FDIC **Quarterly**

Foreword by FDIC Chairman Sheila C. Bair

Quarterly Banking Profile: First Quarter 2011

"We Must Resolve to End Too Big to Fail" – remarks by FDIC Chairman Sheila C. Bair

The Orderly Liquidation of Lehman Brothers Holdings Inc. under the Dodd-Frank Act

FDIC

2011, Volume 5, Number 2

The ***FDIC Quarterly*** is published by the Division of Insurance and Research of the Federal Deposit Insurance Corporation and contains a comprehensive summary of the most current financial results for the banking industry. Feature articles appearing in the ***FDIC Quarterly*** range from timely analysis of economic and banking trends at the national and regional level that may affect the risk exposure of FDIC-insured institutions to research on issues affecting the banking system and the development of regulatory policy.

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2011, Volume 5, Number 2

Foreword by FDIC Chairman Sheila C. Bair *See page iii.*

Quarterly Banking Profile: *First Quarter 2011*

FDIC-insured institutions reported an aggregate profit of $29 billion in the first quarter of 2011, an $11.6 billion improvement (66.5 percent) from the $17.4 billion in net income the industry reported in the first quarter of 2010. This is the seventh consecutive quarter that earnings registered a year-over-year increase. More than half of all institutions (56.2 percent) reported improved earnings. For the sixth consecutive quarter, reduced provisions for loan losses drove the improvement in earnings. *See page 1.*

Insurance Fund Indicators

Estimated insured deposits (based on $250,000 coverage) increased by 1.4 percent during the first quarter of 2011. The Deposit Insurance Fund reserve ratio was -0.02 percent on March 31, 2011, up from -0.12 percent on December 31, 2010, and the -0.39 percent low point reached at the end of 2009. Twenty-six FDIC-insured institutions failed during the quarter. *See page 14.*

"We Must Resolve to End Too Big to Fail"

Remarks by FDIC Chairman Sheila C. Bair on May 5, 2011, before the 47th Annual Conference on Bank Structure and Competition sponsored by the Federal Reserve Bank of Chicago. *See page 25.*

The Orderly Liquidation of Lehman Brothers Holdings Inc. under the Dodd-Frank Act

On September 15, 2008, Lehman Brothers Holdings Inc. (Lehman) filed for bankruptcy. The disorderly and costly nature of the bankruptcy—the largest, and still ongoing, financial bankruptcy in U.S. history—contributed to the massive financial disruption of late 2008. In this article FDIC staff examine how the government could have structured a resolution of Lehman under the orderly liquidation authority of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and how the outcome could have differed from the outcome under bankruptcy. *See page 31.*

Foreword by FDIC Chairman Sheila C. Bair

For many years, the *FDIC Quarterly* and its predecessor publications have been important vehicles for the FDIC to communicate with bankers, analysts and the public about emerging risks and timely policy issues in banking. As I prepare to conclude my term as FDIC Chairman, it is fitting that this issue of the *FDIC Quarterly* focuses on the single most critical policy challenge of the post-crisis period–implementing the tools provided in the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act for resolving large, systemically important financial institutions without resorting to bailouts.

The events of late 2008 were among the most momentous in the nation's financial history. The central policy dilemma of that period was how to respond to the serious financial difficulties of large, complex bank holding companies and non-bank financial companies. The inadequacy of our regulatory and resolution powers in place at the time left policymakers with the unenviable choice of either bailing these companies out or risking a dramatic escalation of the financial crisis. In the heat of the crisis, policymakers at times resorted to providing government assistance instead of letting these firms collapse into bankruptcy, because they feared that the losses generated in a failure would cascade through the financial system. The notable exception, when Lehman Brothers Holdings Inc. filed for bankruptcy on September 15, 2008, was an event that has been widely cited as triggering the most critical stage of the crisis.

The various forms of emergency government assistance that were provided to financial institutions in the fall of 2008 succeeded in limiting the immediate economic damage associated with the crisis. However, an unavoidable consequence of these bailouts was to solidify the pre-existing expectation of the marketplace that certain large financial companies were Too Big to Fail.

We now recognize that the gradual erosion of market discipline among large, complex financial companies was one of the primary factors that led to the financial crisis. With the expectation of a government backstop, these companies were insulated from the normal discipline of the marketplace, resulting in more concentration and complexity in the financial system, more risk-taking at the expense of the public, and a distinct competitive advantage for large, complex companies over other financial providers.

The two articles that accompany the *Quarterly Banking Profile* in this issue focus on the importance of implementing new tools provided by the Dodd-Frank Act to ensure that systemically important financial institutions, or SIFIs, can be resolved without bailouts. Titles I and II of Dodd-Frank establish the regulatory authority to designate firms as SIFIs, thereby subjecting them to heightened supervision and higher capital requirements as well as the need to maintain detailed resolution plans that show how they can be unwound in the event of failure. Importantly, Title II also establishes an Orderly Liquidation Authority which gives the FDIC receivership-like powers to resolve a SIFI if necessary. The two accompanying articles explain in more detail how these authorities will work, and use the example of the Lehman failure to illustrate their advantages in bringing about an orderly resolution without a bailout and at a significantly lower cost than was realized in Lehman's 2008 bankruptcy.

While important progress has been made, much work remains to achieve the full potential of the Dodd-Frank resolutions framework. As the elements of Titles I and II are implemented, regulators will need to stand firm in their commitment to a process that both gives them the information they need to evaluate how a SIFI could be resolved and that insists on resolution plans that are credible and actionable guides to the orderly resolution of each firm in a crisis. Despite the challenges, the successful completion of this work will be essential to putting our financial system on a sounder and more stable footing in the years ahead.

Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation

Quarterly Banking Profile First Quarter 2011

INSURED INSTITUTION PERFORMANCE

- ***Net Income Rises to $29 Billion***
- ***Lower Loan-Loss Provisions Remain Key to Higher Earnings***
- ***Revenues Post Year-over-Year Decline***
- ***Asset Quality Indicators Continue to Exhibit Improvement***
- ***Loan Balances Fall by $126.6 Billion***

Profits Rise for Seventh Consecutive Quarter

Bank earnings continued to benefit from falling loan-loss provisions in first quarter 2011 as FDIC-insured commercial banks and savings institutions posted their highest quarterly net income since the onset of the financial crisis. Net income totaled $29.0 billion, an $11.6 billion (66.5 percent) increase from first quarter 2010, and the best quarterly result since second quarter 2007. This is the seventh consecutive quarter that industry earnings have registered year-over-year gains. More than half of all institutions (56.2 percent) reported improved earnings, and fewer institutions were unprofitable (15.4 percent, compared to 19.3 percent in first quarter 2010).

Loss Provisions Are Less than Half the Level of a Year Ago

Provisions for loan losses fell to $20.7 billion in the first quarter from $51.6 billion a year earlier. This marks the sixth quarter in a row that loss provisions have had a year-over-year decline. It is the smallest quarterly loss provision for the industry since third quarter 2007. The largest reductions in provisions occurred at credit card lenders that made sizable additions to their loan-loss reserves a year ago, but almost half of all institutions (48.9 percent) reported lower provisions. Fewer than a third (32.6 percent) increased their provisions from year-earlier levels.

Revenues Exhibit Weakness

The positive contribution from reduced provisions outweighed the negative effect of lower revenues at many institutions. Net operating revenue (net interest income plus total noninterest income) was $5.5 billion (3.2 percent) lower than a year ago. This is only the second time in the 27 years for which data are available that the industry has reported a year-over-year decline in quarterly net operating revenue.

Chart 1

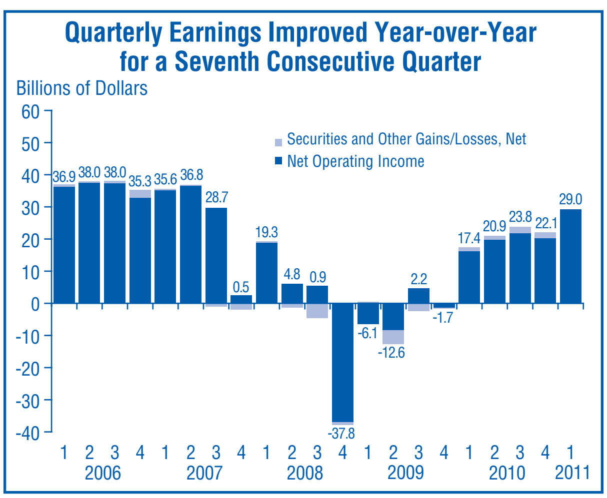
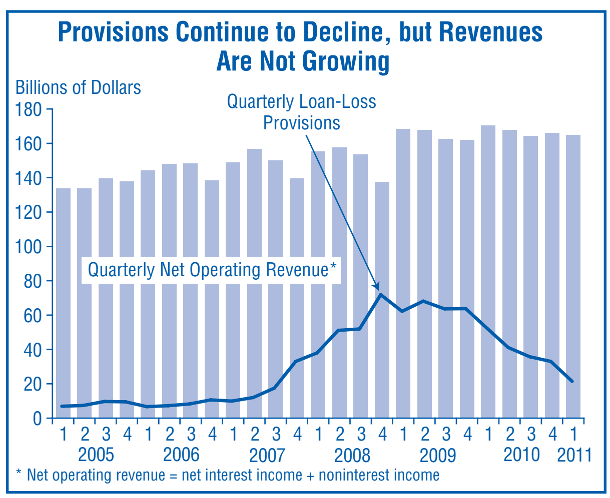


Chart 2



Decline in Revenues Is Concentrated Among Large Institutions

Net interest income declined year-over-year for the first time since fourth quarter 1989, falling by $3.2 billion (3 percent), while noninterest income was $2.2 billion (3.7 percent) lower than in first quarter 2010. The reduction in net interest income was caused by narrower net interest margins and weak growth in interest-earning assets. The decline in noninterest income reflected lower revenues from service charges on deposit accounts (down $1.7 billion, or 17.3 percent at institutions filing Call Reports) and reduced trading income (down $1 billion, or 11.7 percent). Much of the reduction in net operating revenue was concentrated at larger institutions; more than half of all institutions (59.5 percent) reported year-over-year increases in net operating revenue, with 57.6 percent reporting higher net interest income and 52.1 percent reporting increased noninterest income. However, of the ten largest institutions, which together hold more than half of all insured institution assets, six reported year-over-year declines in net operating revenue, six had declines in noninterest income and eight reported lower net interest income.

Loan Losses Improve Across All Main Loan Categories

Net loan charge-offs (NCOs) declined for a third consecutive quarter. Insured institutions charged-off $33.3 billion in the first quarter, a $19.9 billion (37.5 percent) decline from first quarter 2010. Almost half of all institutions (48.9 percent) reported lower NCOs, while 41.5 percent reported increases. NCOs were lower in all major loan categories. The largest reduction occurred in credit cards, where NCOs fell by $7.3 billion (39.1 percent). Real estate construction loan NCOs were $3 billion (51.5 percent) lower than in first quarter 2010, while charge-offs of closed-end 1-4 family residential mortgages fell by $2.6 billion (29.6 percent). Commercial and industrial (C&I) loan NCOs also declined by $2.6 billion (43.1 percent).

Noncurrent Loan Balances Fall for a Fourth Consecutive Quarter

Noncurrent loan balances (loans 90 days or more past due or in nonaccrual status) fell by $17 billion (4.7 percent) during the quarter. At the end of March, insured institutions reported $341.7 billion in noncurrent loans and leases, down from $358.7 billion at the end of 2010. This is the fourth consecutive quarter that noncurrent loans have declined, and they are now $68.2 billion (16.6 percent) below the peak level reached a year ago. Half of all institutions (50.3 percent) reported reductions in their noncurrent loan balances, while 43.1 percent reported increases. Noncurrent balances declined in all major loan categories. Noncurrent C&I loans declined by $6.1 billion (21.1 percent), noncurrent construction and development loans fell by $4.3 billion (8.3 percent), and noncurrent closed-end 1-4 family residential mortgages declined by $2.8 billion (1.6 percent). The average noncurrent loan rate at the end of the quarter was 4.71 percent, the lowest level since second quarter 2009.

