Overview of Resolution Under Title II of the Dodd-Frank Act

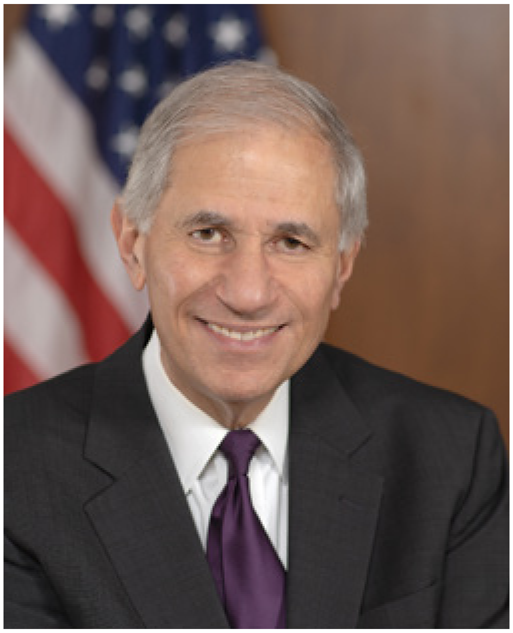
APRIL 2024

FEDERAL DEPOSIT INSURANCE CORPORATION

CONTENTS

FIGURES

CHAIRMAN'S FOREWORD



Central to the mission of the FDIC is managing the failure of banks and financial companies so as to protect insured depositors, preserve value, promote financial stability, and prevent taxpayer bailouts—what we call an orderly resolution. The failure of three large U.S. regional banks and one foreign global systemically important banking organization (GSIB) in the spring of 2023 is a reminder of the importance of this mission. These events also offer an opportunity to review how the FDIC would manage the resolution of a financial company that might be significantly larger—a GSIB headquartered in the U.S. with complex global operations.

Since the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA) in 2010, the FDIC and the Federal Reserve have reviewed multiple rounds of GSIB resolution plans—so called living wills—as required by Title I of the DFA. At the same time, the FDIC has been preparing its own plans for resolving large, complex financial institutions under the Orderly Liquidation Authority of Title II of the DFA, a back-up option that brings new tools and powers to bear if needed to protect U.S. financial stability.

The purpose of this paper is to provide stakeholders in a Title II resolution—customers and counterparties of the institution being resolved, other financial institutions and investors, domestic and foreign regulatory authorities and policymakers, and the general public—well-grounded expectations for how the Title II authority would be applied in practice. Although this paper focuses on the example of a U.S. GSIB resolution, many of the plans and processes described are relevant to how the FDIC would respond if called upon to be receiver for other types of systemically important financial companies.

Since the FDIC's publication of Resolution of Systemically Important Financial Institutions: The Single Point of Entry (SPOE) Strategy in 2013,[1] substantial progress has been made within the banking industry and among regulatory authorities to make GSIB resolution actionable in the United States. The first and second sections of this paper review the authorities and resources available to the FDIC and a set of reforms that have made U.S. GSIBs significantly more resolvable. The third and fourth sections provide more detail than we have previously published on the operational

[1] Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy, 78 Fed. Reg. 76614, December 18, 2013.

steps for performing a U.S. GSIB resolution under Title II. In particular, the paper explains why an SPOE strategy is likely to be the most suitable for a Title II resolution of a U.S. GSIB in a wide array of potential resolution scenarios, and describes the specifics of how it would be deployed.

The ability of the FDIC and other regulatory authorities to manage the orderly resolution of large, complex financial institutions remains foundational to U.S. financial stability. While recognizing the progress that has been made toward enabling such a resolution and ending "too big to fail," we also recognize that the resolution of a GSIB has not yet been undertaken. When it becomes necessary to do so, carrying out such a resolution will come with a unique set of challenges and risks. But an orderly resolution is far preferable to the alternatives, particularly the alternative of resorting to public support to prop-up a failed institution or to bailing out investors and creditors. With this paper we are reaffirming that, should the need arise, the FDIC is prepared to apply the resolution regime that the FDIC and many other regulatory authorities in the U.S. and around the world have worked so diligently to develop.

Setting out clear expectations regarding how the FDIC will handle its role in managing failures of systemically important financial institutions is itself a key component supporting the execution of an orderly resolution. I hope this paper contributes to public understanding and further progress in fulfilling our mission to be able to resolve safely even the largest and most complex financial institutions, and that it serves as an effective guide for stakeholders to turn to in the event that Title II is used.

MARTIN J. GRUENBERG
Chairman
April 2024

ACKNOWLEDGMENTS

Planning for the resolution of a large, complex financial institution involves hundreds of people at the firm, in various U.S. agencies and foreign authorities, and across the FDIC. Writing down and explaining our FDIC planning and preparedness for Title II resolution involved a team of dedicated people who listened and translated the expert knowledge of many into this relatively concise account.

I wish to thank the team from the Division of Complex Institution Supervision and Resolution who spearheaded the drafting and review of this paper, including Susan Baker, Betsy Falloon, Steve Grefe, Bill Pelton, Nathan Steinwald, and Ryan Tetrick. Many others also contributed, including John Conneely, Andrew Felton, Joanne Fungaroli, Mark Haley, David Kiddney, Cassandra Knighton, Laura Porfiris, and Jenny Traille.

The paper also benefited from review of colleagues across the FDIC, including from the Division of Resolution and Receiverships (Audra Cast and Pamela Farwig), the Division of Risk Management Supervision (Robert Connors), the Division of Insurance and Research (Anthony Sinopole), the Office of Communications (Carroll Kim, Amy Thompson, and David Barr), the Office of Legislative Affairs (Andy Jimenez), and many others. Extensive legal support and review was provided by Bruce Hickey, Noah Bloomberg, Angus Tarpley, Vickie Olafson, and others. Kathy Zeidler and Alison Maynard provided editing and graphic design support, respectively.

We are also grateful to our colleagues at other U.S. agencies and foreign authorities who provided feedback on earlier drafts and continue to work constructively with us on these complex matters.

ARTHUR J. MURTON
Deputy to the Chairman for Financial Stability
Director, Division of Complex Institution Supervision and Resolution

INTENTIONALLY LEFT BLANK

EXECUTIVE SUMMARY

In 2008 and 2009, the United States was confronted with its most severe financial crisis since the Great Depression. The financial instability sparked by the failure (or near failure) of several large, complex, interconnected financial companies highlighted many risks and challenges to orderly resolution, including the limited set of options U.S. authorities had to respond to failures that threatened U.S. financial stability.

Objectives and Tools of a Title II Resolution

Addressing these challenges in a way that maintains the stability of the U.S. financial system and does not rely on taxpayer support has been a goal of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or DFA) and related reforms. DFA provided new tools and authorities to make orderly resolution of systemically important financial companies more feasible. Title I of the DFA requires certain firms to develop resolution plans that demonstrate how they could be resolved in an orderly way under their ordinary resolution regime, which for a U.S. GSIB is generally the U.S. Bankruptcy Code. Title II of the DFA created the Orderly Liquidation Authority (OLA) as a backup resolution regime if needed to mitigate risks to financial stability by providing for the appointment of the FDIC as receiver of a failed financial company and for an Orderly Liquidation Fund (OLF) to serve as a temporary backstop source of liquidity.

Resolution Planning and Policy Developments Supporting the Application of Title II

Since the passage of the DFA, the FDIC, other regulators, and Title I plan filing institutions have taken steps that facilitate resolution under Title II authority. In 2013, the FDIC developed the concept of an SPOE resolution strategy. In an SPOE resolution strategy, only the parent holding company is placed into resolution, with its subsidiaries remaining open and operating while the group undergoes restructuring. The SPOE strategy aims to limit disruption and mitigate systemic risk by maintaining the continuity of the failed institution's critical operations and material subsidiaries.

The FDIC, Federal Reserve, and other U.S. authorities have also finalized rules to support orderly resolution of a large, complex financial company. These rules require increased loss absorbing capacity with a long-term debt requirement for GSIBs and "clean holding companies" to minimize complications to bailing in parent holding company creditors; they also require that firms take steps to avoid mass early termination of certain financial contracts while they are transferred to a new counterparty during resolution.

Meanwhile, the largest U.S. banking groups, particularly the U.S. GSIBs, have enhanced their resolvability in various ways through the Title I process. Importantly, these firms have streamlined their organizational and funding structures, identified options for shrinking and divesting their businesses in resolution to reduce their systemic footprint, and taken steps to provide for operational continuity in resolution. They have also developed capabilities to better estimate material subsidiaries' liquidity and capital needs in resolution and built governance frameworks with specific triggers to promote timely action when a firm begins to encounter stress.

Finally, considering the extensive cross-border business undertaken by many large, complex, financial institutions, U.S. and foreign authorities have developed robust mechanisms to promote international cooperation. Key developments include pre-positioning resources to support recapitalization of material subsidiaries and regularly meeting to discuss firm-specific resolution plans and test operational preparedness.

Deciding Whether, When, and How to Use Title II Resolution Authority

The strategic decision-making process for launching a Title II resolution starts with contingency planning for a financial company in stress. During this period, the FDIC and other authorities will assess the situation and evaluate whether a Title II resolution is necessary for this particular financial company and scenario. If deemed appropriate, authorities will follow the interagency "three keys" process—which requires recommendations from two federal agencies or offices followed by a determination by the Secretary of the Treasury, in consultation with the President—to commence a Title II resolution. If the FDIC were appointed receiver of a U.S. GSIB under Title II, the FDIC expects to use an SPOE strategy.

Operational Steps for a U.S. GSIB Title II Resolution

When launching the resolution of a U.S. GSIB using an SPOE strategy, the parent holding company is placed into receivership, and its subsidiaries, assets, and certain liabilities are transferred to a Bridge Financial Company. Most liabilities, especially those due to shareholders and unsecured creditors, would be left behind in the receivership and absorb the costs of the resolution. As necessary, the FDIC could use the OLF to provide a backstop source of liquidity for the Bridge Financial Company.

At the time of its appointment, the FDIC would take steps to stabilize the Bridge Financial Company and its operations by recapitalizing material subsidiaries with the firm's internal resources, providing adequate liquidity to the group, replacing the most senior leaders and retaining key personnel, communicating with stakeholders, and maintaining operational continuity. In this way, subsidiaries in which the vast majority of activity takes place would remain open and operating and able to fulfil their obligations to customers, depositors, and counterparties.

The FDIC will hold accountable management responsible for the failure, allocate losses to shareholders and creditors, and return assets and viable operations to private sector control as soon as possible. Specific resolution actions will likely include winding down certain operations, restructuring or divesting certain businesses, and marketing and selling assets in an orderly manner.

Upon exit, any entity (or entities) emerging from the Bridge Financial Company would be expected to be financially and operationally sound, smaller, and more easily resolvable under their ordinary regimes. The goal is that they will be non-systemic or, at a minimum, significantly less systemic than the failed GSIB. Consistent with statutory obligations and the Title II creditor hierarchy, all losses would be borne by the private sector, primarily the GSIB's former shareholders and unsecured creditors, and not taxpayers. In addition, the FDIC would oversee the repayment of any OLF support, the termination of the Bridge Financial Company, the satisfaction of claims, and the closing of the receivership. From the point of entry into resolution through the distribution of proceeds to claimants using a securities-for-claims exchange process, the resolution process would likely take nine months or longer to complete.

INTRODUCTION

Congress's goals with the passage of the Dodd-Frank Act included promoting the financial stability of the United States by improving accountability and transparency in the financial system, ending ''too big to fail,'' and protecting the American taxpayer by ending bailouts. Title II of the DFA provides certain authorities and tools to support the orderly resolution of large, complex financial companies[2] when their failure and resolution under otherwise applicable law, in most cases the U.S. Bankruptcy Code, would have serious adverse effects on financial stability in the United States. In a successful Title II resolution, the failure of a financial institution will be handled in a way that reduces the impact on U.S. financial system stability while holding accountable the management responsible for the failure and allocating losses to shareholders and creditors.

The set of institutions to which Title II would be applied is not pre-determined but rather is a result of an interagency assessment that must be made at the time of a failure, as described in the DFA. Title II could apply to any financial company (other than an insured depository institution (IDI)[3]) whose failure and resolution under the otherwise applicable insolvency regime would have serious adverse effects on financial stability in the United States (see Figure A: Legal Regimes for Resolving Financial Institutions in the United States). Within that broad universe of financial companies, the FDIC and other authorities have prioritized work on U.S. GSIBs[4] given their large size, extensive interconnectedness, significant roles in financial markets and supporting economic growth, and requirements under DFA for resolution planning. In some cases, large nonbank financial institutions with complex operations whose failure could pose a risk to U.S. financial stability might also be relatively likely candidates for a Title II resolution. In contrast, large regional banking organizations, which have relatively simple organizational structures concentrated almost entirely in their lead IDI subsidiaries and limited cross-border activity, are generally best suited for resolution in which the IDI is placed into receivership under the Federal Deposit Insurance (FDI) Act and the holding company is placed into bankruptcy, as opposed to an SPOE resolution under Title II.

A resolution of any type involves varying degree of costs and uncertainties, and one goal of an orderly resolution is to keep such costs contained and uncertainties manageable. A Title II resolution will involve costs being borne by investors and creditors of the failed institution, and it will likely coincide with a period of market volatility or uncertainty. However, as laid out in this paper, the FDIC continues to prepare to carry out a Title II resolution in a way that minimizes disruption to critical operations needed for the functioning of the financial system and that protects the U.S. economy. The strategies and tools that the FDIC has developed are designed to be adaptable to a range of scenarios, so that the specific actions the FDIC takes can be responsive to the facts and circumstances of a particular institution's failure and conditions in the financial system at the time. The FDIC continues to develop a range of strategic options and capabilities to improve resolution readiness so that systemically important financial institutions can be resolved

2 See DFA definition in § 201(a)(11), 12 U.S.C. § 5381(a)(11).

3 Insured depository institutions (IDIs) are resolved under the Federal Deposit Insurance Act (FDI Act).

4 The Financial Stability Board, in consultation with Basel Committee on Banking Supervision and national authorities, annually identifies a list of GSIBs. In the United States, a banking organization is a U.S. GSIB if it is identified as a global systemically important BHC pursuant to 12 CFR 217.402.

in an orderly manner without jeopardizing U.S. financial stability or relying on taxpayer bailouts. The goal of this paper is to enhance transparency and promote public understanding of the resolution process. While this paper focuses on how the FDIC expects to resolve a U.S. GSIB under Title II, many of the tools and processes described could be applied to resolution of other types of financial companies. Moreover, while this paper explains the FDIC's expected approach, FDIC actions will always depend on the specific facts and circumstances, and, as such, the expectations laid out in this paper are not binding on the FDIC or any other regulatory authority involved in the resolution process.

Figure A: Legal Regimes for Resolving Financial Institutions in the United States

Financial companies in the United States are subject to different resolution regimes, depending on the type of firm. Historically, IDIs, broker-dealers, and insurance companies have been subject to special, sector-specific resolution regimes, while other types of financial companies have been subject to the U.S. Bankruptcy Code. Since 2010 the DFA's Title II has provided an option that allows financial companies that are not IDIs to be eligible for resolution by the FDIC in certain circumstances (see Determining resolution framework: U.S. Bankruptcy Code vs. Title II). IDIs remain exclusively subject to resolution under the FDI Act, which contains its own provisions on resolutions involving systemic risk.[5]

<table>
<tr><th>Type Of Company</th><th>Ordinarily Applicable Resolution Regime</th><th>Systemic Resolution Regime</th></tr>
<tr><td>Insured Depository Institutions</td><td colspan="2">Federal Deposit Insurance Act *</td></tr>
<tr><td>Broker-Dealers</td><td>Securities Investor Protection Act (SIPA)*</td><td rowspan="4">Title II Dodd-Frank Act</td></tr>
<tr><td>Insurance Companies</td><td>State-by-state resolution regimes*</td></tr>
<tr><td>Bank Holding Companies</td><td rowspan="2">U.S. Bankruptcy Code</td></tr>
<tr><td>Other nonbank financial institutions (e.g., CCPs, FMUs, other financial holding companies)</td></tr>
<tr><td colspan="3">* Sector-specific resolution regimes</td></tr>
</table>

[5] The FDI Act's systemic risk exception enables the FDIC to choose a resolution transaction that may not be the least costly to the Deposit Insurance Fund, but would mitigate serious adverse effects on U.S. financial stability.

