APPENDIX A

Legislation Governing the FDIC's Roles as Insurer and Receiver

Background

This appendix focuses on the Federal Deposit Insurance Corporation (FDIC) from 1980 to 1994. To provide a historical context for that period, however, the appendix begins with a brief overview of some earlier, significant legislation passed by the U.S. Congress.

Federal Reserve Act of 1913

Congress created the Federal Reserve System (Federal Reserve) when it passed into law the Federal Reserve Act of 1913. Apart from giving the Federal Reserve regulation of the money supply, the Federal Reserve Act gave state banks the option of Federal Reserve membership, and the Fed was designated the lender of last resort to member banks experiencing liquidity problems.

Glass-Steagall Act of 1932

Between 1921 and 1929, 5,711 banks failed, with approximately two banks failing each day, most of which were small banks in rural communities. Then, at the end of 1930, a large wave of bank failures triggered serious bank runs and liquidity problems that the Federal Reserve was unable to ease. Confidence in the banking system as a whole began to falter.

President Herbert Hoover's administration responded to the banking crisis by recommending two measures to improve funding for banks experiencing liquidity problems. The first measure resulted in the creation in January 1932 of a new federal lending agency, the Reconstruction Finance Corporation (RFC). One of the RFC's primary functions was to lend money to banks. By the end of 1932, the RFC had authorized almost $900 million in loans to assist more than 4,000 banks striving to remain open.

The second measure was the Hoover administration's support of the Glass-Steagall Act of 1932, which broadened the circumstances under which member banks could borrow from the Federal Reserve. The Glass-Steagall Act allowed member banks to borrow from a Federal Reserve Bank by pledging paper other than that ordinarily eligible for rediscount or as collateral for loans. Although individual banks were helped by this measure, the amounts borrowed were not large in the aggregate.

Federal Home Loan Bank Act of 1932

The Great Depression, which began in October 1929, served as a catalyst for passage of the Federal Home Loan Bank Act of 1932, which regulated savings and loans (S&Ls). Congress intended that the act would boost the economy by creating a pool of funds for home financing, foster home ownership through favorable treatment of home mortgages, and change savings and loans institutions from short-term housing lenders to long-term housing lenders.

The Federal Home Loan Bank Act directed that no fewer than 8 and no more than 12 Federal Home Loan Banks (FHLBs) be established as soon as practicable. The act also established the Federal Home Loan Bank Board (FHLBB) to coordinate the system of FHLBs. It gave the board the power to adopt, amend, and enforce rules and regulations, as well as remove or suspend employees and agents of an FHLB and officers or employees of a savings and loans institution. The act allowed eligible financial institutions to borrow from an FHLB by becoming members of an FHLB, or by becoming nonmember borrowers.

Emergency Banking Act of 1933

During the winter of 1932-1933 banking conditions deteriorated rapidly and liquidity pressures increased in response to general uncertainty about the economy. With the election of Franklin D. Roosevelt to the presidency in November 1932, rumors circulated that the new administration would devalue the dollar. Speculative investments and the conversion to gold and foreign currencies followed, and the resultant increases in withdrawals started a massive panic.

By March 4, 1933, approximately 4,000 banks had failed that year, and every state had declared a bank holiday. By March 6, the U.S. financial system was on the verge of collapse, and President Roosevelt proclaimed a four-day nationwide bank holiday. Congress rushed to draft a plan of action. On March 9, after only 40 minutes of debate, the House of Representatives passed a bill. Several hours later, the Senate approved the bill with no changes, and the Congress enacted the Emergency Banking Act of 1933.

The act legalized the national bank holiday and set standards for reopening banks after the holiday. It also provided for the issuance of Federal Reserve notes, which were to be backed by U.S. government securities. In addition, the act gave the Office of the Comptroller of the Currency (OCC) the power to appoint conservators for failed banks.

Implementation of the Emergency Banking Act resided primarily with the secretary of the Treasury, who was empowered to issue licenses for all member banks, both national and state, upon the recommendation of the regional Federal Reserve Bank, the chief national bank examiner, and the OCC. State banking authorities were empowered to license nonmember banks.

Banking Act of 1933

Enacted in June 1933, the Banking Act established the FDIC as a temporary agency to restore public confidence in the banking system and to stabilize the financial system. The act required the appointment of the FDIC as receiver for all national banks and as receiver for insured state chartered banks according to state law. The legislation prohibited paying interest on demand deposits to forestall potentially harmful competition among banks and authorized the Federal Reserve Board to set a ceiling on time deposit rates offered by member banks.[1] In addition, the act began the regulation of bank holding companies by limiting their ability to vote their stock in subsidiary banks.