Chart 3

Lower Asset Yields Are Putting Downward Pressure on Net Interest Margins

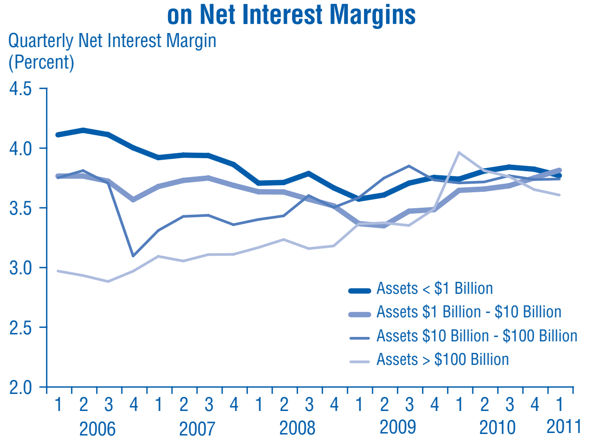
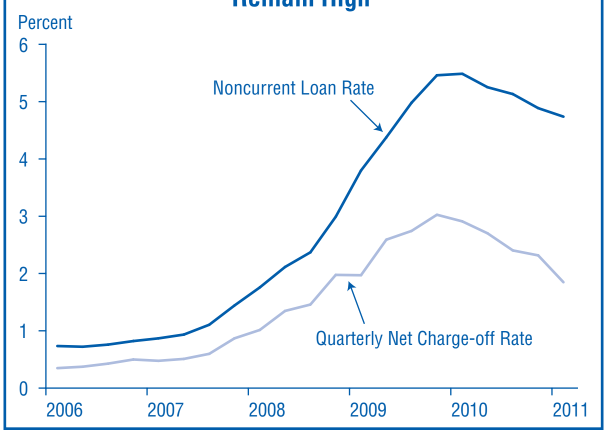


Chart 4

The Levels of Troubled Loans and Loan Losses Remain High



Most Large Banks Reduce Their Reserves

Net charge-offs exceeded loss provisions by $12.6 billion in the first quarter, contributing to a $13 billion (5.6 percent) drop in the industry's loan-loss reserves. This is the fourth consecutive quarter that aggregate reserves have declined; they are now $44.9 billion (17.1 percent) below the peak level of a year ago. The decline in reserves was concentrated among the largest banks. Sixteen of the 19 institutions with assets greater than $100 billion reduced their reserves in the first quarter, and almost two-thirds of institutions with assets between $10 billion and $100 billion (63.2 percent) also reported reserve declines. Some of the largest reductions in reserves occurred at credit card lenders. In contrast to the trend at large banks, most institutions with less than $1 billion in assets (60.1 percent) increased their reserves during the quarter.

Capital Levels Improve

Additions to capital in the first quarter surpassed the decline in reserves. Bank equity capital increased by $25.1 billion (1.7 percent), as retained earnings contributed $13.9 billion. Total risk-based capital increased by $17.8 billion (1.3 percent). Tier 1 leverage capital increased by $25.8 billion (2.2 percent), but tier 2 capital fell by $7.9 billion (3.4 percent), reflecting lower loan-loss reserves. At the end of the quarter, 96 percent of all institutions, representing over 99 percent of total industry assets, met or exceeded the highest regulatory capital requirements as defined for Prompt Corrective Action (PCA) purposes. Industry averages for all three regulatory capital ratios rose to all-time high levels, driven by improvements at the largest institutions.

Asset Growth Occurs Outside Loan Portfolios

Total assets of insured institutions increased by $94.7 billion (0.7 percent) during the quarter. Balances with Federal Reserve banks increased by $116.3 billion (23.5 percent) at Call Report filers with $300 million or more in total assets. Mortgage-backed securities holdings rose by $34.5 billion (2.3 percent). Total loan and lease balances continued to fall, declining by $126.6 billion (1.7 percent). This is the fifth-largest quarterly percentage decline in loan balances in the 28 years for which data are available, and it marks the tenth time in the last eleven quarters that reported loan balances have fallen (the one exception was caused by the implementation of FASB 166 and 167, which resulted in the consolidation of as much as $400 billion in securitized loans onto banks' balance sheets in first quarter 2010). The largest declines in loan balances were in 1-4 family residential mortgages, which fell by $63.8 billion (3.4 percent), credit cards (down $38.9 billion, or 5.5 percent), and in real estate construction and development loans, which declined by $25.9 billion (8.1 percent). Balances fell in most major loan categories, with the exception of C&I loans, which increased by $18.1 billion (1.5 percent) and loans to depository institutions, which rose by $10.2 billion (9.3 percent). Almost half of the growth in C&I loans (47 percent) represented loans to non-U.S. borrowers, while 86.2 percent of the increase in loans to depository institutions consisted of loans to foreign banks. At the end of March, net loans and leases represented 52.4 percent of insured institutions' assets, the lowest share since the early 1970s.

Chart 5

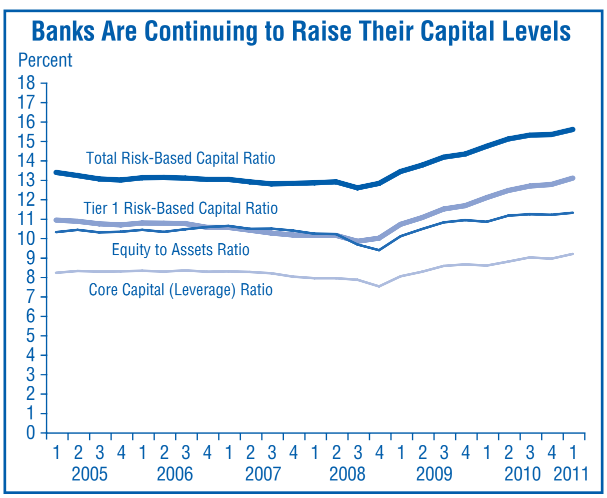
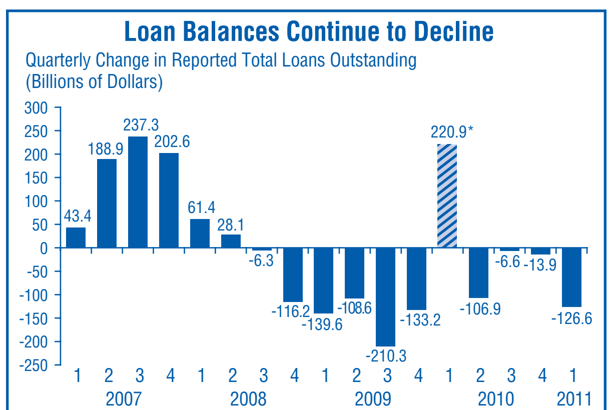


Chart 6



* FASB Statements 166 and 167 resulted in the consolidation of large amounts of securitized loan balances back onto banks' balance sheets in the first quarter of 2010. Although the total amount consolidated cannot be precisely quantified, the industry would have reported a decline in loan balances for the quarter absent this change in accounting standards.