1. OBJECTIVES AND TOOLS OF A TITLE II RESOLUTION

The 2008-2010 financial crisis highlighted a number of challenges in resolving large, complex financial institutions[6] and resulted in the establishment of new legal authorities through the DFA to make orderly resolution more feasible. This section reviews the challenges that crisis brought into focus and the key resolution tools in the DFA.

Challenges of Resolving Large, Complex Financial Companies

Resolution of large, complex financial companies presents a set of challenges that regulatory authorities and financial institutions have been working to address, including the risk of:

- multiple competing insolvency proceedings under different insolvency frameworks within and across jurisdictions;
- ring-fencing of overseas assets by foreign host supervisors, resolution authorities, or third parties;
- disruption of services necessary for the institution's day-to-day operation, such as personnel, information technology, contracts, or financial market utility (FMU) access;
- adverse actions by counterparties, such as closing out derivatives contracts or exercising cross-default rights;
- insufficient financial resources for capital and liquidity to maintain the financial company's ongoing business functions and operations; and,
- insufficient information on the impact of the firm's resolution on the rest of the financial system.

DFA Framework for Orderly Resolution

Title I and Title II of the DFA provide tools to help overcome the aforementioned challenges and close gaps in the U.S. resolution regime revealed in the 2008–2010 global financial crisis.[7] Specifically, the DFA extended authorities similar to the FDIC's long-standing resolution and receivership authority for IDIs under the FDI Act, to support orderly resolution of large, complex financial companies, including bank holding companies.

[6] See Crisis and Response: An FDIC History, 2008–2013, https://www.fdic.gov/bank/historical/crisis/.
[7] See Crisis and Response (pages 27–28).

TITLE I: RESOLUTION PLANNING

Title I of the DFA requires the largest BHCs and other nonbank financial companies designated by the Financial Stability Oversight Council (FSOC)[8] for supervision by the Board of Governors of the Federal Reserve System (Federal Reserve Board or FRB) to prepare resolution plans, alternatively referred to as living wills, Title I plans, or 165(d) plans.[9] (See Figure B: 165(d) planning requirements for U.S. and Foreign Banking Organizations).[10] These companies must provide a plan for their rapid and orderly resolution under the U.S. Bankruptcy Code (or other ordinary insolvency regime) that demonstrates how their failure would avoid serious adverse effects on financial stability in the United States. The Title I planning process requires these companies to demonstrate that they have adequately assessed the challenges that their structure and business activities pose to orderly resolution, and that they have taken action to address those issues. If a firm subject to Title I resolution planning requirements fails to take the remediating actions necessary to become resolvable, U.S. regulators may impose more stringent requirements, divestitures, or restrictions on the growth, activities, or operations of the company.

Since 2013, the eight U.S. GSIBs and other large banks, including foreign banking organizations (FBOs) with the largest U.S. operations, have completed multiple rounds of resolution plans that include both public[11] and confidential sections. To enhance transparency and accountability, the Federal Reserve Board and FDIC have met repeatedly with the largest of these institutions, provided multiple rounds of guidance,[12] and published joint letters providing feedback[13] on the institutions' Title I plans. These letters include a description of how institutions have improved their resolvability as well as any weaknesses they need to address. In 2019, the Federal Reserve Board and FDIC adjusted the frequency and scope of 165(d) plans (see Figure B: 165(d) planning requirements for U.S. and Foreign Banking Organizations).[14]

In addition to improving the likelihood that subject institutions can be resolved through bankruptcy, the Title I planning process has delivered other benefits. Perhaps most significantly, measures undertaken by the institutions to enhance their resolvability under the Bankruptcy Code as part of their Title I planning—such as legal entity rationalization, corporate restructuring, adherence to the International Swaps and Derivatives Association (ISDA) Resolution Stay Protocols, and capabilities to estimate the adequacy and location of capital and liquidity resources in resolution—would also be helpful to the FDIC in a Title II resolution. These organizational and operational changes have materially improved the resolvability of Title I plan filers regardless

8 Pursuant to § 113 of the DFA, 12 U.S.C. § 5323, these non-bank financial companies are designated by the Financial Stability Oversight Council (FSOC) for supervision by the Federal Reserve Board if the Council determines that material financial distress at the non-bank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the non-bank financial company, could pose a threat to the financial stability of the United States. Note that financial market utilities designated as systemically important by FSOC under Title VIII of the DFA are not subject to resolution planning requirements under Title I.

9 See Section 165(d)(1), 12 U.S.C. § 5365(d)(1)

10 https://www.federalregister.gov/documents/2019/11/01/2019-23967/resolution-plans-required.

11 https://www.fdic.gov/regulations/reform/resplans/index.html.

12 For examples of guidance see: 85 Fed. Reg. 83557 (2020 guidance for FBOs) and 84 Fed. Reg. 1438 (2019 guidance for U.S. BHCs). For examples of past FAQs see: https://www.fdic.gov/resources/resolutions/resolution-authority/faq4covered2018.pdf and https://www.fdic.gov/resources/resolutions/resolution-authority/2017faqsguidance.pdf.

13 The joint feedback letters can be found at https://www.federalreserve.gov/supervisionreg/agency-feedback-letters-index.htm.

14 Resolution Plans Required, 84 Fed. Reg. 59194–59228, (November 1, 2019), https://www.federalregister.gov/documents/2019/11/01/2019-23967/resolution-plans-required.

of the regime that may be applied. Additionally, Title I resolution plans provide regulators information about interconnections and interdependencies between institutions and within individual institutions that is otherwise unavailable, and which can be drawn upon to plan for a Title II resolution or in response to other events.

Figure B: 165(d) Planning Requirements for U.S. and Foreign Banking Organizations

Biennial Filers	**Triennial Full Filers**		**Triennial Reduced Filers**
Category I	**Category II**	**Category III**	**Other FBOs**
Two-year Cycle Alternating full and targeted plans	**Three-year Cycle** Alternating full and targeted plans		**Three-year cycle** Reduced plans
U.S. GSIBs	U.S.: ≥$700bn total consolidated assets; or ≥$100bn total consolidated assets with ≥$75bn in cross-jurisdictional activity*	U.S.: ≥$250bn and <$700bn total consolidated assets; or ≥$100bn total consolidated assets with ≥$75bn total non-bank assets, weighted short-term wholesale funding, or off-balance sheet exposure	n/a
n/a	FBO: ≥$700bn in combined U.S. assets; or ≥$100 combined U.S. assets with ≥75bn in cross-jurisdictional activity*	FBO: ≥$250bn and <$700bn in combined U.S. assets; or ≥$100bn combined U.S. assets with ≥$75bn total non-bank assets, weighted short-term wholesale funding, or off-balance sheet exposure	FBO: ≥$250bn global consolidated assets, not subject to category II or III standards

All metrics are calculated as four-quarter averages. Details on the content expected for the full, targeted, and reduced plans can be found in 12 CFR Part 381.

* The Federal Reserve proposed to amend the definition of cross-jurisdictional activity in September 2023. See 88 Fed. Reg. 60385 (September 1, 2023) (https://www.govinfo.gov/content/pkg/FR-2023-09-01/pdf/2023-16896.pdf).

TITLE II: ORDERLY LIQUIDATION AUTHORITY

Before passage of the DFA, the FDIC's resolution and receivership authority was limited to IDIs, using the powers and tools under the FDI Act; the FDIC had no authority to resolve parent bank holding companies or non-bank affiliates of IDIs. Title II of the DFA extends similar powers and tools under the FDI Act to financial companies when their failure and resolution under the Bankruptcy Code (or otherwise applicable law) would have serious adverse effects on financial stability in the United States. Title II authorities are designed to mitigate risks to financial stability while safeguarding taxpayer resources. These powers and tools include the ability to step into the shoes of the failed financial company's shareholders and management to take control of the failed institution, establish a Bridge Financial Company to continue operations of the financial company during the receivership, and manage an administrative claims process that allocates losses to the shareholders and creditors of the failed financial company. Title II also provides for certain stays on counterparty actions, including a short-term stay on certain qualified financial contracts (QFCs),[15] in order to transfer the QFCs and prevent a counterparty from terminating, liquidating, or netting out solely on the basis of the failure of the financial company and the appointment of the FDIC as receiver.[16] Title II also encourages and enables the FDIC to coordinate with foreign authorities in the case of a failure of a financial company with global operations.[17]

Title II also authorizes the creation of the OLF to provide a line of credit to the FDIC to serve as a temporary backstop source of liquidity for the orderly resolution of a failed financial company. The OLF is made available on terms agreed to by the Secretary of the Treasury, and it is not designed to fill capital shortfalls or absorb losses. The FDIC expects to use the liquidity provided by the OLF to stabilize the Bridge Financial Company. The FDIC expects that OLF would be repaid as the Bridge Financial Company secures liquidity from customary sources or from proceeds generated through the resolution of the failed financial company. The amount of funding provided by the OLF is limited by the fair value of the assets of the failed firm, minus a haircut (see Funding of the Bridge Financial Company and its subsidiaries). Title II also allows for the use of guarantees backed by the OLF, which may support continuation of ordinary sources of liquidity or reduce cash needs from the OLF. Taxpayers are protected against any losses from OLF support (see Figure O: Are taxpayers on the hook for the GSIB failure?). If OLF advances cannot be repaid from the proceeds of the resolution of the failed financial company, Title II requires that the OLF be repaid through one or more risk-based assessments on certain financial companies.[18]

[15] QFCs, as defined in § 210(c)(8)(D) of the DFA (see 12 U.S.C. § 5390(c)(8)(D)), include securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, and similar agreements the FDIC determines by regulation, resolution, or order to be QFCs.
[16] See DFA § 210(c)(10)(B), 12 U.S.C. § 5390(c)(10)(B).
[17] See 12 U.S.C. § 5390(a)(1)(N).
[18] See DFA § 210(o), 12 U.S.C. § 5390(o).

2. RESOLUTION PLANNING AND POLICY DEVELOPMENTS SUPPORTING THE APPLICATION OF TITLE II

Building on the tools and authorities provided in the Dodd-Frank Act, the FDIC, other regulators, and Title I plan filing institutions have taken steps that improve resolvability generally and that would support the implementation of a Title II resolution specifically. This section describes these measures, which include development of the SPOE strategy, supporting regulations and guidance, enhancements to institutions' organizational structures and resolution planning capabilities, and arrangements to support international cooperation.

Strategy for Mitigating Disruption and Contagion: Single Point Of Entry

The development of the SPOE resolution strategy represented a critical step forward in the FDIC's thinking about how to address the challenges of resolving large, complex financial institutions.[19] As previously described by the FDIC in a notice published for comment in 2013, the SPOE strategy calls for only the parent holding company to be placed into resolution, with its subsidiaries remaining open and operating while the group undergoes restructuring. Many large U.S. financial companies conduct their businesses through complex arrays of interconnected entities across international borders that span legal and regulatory regimes. A large institution's business lines may not align to legal operating entities, and the operating entities often share funding and support services. These integrated groups make it very difficult to conduct a resolution of one or more legal entities without disrupting operations across the group. The SPOE strategy is designed to address this challenge by keeping the material business entities that face customers, counterparties, depositors, and service providers operating while the parent holding company is in resolution and a coordinated restructuring is undertaken across the institution.[20]

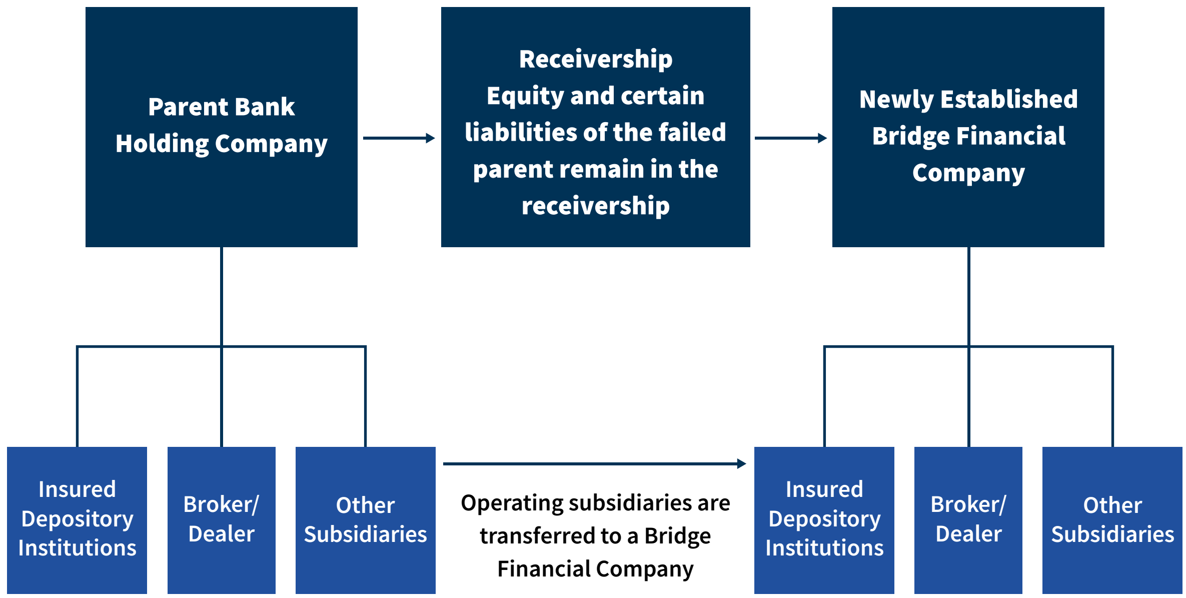
Generally, in SPOE, the FDIC would place one entity (the parent holding company, in the case of U.S. GSIBs) into resolution, while the ownership interests in the underlying subsidiaries are transferred from the failed parent to a new Bridge Financial Company (see Figure C: Single Point of Entry Schematic).

---

[19] Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy, https://www.govinfo.gov/content/pkg/FR-2014-02-21/pdf/2014-03692.pdf.

[20] Outside the United States, most resolution authorities have coalesced around an SPOE strategy for GSIBs with highly integrated operations. However, some GSIBs operate through subsidiaries or subgroups that are separately managed and funded in distinct jurisdictions. For those non-U.S. GSIBs, and in coordination with home country authorities, a multiple-point-of-entry (MPOE) resolution strategy has been adopted, under which certain distinct subsidiaries or subgroups would undergo resolution through different national insolvency regimes.

Figure C: Single Point of Entry Schematic



The equity and unsecured debt of the failed parent would remain in the original legal entity (now in receivership) and become claims against the receivership. As claimants, the parent holding company's shareholders and unsecured creditors would be structurally subordinated to the creditors of the rest of the group and would be first in line to bear the cost of the institution's failure. During the resolution, the Bridge Financial Company would undergo restructuring, whereby some of the operations or subsidiaries may be sold, wound down, or liquidated. Proceeds from the resolution would be used to satisfy claims to the extent of the value ultimately realized through the resolution.

The SPOE strategy can limit disruption and mitigate systemic risk by maintaining the continuity of the failed institution's operations and subsidiaries, including the ongoing relationships with the institution's counterparties, internal and external service providers, and key FMUs such as central clearing counterparties or payment systems. The SPOE strategy also can help services or operations of the firm critical to the functioning of the financial system continue operating. By maintaining operational continuity, SPOE also helps to preserve value for claimants against the failed company, as required by law. SPOE also has the benefit of being less complex administratively compared to multiple resolution proceedings at operating entities. In addition, SPOE enables the FDIC to better leverage the personnel, facilities, systems, and other resources of the institution being resolved rather than relying more extensively on the personnel, systems, and capabilities of the FDIC. Although the FDIC developed the SPOE strategy originally in the Title II context, by 2019, all eight of the U.S. GSIBs had also adopted an SPOE approach in bankruptcy as the preferred strategy in their Title I resolution plans.