One element of the Banking Act of 1933 (sections 16, 20, 21 and 32) is the famous Glass-Steagall Act, which provides for the separation of banking and commerce and which is a subject of debate today. It was section 8 of the Glass-Steagall Act that created the FDIC, through an amendment to the Federal Reserve Act, and provided for a temporary plan of deposit insurance, to be initiated on January 1, 1934, and a permanent plan, to be effective on July 1, 1934. Those provisions formed the nucleus of what is today known as the Federal Deposit Insurance Act. Through the Glass-Steagall Act, the initial deposit insurance limit was set at $2,500. It subsequently was increased to $5,000 under the temporary plan.

The Banking Act of 1933 also included a provision that required the FDIC to organize a Deposit Insurance National Bank (DINB) to act as the instrument for paying off the insured deposits of each closed bank. The DINB, a chartered national bank with limited life and powers, could accept new deposits and could be capitalized by the local community within two years if it was in the public interest to establish a new bank in the community in which the original bank closed. The organization of DINBs was made optional by the Banking Act of 1935 and the FDIC was authorized to make payments to depositors directly or through an existing bank. From January 1, 1934, to August 23, 1935, the FDIC placed 24 insured banks into receivership and paid off their deposits through DINBs.

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1. The Federal Reserve Board is the body upon which the general supervision and coordination of the Federal Reserve System rests. The Federal Reserve, which is the central banking system of the United States, was created by the Federal Reserve Act of 1913. With the Banking Act of 1935, the Federal Reserve Board came to be known as the Federal Reserve Board of Governors.

Home Owner's Loan Act of 1933

In response to the continuing Great Depression, the estimated 40 percent of home mortgages in default, and an epidemic of foreclosures by home financing institutions during 1932 and 1933, Congress passed the Home Owner's Loan Act of 1933 as an additional piece of legislation to regulate the savings and loan industry.

The primary purpose of the act was to protect small homeowners from foreclosure and to relieve them of a portion of the burden of excessive interest and principal payments incurred during a period of higher value and earning power. The act authorized the FHLBB to charter and regulate federal savings and loan associations. It also allowed state chartered savings and loans that were members of an FHLB to convert to federal charters. In addition, the act authorized the FHLBB to liquidate or appoint a receiver or conservator for any federal savings and loan.

National Housing Act of 1934

Congress passed the National Housing Act of 1934 to improve national housing and to stimulate the sluggish economy. The act sought to prevent risky new mortgages and to decrease the need for second mortgages in the home financing industry.

Congress had determined that the best method to restore confidence in the savings and loan system was through an insurance program such as that provided for banks in 1933. Thus, the act provided for insuring the deposits of savings and loans so they would have the necessary funds to make home loans. Title IV of the National Housing Act established the Federal Savings and Loan Insurance Corporation (FSLIC), which would operate under the direction of the FHLBB.

Under the act, any savings and loan seeking deposit insurance with the FSLIC would apply for and submit to examination of its financial condition. The FSLIC insured deposits at approved institutions up to $5,000 for any one investor or depositor, who would receive an insurance payoff in the event of an institution's failure. The act empowered the FSLIC to liquidate any of its insured institutions or act as a conservator or receiver for federal savings and loans.

The Banking Act of 1935

The Banking Act of 1935 established the FDIC as a permanent agency of the federal government and inaugurated a permanent federal deposit insurance plan. The act set $5,000 as the limit for insurance coverage and gave the FDIC the authority to pay off depositors either directly or through an existing bank instead of through a DINB.

The 1935 act set more rigorous standards for admission to the deposit insurance plan. The act required the FDIC, when acting on insurance applications from new banks, to consider (1) the adequacy of the bank's capital, (2) its future earnings prospects, (3) the quality of its management, and (4) its usefulness in serving the convenience and needs of the community. The act also empowered the FDIC to terminate a bank's insured status if it was found to be engaging in uncorrected unsafe and unsound practices.

The 1935 act also required insured banks to pay for assessments at a rate of 1/12 of 1 percent per annum, computed on the assessment base, which was to be the average for six months of the difference at the end of each day between the total amount of the bank's liabilities for deposits and the total of uncollected items.