Deposit Growth Remains Strong

Deposits at FDIC-insured institutions increased by $178.8 billion (1.9 percent), as deposits in foreign offices rose by $61.4 billion (4 percent), and domestic office deposits grew by $117.4 billion (1.5 percent). Noninterest-bearing deposits in domestic offices increased by $58.3 billion (3.5 percent), while interest-bearing deposits were up by $59.1 billion (1 percent). Nondeposit liabilities fell by $101.1 billion (4.2 percent), with Fed funds purchased declining by $44.6 billion (37.5 percent), and FHLB advances falling by $28.6 billion (7.4 percent).

The Pace of Bank Failures Slows

The number of insured commercial banks and savings institutions reporting financial results declined from 7,658 to 7,574 in the first quarter. One new reporting institution was added during the quarter, while 56 institutions were absorbed by mergers and 26 institutions failed. One report had not been received at the time these data were prepared. The number of institutions on the FDIC's "Problem List" increased from 884 to 888 during the quarter. Assets of "problem" institutions increased from $390 billion to $397 billion. Insured institutions reported 2.09 million full-time equivalent employees in the first quarter, an increase of 65,632 (3.2 percent) from first quarter 2010.

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Chart 7

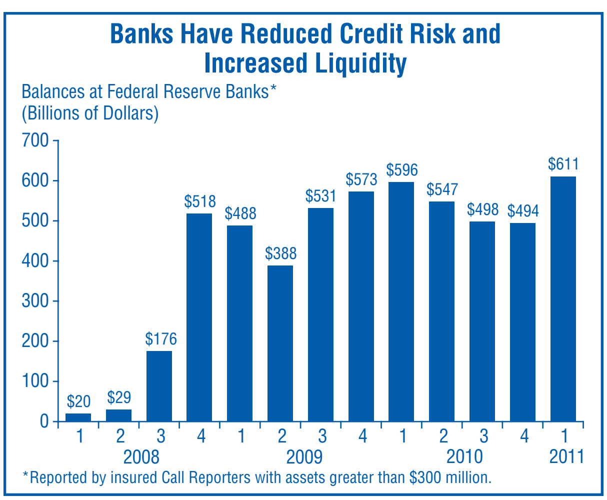

Chart 8

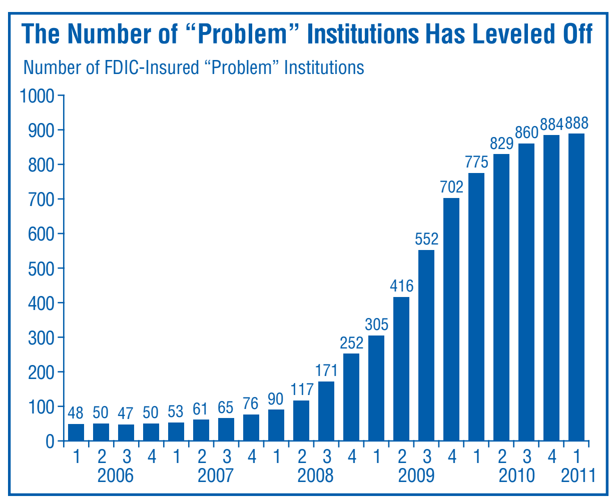

TABLE I-A. Selected Indicators, All FDIC-Insured Institutions*

	2011**	2010**	2010	2009	2008	2007	2006
Return on assets (%)	0.87	0.53	0.65	-0.07	0.03	0.81	1.28
Return on equity (%)	7.75	4.87	5.90	-0.71	0.35	7.75	12.30
Core capital (leverage) ratio (%)	9.14	8.54	8.89	8.60	7.47	7.97	8.22
Noncurrent assets plus other real estate owned to assets (%)	2.95	3.44	3.11	3.36	1.91	0.95	0.54
Net charge-offs to loans (%)	1.82	2.88	2.55	2.52	1.29	0.59	0.39
Asset growth rate (%)	0.59	-1.40	1.78	-5.45	6.19	9.88	9.03
Net interest margin (%)	3.66	3.84	3.76	3.49	3.16	3.29	3.31
Net operating income growth (%)	78.81	352.07	1653.91	-154.33	-90.71	-27.59	8.52
Number of institutions reporting	7,574	7,934	7,658	8,012	8,305	8,534	8,680
Commercial banks	6,453	6,773	6,530	6,840	7,087	7,284	7,401
Savings institutions	1,121	1,161	1,128	1,172	1,218	1,250	1,279
Percentage of unprofitable institutions (%)	15.36	19.31	21.81	30.8	24.89	12.09	7.94
Number of problem institutions	888	775	884	702	252	76	50
Assets of problem institutions (in billions)	$397	$431	$390	$403	$159	$22	$8
Number of failed institutions	26	41	157	140	25	3	0
Number of assisted institutions	0	0	0	8	5	0	0

* Excludes insured branches of foreign banks (IBAs).
** Through March 31, ratios annualized where appropriate. Asset growth rates are for 12 months ending March 31.