Regulations Supporting Orderly Resolution

Since the DFA was enacted, U.S. authorities have implemented a set of regulations that support orderly resolution of a large, complex financial company, particularly a resolution using an SPOE strategy, whether under bankruptcy or Title II. The development of these rules has been informed by industry consultation and collaboration with international standard-setting bodies. These regulations provide for:

- **Increased total loss-absorbing capacity**—The Federal Reserve Board finalized a rule that became effective in 2017 that, among other things, requires U.S. GSIBs and foreign GSIBs with the largest U.S. operations to maintain minimum amounts of total loss-absorbing capacity (TLAC), including qualifying unsecured, "plain vanilla" long-term debt (LTD).[21] These requirements were put in place so that holders of TLAC could bear losses without transmitting systemic risk. The TLAC and LTD are issued by the parent holding company of U.S. GSIBs and the U.S. intermediate holding company (IHC) of foreign GSIBs. This structure facilitates the ability to concentrate loss absorbency in one entity and avoid multiple competing insolvency proceedings. The calibration of the TLAC and LTD requirements is scaled to provide adequate capacity to absorb losses and support the institution's operations during resolution. To further mitigate risk of contagion, subsequent regulations have also limited exposure of U.S. GSIBs to TLAC and LTD securities issued by another GSIB[22] and required extensive disclosures about TLAC and LTD securities' exposure to loss in resolution.[23]
- **Simplified "clean" holding companies**—Before the crisis, the parent holding companies of many large, complex financial companies issued an array of short-term financial instruments and complex liabilities. In the event of resolution, imposing losses on holders of these instruments or counterparties could have introduced complexities and risks of market disruption. The Federal Reserve Board's 2017 TLAC/LTD rule addressed this issue by requiring the parent holding company of a U.S. GSIB and the top-tier U.S. intermediate holding companies of foreign GSIBs to avoid entering into certain financial arrangements. These clean holding company requirements prohibit or limit the parent holding company's ability to issue short-term debt to external parties; enter into certain derivatives and other QFCs with external counterparties; provide certain guarantees of subsidiary liabilities or other arrangements that create disruptive default, set-off, or netting rights for subsidiaries' creditors; or allow their liabilities to be guaranteed by one of their subsidiaries. By preventing U.S. GSIBs from maintaining these types of contracts at the holding company, this rule helps promote operational continuity while the holding company is resolved under an SPOE strategy and ensures that losses are largely borne by the shareholders and unsecured creditors who are aware of the risks. In doing so, it also concentrates loss absorbency in one entity and avoids multiple competing insolvency proceedings.

[21] See 12 CFR Part 252, Subpart G.
[22] See FDIC, Federal Reserve Board, and Office of the Comptroller of the Currency (OCC) rules 86 Fed. Reg. 708 (January 6, 2021).
[23] TLAC issuers must disclose the risk of loss during resolution using multiple methods, including their Exchange Act Reporting (where the risks are material), individual websites, and TLAC-securities disclosure documents. See 12 CFR 252.65 and 252.167.

- **Stays on counterparty actions**—Mass early termination of QFCs can have disruptive effects by sparking asset fire sales and transmitting distress across the financial system. The Dodd-Frank Act provides for a one-business-day stay for Title II resolutions, similar to the stay available under the FDI Act for the resolution of IDIs. These stays provide time for QFCs to be transferred to a bridge or other identified third party, allowing the contracts to continue without termination.[24] However, there remained some potential issues that could complicate resolution. Specifically, these statutory stays would not be applicable in bankruptcy, and there was uncertainty around whether the Title II stay would be enforced if the QFCs were governed by laws outside the United States. In 2017, the Federal Reserve Board, FDIC, and Office of the Comptroller of the Currency (OCC) adopted rules requiring U.S. GSIBs and the U.S. operations of foreign GSIBs to amend the terms of QFCs to include stay provisions that would prevent their immediate cancellation or termination if the institution enters bankruptcy or another resolution process (such as Title II).[25] Compliance with these rules was in large part accomplished by U.S. GSIBs through their adherence to the ISDA Resolution Stay Protocols.[26] Together, these measures bolster the protections in the Dodd-Frank Act against cross-defaults and early terminations on QFCs domestically and on a cross-border basis, and mitigate the risk of disorderly failure and asset price volatility.

Resolution Planning and Firm Capabilities

Through the Title I resolution planning process, the largest U.S. banking groups have enhanced their resolvability in various ways, including streamlining their organizational structures and developing resolution capabilities to estimate material subsidiaries' liquidity and capital needs in resolution. While the strength of these capabilities varies across firms, Title I provides a process for ongoing supervisory review and improvements. In addition to being critical for a financial company's bankruptcy strategy, these enhancements will aid the FDIC in its role as receiver under Title II, if needed.

Key financial company actions undertaken to improve their resolvability as part of the Title I resolution planning process include:

- **Establishing resolution plans and optionality**—As part of the Title I resolution planning process, institutions have developed plans for their resolution under the Bankruptcy Code that address their unique structures and business models. (See Figure B: 165(d) planning requirements for U.S. and Foreign Banking Organizations for a description of which firms are required to file Title I plans.) The Title I plans of all eight U.S. GSIBs envision using an SPOE strategy under the Bankruptcy Code. The institutions have also built optionality into their Title I resolution plans by identifying companies or business lines that could be sold, providing a range of divestiture and wind-down strategies for various subsidiaries, and highlighting important businesses or subsidiaries in which a disruption in the continuity

[24] DFA § 210(c)(10)(B); 12 U.S.C. § 5390(c)(10)(B) provides authority for the FDIC, in some circumstances, to repudiate or terminate QFCs of specific counterparties to the BFC. In practice, however, the Federal Reserve's clean holding company requirements mean that U.S. GSIBs can hold only a de minimus amount of such contracts at the holding company and almost all QFCs are held at operating companies, which would remain open, operating, and expected to continue to perform on all QFC contracts.
[25] 12 CFR Part 382 (FDIC); 12 CFR 252.81-252.88 (FRB); 12 CFR Part 47 (OCC).
[26] ISDA 2018 U.S. Resolution Stay Protocol, https://www.isda.org/protocol/isda-2018-us-resolution-stay-protocol/.

of operations may present material risks to U.S. financial stability. The optionality built into these plans helps the institution and the FDIC, if it were appointed receiver under Title II, to be more prepared to respond to a variety of institution and market conditions while mitigating the risk to financial stability.

- **Simplifying organizational structures**—To make their preferred resolution strategies more feasible, institutions have developed criteria to evaluate proposed structural changes within their organizations. Organizational decisions, which had previously been made to manage only "business as usual" considerations, such as compliance and taxes, now incorporate considerations of resolvability. These efforts have resulted in reducing the number of legal entities, simplifying their ownership structure, and updating governance processes to ensure that resolution considerations are taken into account when divesting of or establishing new legal entities or when establishing new business lines. Also, to simplify funding structures, institutions have identified clear paths to deliver funding to their key subsidiaries. Together, these efforts are designed to simplify the resolution process, support operational continuity, and reduce frictions related to the provision of capital and liquidity support to material entities.
- **Establishing triggers for timely action**—To support rapid and orderly resolution under the U.S. Bankruptcy Code, U.S. GSIBs need to commence the bankruptcy process with enough resources to fund themselves throughout the resolution process. This not only requires that the companies have the capability to estimate their resource needs in bankruptcy and have adequate resources in place, but also that they have the governance mechanisms in place to commence a timely bankruptcy filing (i.e., while the institution still maintains sufficient resolution resources). As part of the Title I process, institutions develop data systems and modelling capabilities to estimate and track the amount and location of capital and liquidity required to execute their preferred resolution strategy under bankruptcy. Institutions connect these capital and liquidity capabilities to internal escalation triggers, playbooks, and other governance mechanisms to facilitate the timely consideration of important recovery and resolution actions by the institution's board of directors and senior management. In addition, these capabilities help the institutions actively consider how to strike the best balance between pre-positioning resources at specific entities versus maintaining additional resources to be deployed flexibly across the group during resolution.
- **Planning for operational continuity**—A key advantage of the SPOE strategy is that it provides for the institution's subsidiaries to continue operating in order to minimize disruptions to services that may be important to maintaining financial stability. As part of their Title I process, institutions explicitly considered and addressed a number of obstacles to continuity of operations, including how to maintain access to key FMUs and to other critical services both inside and outside the institution. For FMU access, institutions have developed strategies and playbooks to maintain the ability to use and provide access to payment, clearing, and settlement services, including operational and liquidity arrangements that plan for increased margin and collateral requirements. Institutions have also developed frameworks to document the service providers that support critical operations, adopted arms-length and resolution-friendly contract terms for third-party and intra-company shared service providers, pre-positioned working capital in key service subsidiaries, and developed playbooks and strategies for retaining key personnel. Overall, these measures are intended to facilitate continuity of operations, which will help minimize the impact to financial stability resulting from the institutions' entry into resolution.

- **Providing transparency to investors and markets**—To address public concerns about some institutions being "too big to fail," U.S. authorities have taken measures to promote transparency about resolution plans. The Federal Reserve Board and FDIC require all institutions subject to Title I planning requirements to have a publicly available version of their Title I plan in order to inform the public's understanding of the institution's resolution strategy.[27] (See details on disclosure of authorities' feedback in the Title I: Resolution Planning section.)

International Cooperation

Given the cross-border activities of U.S. GSIBs, resolution preparedness requires international coordination based on strong working relationships. In addition to the resolution planning rules and related enhancements described above, authorities have built a framework to promote cross-border cooperation in the event of a U.S. GSIB failure, including:

- **Pre-positioning adequate resources**—Pre-positioning adequate resources to support continuity of operations throughout an SPOE resolution helps to reduce the risks of multiple competing insolvencies and jurisdictional ring-fencing of operations and assets. Some authorities have issued requirements for subsidiaries to maintain internal total loss-absorbing capacity (iTLAC).[28] This pre-positioned iTLAC enables losses occurring locally at a foreign subsidiary to be "passed up" to the parent holding company in the home country. Title I plan filers also are expected to proactively consider and provide for the amount of capital and liquidity that needs to be pre-positioned to enable a rapid and orderly resolution under bankruptcy in their Title I plans—even where there are no foreign requirements to do so.
- **Crisis management groups (CMGs)**—CMGs bring together "home" and "host" authorities for regular, institution-specific discussions regarding resolution strategies, cross-border implementation plans, obstacles to orderly resolution, and progress toward resolvability. The discussions and relationships built in CMGs strengthen the preparedness of authorities to coordinate and improve knowledge of—and confidence in—each other's crisis management plans and reduce the incentive for the kind of ring-fencing of assets that could further destabilize the institution or market functioning generally. CMGs are supported by confidential information-sharing arrangements, including institution-specific cooperation agreements (CoAgs) and a network of jurisdictional and authority-specific memoranda of understanding (MOUs) designed to facilitate discussion while protecting sensitive or confidential supervisory information.

---

[27] The public section of the Title I plans are expected to cover, for example, the strategy for continuity, transfer, or orderly wind down of each material entity; a high-level description of the firm's intragroup financial and operational interconnectedness; the liquidity resources and loss absorbing capacity of the firm; the expected resulting organization upon completion of the resolution process; and how the firm has addressed any deficiencies, shortcomings, or key vulnerabilities identified in previous plans and steps the firm is taking to improve resolvability under the Bankruptcy Code. See 12 CFR 381.11(c).

[28] For example, the Federal Reserve has required internal TLAC from certain FBOs operating in the U.S. (See 12 CFR 252, Subpart P), and the FDIC and Federal Reserve proposed internal TLAC for certain IDIs in September 2023 (https://www.federalregister.gov/documents/2023/09/19/2023-19265/long-term-debt-requirements-for-large-bank-holding-companies-certain-intermediate-holding-companies). Foreign authorities have also required internal TLAC from certain U.S. firms operating in their jurisdictions: see for example, policies from the United Kingdom (https://www.bankofengland.co.uk/paper/2021/the-boes-approach-to-setting-mrel-sop) and the Banking Union (https://www.srb.europa.eu/system/files/media/document/2023-05-15_SRB_MREL_Policy_2023_final%20_clean.pdf).

- **Cross-border and multilateral engagement**—This type of engagement helps U.S. and foreign regulatory authorities deepen their understanding of resolution processes and necessary coordination among home and host authorities, improving readiness for resolution. The principals and staff of the FDIC and other U.S. authorities work closely with foreign counterparts to plan for cross-border coordination, particularly regarding U.S. GSIBs with assets and operations in key material jurisdictions. Authorities meet regularly to discuss practical examples of cross-border cooperation and crisis management and conduct exercises to practice operationalizing resolution actions. In addition, the FDIC has helped develop international standards for resolution regimes[29] to support the development and implementation of effective cross-border resolution practices.

The combination of the measures described above addresses or mitigates many of the common resolution challenges that large, complex financial institutions faced during the U.S. financial crisis of 2008–2010 (see Figure D: Resolution Developments Mitigating Resolution Challenges). While meaningful challenges and risks remain that must be anticipated and managed, the options available today for resolving financial institutions that pose systemic risk are much more fit-for-purpose than those available during the 2008–2010 financial crisis, and the likelihood of an orderly resolution in a wide range of scenarios is greatly improved.

[29] Key Attributes of Effective Resolution Regimes for Financial Institutions. https://www.fsb.org/2014/10/key-attributes-of-effective-resolution-regimes-for-financial-institutions-2/.

Figure D: Resolution Developments Mitigating Resolution Challenges

	Resolution Tools, Planning and Policy Developments						
Resolution Challenges	**Title I Firms' Resolution Planning**	**Title II Orderly Liquidation Fund**	**Single Point Of Entry Strategy**	**TLAC and Capital And Liquidity Pre-Positioning**	**Clean Bank Holding Company Rules**	**QFC Stays and ISDA Protocol**	**Cross-Border Cooperation**
Multiple competing insolvencies	✓	✓	✓	✓	✓		✓
Ring-fencing of foreign assets	✓	✓	✓	✓			✓
Disruption of operations and services	✓	✓	✓	✓	✓		✓
Adverse counterparty actions	✓	✓	✓	✓	✓	✓	✓
Insufficient financial resources		✓		✓			
Contagion to financial system	✓	✓	✓	✓	✓	✓	✓

3. DECIDING WHETHER, WHEN, AND HOW TO USE TITLE II RESOLUTION AUTHORITY

This section describes the strategic decision-making process for launching a Title II resolution of a U.S. GSIB. This process starts with contingency planning for a financial company in stress, as the FDIC and other authorities will evaluate the situation and work toward consensus about the best resolution framework and strategy for a particular financial company in a specific scenario.