Moreover, the act authorized the FDIC to issue notes or other obligations in an amount not to exceed three times the amount received by the FDIC in payment of its capital stock and assessments for the year 1936. It also authorized the FDIC to prohibit the payment of interest in insured nonmember banks and to limit rates of interest paid on savings and time deposits.

Finally, the act expanded the FDIC's authority to resolve failing banks by giving it the power to make advances that would facilitate the merger or consolidation of an insured bank when such action would reduce or avert the risk of a threatened loss to the FDIC. With this new power, a receivership and payoff was no longer the only solution to a failing bank.

Federal Deposit Insurance Act of 1950

The Federal Deposit Insurance Act (FDI Act) of 1950 withdrew the FDIC's authorizing statute from the Federal Reserve Act and consolidated the basic authority for the permanent operation of the Federal Deposit Insurance Corporation into one law. The separate nature of this legislation served to reinforce the independent nature of the FDIC.

Although the FDI Act was substantively similar to the Banking Act of 1935, Congress added section 13(e), which codified the result reached by the U.S. Supreme Court in the 1942 case of *D'Oench, Duhme & Co. v. FDIC*. That case is credited with articulating the rule of law prohibiting a party who had lent himself or herself to an unrecorded scheme or arrangement that would tend to mislead banking authorities from asserting this as a defense against the FDIC. In 1989, with the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), Congress amended section 13(e) by providing additional protection for the FDIC receiver from unrecorded agreements that would tend to diminish or defeat the receiver's interest in an asset.

The FDI Act also made a change from the Banking Act of 1935 regarding bank examinations. The 1935 act had empowered examiners to conduct an examination of any insured state nonmember bank, any state nonmember bank applying for insurance, and any closed insured bank. In addition, it allowed examiners to examine any national bank or District of Columbia bank and any state member bank with the written consent of the OCC or the Board of Governors of the Federal Reserve System, respectively. In the FDI Act, after Congress eliminated the requirement of consent regarding such national and District of Columbia banks and state member banks, it provided that the

FDIC examiners could conduct such examinations if the FDIC Board of Directors believed them necessary to determine the bank's condition "for insurance purposes."

Fifteen years after the enactment of the Banking Act of 1935, the FDIC asked Congress to eliminate the requirement for a merger or consolidation for cases in which a potential failure could best be handled with loans or asset purchases that would restore the institution to a sound condition. Congress responded to the FDIC's request by limiting the exercise of the authority for such open bank assistance to situations in which the continued operation of the bank was essential to provide adequate banking services in the community.

Housing Act of 1954

Congress enacted the Housing Act of 1954 to amend the National Housing Act of 1934 by limiting insurance coverage on mortgages to 90 percent of total assets. In addition, Congress included new provisions and amendments in the act that relate to the FHLBB and the FSLIC, such as limitations on the authority of courts to hear claims involving FSLIC insurance payments.

The FDIC from 1980 through 1994

In the early 1980s, a banking crisis resulted from a sustained period of rising interest rates and the erosion of traditional funding sources. In an effort to respond to the crisis, Congress passed a series of laws that imposed additional regulatory controls. The remainder of this appendix presents a summary of some of the significant legislation enacted during that period and the effect that legislation had on the receivership and resolution processes.

Depository Institutions Deregulation and Monetary Control Act of 1980

In response to the situation facing banks and thrifts, Congress passed the Depository Institutions Deregulation and Monetary Control Act (DIDMCA) of 1980. That act was perhaps the most significant piece of banking legislation since the passage of the Banking Act of 1933. The DIDMCA began the gradual process of removing the restrictions imposed by Regulation Q, the Federal Reserve's regulation that had placed a ceiling on the interest rates banks could offer their depositors. It sought to deregulate banking and promote more competition to benefit consumers; it also sought to tighten monetary control by extending Federal Reserve requirements to all member and nonmember commercial banks and thrifts offering negotiable order of withdrawal (NOW) accounts (interest-bearing demand accounts on which thrifts had to keep reserves). The DIDMCA also raised the insurance limit from $40,000 to $100,000.

Garn–St Germain Depository Institutions Act of 1982

The financial position of thrift institutions worsened during the early 1980s. Interest rates rose sharply in 1980 and did not decrease measurably until the end of the summer of 1982. Thrifts, which traditionally had a significant portion of their portfolios invested in mortgage and other real estate lending (which are frequently long-term investments), could not rapidly adjust to the interest rate change. In response to this mismatch of assets and liabilities, Congress passed the Garn–St Germain Depository Institutions Act (Garn–St Germain) of 1982. The act, aimed at the savings and loan associations and mutual savings banks (MSBs), greatly expanded the powers of those institutions by adding commercial lending and direct investment authority. It also granted banks and other depository institutions authority to offer money market accounts, which, it was thought, would improve the institutions' chances for long-term survival and reduce exposure to risk.