TABLE II-A. Aggregate Condition and Income Data, All FDIC-Insured Institutions

(dollar figures in millions)	1st Quarter 2011	4th Quarter 2010	1st Quarter 2010	%Change 10Q1-11Q1
Number of institutions reporting	7,574	7,658	7,934	-4.5
Total employees (full-time equivalent)	2,092,877	2,086,582	2,027,245	3.2
CONDITION DATA				
Total assets	$13,414,655	$13,319,971	$13,336,249	0.6
Loans secured by real estate	4,158,538	4,266,518	4,401,820	-5.5
1-4 family residential mortgages	1,833,798	1,897,610	1,887,145	-2.8
Nonfarm nonresidential	1,064,489	1,070,659	1,091,364	-2.5
Construction and development	295,511	321,438	418,028	-29.3
Home equity lines	623,994	636,903	659,712	-5.4
Commercial & industrial loans	1,204,518	1,186,467	1,176,799	2.4
Loans to individuals	1,275,196	1,317,602	1,366,177	-6.7
Credit cards	663,194	702,058	712,776	-7.0
Farm loans	55,025	59,329	55,740	-1.3
Other loans & leases	557,462	547,841	504,892	10.4
Less: Unearned income	1,995	2,441	2,711	-26.4
Total loans & leases	7,248,745	7,375,316	7,502,717	-3.4
Less: Reserve for losses	218,158	231,154	263,105	-17.1
Net loans and leases	7,030,587	7,144,163	7,239,612	-2.9
Securities	2,723,194	2,667,711	2,531,621	7.6
Other real estate owned	52,376	52,676	46,306	13.1
Goodwill and other intangibles	394,475	393,750	404,591	-2.5
All other assets	3,214,024	3,061,671	3,114,118	3.2
Total liabilities and capital	13,414,655	13,319,971	13,336,249	0.6
Deposits	9,601,757	9,422,958	9,198,799	4.4
Domestic office deposits	7,990,506	7,873,135	7,692,355	3.9
Foreign office deposits	1,611,252	1,549,823	1,506,444	7.0
Other borrowed funds	1,629,745	1,718,333	2,052,564	-20.6
Subordinated debt	139,860	146,833	150,540	-7.1
All other liabilities	514,006	519,548	475,259	8.2
Total equity capital (includes minority interests)	1,529,286	1,512,298	1,459,088	4.8
Bank equity capital	1,510,503	1,485,442	1,439,423	4.9
Loans and leases 30-89 days past due	110,513	118,390	144,461	-23.5
Noncurrent loans and leases	341,697	358,719	409,871	-16.6
Restructured loans and leases	110,107	87,487	64,426	70.9
Mortgage-backed securities	1,519,194	1,484,703	1,387,008	9.5
Earning assets	11,643,457	11,555,391	11,554,212	0.8
FHLB Advances	357,952	386,504	480,359	-25.5
Unused loan commitments	5,779,802	5,658,421	6,102,602	-5.3
Trust assets	19,980,826	19,341,650	18,115,247	10.3
Assets securitized and sold***	976,910	967,307	996,881	-2.0
Notional amount of derivatives***	246,083,864	232,210,712	218,807,591	12.5

INCOME DATA	Full Year 2010	Full Year 2009	%Change	1st Quarter 2011	1st Quarter 2010	%Change 10Q1-11Q1
Total interest income	$536,917	$541,170	-0.8	$129,438	$138,521	-6.6
Total interest expense	106,882	143,509	-25.5	23,238	29,091	-20.1
Net interest income	430,035	397,661	8.1	106,200	109,429	-3.0
Provision for loan and lease losses	157,579	249,598	-36.9	20,700	51,560	-59.9
Total noninterest income	236,715	260,635	-9.2	58,623	60,866	-3.7
Total noninterest expense	392,694	406,114	-3.3	102,228	95,339	7.2
Securities gains (losses)	9,116	-1,629	N/M	-124	1,592	N/M
Applicable income taxes	38,283	6,164	521.1	12,714	7,436	71.0
Extraordinary gains, net	-450	-3,787	88.1	106	58	83.1
Total net income (includes minority interests)	86,860	-8,994	N/M	29,163	17,611	65.6
Bank net income	86,206	-9,795	N/M	29,003	17,418	66.5
Net charge-offs	187,504	188,824	-0.7	33,305	53,252	-37.5
Cash dividends	53,895	47,189	14.2	15,101	4,374	245.2
Retained earnings	32,311	-56,984	N/M	13,902	13,044	6.6
Net operating income	80,280	-5,166	N/M	29,237	16,351	78.8

*** Call Report filers only.

N/M - Not Meaningful.