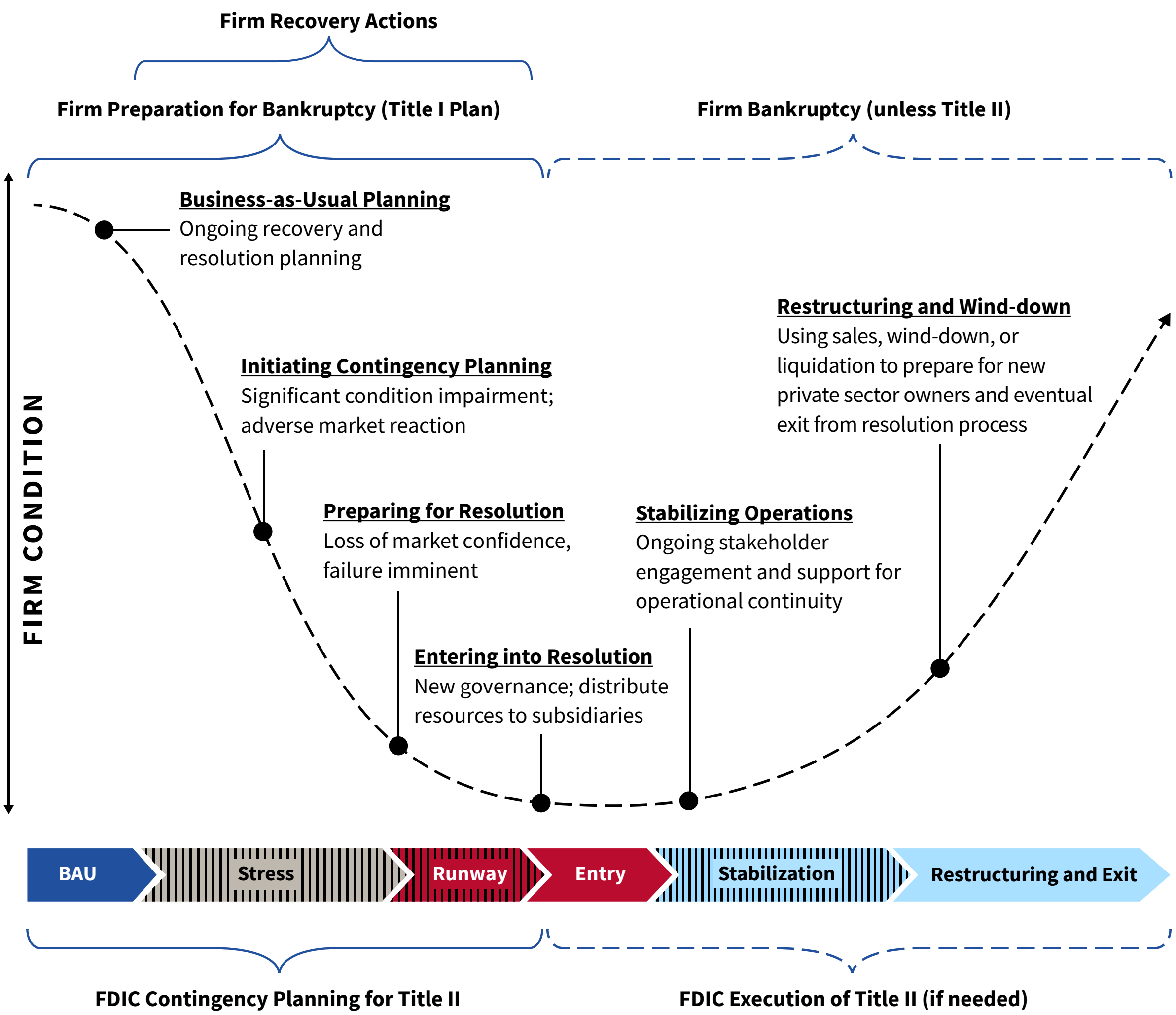
Contingency Planning

When a U.S. GSIB experiences stress and moves along the crisis continuum from “business as usual” toward failure, the financial company and its supervisors will be working to address the issues while simultaneously engaging in contingency planning for various resolution options (see Figure E: Firm Crisis Continuum and Contingency Planning Phases). The institution is expected to simultaneously undertake recovery actions and contingency planning for bankruptcy in line with its Title I planning. While the speed at which a firm proceeds through the crisis continuum will vary according to the firm’s business model and the nature of the stress, GSIBs have put governance mechanisms in place that include triggers for timely actions. These actions include recovery measures, notification to the FDIC and Federal Reserve Board as the institution hits pre-identified triggers, distribution of resources to subsidiaries to facilitate orderly resolution, and ultimately a decision to file for bankruptcy, if needed.

In parallel with the recovery and contingency bankruptcy planning actions managed by the financial company, the FDIC would undertake heightened monitoring and contingency planning for a Title II resolution in case the financial company’s recovery efforts prove unsuccessful and the financial company’s resolution under the Bankruptcy Code could have serious adverse effects on U.S. financial stability. The metrics and triggers under the financial company’s Title I process would help the FDIC and other U.S. authorities assess available capital and liquidity resources and the financial company’s proximity to “default or danger of default.”[30] The firm’s trigger framework will also help inform authorities’ decisions about whether (and when) to put the financial company into a Title II resolution.

[30] Under the Dodd-Frank Act, a financial company is considered to be “in default or in danger of default” if (A) a case has been, or likely will promptly be, commenced with respect to the financial company under the Bankruptcy Code; (B) the financial company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion; (C) the assets of the financial company are, or are likely to be, less than its obligations to creditors and others; or (D) the financial company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

Figure E: Crisis Continuum and Contingency Planning Phases



An important part of the FDIC's contingency planning is early engagement with the appropriate domestic and foreign supervisory and resolution authorities involved with material parts of the financial company to discuss the prospects for recovery and to confirm the likely legal regime and strategy for resolution of the financial company, should it occur. This engagement would leverage the processes and understandings established among resolution and supervisory authorities through the financial company's CMG, the financial company-specific CoAgs, jurisdictional MOUs for information sharing, and exercises that have documented and practiced steps in cross-border coordination. Communication and cooperation with these authorities will be important to limit the disruption to domestic and foreign subsidiaries, and ultimately to continue their operation as part of the consolidated group under an SPOE resolution.

In considering the appropriate timing to commence resolution, a key challenge will be balancing the prospects for recovery against the potential risks of delaying entry into resolution—such as further deterioration of the institution in a way that compromises an eventual resolution and worsens the outcomes for financial system stakeholders. There is a natural tension between providing an adequate opportunity for a troubled financial company to recover and timing the entry into Title II resolution before resources are exhausted. Timely entry would allow more flexibility in the use of the financial company's remaining capital and liquidity resources to support orderly resolution, strengthening the recapitalization of the subsidiaries, and likely reducing the need for OLF support. In addition, while a financial company may enter Title II resolution before or after the commencement of a bankruptcy proceeding, where it has been determined that Title II resolution is necessary, commencing that process before the firm has filed for bankruptcy would simplify the resolution process. Finally, based on its long-standing experience resolving IDIs, the FDIC believes the ideal time to be appointed receiver under Title II would be late on a Friday afternoon (Eastern Time), immediately after U.S. financial markets close. The appointment as receiver late Friday afternoon would provide time, while most global financial markets are closed, to form a Bridge Financial Company, mobilize resources needed to conduct business beginning on Monday morning, and communicate with key constituencies (including employees, counterparties, and claimants) around the globe. The FDIC recognizes that a Friday night appointment may not be possible in all instances, and the timing will be highly dependent on the nature of the failing institution, how it fails, and market conditions at the time.

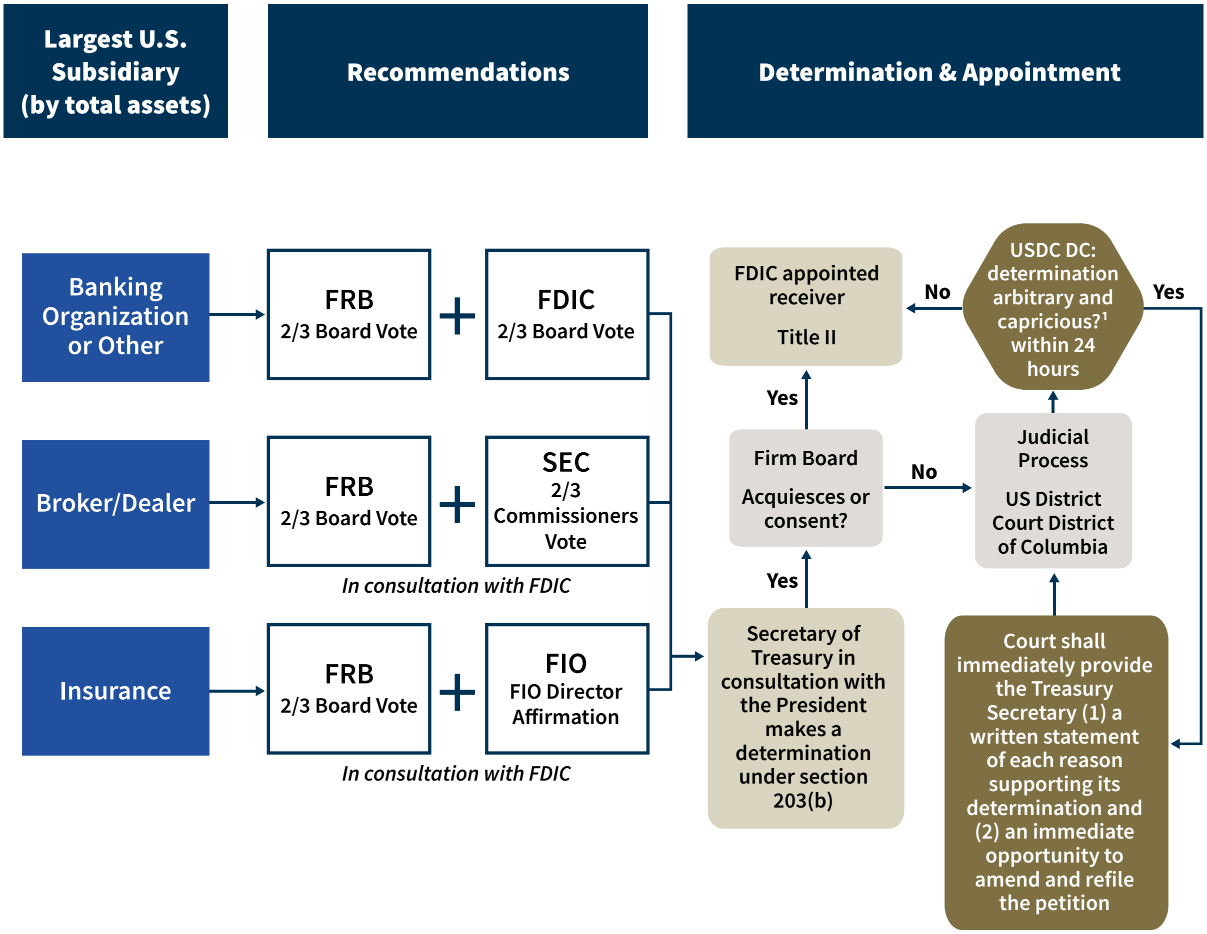
Determining the Resolution Regime: Bankruptcy or Title II

As a U.S. GSIB approaches failure, authorities will need to determine the best legal regime to manage the resolution considering the scenario encountered. As previously noted, for U.S. GSIBs, which are organized as BHCs, the Bankruptcy Code is the statutory first option for the resolution of the BHC; Title II is a back-up resolution framework for financial companies when resolution under ordinary insolvency regimes would have serious adverse effects on financial stability in the United States. The DFA lays out a clear process to approve the use of Title II authority that this section explains in detail and that the FDIC believes the relevant agencies can implement as swiftly as necessary.[31] The decision to undertake a Title II resolution is made pursuant to a multi-agency process provided in Title II of the Dodd-Frank Act. This process is often referred to as the "three keys process," because it requires recommendations from two federal agencies or offices followed by a determination by the Secretary of the Treasury, in consultation with the President, to commence a Title II receivership (see Figure F: The Three Keys Process for Title II's Orderly Liquidation Authority). There is no ex-ante list of financial companies that would be resolved under Title II: the authorities involved in the three keys process would consider only whether to place a specific financial company into Title II resolution as the financial company approaches default or danger of default.

The specific agencies or offices responsible for key turning depend upon the type of financial company in question. In all cases, the Federal Reserve Board is one of the recommending agencies. In most cases, the FDIC would be the second recommending agency. However, if the financial company or its largest domestic subsidiary (by assets) is a broker-dealer or an insurance company, the second recommending role would be filled by the U.S. Securities and Exchange Commission (SEC) or the Director of Treasury's Federal Insurance Office (FIO), respectively. In both of these cases, the statute requires that the FDIC be consulted on the recommendations. These recommendations must cover eight criteria (see Figure G: Required Elements of a Title II Recommendation), including whether the company is "in default or in danger of default," the effect a default of the financial company would have on U.S. financial stability, why an insolvency proceeding under the Bankruptcy Code is not appropriate, and the nature and extent of the planned actions expected to be taken regarding the financial company.

[31] The three keys process in DFA is similar to the voting process for approving the systemic risk exception in the FDIA which the agencies have invoked on a rapid timeframe including in the first quarter of 2023.

Figure F: The Three Keys Process for Title II's Orderly Liquidation Authority



[1] The U.S. District Court of the District of Columbia's (USDC DC's) review is limited to the Secretary's determination that (1) the covered financial company is in default or in danger of default and (2) the covered financial company satisfies the definition of a financial company under section 201(a)(11).

As a U.S. GSIB approaches "default or in danger of default," the FDIC will continue to undertake contingency planning for the firm's failure. To inform its views on potential Title II recommendations, the FDIC expects to evaluate, among other things, (1) the financial company's ability to recover from financial distress and (2) whether its bankruptcy plan would be successful considering prevailing market conditions. In assessing the bankruptcy plan, the FDIC would evaluate whether the financial company's projected capital and liquidity resources could meet its estimated needs in resolution. The FDIC will look to supplement this evaluation with supervisory data and insights from relevant authorities, particularly those in the financial company's CMG. In evaluating the risk to U.S. financial stability, FDIC would consider, among other things, whether (and, if so, how) resolution under the Bankruptcy Code could disrupt the financial company's critical operations, material entities, and core business lines, and whether that disruption would have serious adverse effects on financial stability of the United States. The FDIC also would evaluate whether actions contemplated in its own planning for resolving a financial company using its Title II authorities would avoid or mitigate potential serious adverse effects on the financial stability of the United States.

The FDIC expects that a key driver in deciding the appropriate resolution regime is likely to be an assessment of whether the financial company has access to sufficient liquidity to fund its own orderly resolution or if backstop liquidity from the OLF will be necessary, and the level of confidence in this analysis. A U.S. GSIB's resolution estimation capabilities, developed as part of its Title I planning, would provide a robust starting point for the evaluation of both its liquidity needs in resolution and the sufficiency of its capital resources to assure adequate recapitalization of subsidiaries. The FDIC would build on these capabilities and use other information to consider a range of projections of financial resource needs in both bankruptcy and Title II scenarios to support its evaluation of the appropriate resolution regime and strategy.

With the recommendations submitted by the appropriate key turners, the Secretary of the Treasury, in consultation with the President, would determine whether seven statutory requirements are met, including that no viable private sector alternative is available to prevent the default of the financial company, that the failure of the company and its resolution under the Bankruptcy Code (or otherwise applicable law) would have serious adverse effects on the financial stability of the United States, and that the actions planned to be taken under Title II would avoid or mitigate such adverse effects (see Figure G: Determination by the Secretary of the Treasury). The Treasury Secretary will notify the financial company of a determination. If the financial company's board of directors does not consent or acquiesce to the appointment of the FDIC as receiver under Title II, Treasury would submit a petition to initiate a 24-hour judicial review process. This judicial review is limited to the question of whether the Secretary acted in an arbitrary and capricious manner in determining that the financial company is in default or danger of default or meets the applicable definition of a financial company. At the end of this period, absent adverse judicial action, the FDIC is appointed receiver.