In addition, to increase or maintain the capital of qualifying depository institutions, the act granted the FDIC the authority to purchase net worth certificates from those institutions. The FDIC could purchase a net worth certificate from a qualifying financial institution in exchange for an FDIC issued promissory note. The note was an asset on the bank's books, with the offsetting liability of the certificate counted toward regulatory capital. The FDIC paid interest to the bank as cash, while the bank, if it had earnings and achieved a certain level of net worth, paid part of its net income to the FDIC. In 1985, at the height of the Net Worth Certificate Program, which ultimately lasted until October 1991, the FDIC had more than $700 million in outstanding certificates. Of the 29 savings banks that participated in the program, 22 required no further assistance and eventually extinguished their net worth certificates.

The act also expanded the FDIC's authority to provide open bank assistance by eliminating the essentially test except in instances in which the cost of open assistance would exceed the estimated cost of liquidating the subject institution.

Competitive Equality Banking Act of 1987

When Congress passed the Competitive Equality Banking Act (CEBA) of 1987, it contained several provisions that were particularly significant for the FDIC and state nonmember banks. A summary of the most important of those provisions follows:

Emergency Acquisitions. CEBA amended the FDI Act to extend and expand the FDIC's emergency interstate acquisition authority in the following ways:

- Out-of-state holding companies could acquire failing or failed qualified stock institutions and mutual savings banks before failure if the failing institutions had assets of $500 million or more.

- A holding company could be sold, in whole or in part, to an out-of-state holding company if the in-state holding company had a failing bank or banks with aggregate banking assets of $500 million or more, and the bank or banks represented 33 percent or more of the holding company's banking assets.

- An out-of-state holding company was permitted expansion rights in the state of acquisition through the bank holding company structure. CEBA also prevented regional compact restrictions from applying to a holding company that made an acquisition under emergency authority.

Bridge Banks. CEBA permitted the FDIC to establish a bridge bank (which was chartered as a national bank and operated under the direction of a board appointed by the FDIC) to assume the deposits and certain other liabilities, and to purchase certain assets of one or more failed banks, if the FDIC's Board of Directors determined that (1) the cost of establishing a bridge bank did not exceed the cost of liquidation, (2) the continued operation of the failed bank was essential to provide adequate banking services in the local community, or (3) the continued operation of the failed bank was in the best interest of the depositors or the public. Modifications of the bridge bank authority in 1989 by FIRREA included extending the term of bridge bank operation from three years to five years and revising the provisions concerning dissolution of a bridge bank.

The FDIC found the bridge bank to be an important tool, one that it used in some of the largest bank failures. By providing the FDIC with authority to create a bridge bank contemporaneously with the closing of a failing bank and to control the bridge bank until its disposition, CEBA provided the FDIC sufficient time to evaluate the bank's situation and determine an appropriate resolution. The additional time also allowed prospective acquirers sufficient time to assess the bank's condition and make a reasonable offer for the institution.

Recapitalization of the FSLIC. Another significant provision of CEBA authorized the Financing Corporation (FICO), a newly established financing corporation funded by the FHLBs, to raise $10.8 billion for the FSLIC by selling bonds in the capital markets. CEBA limited the FSLIC's spending to no more than $3.75 billion per year in conjunction with failed thrift institutions. CEBA gave the FICO authority to levy assessments against savings and loan institutions. CEBA also imposed a one-year moratorium from the date of enactment, during which no insured institution could voluntarily leave the FSLIC. CEBA later extended that provision for an additional year. A grandfather provision exempted institutions that had converted into or merged with an FDIC insured institution, or that had entered into a letter of intent or memorandum of understanding to do so, before March 31, 1987.

Loan Loss Amortization. Under certain circumstances, agricultural banks could write down their losses on agricultural loans over seven years, rather than deduct the amount of loss from capital as soon as the loss was identified. Agricultural banks were defined as banks in economic areas dependent on agriculture, with assets of $100 million or less, that had at least 25 percent of their loans in agricultural loans. During 1987, 20 state nonmember banks had applied for the program. By the end of the next year, agricultural bank failures had declined.