TABLE III-A. First Quarter 2011, All FDIC-Insured Institutions

		Asset Concentration Groups*								
FIRST QUARTER **(The way it is...)**	**All Insured Institutions**	**Credit Card Banks**	**International Banks**	**Agricultural Banks**	**Commercial Lenders**	**Mortgage Lenders**	**Consumer Lenders**	**Other Specialized <$1 Billion**	**All Other <$1 Billion**	**All Other >$1 Billion**
Number of institutions reporting	7,574	21	4	1,531	3,983	700	72	355	844	64
Commercial banks	6,453	17	4	1,527	3,553	168	55	327	750	52
Savings institutions	1,121	4	0	4	430	532	17	28	94	12
Total assets (in billions)	$13,414.7	$676.3	$3,164.6	$200.3	$4,087.1	$798.9	$118.4	$51.9	$137.1	$4,180.1
Commercial banks	12,157.3	651.1	3,164.6	199.8	3,619.6	233.4	49.7	46.4	111.7	4,081.0
Savings institutions	1,257.3	25.2	0.0	0.5	467.4	565.5	68.7	5.5	25.3	99.1
Total deposits (in billions)	9,601.8	290.6	2,111.7	167.5	3,155.9	569.5	96.5	41.1	114.7	3,054.3
Commercial banks	8,674.6	275.0	2,111.7	167.1	2,824.5	141.6	39.0	37.1	94.6	2,984.0
Savings institutions	927.2	15.6	0.0	0.4	331.4	427.9	57.5	4.0	20.1	70.3
Bank net income (in millions)	29,003	6,364	4,643	524	6,283	984	387	170	277	9,371
Commercial banks	27,147	5,869	4,643	523	5,494	848	249	113	256	9,153
Savings institutions	1,855	495	0	1	789	136	138	57	21	218
Performance Ratios (annualized, %)										
Yield on earning assets	4.47	12.20	3.25	4.87	4.70	4.21	5.52	3.65	4.74	3.78
Cost of funding earning assets	0.80	1.29	0.71	1.06	0.92	1.14	1.16	0.84	1.03	0.55
Net interest margin	3.66	10.92	2.53	3.80	3.78	3.06	4.35	2.81	3.70	3.23
Noninterest income to assets	1.76	2.78	1.98	0.60	1.22	0.79	1.57	5.45	0.87	2.17
Noninterest expense to assets	3.06	4.82	2.89	2.62	3.05	2.44	2.68	6.08	3.03	3.02
Loan and lease loss provision to assets	0.62	2.01	0.29	0.26	0.69	0.53	0.99	0.19	0.27	0.60
Net operating income to assets	0.88	3.62	0.72	1.04	0.59	0.46	1.33	1.30	0.79	0.87
Pretax return on assets	1.25	5.70	0.80	1.23	0.87	0.73	2.05	1.78	1.00	1.30
Return on assets	0.87	3.68	0.60	1.05	0.62	0.49	1.33	1.33	0.82	0.90
Return on equity	7.75	23.80	6.79	9.64	5.33	4.80	12.28	8.71	7.30	7.40
Net charge-offs to loans and leases	1.82	6.67	1.96	0.30	1.32	0.97	1.77	0.74	0.36	1.40
Loan and lease loss provision to net charge-offs	62.15	35.20	43.81	136.56	78.25	94.54	75.04	87.50	133.20	83.61
Efficiency ratio	60.75	36.55	69.27	63.51	65.69	66.39	46.16	75.34	70.69	60.08
% of unprofitable institutions	15.36	4.76	0.00	5.62	21.11	15.14	6.94	10.99	9.48	7.81
% of institutions with earnings gains	56.15	90.48	0.00	55.26	58.80	50.71	44.44	46.76	54.27	54.69
Condition Ratios (%)										
Earning assets to total assets	86.80	88.86	85.01	91.68	88.79	93.19	94.56	91.28	91.59	83.97
Loss allowance to:										
Loans and leases	3.01	7.57	3.68	1.63	2.43	1.49	2.39	1.86	1.56	2.68
Noncurrent loans and leases	63.85	374.40	66.07	83.77	57.85	33.71	159.99	81.44	68.82	43.76
Noncurrent assets plus other real estate owned to assets	2.95	1.72	2.02	1.64	3.58	2.92	1.22	0.93	1.76	3.43
Equity capital ratio	11.26	16.03	8.72	10.96	11.62	10.29	10.81	15.15	11.18	12.22
Core capital (leverage) ratio	9.14	13.39	7.13	9.94	9.87	9.49	10.50	14.01	10.81	8.96
Tier 1 risk-based capital ratio	13.04	15.27	11.90	14.44	12.98	19.94	14.36	31.37	18.35	12.10
Total risk-based capital ratio	15.54	17.57	15.02	15.61	14.97	21.07	15.53	32.42	19.49	15.09
Net loans and leases to deposits	73.22	182.87	48.02	71.28	84.45	78.75	87.12	34.92	64.35	68.09
Net loans to total assets	52.41	78.57	32.05	59.60	65.21	56.13	71.03	27.67	53.85	49.75
Domestic deposits to total assets	59.57	39.51	33.03	83.62	76.07	71.19	81.35	78.14	83.68	61.75
Structural Changes										
New charters	1	0	0	0	1	0	0	0	0	0
Institutions absorbed by mergers	56	0	0	9	38	1	2	1	3	2
Failed institutions	26	0	0	2	24	0	0	0	0	0
PRIOR FIRST QUARTERS **(The way it was...)**										
Number of institutions 2010	7,934	21	4	1,553	4,358	745	75	303	813	62
2008	8,494	26	6	1,550	4,752	809	102	362	835	52
2006	8,790	30	4	1,647	4,629	864	120	436	1,001	59
Total assets (in billions) 2010	$13,336.3	$725.0	$3,157.3	$181.1	$4,498.0	$776.9	$95.0	$40.7	$126.6	$3,735.7
2008	13,369.3	448.5	3,085.6	158.0	5,271.5	1,364.4	66.3	38.2	112.5	2,824.5
2006	11,209.8	370.2	1,972.3	140.3	3,844.9	1,745.6	98.6	50.0	128.6	2,859.2
Return on assets (%) 2010	0.53	0.70	0.75	0.95	0.16	0.78	1.41	1.20	0.86	0.64
2008	0.58	4.59	0.35	1.19	0.78	-0.21	1.30	2.20	1.01	0.13
2006	1.34	4.57	1.16	1.26	1.35	1.05	2.19	-1.31	1.06	1.23
Net charge-offs to loans & leases (%) 2010	2.88	14.26	2.75	0.45	1.89	1.20	2.69	0.54	0.44	2.29
2008	0.99	4.97	1.13	0.17	0.71	1.14	1.78	0.21	0.17	0.64
2006	0.32	2.95	0.53	0.09	0.17	0.11	0.95	0.16	0.12	0.18
Noncurrent assets plus OREO to assets (%) 2010	3.44	2.77	2.64	1.66	4.01	3.14	1.29	0.69	1.54	3.87
2008	1.15	1.62	0.70	0.99	1.43	1.97	0.73	0.28	0.74	0.70
2006	0.48	1.17	0.42	0.67	0.49	0.55	0.51	0.23	0.53	0.37
Equity capital ratio (%) 2010	10.79	13.47	8.77	11.23	10.76	9.76	10.52	16.99	11.20	12.15
2008	10.18	22.85	7.57	11.22	11.36	8.09	9.01	20.28	11.32	9.61
2006	10.38	27.22	7.95	10.81	10.28	10.81	9.63	19.39	11.04	9.55

* See Table V-A (page 10) for explanations.

