standards, including requirements for recovery and resolution plans, based on qualitative characteristics such as those identified in the recommendation. The discretion applies to BHCs with over US$100 billion in assets; it does not apply to IDIs. Furthermore, the OCC is authorized to impose recovery planning to a national bank below the minimum asset threshold if the OCC deems the bank highly complex or presenting heightened risk.
20. FSSA, ¶72—Assign formal crisis preparedness and management coordinating role to FSOC.	The FSOC has not assumed a crisis preparedness and management role under its existing statutory mandate to identifying risks to U.S. financial stability, to respond to emerging risks, and to facilitate close collaboration between the agencies whose heads sit on the FSOC. The FSOC was an informal forum for emerging issues, such as, Brexit, Hurricane Sandy, and MF Global's bankruptcy.
21. FSSA, ¶77—Consideration should be given to raising assessments, as bank profitability recovers, to reach the two percent deposit insurance fund target sooner.	The Deposit Insurance Fund grew from 1.09 percent in 2015Q3 (US$72.6 billion at end-2015) to 1.41 percent in 2019Q3 (US$110.3 billion at end-2019). The long-term goal stands at 2 percent.
22. FSSA, ¶78—With some credit unions potentially becoming systemic, there is a need to enhance the deposit insurance regime by removing the cap, targeting a significantly higher level of paid-in funds, and making membership mandatory for all credit unions.	The deposit insurance system for credit unions was not changed on these points.