Financial Institutions Reform, Recovery, and Enforcement Act of 1989

When Congress passed the landmark Financial Institutions Reform, Recovery, and Enforcement Act of 1989, its primary intent was to address the financial crisis facing the thrift industry, which at the time, included some 600 seriously troubled savings associations with assets of about $350 billion. Provisions in FIRREA also significantly changed the financial institution's regulatory structure and strengthened the authority of federal supervisors to require adequate capital, promote safe banking practices, and ensure compliance with applicable laws. Greatly expanding the powers and duties of the FDIC, FIRREA also—

- Eliminated the FSLIC and the FHLBB and created the Office of Thrift Supervision (OTS). It established the OTS as an agency under the supervision of the U.S. Department of the Treasury that would assume the examination and supervision functions of the former FHLBB.

- Established the Resolution Trust Corporation (RTC) to merge or liquidate savings associations declared insolvent during the period from January 1, 1989, through August 9, 1992, with the FDIC as the manager of the RTC. The FIRREA legislation also established the Resolution Funding Corporation (REFCORP), which funded the activities of the RTC, primarily through $40 billion in bond sales. (The RTC's sunset was December 31, 1995.)

- Created two new insurance funds to be administered by the FDIC: the Savings Association Insurance Fund (SAIF) and the Bank Insurance Fund (BIF). The funds would provide federal deposit insurance for deposits at savings associations and banks, respectively, to replace the FSLIC and the FDIC's permanent insurance funds.

- Granted authority to the FDIC to assess insured depository institutions whose sister insured depository institutions had failed. That cross guaranty authority was designed to prevent affiliated banks from shifting assets and liabilities in anticipation of one or more of their number failing in order to retain value for shareholders. By virtue of the cross guaranty authority, in the event of the failure of an affiliated bank, FIRREA authorized the FDIC to apportion the loss among all of the banks in the affiliated group.

- Expanded the FDIC Board of Directors from three to five members: three presidential appointees (one designated as chairperson and another designated as vice chairperson), the comptroller of the currency, and the director of the OTS.

- Granted authority to the FDIC and the RTC to appoint themselves as sole conservators or receivers of any insured state depository institution, providing they met certain criteria. (The OCC got its conservatorship powers in the Emergency Banking Act of 1933, so that it could act as conservator for any national bank.)

FDIC Assessment Rate Act of 1990

In response to the FDIC's request for greater flexibility, Congress enacted the FDIC Assessment Rate Act of 1990, which gave the FDIC enhanced authority over the timing and size of increases in deposit insurance premiums. Principal provisions of the act removed annual assessment rate restrictions and allowed the FDIC board to make mid-year adjustments to the assessment rates. The act also enabled the FDIC to borrow from the Federal Financing Bank for the BIF or the SAIF. Before that act was passed, the maximum annual assessment rate was $^1/_2$ of 1 percent computed on the assessment base, which was not enough to keep the insurance fund capitalized.

Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990

Congress enacted the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 as part of the Crime Control Act of 1990. The act was designed to enhance the powers of the FDIC and other federal banking regulatory agencies to prevent and punish fraud in the banking and thrift industries. The act also—

- Gave the FDIC and the RTC the authority to ask courts to freeze the assets of persons who had defrauded depository institutions to prevent them from transferring assets out of reach of regulatory agencies.
- Prevented individuals who had defrauded financial institutions from using title 11 of the U.S. Code, the Bankruptcy Code of the United States, to discharge their debts to those institutions and from shielding their assets under the code by buying lavish homes and subsequently invoking a homestead exemption in bankruptcy.
- Gave the FDIC the power to issue administrative subpoenas in connection with its receivership and conservatorship activities, a power it already held in its supervisory capacity. In addition, the act authorized the FDIC to prohibit excessive bonuses, benefits, and certain "golden parachute" payments to departing directors, officers, or employees of troubled banks or thrifts.

Federal Deposit Insurance Corporation Improvement Act of 1991

When Congress passed the Federal Deposit Insurance Corporation Improvement Act (FDICIA) of 1991, it had a significant effect on the FDIC. Key provisions of that act include least cost resolution, FDIC borrowing authority, recapitalization, prompt corrective action, risk-based premiums, FDIC backup enforcement authority, open bank assistance, and brokered deposits.

Least Cost Resolution. The new "least cost test" requires that any assistance the FDIC provided under section 13 of the FDI Act be (1) necessary to meet the FDIC's obligation to protect the insured deposits in a failed or failing institution and (2) the least costly to the deposit insurance fund of all possible methods of meeting that obligation. That requirement meant that any assisted transaction the FDIC implemented would have to be less costly than liquidation and less costly than all other possible assisted transactions. Under prior law, the transaction implemented had to be less costly than a liquidation, but not necessarily less costly than all other possible transactions. The least cost resolution of FDICIA ended the FDIC's preference for whole bank transactions and compelled the FDIC to consider more transaction options than it had previously.