TABLE III-A. First Quarter 2011, All FDIC-Insured Institutions

		Asset Size Distribution				Geographic Regions*					
FIRST QUARTER (The way it is...)	All Insured Institutions	Less than $100 Million	$100 Million to $1 Billion	$1 Billion to $10 Billion	Greater than $10 Billion	New York	Atlanta	Chicago	Kansas City	Dallas	San Francisco
Number of institutions reporting	7,574	2,574	4,330	563	107	943	1,009	1,581	1,811	1,580	650
Commercial banks	6,453	2,277	3,659	431	86	489	892	1,302	1,713	1,465	592
Savings institutions	1,121	297	671	132	21	454	117	279	98	115	58
Total assets (in billions)	$13,414.7	$147.2	$1,284.3	$1,429.1	$10,554.1	$2,709.2	$2,912.9	$3,048.2	$1,680.3	$788.5	$2,275.6
Commercial banks	12,157.3	130.4	1,050.6	1,094.0	9,882.4	2,039.4	2,791.1	2,924.4	1,625.7	695.2	2,081.6
Savings institutions	1,257.3	16.8	233.8	335.1	671.7	669.8	121.9	123.8	54.6	93.3	193.9
Total deposits (in billions)	9,601.8	124.9	1,067.7	1,103.5	7,305.7	1,853.0	2,153.9	2,114.4	1,251.1	638.6	1,590.8
Commercial banks	8,674.6	111.5	881.7	846.1	6,835.2	1,370.8	2,062.5	2,020.5	1,208.0	562.2	1,450.6
Savings institutions	927.2	13.4	186.0	257.3	470.5	482.2	91.4	93.9	43.1	76.4	140.2
Bank net income (in millions)	29,003	212	1,775	2,617	24,399	6,989	4,497	5,108	5,073	1,823	5,512
Commercial banks	27,147	205	1,531	2,144	23,267	6,671	4,374	5,059	4,986	1,606	4,451
Savings institutions	1,855	7	244	472	1,132	319	123	48	87	217	1,061
Performance Ratios (annualized, %)											
Yield on earning assets	4.47	4.89	4.88	4.82	4.35	5.00	4.26	3.60	5.36	4.68	4.48
Cost of funding earning assets	0.80	1.06	1.13	1.02	0.72	0.94	0.71	0.72	0.68	0.82	0.93
Net interest margin	3.66	3.83	3.75	3.80	3.63	4.05	3.55	2.88	4.68	3.86	3.55
Noninterest income to assets	1.76	1.10	0.94	1.20	1.94	1.68	1.70	1.92	2.03	1.29	1.66
Noninterest expense to assets	3.06	3.62	3.18	2.92	3.06	3.12	3.06	3.02	3.47	3.14	2.72
Loan and lease loss provision to assets	0.62	0.29	0.50	0.68	0.63	0.56	0.86	0.47	0.84	0.42	0.48
Net operating income to assets	0.88	0.56	0.53	0.71	0.94	1.01	0.56	0.68	1.23	0.92	1.11
Pretax return on assets	1.25	0.69	0.73	1.06	1.35	1.58	0.85	0.94	1.77	1.23	1.39
Return on assets	0.87	0.58	0.56	0.73	0.93	1.04	0.62	0.68	1.20	0.93	0.97
Return on equity	7.75	4.98	5.40	6.46	8.22	8.18	5.25	7.91	10.51	8.68	7.94
Net charge-offs to loans and leases	1.82	0.41	0.75	1.32	2.09	2.29	1.81	1.41	2.01	0.82	1.98
Loan and lease loss provision to net charge-offs	62.15	121.63	102.22	81.67	57.77	44.11	84.61	71.68	61.99	80.84	48.35
Efficiency ratio	60.75	78.69	72.27	62.01	59.15	58.05	64.34	67.39	54.33	65.17	56.20
% of unprofitable institutions	15.36	17.87	14.32	12.97	9.35	13.36	30.62	14.10	10.93	10.06	22.77
% of institutions with earnings gains	56.15	53.03	56.17	67.50	71.03	56.73	51.64	56.29	56.16	54.87	65.08
Condition Ratios (%)											
Earning assets to total assets	86.80	91.16	91.51	90.54	85.66	87.49	84.12	87.03	87.16	90.13	87.67
Loss allowance to:											
Loans and leases	3.01	1.77	1.92	2.24	3.32	3.03	3.03	3.09	3.39	2.17	2.85
Noncurrent loans and leases	63.85	67.37	54.20	52.20	66.50	88.58	49.58	59.45	64.53	60.48	75.84
Noncurrent assets plus other real estate owned to assets	2.95	2.39	3.37	3.47	2.84	2.05	3.97	2.74	4.05	3.00	2.19
Equity capital ratio	11.26	11.62	10.32	11.47	11.34	12.74	11.86	8.53	11.59	10.75	12.33
Core capital (leverage) ratio	9.14	11.24	9.85	10.12	8.89	10.21	8.59	7.22	9.44	9.76	10.69
Tier 1 risk-based capital ratio	13.04	17.91	14.54	14.97	12.55	14.99	11.74	10.85	11.79	14.09	16.14
Total risk-based capital ratio	15.54	19.04	15.76	16.27	15.37	17.05	14.78	14.03	14.22	15.80	17.82
Net loans and leases to deposits	73.22	67.51	75.72	79.56	72.00	77.48	73.85	63.66	85.83	75.41	69.33
Net loans to total assets	52.41	57.31	62.95	61.43	49.84	52.99	54.61	44.16	63.91	61.08	48.47
Domestic deposits to total assets	59.57	84.88	83.06	76.72	54.03	60.09	65.29	53.63	68.89	80.52	45.42
Structural Changes											
New charters	1	0	1	0	0	0	1	0	0	0	0
Institutions absorbed by mergers	56	19	31	6	0	4	2	15	16	16	3
Failed institutions	26	5	19	2	0	0	10	7	0	5	4
PRIOR FIRST QUARTERS (The way it was...)											
Number of institutions 2010	7,934	2,779	4,475	575	105	977	1,103	1,637	1,868	1,654	695
2008	8,494	3,347	4,481	549	117	1,036	1,223	1,752	1,968	1,730	785
2006	8,790	3,826	4,334	511	119	1,106	1,225	1,863	2,055	1,783	758
Total assets (in billions) 2010	$13,336.3	$155.4	$1,339.9	$1,478.1	$10,362.8	$2,671.8	$2,989.0	$2,978.4	$1,664.4	$786.4	$2,246.3
2008	13,369.3	178.0	1,334.3	1,438.1	10,419.0	2,478.8	3,423.5	2,963.1	1,000.0	748.7	2,755.2
2006	11,209.8	199.0	1,259.4	1,395.6	8,355.8	2,866.2	2,759.4	2,604.0	819.6	620.6	1,539.9
Return on assets (%) 2010	0.53	0.46	0.38	0.19	0.60	0.56	0.27	0.48	0.65	0.72	0.73
2008	0.58	0.73	0.79	0.76	0.53	1.04	0.32	0.75	1.39	0.94	-0.05
2006	1.34	0.95	1.11	1.30	1.39	1.29	1.33	1.10	1.59	1.31	1.71
Net charge-offs to loans & leases (%) 2010	2.88	0.65	0.88	1.77	3.46	4.10	2.73	2.35	3.27	1.23	2.59
2008	0.99	0.20	0.30	0.70	1.16	1.15	0.76	0.84	1.13	0.45	1.38
2006	0.32	0.12	0.12	0.18	0.39	0.47	0.16	0.23	0.35	0.16	0.52
Noncurrent assets plus OREO to assets (%) 2010	3.44	2.31	3.38	3.69	3.43	2.46	4.18	3.23	4.79	3.18	3.02
2008	1.15	1.09	1.33	1.44	1.09	0.86	1.08	1.09	1.52	1.22	1.42
2006	0.48	0.69	0.52	0.44	0.48	0.40	0.31	0.53	0.84	0.68	0.60
Equity capital ratio (%) 2010	10.79	11.96	10.04	10.87	10.86	11.92	11.29	8.55	11.51	10.40	11.37
2008	10.18	13.78	10.52	11.13	9.94	12.09	10.20	9.06	9.73	9.88	9.88
2006	10.38	12.29	10.28	10.78	10.28	11.15	9.77	9.02	10.48	10.19	12.36