Figure G: DFA Title II Requirements

Required Elements of a Title II Recommendation	Determination by the Secretary of the Treasury
The written recommendation to the Secretary of the Treasury must contain the following elements: 1. Default: an evaluation of whether the financial company is in default or in danger of default; 2. U.S. Financial Stability: a description of the effect that the default of the financial company would have on financial stability in the United States; 3. Low- or Moderate-Income/Underserved Communities: a description of the effect that the default of the financial company would have on economic conditions or financial stability for low-income, minority, or underserved communities; 4. Actions: a recommendation regarding the nature and the extent of actions to be taken under Title II regarding the financial company; 5. Private Sector Alternative: an evaluation of the likelihood of a private sector alternative to prevent the default of the financial company; 6. Bankruptcy: an evaluation of why a case under the Bankruptcy Code is not appropriate for the financial company; 7. Effects on Creditors, Counterparties, and Shareholders: an evaluation of the effects on creditors, counterparties, and shareholders of the financial company and other market participants; and 8. Financial Company Criteria: an evaluation of whether the company satisfies the definition of a financial company Source: Dodd-Frank Act § 203(a) (12 U.S.C. § 5383(a))	The Secretary of the Treasury, in consultation with the President, must determine that: 1. Default: the financial company is in default or in danger of default; 2. U.S. Financial Stability: the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability in the United States; 3. Private Sector Alternatives: no viable private sector alternative is available to prevent the default of the financial company; 4. Effect on Creditors, Counterparties, and Shareholders: any effect on the claims or interests of creditors, counterparties, and shareholders of the financial company and other market participants as a result of actions to be taken under Title II is appropriate, given the impact that any action taken under Title II would have on financial stability in the United States; 5. Mitigate: any actions under section 204 of Title II would avoid or mitigate such adverse effects, taking into consideration the effectiveness of the action in mitigating potential adverse effects on the financial system, the cost to the general fund of the Treasury, and the potential to increase excessive risk taking on the part of creditors, counterparties, and shareholders in the financial company; 6. Contingent Convertibles: a Federal regulatory agency has ordered the financial company to convert all of its convertible debt instruments that are subject to the regulatory order; and 7. Financial Company: the company satisfies the definition of a financial company under section 201 Source: DFA § 203(b) (12 U.S.C. § 5383(b))

Figure H: Resolution of a Foreign GSIB with U.S. Operations

Since the global financial crisis, foreign authorities in charge of the supervision and resolution of non-U.S. GSIBs also have improved their resolution regimes and the resolvability of systemically important banks.* The FDIC has participated in the cross-border CMGs of many foreign GSIBs, which has advanced familiarity with those home authorities' plans for resolution.

When a foreign GSIB with U.S. operations fails, the FDIC expects that the resolution will be led by the home country authorities under the strategy they have adopted, most commonly an SPOE strategy that would enable the foreign GSIB's U.S. subsidiaries to remain open and operating while the foreign parent is resolved. The foreign GSIB's U.S. operations could be recapitalized using internal TLAC that the Federal Reserve has required them to issue from their U.S. IHC to their top-tier parent (see 12 CFR Part 252) or other capital contributions from the foreign parent, if necessary.

If these actions are insufficient and the foreign GSIB's U.S. operations need to be resolved separately, the ordinary resolution regime would most likely apply (e.g., bankruptcy for IHCs, FDI Act for IDIs, Securities Investor Protection Act for broker dealers, see Figure A above.) All foreign GSIBs operating in the United States have developed Title I plans for an orderly resolution under bankruptcy for their U.S. operations. However, just like any other financial company, the foreign GSIB's IHC is legally eligible for resolution under DFA's Title II, if it meets the conditions.

* See Financial Stability Board 2023 Resolution Report https://www.fsb.org/wp-content/uploads/P151223.pdf.

Confirming the Resolution Strategy

In the context of a Title II resolution, the FDIC's internal planning analyzes financial company-specific resolution strategies and execution challenges, including options for restructuring. In light of the advantages of the SPOE strategy, and the policies and innovations that U.S. authorities and institutions have developed that support that strategy (described in Section 2), the FDIC expects that for a Title II resolution of a U.S. GSIB, an SPOE strategy will be most suitable in a wide array of potential scenarios. SPOE involves only the top holding company of the GSIB entering resolution, allowing material operating subsidiaries to remain open and operating, with one resolution authority overseeing the financial company's stabilization and restructuring by stepping into the shoes of the holding company entering resolution.

The feasibility of the SPOE strategy is improved when the financial company has sufficient resources to recapitalize subsidiaries to meet minimum capital requirements, and additional capital to meet market expectations, thus keeping all material operating subsidiaries out of separate insolvency proceedings.[32] If a financial institution is nearing failure and is under such severe stress that its existing resources would be insufficient to recapitalize material operating subsidiaries, then such circumstances may require an alternative strategy in which one or more material subsidiaries or groups are placed into separate resolution proceedings under their applicable insolvency regimes. For example, if a U.S. GSIB's resources were inadequate to recapitalize the group's material operating subsidiaries under SPOE, then its U.S. broker-dealer

[32] While the SPOE strategy supports the stabilization and continuation of material subsidiaries, the FDIC may initiate the restructuring process quickly upon entry into resolution which may involve launching an immediate wind down or separate insolvency proceeding for certain BFC subsidiaries whose operations are not critical or do not contribute to the value of the group. Approaches to the restructuring and wind down of operations are discussed in more depth in the Exiting from Resolution section below.

or U.S. IDI could be placed into resolution under the Securities Investor Protection Act (SIPA) or the FDI Act, respectively, while the holding company is resolved under Title II. Or, if resources do not support sufficient recapitalization of a foreign subsidiary, a foreign authority could initiate a resolution proceeding of a U.S. GSIB's overseas subsidiary under applicable laws in that jurisdiction. If a U.S. GSIB were resolved using such an alternative, the FDIC would still be able to rely on many of the same resources and operational procedures, though there will likely be additional challenges in stabilizing operations, maintaining operational continuity, and preserving value for claimants.

Figure I: How Does a GSIB Resolution Under Title II Affect My Deposits?

If a GSIB were to be resolved using an SPOE strategy, the group's insured depository institution (IDI) would remain open and operating and deposits would not bear losses. Your deposits are held by an IDI, not the GSIB parent holding company that would be placed into resolution. All of the GSIB's material subsidiaries—including the GSIB's IDI which holds your deposits—remain open and operating. You will have full access to your deposits as you need them.

If a GSIB were to be resolved using an MPOE strategy, certain subsidiaries would be resolved separately. If the GSIB's IDI failed, the FDIC would manage its resolution under provisions of the FDI Act.* Since the founding of the FDIC in 1933, no depositor has lost a penny of FDIC-insured funds.

* See Bank Failures (https://www.fdic.gov/resources/resolutions/bank-failures/) and Understanding Deposit Insurance (https://www.fdic.gov/resources/deposit-insurance/understanding-deposit-insurance/index.html).

INTENTIONALLY LEFT BLANK

4. OPERATIONAL STEPS FOR A U.S. GSIB TITLE II RESOLUTION

This section describes the operational steps the FDIC expects to take to implement a Title II resolution of a U.S. GSIB using an SPOE strategy, which it expects to be the appropriate strategy to resolve U.S. GSIBs. This discussion starts from the launch of the resolution when the FDIC is appointed receiver, then discusses the FDIC's expected steps for stabilization of the operations, orderly wind down and restructuring, and exit from resolution. The FDIC's operational processes for executing a Title II resolution build upon and are informed by such processes for IDIs, but are significantly different given the complex nature of the financial companies involved and the different legal authority that would be applied. While this section focuses on expectations for implementing the Title II resolution for U.S. GSIBs reflecting their particular characteristics and resolution plans, many of the processes described are also adaptable to support resolution of other types of systemically important financial companies under Title II.

Launching the Resolution

Launching a resolution involves a number of steps that happen concurrently. This section describes the processes that the FDIC, as receiver, undertakes at the beginning of resolution, specifically: establishing the Bridge Financial Company, its leadership, and governance; transferring assets and liabilities to the Bridge Financial Company or receivership; and launching the claims process.

STEPPING IN AS RECEIVER

Upon its appointment as receiver for the failed financial company, the FDIC steps into the shoes of its officers, directors, and shareholders, taking control of all assets of the failed company, including its subsidiaries.[33] As receiver, the FDIC has broad authority to continue operations, collect debts, and affirm or repudiate contracts of the holding company in receivership. The FDIC as receiver is empowered to charter a new Bridge Financial Company, and to transfer assets and liabilities from the receivership to the Bridge Financial Company.[34]

FORMING THE BRIDGE FINANCIAL COMPANY

Title II provides the FDIC the authority to charter a Bridge Financial Company, appoint its directors, and establish the terms of its governance.[35] A Bridge Financial Company chartered and organized by the FDIC is a new legal entity created to facilitate the resolution of a financial company under Title II. In the expected SPOE approach for a U.S. GSIB Title II resolution, the newly

33 The DFA authorizes FDIC to, "succeed to all rights, titles, powers, and privileges of the covered financial company and its assets" (§ 210(a)(1)(A)(i) ; 12 U.S.C. § 5390(a)(1)(A)(i)) and "take over the assets of and operate the covered financial company" and "conduct all business of the covered financial company" (DFA § 210(a)(1)(B)(i); 12 U.S.C. § 5390(a)(1)(B)(i)).
34 DFA § 210(h); 12 U.S.C. § 5390(h).
35 DFA § 210(h); 12 U.S.C. § 5390(h).

chartered Bridge Financial Company will become the substitute top-tier holding company, hold the ownership stakes in subsidiary operating companies, and support the continuation of the critical operations of the group.

The FDIC as receiver may transfer assets and liabilities of the failed U.S. GSIB to the Bridge Financial Company at its discretion, and is not required to seek any customer, regulator, or court approval or consent.[36] Title II requires the FDIC as receiver to observe the principle of equitable treatment of creditors of the same class in connection with the transfer of assets and liabilities to the Bridge Financial Company while permitting departure from that principle only in limited, clearly specified circumstances.[37]

In a U.S. GSIB SPOE resolution, the FDIC expects that substantially all the assets of the top-tier holding company will be transferred to the Bridge Financial Company, which likely will include the investments in and loans to the group's subsidiaries as well as cash and securities held by the holding company. Secured liabilities would likely be transferred to the Bridge Financial Company, together with the accompanying collateral. Certain obligations to trade creditors needed to continue the smooth functioning of the Bridge Financial Company may also be transferred. The failed financial company's unsecured liabilities (primarily long-term debt, including that issued pursuant to the Federal Reserve Board's rule, as discussed above[38]), together with the shareholders' equity, will be retained in the receivership.[39] These creditors and shareholders will become claimants against the receivership estate. The claimants who held those liabilities will bear the losses of the group in accordance with the statutory creditor hierarchy (see Figure N: The Dodd-Frank Act Creditor Hierarchy). The value of their claims and the amount of their recoveries will be determined by the proceeds from the resolution process (see Exiting from Resolution discussion).

Although the Bridge Financial Company is statutorily exempt from regulatory capital requirements, it will be capitalized because it will receive substantially all of the assets of the failed U.S. GSIB holding company while leaving its unsecured liabilities, including the long-term debt required by the TLAC rule, behind in the receivership. As such, the Bridge Financial Company is expected to be in a better position than the failed GSIB to stabilize the group and support its material operating subsidiaries.

APPOINTING NEW DIRECTORS AND OFFICERS

Upon appointment of the FDIC as receiver, the board of the failed financial company would cease and certain officers responsible for the failure would not be retained by the Bridge Financial Company. To establish governance for the Bridge Financial Company upon its formation, the FDIC would install a new board and appoint new individuals to key senior executive roles, including the CEO and potentially other C-suite officers. To maintain operational continuity and preserve value, the FDIC expects that in most cases it would continue the roles of the vast majority of other managers and employees of the failed financial company in the Bridge Financial Company upon

[36] DFA § 210(a)(1)(G) and (h)(5)(D); 12 U.S.C. § 5390(a)(1)(G) and (h)(5)(D).
[37] DFA § 210(h)(5) and 12 CFR 380.27.
[38] The Federal Reserve Board's clean holding company requirements limit the amount of non-TLAC liabilities that a U.S. GSIB can issue to 5 percent of the firm's TLAC; these other unsecured liabilities would remain in the receivership.
[39] In deciding which assets and liabilities to transfer to the Bridge Financial Company and which to leave in the receivership, the FDIC is required to treat similarly situated creditors equitably, with limited exceptions, as outlined in DFA § 210(b)(4), (d)(4), and (h)(5)(E) of the DFA and 12 CFR § 380.27.

its formation, provided they are not responsible for the failure. Employees and managers of the subsidiaries that are not in resolution would largely be unaffected. Appropriate steps would be taken to retain key employees.[40] In establishing oversight and management for the Bridge Financial Company, the FDIC will be guided by its aim to foster public and market credibility, leverage private sector experience and skills in fulfilling the resolution strategy, and retain the resident expertise needed to conduct the day-to-day operations.

Figure J: Addressing Management Challenges

How does the FDIC hold managers responsible for the failure accountable?	How does the FDIC identify new managers for failed financial companies?
Upon entry: The Dodd-Frank Act mandates that officers and directors responsible for the failure cannot be retained. The DFA also provides authority for compensation clawbacks for senior executives who are considered to be substantially responsible for the failed condition of the company. *During restructuring:* The FDIC will retain authority to remove directors at will during the bridge period, and expects to work with the new board and CEO to identify and remove management responsible for the firm's failure. The FDIC may also seek support from regulators to identify and remove operating subsidiary management responsible for the GSIB's failure. *Upon exit:* DFA's statutory creditor hierarchy subordinates compensation owed to senior executives and directors of the failed companies to all claimants except shareholders.	The FDIC maintains a roster of qualified and vetted individuals who could serve in leadership capacities at a Bridge Financial Company. During the early phases of resolution planning, the FDIC would re-evaluate its existing roster based on the facts and circumstances of the current market environment and failure scenario to identify directors and officers with the most relevant experience and skills to lead the particular Bridge Financial Company. The FDIC would seek input from other U.S. authorities in identifying Bridge Financial Company director and officers. All candidates are expected to receive appropriate "fit-and-proper" approvals in relevant jurisdictions.

[40] Where directors or management of the subsidiaries are interlocking with the holding company, there may be some management changes at key subsidiaries, but the authorities and responsibilities of those positions would largely remain the same.

ESTABLISHING BRIDGE OVERSIGHT

The unique circumstances of a Title II resolution, and complexity of the institutions that may be subject to such a resolution, require clearly delineating authorities and roles between the FDIC and the Bridge Financial Company. The FDIC would formalize the oversight and governance of the Bridge Financial Company when it is formed through its organizing documents, including its articles of association, bylaws, and charter. The FDIC must make certain that (1) the Bridge Financial Company has all the powers and authorities it needs to continue the operations of the failed financial company's subsidiaries, (2) the officers and directors have clear authority to take necessary actions to run the day-to-day operations, (3) the operations of the Bridge Financial Company and its subsidiaries align with an Orderly Liquidation Plan (OLP) acceptable to the Secretary of the Treasury, and (4) the Orderly Liquidation Fund is timely repaid.[41]

In connection with the formation of the Bridge Financial Company, the FDIC expects to put in place an oversight framework whereby the FDIC retains control over major strategic decisions of the financial company, including key hires, restructuring options, major capital and funding uses, and retention of certain external consultants (see Figure J: Addressing Management Challenges). At the same time, the FDIC expects to assign the new board and its management specific responsibilities, and to direct that they develop and implement specified action plans acceptable to the FDIC that would lead to the timely, orderly exit from the resolution process. For example, the FDIC will ask the Bridge Financial Company leadership to review the financial company's risk management policies and practices to determine the cause(s) of failure, and to develop and implement a plan to mitigate risks identified in that review. In addition, the FDIC will ask the Bridge Financial Company leadership to build out a detailed restructuring plan in line with the OLP. The Bridge Financial Company leadership will also be responsible for managing capital and funding to stabilize the financial company's critical operations, carry out the restructuring plan, and meet the terms of any Mandatory Repayment Plan (MRP) (see Funding the Bridge Financial Company and its subsidiaries for more detail on the OLP and MRP).[42]

This division of responsibilities will enable the management and staff of the Bridge Financial Company to conduct most of the day-to-day activities, while the FDIC will guide strategic decision-making and ensure that the objectives of Title II are met.

[41] Before use of OLF resources, an OLP, setting forth the orderly liquidation strategy for the firm and the use of OLF funds, must be agreed upon with the Secretary of the Treasury. Dodd-Frank Act § 210(n)(9)(A) (12 U.S.C. § 5390(n)(9)(A)).
[42] An MRP must be in effect between the FDIC and the Treasury before any OLF funding, in aggregate, exceeds the initial 10 percent Maximum Obligation Limitation or before OLF funds may be outstanding for longer than 30 days. The Secretary of the Treasury and the FDIC must consult with and deliver the MRP to Congress. DFA sections 210(n)(6) and (n)(9), 12 U.S.C. § 5390(n)(6) and (n)(9). See also 12 CRF § 380.10(a) and 31 CFR § 149.3. See Stabilizing the Bridge and its Operations section for discussion of the terms for use of OLF.