In making its least cost determinations, the FDIC is required to evaluate the alternative structures and bids on a present-value basis, using a realistic discount rate. The statute requires the FDIC to document its evaluation and the assumption on which the evaluation is based, including any assumptions regarding interest rates, asset recovery rates, asset holding costs, and payment of contingent liabilities, and to retain that documentation for at least five years.

Under the "systemic risk" exception to the least cost test, a non–least cost assisted transaction could be implemented only if the secretary of the Treasury, acting in consultation with the president of the U.S. and on the recommendation of the boards of both the FDIC and the Federal Reserve (both boards acting by two-thirds majorities), determined that the transaction was necessary to avoid serious adverse effects on economic conditions or financial stability. That exception replaced the former essentiality exception, under which an assisted transaction that was not less costly than a liquidation could be implemented if the FDIC determined that the operation of the institution were deemed essential to provide services in its community. The essentiality exception was used numerous times over the years with the determinations ranging from the specific—a minority-owned bank serving a minority community—to the general—the number of depositors, size of the bank, and whether the bank was a significant depository of public funds.

FDIC Borrowing Authority. In 1991, for the first time in history, the BIF technically dropped below zero to negative $7 billion. Under FDICIA, the FDIC's authority to borrow from the Treasury Department to cover BIF losses was increased from $5 billion to $30 billion. The insured banks were required to repay the borrowed amounts through deposit insurance premiums over a period not to exceed 15 years. In addition, the FDIC could borrow money on a short-term basis for working capital, subject to an overall cap. Working capital borrowings were not to exceed the total of cash and cash equivalents held by the insurance fund, plus 90 percent of the estimated fair market value of the assets held by the fund, plus the amount authorized to be borrowed from the Treasury to cover insurance losses.

Recapitalization. The FDIC Board of Directors was required to adopt deposit insurance premiums according to a recapitalization schedule that would cause the BIF to reach its designated reserve ratio within 15 years and the SAIF to reach its reserve ratio within a reasonable time.

Prompt Corrective Action. In general, FDICIA required federal banking regulators to take certain supervisory action (prompt corrective action) when an insured depository institution fell within one of the three lowest of five specifically enumerated capital categories (well-capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized). Such prompt corrective actions included increased monitoring, raising additional capital, requiring acceptance of an offer to be acquired, and closure of the institution. The purpose of the new provisions was to resolve the problems of insured depository institutions at the least possible long-term loss to the deposit insurance funds. For insured depository institutions that were designated critically undercapitalized (that is, those institutions with a ratio of tangible equity to total assets equal to or less than 2 percent), FDICIA required that, not later than 90 days from designation, a conservator or receiver must be appointed.

Risk-Based Premiums. Beginning January 1, 1994, FDICIA required the FDIC to impose deposit insurance assessments according to the risks that an institution posed to the appropriate insurance fund. The act also authorized the FDIC to deny insurance to any applicant (including national banks and state chartered banks supervised by the Federal Reserve Board), based on a bank's failure to meet statutory factors.

FDIC Backup Enforcement Authority. FDICIA gave the FDIC, which had been given backup enforcement authority over insured savings associations, the same authority over national banks and state member banks. Under FIRREA, if the federal banking agency to which the FDIC recommended specific enforcement action against any insured depository institution or any affiliated institution failed to take the recommended action (or acceptable alternative action) within 60 days, the FDIC could step in. In cases of exigent circumstances, the FDIC could take immediate action.

Open Bank Assistance. Open bank assistance was the subject of two separate provisions of FDICIA. The first provision was mandatory and stated that the FDIC could provide open bank assistance only if it had determined that grounds for the appointment of a conservator or receiver existed and that the institution's capital was not likely to be increased without assistance. In addition, the FDIC would have to be able to determine that the institution's management was competent and not the cause of the institution problems.[2]

Brokered Deposits. FDICIA also imposed a restriction on the use of brokered deposits. Troubled institutions (that is, those that did not meet applicable minimum capital requirements) were precluded from accepting funds obtained directly or indirectly by or through any deposit broker and were similarly prohibited from offering a rate of interest significantly higher than other area banks.