Figure K: Balanced Approach for Bridge Governance and Oversight—Examples of the Division of Responsibilities Between the FDIC and Bridge Financial Company

The FDIC retains key controls over strategic decisions	**Approval of:** • Restructuring plan consistent with the OLP for reorganization of the Bridge Financial Company, including material divestitures, mergers, consolidation, or reorganization of Bridge Financial Company • Amendments to the Bridge Financial Company's articles of association and bylaws • Appointment and removal of the Bridge Financial Company Board of Directors, CEO, and certain senior executive officers • Funding and liquidity plan, including compliance with the MRP, and the approach to usage and repayment of any OLF advances and any related guarantees • Key contracts such as the independent auditor and valuation consultant
New Bridge Financial Company Board and CEO oversee day-to-day operations	**Management of:** • Development and implementation of a detailed restructuring and wind-down plan consistent with the strategic direction provided by the FDIC and outlined in the OLP • Hiring and firing of officers and employees (other than designated key officers) • Oversight of the group, including subsidiaries and daily operations of the financial company • The financial company's governance framework to oversee the subsidiaries, subject to changes necessary to accommodate new directors • Capital and liquidity resources in accordance with the agreed-upon OLP and approved MRP, including provision of intercompany advances and support for subsidiaries • Retention of approved consultants, such as the independent auditor, valuation consultants, and other professional services

COMMENCING THE CLAIMS PROCESS

Similar to IDI resolutions under the FDI Act, the claims process under Title II is an administrative process handled by the FDIC as receiver, and requires no judicial actions or approvals.[43] The process the FDIC will use in a U.S. GSIB Title II resolution builds upon the FDIC's experience administering claims for IDIs (though it is in some ways simpler due to the absence of deposit claims at the parent holding company). Under the DFA, as a first step in a Title II claims process, the FDIC would provide all creditors with notice of the claims bar date by which all claims must be filed. In addition to mailing notifications, the FDIC anticipates the notice will be provided in a variety of ways, such as by a website, call centers, and publications. The FDIC expects to use a 90-day bar date—the minimum statutory period—to support an expeditious resolution. As a result of the Federal Reserve Board's clean holding company requirement, U.S. GSIBs have reduced the kinds of liabilities issued by the parent holding company, which significantly reduces the number and type of claimants and is expected to simplify the claims process.

The FDIC expects to incorporate elements of the bankruptcy claims process where suitable. For instance, to improve transparency and efficiency, the FDIC may schedule certain claims that would be allowed without any filing required, unless a creditor disputes the scheduled amount. Most claims of bondholders likely will be managed by indenture trustees so that individual bondholders under such an indenture would not need to file claims. The FDIC also may establish a public claims registry to make available the amount and status of claims.

The FDIC will establish appropriate procedures and tracking mechanisms to process and make determinations on filed claims within 180 days. In some instances, upon mutual agreement, the determination period is extendable beyond 180 days after a claim is filed.[44] Further, the FDIC will establish an administrative process for claimants to seek review of disallowed claims. Once this administrative process is exhausted, claimants who are dissatisfied with the results of this process may file a case in federal court within 60 days thereafter.[45] The FDIC will satisfy allowed claims with the proceeds of the resolution in accordance with the statutory claims hierarchy in the Dodd-Frank Act, as described in the Exiting from Resolution section below. The FDIC also expects to provide information regarding the receivership on the FDIC's website and establish a call center to handle public inquiries. The FDIC may provide claimants with supplemental information, where practical, to assist in the claimants' assessment of claim value. To quickly provide the specialized skills and services to the receiver for a resolution of this magnitude, the FDIC has contracting processes prepared to support the orderly resolution (see Figure L: FDIC Use of Contractor Support in a Title II Resolution).

43 See DFA § 210(a)(2)-(7); 12 U.S.C. § 5390(a)(2)-(7).

44 DFA § 210(a)(3)(A)(ii); 12 U.S.C. § 5390(a)(3)(A)(ii).

45 DFA § 210(a)(4); 12 U.S.C. § 5390(a)(4). The FDIC expects to publish the notice during the week following its appointment as receiver, similar to its practice for IDI resolutions.

Figure L: FDIC Use of Contractor Support in a Title II Resolution

To quickly provide the specialized skills and services to the receiver, the FDIC has contracting processes prepared to support orderly resolution. The FDIC may use these contracts for:

Claims—supporting the claims administration and noticing process

Executive Search—identifying C-suite and board of directors for the Bridge Financial Company

Strategic Communications—developing communications strategies associated with managing and executing resolutions

Human Resources Management—including on-boarding and off-boarding, establishing retention and compensation plans, and ensuring continuity of payroll and benefits and systems and benefits administered for the receivership

Receivership Financial Accounting and Reporting—including financial accounting and reporting, tax accounting, and valuation of financial instruments

Financial Advisory Services—supporting strategic planning; valuations; restructuring, divestitures, and sales; complex financial analysis; and receivership asset management

Stabilizing Operations

Activities in the days immediately following entry into resolution will focus on stabilizing the Bridge Financial Company and its subsidiaries' operations to support the orderly functioning of the wider financial system and to preserve value for the receivership estate. The newly formed Bridge Financial Company itself is a relatively simple entity, and the FDIC expects it will (1) be backed by OLF liquidity or guarantees to the extent needed and (2) have a strong balance sheet with ample capital resulting from the reduction in liabilities. The operating subsidiaries transferred to the Bridge Financial Company that house all the business and operational activity of the group—one or more of which were the source of the group-wide failure and which may be under distress—will require the most attention.

Immediate actions will be taken to use the internal resources of the group to recapitalize these subsidiaries, provide liquidity support, and maintain continuity of operations. These actions will be complemented by a comprehensive communications effort coordinated among the FDIC, other authorities, and the Bridge Financial Company aimed at providing clarity and confidence in the resolution to a range of critical stakeholders—staff of the Bridge Financial Company and its subsidiaries, customers, counterparties, various authorities, and the wider public. These actions are designed to enable subsidiaries to maintain their authorizations to operate from their respective supervisors and establish market confidence that allows for ongoing operations and business activity.

CAPITALIZING THE BRIDGE FINANCIAL COMPANY AND ITS SUBSIDIARIES

The balance sheet of the Bridge Financial Company is composed of substantially all the assets of the failed U.S. GSIB, while unsecured liabilities of the failed holding company, including the long-term debt required by the TLAC rule, are left behind in the receivership. This results in the Bridge Financial Company beginning with strong capitalization that should promote market confidence in the bridge and its material operating subsidiaries, positioning it to begin the process of winding down operations and restructuring viable businesses for an eventual exit from the resolution process.

In the run-up to resolution, the financial company will be using its estimation and forecasting capabilities developed as part of its Title I planning to calculate realized and projected losses across subsidiaries. The financial company will evaluate its needs against its mix of pre-positioned resources at material subsidiaries and additional contributable resources that can be deployed flexibly across the group. At the same time, the FDIC will leverage the capabilities of the financial company and other information it and other supervisors provide, to inform an FDIC estimation of the realized and projected level of losses across subsidiaries. The FDIC will then work with domestic and foreign supervisors to establish expectations and specific options for addressing any capital shortfalls.

Depending on the failure scenario, actions may be needed immediately upon entry into resolution to recapitalize material subsidiaries that have suffered losses. Recapitalization will be to a level sufficient to meet local regulatory requirements (confirmed by subsidiary supervisors) to remain open and operating, and to engender market confidence. If, for example, a U.S. GSIB enters Title II resolution with losses at its IDI, the FDIC would use the internal resources of the failed GSIB to recapitalize the IDI to keep it open and operating (and out of a separate FDI Act resolution). The specific amount, location, and timing of losses may not be easily predictable, which makes it important to retain flexibility with unallocated contributable resources. The FDIC would expect the Bridge Financial Company to first use pre-positioned internal TLAC (for example by forgiving intercompany loans from the parent holding company) for recapitalization. If additional capital is needed for regulatory or market confidence purposes, other pre-positioned resources or unallocated contributable resources could be used.

FUNDING THE BRIDGE FINANCIAL COMPANY AND ITS SUBSIDIARIES

In a Title II resolution, the FDIC would seek to maximize private-sector sources of funding to limit backstop lending from the public sector. However, if the financial company's internal resources and private sources of funding are not sufficient or readily available, the DFA authorizes the establishment of the OLF at Treasury that the FDIC may draw upon, subject to terms agreed to by the Secretary of the Treasury, to serve as a back-up source of temporary liquidity support for the resolution.

To meet the Bridge Financial Company's liquidity needs, such as the operating subsidiaries' payment and settlement obligations to customers, clients, counterparties, and FMUs, the FDIC envisions several possible avenues for the Bridge Financial Company to obtain funding and stabilize its operations throughout resolution, including:

- **Customary funding**—The FDIC expects that some customary funding sources would remain in place, as a capitalized Bridge Financial Company (and recapitalized subsidiaries) with access to backstop liquidity or guarantees via the OLF should be a creditworthy entity with ready access to private sector funding. To the extent that subsidiaries have access to existing funding sources, including market-based and ordinary public facilities, customary funding sources are the preferred method of funding.

- **Pre-positioned resources and unallocated contributable resources**—In connection with the Title I planning process, U.S. GSIBs have planned for the possibility that customary funding sources will be unavailable, and all U.S. GSIBs have pre-positioned liquidity at material subsidiaries for use in resolution. In addition, these institutions have provided for unallocated contributable resources that are intended to be available in resolution to support its material entities as needed. These resources would be available for the Bridge Financial Company to distribute quickly where needed.
- **Direct OLF funding**—If customary funding and any pre-positioned and unallocated contributable resources are insufficient to meet the Bridge Financial Company's liquidity needs, the OLF can serve as a temporary backstop liquidity source to assure prompt stabilization and instill confidence in the resolution strategy. The OLF can provide liquidity, as needed and appropriate, immediately at the point of entry into Title II resolution. (See discussion below on terms for the use of the OLF.)
- **OLF-backed guarantees**—Subject to the same requirements for accessing the OLF for borrowing cash, the FDIC may provide liquidity support through the use of guarantees backed by its ability to borrow OLF funds. The use of OLF-backed guarantees instead of direct funding could preserve or induce private-sector financing and may reduce the cash requirements needed from the OLF.

In the run up to resolution, the FDIC would estimate the expected range of funding needs for the Title II resolution based on the most recent available financial data. Information from the U.S. GSIB, supervisors, and market sources would be used to calculate—and regularly update—available liquidity and funding needs estimates. Models and methodologies developed through the Title I resolution planning process will provide capabilities and data that the FDIC likely would leverage to confirm its own projections of the peak funding needs and minimum operating liquidity of the subsidiaries. In addition, the financial company's internal cash flow projections would inform estimates for Title II funding needs. As has been a focus of resolution planning with authorities in CMGs and other venues, the FDIC expects to communicate and coordinate with U.S. and foreign authorities to operationalize funding in host jurisdictions, including sourcing of foreign currency as needed.

The FDIC would use its projections to develop a schedule for borrowing from (and repayment of) the OLF, consistent with the OLP agreed upon with the Secretary of the Treasury. The amount of borrowing available will be proportionate to the size of the company that failed. While the amount of borrowing available may be substantial, it is not unlimited and is subject to a maximum obligation limitation.[46] The initial funding limit is calculated in a straightforward manner: it is equal to 10 percent of the financial company's total consolidated assets based on the most recent financial statements available. If OLF funding is needed in excess of this initial 10 percent or for longer than 30 days, the FDIC can obtain funding of up to 90 percent of the fair value of the financial company's total consolidated assets available for repayment, subject to an MRP

[46] DFA § 210(n)(6); 12 U.S.C. § 5390(n)(6). See also 12 CFR § 380.10 for the FDIC and 31 CFR Part 149 for U.S. Treasury.

approved by the Secretary of the Treasury.[47] The MRP would provide a schedule for the repayment of all OLF obligations, with interest. Ultimately, as the financial company stabilizes, the OLF borrowings could be repaid either from recoveries on the assets of the failed financial company or from funds obtained upon re-entry into private funding markets. The terms of each OLF advance must be agreed upon with the Secretary of the Treasury. DFA expressly requires the interest rate to include a surcharge to incentivize prompt repayment.[48] Similarly, the FDIC expects guarantees to be targeted in scope and duration and to incur a fee designed to incentivize a prompt release of the guarantee. Requirements with respect to collateral also would be agreed upon with Treasury.

MAINTAINING OPERATIONAL CONTINUITY

A critical element of stabilization is maintaining operational continuity for the group's material entities and functions. This includes access to FMUs, continuation of critical services, retention of key employees, and stays on termination rights. Although a U.S. GSIB resolution under Title II using an SPOE strategy provides a clear path to operational continuity by avoiding multiple competing insolvencies and keeping the operations of the interconnected group intact, potential challenges to maintaining continuity must be addressed to stabilize the entity, including:

- **Continuity of access to FMUs**—Uninterrupted and dependable access to FMUs—the multilateral systems that provide the infrastructure for conducting payment, clearing, and settlement activities among financial institutions—will be essential for the stabilization of Bridge Financial Company operations. As part of their Title I plans, GSIBs have identified key FMU counterparties, including payment systems, clearing banks, and agent banks, and have established communication protocols with those counterparties that can be leveraged in a Title II resolution to inform liquidity provision and communication strategies, helping to minimize disruption to FMU services.
- **Continuity of critical services**—In the period immediately following appointment of the FDIC as receiver and into the stabilization phase, care will be taken to continue the critical services of the group (shared and outsourced services necessary for the group's continued operation). The FDIC expects to leverage the GSIB's crisis preparations and Title I planning to understand the group's operational interconnectedness and the contingency strategies for maintaining critical services. For example, the U.S. GSIBs have established arms-length terms for affiliate-shared services and identified key service contracts. As a result of the Title I process, these contracts contain resolution-friendly language to avoid termination based on resolution or insolvency, and in some cases, include resolution-friendly assignability terms to permit assignment of agreements in a divestiture. In their Title I plans, the U.S. GSIBs include estimates of the working capital needed for the continuation of shared and outsourced services. The FDIC and Federal Reserve Board have recommended that U.S.GSIBs pre-position enough resources at subsidiaries that provide critical services to enable them to operate for six months without extra resources from the parent.
- **Retention of key employees**—Key employees are essential to continuity of operations because of their relationships with customers and counterparties, as well as their expert knowledge of operations, products, and systems. U.S. GSIB retention plans for key employees, for example in Title I plans, will provide useful insights to the FDIC, including by mapping key employees

[47] DFA § 210(n)(6) and (n)(9), 12 U.S.C. § 5390(n)(6) and (n)(9). See also 12 CRF § 380.10(a) and 31 CFR § 149.3.
[48] DFA § 210(n)(5)(C); 12 U.S.C. § 5390(n)(5)(C).

to material entities and critical operations. The FDIC has identified a range of employee retention strategies to continue operations uninterrupted.

- **Temporary stays on termination rights**—In a Title II resolution, QFC stays would be enforceable domestically and on a cross-border basis, thus mitigating risk to operational continuity. For GSIBs, the vast majority of QFCs sit at the operating subsidiary level rather than at the parent level; in some cases, the parent may provide guarantees or credit support to the subsidiaries' QFC obligations. Title II includes a stay that would prevent any cross-default related to the guarantees or credit support provided to the subsidiaries' QFCs.[49] The statutory framework is further supported on a cross-border basis by the ISDA Resolution Stay Protocols. Under these statutory and contractual provisions, the counterparties do not have any right to terminate or exercise other remedies because of the insolvency or financial condition of the financial company or the appointment of the FDIC as receiver for the financial company as long as (1) the guarantee or credit support and all related assets and liabilities are transferred to—and assumed by—a Bridge Financial Company or other qualifying acquirer within one business day, or (2) the FDIC, as receiver, otherwise provides adequate protection regarding the obligations supported by the guarantee or other credit support.
- **Maintaining continued authorizations**—As part of contingency planning and stabilization activities, the FDIC and the Bridge Financial Company will work with domestic and foreign authorities to ensure that regulated entities continue to meet all conditions for continued authorizations, and that authorities continue to allow normal operating actions on that basis. Beyond demonstrating compliance with typical supervisory and regulatory requirements, the change in control of the group's operations from the failed financial company to the Bridge Financial Company is expected to involve additional approvals, including coordination to have new board members and managers deemed "fit and proper."

PUBLIC FACING COMMUNICATIONS

Coordinated, consistent, and timely communications to the broad array of stakeholders will be critical to stabilizing the financial company's operations, retaining employees to continue critical operations, and reassuring the failed financial company's customers, counterparties, regulatory authorities, and the general public. U.S. authorities would coordinate the announcement of the FDIC's appointment as receiver, initiating public messaging to all stakeholders. The FDIC expects initial communications would include the following elements:

- Coordination—domestic and international authorities are coordinating to implement an orderly resolution plan, and subsidiaries are meeting their regulatory requirements and remain open and operating;
- Continuity—key operations and functions will be stabilized, and over time, through the process of restructuring, will either continue or wind down in an orderly manner;
- Recapitalization and funding—the group, including its major domestic and foreign operating subsidiaries, has been recapitalized and has access to sufficient liquidity to meet its obligations and operate its businesses; and
- Accountability—shareholders and creditors will bear the costs of the resolution, and management responsible for the failure will be held accountable.

---

[49] DFA § 210(c)(16),12 U.S.C. § 5390(c)(16).

A key challenge with respect to communication is coordinating messaging across multiple time zones with stakeholders across the globe. The FDIC has existing relationships with strategic communication contractors to support the FDIC's Title II communication planning and preparations (see Figure L: FDIC Use of Contractor Support in a Title II Resolution). The FDIC would also leverage the communication plans and crisis communication capabilities developed by the U.S. GSIB, included as part of the Title I process. Starting on the date of appointment, targeted messaging will be provided to the public, customers, counterparties, and employees in coordination with host authorities and the Bridge Financial Company. In addition, the FDIC would fulfill its statutory reporting requirements[50] and timely respond to other oversight requests.

During stabilization, communications are expected to focus on the Bridge Financial Company operations and actions taken to hold accountable management responsible for the failure. As the Bridge Financial Company carries out restructuring by winding down or selling business lines and assets, both the Bridge Financial Company and the FDIC will proactively communicate progress, likely with more specific operational and resolution details, including allocation of losses to shareholders and creditors of the failed financial company through the claims process. Communications will continue after the termination of the Bridge Financial Company with messaging to claimants and other external stakeholders regarding ongoing activities of the receivership (which continues separate from the Bridge Financial Company), congressional reporting, ongoing litigation, or remaining asset liquidations.

Exiting from Resolution

The FDIC would seek to exit the resolution as soon as practicable and return the assets and restructured operations to private-sector control, after addressing the cause of failure and ensuring that ongoing operations no longer pose a serious adverse risk to U.S. financial stability. The manner and timing of settling claims and exiting resolution will be outlined in the OLP agreed to with the Secretary of the Treasury. Once the Bridge Financial Company is open and operating, the Bridge Financial Company management will develop a detailed plan for implementing that strategy by restructuring the Bridge Financial Company and exiting from resolution. This restructuring plan, which will be subject to the FDIC's approval and oversight, will describe the plan for winding down certain entities or lines of business and how remaining operations would be restructured and returned to private-sector control.

[50] The Department of the Treasury is responsible for reporting to Congress within 24 hours of the appointment of the FDIC as receiver. 12 U.S.C. § 5383(c)(2). The FDIC is responsible for a report to the Senate Committee on Banking, Housing, and Urban Affairs and the House Financial Services Committee not later than 60 days after the appointment (and amended no less than every quarter, "as necessary"). 12 U.S.C. § 5383(c)(3). In addition, if the FDIC requires more than three years to resolve a failed financial company under Title II, the statute provides for two one-year extensions. For the first one-year extension, the FDIC must certify in writing to the Senate Committee on Banking, Housing, and Urban Affairs and the House Financial Services Committee that the continuation of the receivership is necessary to, among other reasons, protect the stability of the financial system of the United States. DFA § 202(d)(2); 12 U.S.C. § 5382(d)(2). For the second one-year extension, the Secretary of the Treasury must concur and the FDIC, within 30 days, must file a report with those committees describing the need for the extension and the specific plan for concluding the receivership before the end of the extension. DFA § 202(d)(3); 12 U.S.C. § 5382(d)(3).

ORDERLY WIND DOWN AND RESTRUCTURING OF OPERATIONS

Once the operating subsidiaries are stabilized, the FDIC as receiver and Bridge Financial Company management expect to focus on developing and implementing the restructuring plan. The restructuring plan must be consistent with the FDIC's overall resolution strategy as described in the OLP, and will be subject to review, approval, and monitoring by the FDIC. The restructuring and exit plan will preserve optionality and flexibility, so that actions (and the time needed to execute) can be responsive to the circumstances during resolution, prevailing market conditions, and the judgement of authorities. Decisions regarding the restructuring plan would also include assessments of the systemic impact of various options, such as the substitutability of critical operations or the possible impact on markets.

The FDIC will have analyzed the possible restructuring, divestiture, and wind-down actions to occur in resolution before the failure and incorporated its expectations into the resolution strategy for the financial company. For resolution of a U.S. GSIB, the starting point for this analysis will draw on the divestiture and wind-down options provided by the financial company in its recovery and Title I resolution plans. The type and extent of restructuring will depend on the nature of the financial company's business, the causes of failure, and the economic and market conditions at the time. For example, an appropriate restructuring plan for specific types of operations could include:

- Sales of subsidiaries or specific business lines (e.g., for relatively independent asset management vehicles or wealth management businesses);
- Wind down/liquidation of specific portfolios, business lines, or subsidiaries in an orderly manner (e.g., for market-oriented trading operations housed in broker-dealer subsidiaries);
- Break-up of certain operating subsidiaries for sale or spin-off (e.g., for regional retail banking franchises); or
- Resolution proceedings for specific subsidiaries (e.g., for an insolvent subsidiary not critical to the ongoing operations or value of the group).[51]

Any restructuring will aim to maintain value, continue or transition critical operations, address the cause of failure, and ensure that the entity or entities emerging from the Bridge Financial Company can be effectively resolved under the Bankruptcy Code (or other applicable regime) in an orderly fashion. Ongoing restructuring and divestiture requirements could also continue after exit from resolution via conditions placed on acquirers or other supervisory or regulatory requirements.

TERMINATING THE BRIDGE

During the bridge phase, the FDIC as receiver will be working to return assets and operations to private-sector control and to terminate Bridge Financial Company status.[52] To exit from resolution, the FDIC would require the Bridge Financial Company 1) to engage an independent

[51] While implementing the OLP, the FDIC might find that an insolvent (or soon to be insolvent) GSIB subsidiary would take resources away from stabilizing the group. If risks of cross-default, interconnectedness, and contagion could be mitigated, that insolvent subsidiary could be resolved under applicable law to preserve the viability of the rest of the group or its most systemically important functions. The applicable resolution framework would be a function of the type of subsidiary (see Figure A).

[52] By statute, a Bridge Financial Company must be terminated not later than two years following its charter. That period may be extended by the FDIC for no more than three additional one-year periods.

valuation advisor to conduct an enterprise valuation and 2) to obtain audited financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles that would demonstrate the fair value of the Bridge Financial Company's operations. The FDIC would then evaluate the enterprise valuation and obtain an opinion from its own independent valuation advisor. The FDIC expects to use this information to determine the best way to return the financial company's operations to private control and terminate the Bridge Financial Company.

While the Bridge Financial Company could be terminated through a public sale or merger,[53] this exit option might not be feasible. While a small share offering could help with price discovery and demonstrating private demand for the company's shares, placing a controlling stake in such a resolved financial company could be difficult for public markets or industry acquirers to absorb in a timely manner.

Considering these challenges, the FDIC is preparing to exit from a Bridge Financial Company using a securities-for-claims exchange. In this approach, a BHC (or successor company or companies) would issue new debt and equity securities to the receivership, which would distribute them to satisfy the claims against the receivership in accordance with the statutory creditor hierarchy. The claimants become the new owners of or creditors to the successor company (or companies), and can retain or monetize their new securities holdings according to their preferences. This approach effectively completes the "bail-in" of creditor claims by allocating losses to claimants according to the DFA creditor hierarchy and putting the remaining claimants (e.g., the former debtholders and other creditors) in the position of equity and debt holders in the successor company (or companies). Once the securities are distributed, the Bridge Financial Company's bridge status is terminated and the successor company or companies will be owned by the former claimants.

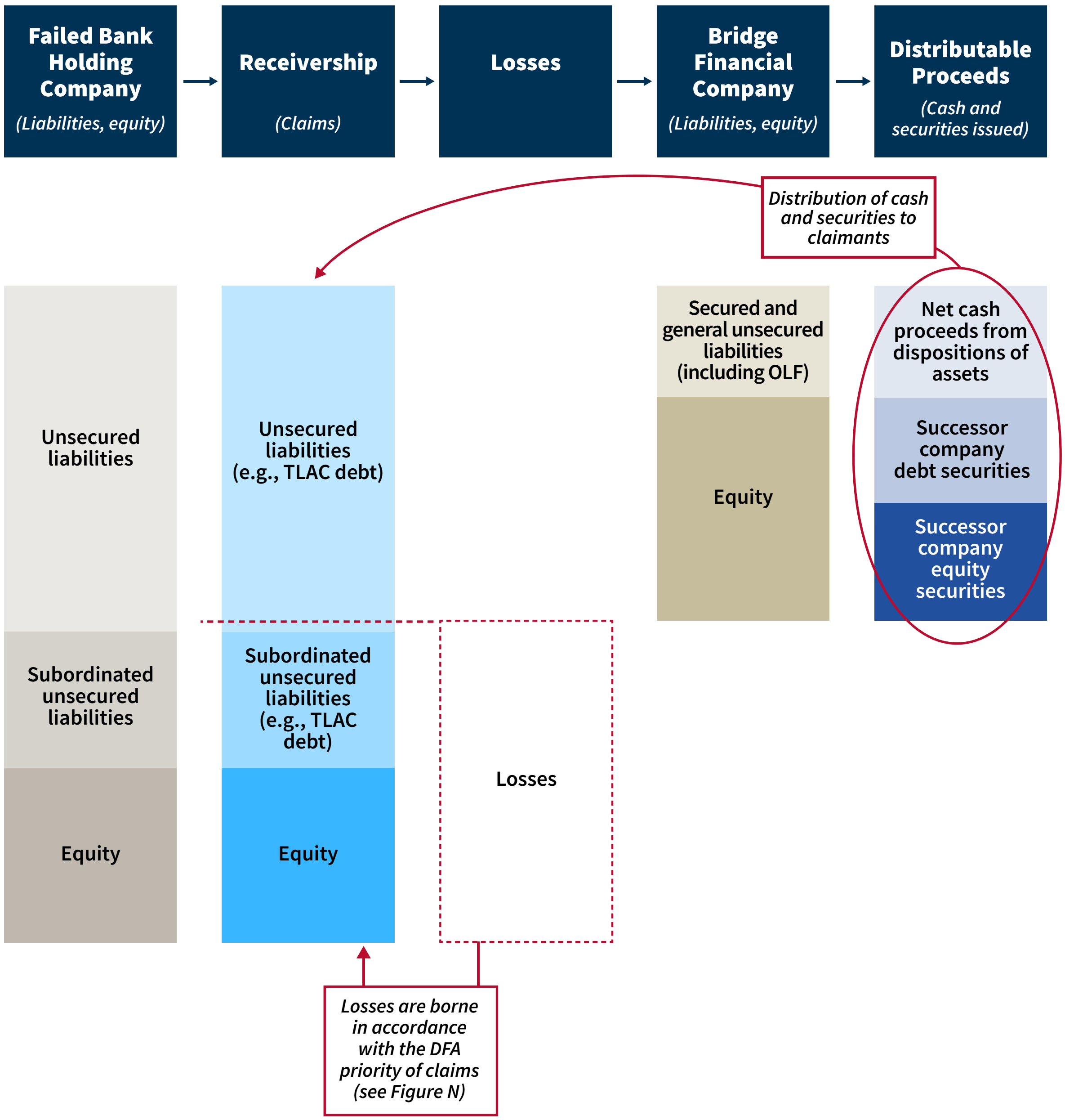
A Title II SPOE resolution using a securities-for-claims exchange is sometimes referred to as a "closed-firm bail-in," as the securities distributed to satisfy claims are issued after the financial company has been placed into receivership and its operations are moved to a Bridge Financial Company.[54] While the timeline may vary depending on the scenario, completion of all the steps needed for the securities-for-claims exchange—making claims determinations, estimating valuation of any successor company (or companies), and issuing and distributing new securities to claimants—will be arranged during the bridge period, which is likely to take at least nine months. This will allow sufficient time for the FDIC and the Bridge Financial Company to meet all of the requisite federal securities law requirements for a securities-for-claims exchange, including issuing audited financial statements, prospectuses, and necessary disclosures for the successor company (or companies) to comply with the requirements of the Securities Act of 1933.

[53] DFA provides for two thresholds for termination of bridge status related to stock ownership. At the FDIC's election, the bridge status may be terminated when a majority of the capital stock of the Bridge Financial Company is sold to a company other than the FDIC or another Bridge Financial Company. When 80 percent or more of the capital stock is sold to a person other than the FDIC or another Bridge Financial Company, the bridge status is automatically terminated. Where the bridge status is terminated, the Bridge Financial Company may be reincorporated under the laws of any state, and the resulting corporation becomes the successor to the Bridge Financial Company.

[54] This contrasts with an "open firm bail-in" process in which TLAC debt instruments are converted to equity to effect a recapitalization of an existing legal entity at or close to the time of failure of the financial company. This alternative process is envisioned by some foreign regulatory authorities to carry out an SPOE resolution of GSIBs headquartered in their jurisdictions. See https://www.fsb.org/2021/12/bail-in-execution-practices-paper/.

Figure M: Illustrative Exit Through a Securities-for-Claims Exchange

In this example of a securities-for-claims exchange, the Bridge Financial Company would prepare, issue, and register the exchange of securities of the restructured successor company (or companies). Securities in the successor company, along with any cash proceeds from the restructuring of the failed company, would be distributed by the receivership to claimants according to the DFA creditor hierarchy. Losses will be borne according to the priority of claims under DFA. This is a highly stylized example that does not attempt to capture all restructuring, winding down, sales, or liquidations that may occur before exiting from the Bridge Financial Company.



SETTLING CLAIMS AND TERMINATING THE RECEIVERSHIP

The Dodd-Frank Act establishes the order of priority in paying all claimants of the receivership (see Figure N: The Dodd-Frank Act Creditor Hierarchy).[55] The Dodd-Frank Act also generally requires the FDIC to observe the principle of equal treatment of creditors of the same class.[56] The FDIC will pay allowed claims against the receivership on a pro rata basis to the extent that assets in the receivership estate are available following full payment to all more senior classes of claims. Administrative expenses of the FDIC and any obligations to the United States will be paid in full before any other claimants are paid (see Figure O: Are taxpayers on the hook for the GSIB failure?). The FDIC expects that OLF borrowings will have been repaid by this time through the return to customary funding sources or proceeds of the resolution including the liquidation of assets. In the unlikely event that this does not occur, and the assets of the Bridge Financial Company, its subsidiaries, and the receivership are insufficient to repay fully the OLF, the FDIC is required to impose one or more risk-based assessments on eligible financial companies within a five-year period to repay any amounts borrowed from the OLF without loss to the taxpayer.[57]

The specific combination of cash and securities used to satisfy allowed claims would vary, depending on the method used to terminate the Bridge Financial Company and the type of assets available in the receivership estate. For example, if the Bridge Financial Company is terminated via the securities-for-claims process described above (see Figure M: Illustrative Exit through a Securities-for-Claims Exchange), the allowed claims could be satisfied with securities issued by the bridge's successor company (or companies). There may also be other assets in the receivership to be distributed, such as proceeds from liquidations or sales of business lines that may be in the form of cash or securities.