Disposition of Assets. FDICIA applied to the FDIC a rule that had previously applied only to asset dispositions of the RTC and that was intended to maximize the value and reduce the costs of asset dispositions. With FDICIA, the FDIC was required to (1) maximize the net present value return from the sale or disposition of assets, (2) minimize the

2. See Part I, Resolution and Asset Disposition Practices, Chapter 5, Open Bank Assistance, for further details.

amount of any loss realized in the resolution of cases, (3) ensure adequate competition and fair and consistent treatment of bidders, (4) prohibit discrimination on the basis of race, sex, or ethnic group in the solicitation and consideration of offers, and (5) maximize the preservation of the availability and affordability of residential real property for low- and moderate-income individuals.

Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991

The Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act (RTCRRIA) of 1991 provided that the restructured RTC be headed by a chief executive officer (CEO), appointed by the president with the advice and consent of the Senate, instead of by the FDIC chairman and board of directors. The RTC Oversight Board, created by FIRREA, was recast into the Thrift Depositor Protection Oversight Board (TDPOB), composed of the secretary of the Treasury (who served as chairman), the chairman of the FDIC, the director of the Office of Thrift Supervision, the CEO of the RTC, the chairman of the Federal Reserve Board, and two private-sector representatives.

The RTCRRIA legislation provided the RTC with $25 billion more in funding through April 1, 1992, and extended its ability to accept appointment as conservator or receiver from August 9, 1992, to September 30, 1993, at which time the FDIC, as manager of the SAIF, would become responsible for handling failed thrifts. The RTC would continue to handle the resolution of failed thrifts until October 1, 1993. The Treasury Department was required to make up any shortfall in any annual funding of the SAIF through the year 2000.

Omnibus Budget Reconciliation Act of 1993

Two years after passing RTCRRIA, Congress passed the Omnibus Budget Reconciliation Act of 1993. A significant provision of the act was the "national depositor preference" distribution schedule applicable to the assets of all insured depository institutions that closed on or after August 10, 1993. The following five categories of claims, with priority determined in order of payment, were specified:

1. Administrative expenses of the FDIC as receiver;
2. Any deposit liability, including the FDIC's subordinated claim;
3. Any other general or senior liabilities;
4. Any subordinated obligations, including any obligation of commonly controlled depository institutions for cross guaranty assessments; and
5. Any obligations to shareholders or members, including holding companies and their creditors.

General unsecured creditors' claims were subordinated to any deposit liability of the institution, including the FDIC's (that is, all deposit liabilities were preferred). It was expected that the depositor preference schedule would reduce the cost of resolutions to the deposit insurance funds. Previously, assets had been distributed according to the law of the jurisdiction that chartered the failed institution.

RTC Completion Act of 1993

The RTC Completion Act (Completion Act) of 1993 became the most significant banking statute of the year to affect the FDIC and RTC. From April 1, 1992, through December 17, 1993, the RTC would not have had sufficient funding to resolve additional failed savings and loan institutions. The Completion Act removed the April 1, 1992, deadline for the use of funds that had previously been established, which permitted the RTC to use up to $18.3 billion authorized under RTCRRIA to resolve the remaining insolvent thrifts.

The Completion Act—

- Extended the September 30, 1993, deadline for appointing the RTC as conservator or receiver for savings associations to a date between January 1, 1995, and July 1, 1995, to be determined by the chairperson of the TDPOB.
- Accelerated the act of transferring the RTC operations to the FDIC by amending the termination date of the RTC from December 31, 1996, to December 31, 1995.
- Disallowed the use of BIF assessments for repaying funds borrowed from the U.S. Treasury for SAIF insurance purposes, and vice versa.
- Extended the moratorium on conversions from membership in one insurance fund to the other until August 9, 1994, or the date on which SAIF first met the designated reserve ratio of $1.25 for every $100 of insured deposits, whichever came later.
- Required the RTC to adopt a series of management reforms and implement provisions designed to improve the agency's record in providing business opportunities to minorities and women when issuing RTC contracts or selling assets.
- Established an affordable housing program, under which the FDIC and the RTC were required to provide tenants a right of first refusal to purchase one-to-four-family residences owned by the FDIC or the RTC, except under certain circumstances, and to give limited preference to offers from nonprofit corporations, public agencies, and other organizations that would provide for use of a property by homeless individuals and families.

Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994

The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 authorized interstate banking and branching for United States and foreign banks over a three-year period. Significant for the FDIC, the act authorized—

- Bank holding companies to acquire banks located in any state beginning September 29, 1995.
- Insured banks to merge across state lines beginning June 1, 1997, unless the affected states "opted out" (that is, enacted laws that prohibit interstate branching).
- Insured banks to establish de novo out-of-state branches if the host state permitted interstate branching through the establishment of de novo branches.

Table A-1

Legislation at a Glance 1913-1954

Legislation	Major Provisions
Federal Reserve Act of 1913	Established the Federal Reserve System, the nation's central bank, to regulate the nation's money supply; gave state banks the option of Federal Reserve membership; designated the Federal Reserve as lender of last resort to banks experiencing liquidity problems.
Glass-Steagall Act of 1932	Broadened the circumstances under which member banks could borrow from the Federal Reserve; required the separation of investment activities and commercial banking. (Part of the Banking Act of 1933—see below).
Federal Home Loan Bank Act of 1932	Established Federal Home Loan Banks; established the Federal Home Loan Bank Board to coordinate the home mortgage system; empowered the FHLBB to adopt, amend, and enforce rules and regulations, as well as remove or suspend FHLB employees and agents of S&Ls.
Emergency Banking Act of 1933	Set standards for reopening banks after the declared national bank holiday; provided for the issuance of Federal Reserve notes backed by U.S. government securities; empowered the OCC to appoint conservators for failed banks.
Banking Act of 1933	Established the FDIC as a temporary agency to restore public confidence in banking; required the FDIC's appointment as receiver for all national banks.
Home Owner's Loan Act of 1933	Authorized the Federal Home Loan Bank Board to charter and regulate federal S&Ls, and allowed conversion of state chartered S&Ls that were FHLB members to federal charters; authorized the FHLBB to liquidate or appoint a receiver or conservator for any federal S&L.
National Housing Act of 1934	Established the Federal Savings and Loan Insurance Corporation under the FHLBB's direction to monitor S&L financial conditions, insure deposits at approved institutions for up to $5,000, and provide for insurance payoffs in the event of failure; empowered the FSLIC to liquidate any of its insured institutions or to act as conservator or receiver for federal S&Ls.
Banking Act of 1935	Established the FDIC as a permanent government agency, set up permanent insurance coverage with a $5,000 limit, authorized the FDIC to pay off depositors directly or through an existing bank, and established rigorous standards for insurance admission; provided for assessments to be paid by insured banks, and facilitated the merger or consolidation of insured banks to reduce risk or loss to the FDIC.
Federal Deposit Insurance Act of 1950	Consolidated the basic authority for the FDIC's permanent operation into one law; codified *D'Oench;* empowered examiners to examine all insured state nonmember banks, as well as closed insured banks, national banks, D.C. banks, or state member banks for insurance purposes, without the consent of the OCC or the Federal Reserve Board of Governors.
Housing Act of 1954	Amended the National Housing Act of 1934 by limiting insurance coverage on mortgages to 90% of total assets; limited the authority of the courts to hear claims involving FSLIC insurance payments.

Table A-2

Legislation at a Glance 1980–1994

Legislation	Major Provisions
Depository Institutions Deregulation and Monetary Control Act of 1980	Deregulated banking and promoted competition; gave financial institutions additional lending and investment powers; increased deposit insurance coverage to $100,000.
Garn–St Germain Act of 1982	Granted the use of money market accounts; allowed federal savings and loan institutions to offer demand deposits; authorized the FDIC net worth certificate assistance.
Competitive Equality Banking Act of 1987	Provided for emergency acquisitions; authorized bridge banks; recapitalized the FSLIC; allowed agricultural banks to amortize loan losses.
Financial Institutions Reform, Recovery, and Enforcement Act of 1989	Addressed the thrift crisis by abolishing the FSLIC and the FHLBB; creating the RTC and the OTS; and strengthening provisions of the FDI Act.
FDIC Assessment Rate Act of 1990	Removed annual assessment rate restrictions.
Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990	Strengthened the FDIC's powers to prevent fraud.
Federal Deposit Insurance Corporation Improvement Act of 1991	Required "least cost" resolutions of failed and failing insured depository institutions, prompt corrective action, and risk-based premiums.
RTC Refinancing, Restructuring, and Improvement Act of 1991	Restructured the RTC and provided an additional $25 billion in funding.
Omnibus Budget Reconciliation Act of 1993	Created national depositor preference amendment.
RTC Completion Act of 1993	Accelerated the RTC closing date by one year; released funds authorized under RTCRRIA.
Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994	Authorized interstate banking and branching.

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