Once the FDIC as receiver has determined the final valuation of the assets to be used to satisfy claims,[58] distributed the assets to claimants, completed any accounting and auditing processes, and resolved any ongoing litigation matters, the receivership would be terminated. The Dodd-Frank Act requires the receivership to be terminated within three years, but provides for two one-year extensions under certain conditions.[59]

[55] See DFA § 210(b)(1), 12 U.S.C. § 5390(b)(1); see also 12 CFR § 380.21.
[56] While the DFA permits departure from this principle in specified circumstances that benefit the recoveries of all creditors, the FDIC has further limited its discretion to treat similarly situated creditors differently by issuing a rule stating that holders of long-term senior debt (defined as unsecured debt with a term of longer than one year), subordinated debt, or equity are not eligible for any additional payments or preferential treatment as provided for in DFA. See DFA § 210(d)(4), 12 CFR 380.27. Any deviation from the principle of similar treatment of similarly situated creditors must be reported to Congress. See DFA § 203(c)(3).
[57] See DFA § 210(o); 12 U.S.C. § 5390(o).
[58] The FDIC will rely on the same independent valuation expert hired to value the Bridge Financial Company.
[59] DFA § 202(d), 12 U.S.C. § 5382(d). Note that DFA § 202(d)(4) provides that these time limits may be further extended solely for the purpose of completing ongoing litigation under certain conditions.

Figure N: The Dodd-Frank Act Creditor Hierarchy

The statutory creditor hierarchy for financial companies resolved under Title II is as follows:

i. Administrative expenses of the receiver

ii. Amounts owed to the United States

iii. Wages, salaries, or commissions earned by an individual [that is not an executive or director] , subject to monetary caps

iv. Contributions owed to employee benefit plans, subject to monetary caps

v. Other general or senior liability of the covered financial company

vi. Obligations subordinated to general creditors

vii. Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned, owed to senior executives and directors of the covered financial company.

viii. Obligations to [equity owners] … of the covered financial company.

Source: DFA § 210(b)(1) (12 U.S.C. § 5390(b)(1))

Figure O: Are Taxpayers "On the Hook" for the GSIB Failure?

No. Taxpayers shall bear no losses.

The first priority claims to be paid are the FDIC's administrative expenses as receiver and any amounts owed to the United States, including any outstanding funding from the OLF.

In the unlikely event that the value of the resolved firm is insufficient to repay these amounts in full, the rest of the claimants would receive nothing. The Dodd-Frank Act requires the FDIC to recover any shortfall to the OLF by imposing one or more risk-based assessments on certain financial companies, namely, bank holding companies and other financial companies with $50bn or more in total consolidated assets and any non-bank financial company designated by the Financial Stability Oversight Council for enhanced supervision by the Federal Reserve.

Source: DFA § 214(c) (12 U.S.C. § 5394(c))

In summary, by the end of a GSIB Title II resolution, the Bridge Financial Company's bridge status has been terminated and the operations of the former financial company are returned to private control. The FDIC's receivership expenses and any amounts borrowed from the OLF have been repaid in full. The GSIB's former shareholders and creditors have borne losses in a manner consistent with the statutory obligation to treat similarly situated creditors the same and respects the creditor hierarchy. Allowed claims have been satisfied by either cash, securities, or other compensation, and the receivership has been terminated. The entity (or entities) emerging from the Bridge Financial Company will be financially and operationally sound, smaller, and more easily resolvable under their ordinary regimes. The goal is that they will be non-systemic or, at a minimum, significantly less systemic than the failed GSIB, and would be subject to all applicable supervisory and resolution planning requirements.

Upon exit, any entity (or entities) emerging from the Bridge Financial Company are expected to be materially different from the failed GSIB and could be resolved without resorting to the OLA. From the point of entry into resolution through the distribution of proceeds to claimants through a securities-for-claims exchange process, the FDIC expects the resolution will take at least nine months to complete, with certain activities continuing after this point at a successor company (or companies) and in the receivership.

CONCLUSION

Since the U.S. financial crisis of 2008–2010, the FDIC has made significant progress in developing its approach to resolution under Title II. The legal framework provided by the Dodd-Frank Act combined with supporting regulation, resolution planning capabilities, and supervisory cooperation, has provided a solid foundation. The FDIC has prepared to take on its statutory role as receiver under Title II by developing resolution strategies, building out processes, and preparing for exigent circumstances.

While the FDIC's Title II tool kit remains unused, the work and plans described in this paper have contributed to addressing the "too big to fail" problem. The transparency provided on the FDIC's approach to resolution in Title II will make more readily apparent to firms and investors that even large, complex, and interconnected financial companies can be resolved in an orderly fashion, with losses borne by the private sector and not taxpayers.

However, resolution planning for large, complex financial institutions remains an ongoing effort—even when times are good. Complex financial institutions are constantly changing, with new business lines, products, risks, and subsidiaries. All of these changes require thoughtful consideration of the impact on the resolvability of a financial company and the FDIC's contingency plans to resolve a financial company under Title II.

The FDIC continues to have an ambitious work plan to maintain and build its readiness to step in as receiver for a financial company under Title II of the DFA. FDIC readiness efforts in recent years have focused on operationalization and exercises covering key OLA readiness processes. Internally, the FDIC continues to refine its processes and analysis to be prepared to execute its Title II resolution roles and responsibilities. The FDIC also works regularly with interagency colleagues to review the plans and processes required to effectively prepare for and carry out a Title II resolution. Finally, considering the extensive cross-border operations of many systemically important financial institutions, the FDIC works to maintain relationships with international supervisory and resolution counterparts, including through senior level exercises, vulnerability discussions, and international standard setting, such as in the Financial Stability Board's Resolution Steering Group. Going forward, the FDIC will remain vigilant, flexible, and focused on mitigating systemic risk that may arise from the failure of large, complex financial institutions.

INTENTIONALLY LEFT BLANK

GLOSSARY AND ABBREVIATIONS

Term	Abbreviation	Definition
Bail-in		An informal term that refers to the practice of making shareholders and certain creditors, rather than taxpayers, absorb losses of a failed firm.
Bail-out		An informal term that refers to the practice of a party (often an official sector entity) providing capital to a failing firm to cover past losses and keep the company running.
Bridge Financial Company		A legal vehicle chartered by the FDIC used to facilitate the resolution of a financial company under Title II.
Business-as-usual	BAU	Non-stressed, normal operating conditions.
Claimant		The holder of a claim against the receivership estate of the failed financial company. Claimants may include creditors or shareholders of the failed financial company who may be entitled to compensation from the proceeds of the resolution.
Claims bar date		Generally, the date after which claims filed against the receivership estate will be disallowed.
Compensation clawback		A provision of the Dodd-Frank Act requiring the recovery of compensation from any current or former senior executive or director substantially responsible for the failed condition of the covered financial company. 12 U.S.C. § 5390(s)
Cooperation Agreements	CoAgs	Documents designed to facilitate institution-specific information sharing and cooperation among authorities, such as Crisis Management Group members.
Crisis Management Groups	CMGs	Official sector groups that bring together home and key host authorities of specific Global Systemically Important Financial Institutions to enhance cooperation regarding resolution planning and implementation.
Critical operations		Term used in guidance to filers of Dodd-Frank Act Title I plans to refer to the activities, services, or operations of a financial company, the failure or discontinuance of which would pose a threat to the financial stability of the United States.
Dodd-Frank Wall Street Reform and Consumer Protection Act	Dodd-Frank Act or DFA	Legislation enacted as a response to the financial crisis of 2008. Among its numerous provisions, DFA provides authority to the FDIC to resolve large, complex financial institutions if their failure would pose systemic risk to the U.S. financial system.
Federal Deposit Insurance Act	FDIA	The resolution framework applicable to insured depository institutions.
Financial Market Utilities/ Financial Market Infrastructure	FMU / FMI	Companies that perform a variety of functions in the market, including the clearance and settlement of cash, securities, and derivatives transactions; many FMUs are central counterparties and are responsible for clearing a large majority of trades in their respective markets. Internationally, FMUs are often referred to as Financial Market Infrastructures (FMIs).

Term	Abbreviation	Definition
Financial Company		According to the Dodd-Frank Act, any company that (1) is incorporated or organized under any provision of federal or state law; (2) is (a) a bank holding company, (b) a nonbank financial company supervised by the Federal Reserve Board, (c) any company that is predominantly engaged in activities that the Federal Reserve Board has determined are financial in nature or incidental thereto, or (d) any subsidiary of any company described in (a)–(c) that is predominantly engaged in activities that the Federal Reserve Board has determined are financial in nature or incidental thereto; and (3) is not an insured depository institution.[60]
Financial Stability Board	FSB	An international standard-setting body that seeks to strengthen financial systems and increase the stability of international financial markets by establishing standards, monitoring best practices, and promoting cross-border cooperation.
Foreign Banking Organization	FBO	A banking organization whose ultimate parent is headquartered outside the United States. FBO operations can encompass a wide variety of banking and nonbanking activities, through subsidiaries, branches, agencies, or representative offices.
Global Systemically Important Banking Organizations	GSIB	A banking group included on the Financial Stability Board's annual list of GSIBs.[61] This list is developed based on an assessment methodology designed by the Basel Committee on Banking Supervision. Authorities generally apply additional supervisory or regulatory requirements to GSIBs.
Insured depository institution	IDI	Any bank or savings association the deposits of which are insured by the FDIC pursuant to the Federal Deposit Insurance Act.
Intermediate Holding Company	IHC	Legal entity that sits in the ownership chain between a top-tier parent entity and one or more subsidiaries. Regulation YY requires foreign banking organizations with U.S. non-branch assets of $50 billion or more to establish an IHC.
International Swaps and Derivatives Association Resolution Stay Protocols	ISDA protocols	Common template text used to facilitate compliance with specific requirements on the terms of swaps, repos, and other qualified financial contracts. Market participants adhering to the 2018 ISDA U.S. Resolution Stay Protocol ensure that the terms of their covered agreements comply with certain rules[62] that: • limit the ability of counterparties to exercise default rights related, directly or indirectly, to an affiliate of covered entities entering into a resolution proceeding under Dodd-Frank Act (DFA) Title II, the Federal Deposit Insurance Act (FDIA), or the U.S. Bankruptcy Code, and • limit restrictions on transfer rights once an entity has entered into a resolution proceeding under DFA Title II, FDIA, or the U.S. Bankruptcy Code.

60 See DFA § 201(a)(11); 12 U.S.C. § 5381(a)(11).
61 https://www.fsb.org/2022/11/fsb-publishes-2022-g-sib-list/.
62 Board of Governors of the Federal Reserve System (12 CFR §§ 252.2, 252.81-88), the Federal Deposit Insurance Corporation (12 CFR §§ 382.1-7), and the Office of the Comptroller of the Currency (12 CFR §§ 47.1-8).

Term	Abbreviation	Definition
Large, Complex Financial Institutions		An informal term used in this paper to refer to financial institutions or financial companies with multiple material subsidiaries, complex lines of business, or more than $100 billion in total assets.
Mandatory Repayment Plan	MRP	An agreement between the Treasury Secretary and the FDIC that provides a specific plan and schedule to achieve the repayment of the outstanding amount of borrowing from the Orderly Liquidation Fund.
Material entities or material subsidiaries		Under Title I resolution planning, an institution-identified legal entity that is significant to the activities of an intuition's core business line or critical function.
Multiple Point of Entry Strategy	MPOE	A resolution strategy in which a group's resolution would be implemented by placing distinct subsidiaries or subgroups into different insolvency regimes at the beginning of the resolution process, and managing multiple resolution processes independently.
Orderly Liquidation Authority	OLA	Administrative authority provided to the FDIC under Title II of the Dodd Frank Act to resolve a financial company in the event that resolution under the ordinary insolvency regime (usually the U.S. Bankruptcy Code) would have serious adverse effects on financial stability in the United States.
Orderly Liquidation Fund	OLF	A mechanism for the provision of temporary public funding from the U.S. Department of the Treasury to support the resolution of a financial company under Title II of the Dodd Frank Act that must be repaid from the proceeds of the resolution or assessments on certain financial companies.
Orderly Liquidation Plan	OLP	A plan acceptable to the Secretary of the Treasury detailing the provision and use of the Orderly Liquidation Fund and an outline of the resolution strategy for a financial company placed into Title II resolution.
Qualified financial contracts	QFCs	Any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement, as defined in section 210(c)(8)(D) of Title II of the Dodd-Frank Act. Generally, QFCs are subject to different stay treatment, among other provisions. In addition, certain financial companies are subject to requirements for QFC recordkeeping pursuant to 31 CFR part 148.
Receiver		An entity with the legal responsibility to manage a resolution process. The FDIC is the receiver under Dodd-Frank Act Title II.
Receivership		The residual estate of a failed company against which former shareholders and creditors may have claims.
Resolution plans/ Title I plans/ 165(d) plans/ Living Wills		Plans required under Dodd-Frank Act Section 165(d) for certain nonbank financial companies and bank holding companies with total consolidated assets of $250 billion or more, to be submitted periodically to the FDIC and the Federal Reserve Board. These plans cover preparations for the company's rapid and orderly resolution under the U.S. Bankruptcy Code.
Ring-fencing		(1) When host authorities require resources to be retained in their own jurisdictions before or during a resolution or (2) when host authorities take unilateral action to place hosted operations into resolution in the host jurisdiction.

<table>
<tr><th>Term</th><th colspan="2">Abbreviation</th><th>Definition</th></tr>
<tr><td>Securities-for-claims exchange</td><td colspan="2"></td><td>The use of equity securities of the successor company (or companies) of a Bridge Financial Company to satisfy the claims against the receivership in accordance with the statutory creditor hierarchy. The claimants become the new owners of the successor company or companies.</td></tr>
<tr><td>Single Point of Entry Strategy</td><td colspan="2">SPOE</td><td>A resolution strategy in which a top tier legal entity (such as the parent holding company in the case of U.S. GSIBs) would be placed into resolution while its material subsidiaries remain open and operating through the transfer of the interests in the underlying subsidiaries to a bridge entity, which would then manage an orderly resolution of the group.</td></tr>
<tr><td>Securities Investor Protection Act</td><td colspan="2">SIPA</td><td>The ordinary resolution framework applicable to failed U.S. broker-dealers, administered by the Securities Investor Protection Corporation.</td></tr>
<tr><td>Three Keys Process</td><td colspan="2"></td><td>The statutorily required multi-agency process to appoint the FDIC as receiver under Title II. The process requires recommendations from two regulatory bodies and a determination by the Secretary of the Treasury, in consultation with the President.</td></tr>
<tr><td rowspan="3">Total Loss-Absorbing Capacity</td><td colspan="2">TLAC</td><td>An international standard developed by the Financial Stability Board for adequate loss absorbing capacity for Global Systemically Important Banking Organizations in resolution, implemented in the United States by Federal Reserve Regulation YY.</td></tr>
<tr><td>External</td><td>TLAC</td><td>External TLAC includes equity and long-term debt instruments issued by the resolution entity to the market that will be available to absorb losses in resolution, in accordance with the applicable statutory creditor hierarchy.</td></tr>
<tr><td>Internal</td><td>iTLAC</td><td>Internal TLAC includes instruments issued internally within a corporate group to facilitate the shift of losses from operating subsidiaries to a holding company and to support the recapitalization of those subsidiaries so they can stay open and operating during resolution of the parent holding company.</td></tr>
</table>

FDIC-014-2024