* See Table V-A (page 11) for explanations.

TABLE IV-A. Full Year 2010, All FDIC-Insured Institutions

FULL YEAR (The way it is...)	All Insured Institutions	Asset Concentration Groups* Credit Card Banks	International Banks	Agricultural Banks	Commercial Lenders	Mortgage Lenders	Consumer Lenders	Other Specialized <$1 Billion	All Other <$1 Billion	All Other >$1 Billion
Number of institutions reporting	7,658	22	4	1,559	4,085	718	73	314	815	68
Commercial banks	6,530	18	4	1,555	3,640	182	59	286	732	54
Savings institutions	1,128	4	0	4	445	536	14	28	83	14
Total assets (in billions)	$13,320.0	$705.4	$3,038.1	$199.8	$4,097.6	$789.0	$114.4	$42.9	$132.4	$4,200.3
Commercial banks	12,066.4	678.1	3,038.1	199.3	3,631.3	235.3	49.7	37.3	109.4	4,087.8
Savings institutions	1,253.6	27.4	0.0	0.5	466.3	553.7	64.7	5.6	23.0	112.5
Total deposits (in billions)	9,423.0	297.2	2,009.5	165.9	3,147.7	544.0	91.1	33.5	110.4	3,023.7
Commercial banks	8,514.4	281.4	2,009.5	165.5	2,822.3	132.2	38.2	29.4	91.9	2,943.9
Savings institutions	908.6	15.8	0.0	0.4	325.4	411.8	52.9	4.1	18.5	79.8
Bank net income (in millions)	86,206	12,056	21,828	1,901	8,837	5,317	1,433	624	911	33,300
Commercial banks	77,948	10,914	21,828	1,898	6,451	2,701	922	365	975	31,893
Savings institutions	8,258	1,141	0	3	2,386	2,616	511	260	-64	1,406
Performance Ratios (annualized, %)										
Yield on earning assets	4.70	13.57	3.42	5.22	4.89	4.36	5.80	3.79	4.98	3.96
Cost of funding earning assets	0.94	1.48	0.71	1.30	1.13	1.34	1.37	0.98	1.24	0.67
Net interest margin	3.76	12.09	2.71	3.93	3.76	3.02	4.43	2.81	3.74	3.28
Noninterest income to assets	1.79	2.99	2.00	0.65	1.27	0.76	1.88	6.68	1.03	2.18
Noninterest expense to assets	2.97	4.63	2.82	2.68	3.05	1.78	2.78	7.26	3.27	2.92
Loan and lease loss provision to assets	1.19	6.32	0.62	0.46	1.25	0.75	1.29	0.22	0.38	0.89
Net operating income to assets	0.61	1.77	0.64	0.96	0.16	0.67	1.28	1.29	0.67	0.79
Pretax return on assets	0.94	2.74	0.95	1.12	0.37	1.08	2.01	1.95	0.83	1.14
Return on assets	0.65	1.82	0.72	0.98	0.22	0.68	1.28	1.48	0.70	0.80
Return on equity	5.90	11.83	8.08	8.84	1.92	6.95	11.96	9.15	6.23	6.70
Net charge-offs to loans and leases	2.55	10.83	2.29	0.59	1.90	1.14	2.36	0.64	0.56	1.87
Loan and lease loss provision to net charge-offs	84.04	69.06	75.96	122.88	96.27	110.05	72.49	124.09	120.39	91.47
Efficiency ratio	57.22	31.86	65.15	62.64	64.44	49.15	44.96	77.38	70.17	57.24
% of unprofitable institutions	21.81	9.09	0.00	7.06	31.63	16.43	5.48	14.33	11.53	7.35
% of institutions with earnings gains	66.51	100.00	75.00	65.75	66.88	72.42	83.56	50.64	63.80	75.00
Condition Ratios (%)										
Earning assets to total assets	86.75	88.75	84.36	91.62	88.77	93.53	96.20	90.96	91.74	84.22
Loss allowance to:										
Loans and leases	3.13	8.19	3.96	1.57	2.47	1.45	2.50	1.85	1.51	2.70
Noncurrent loans and leases	64.44	372.36	62.79	84.98	57.35	34.16	173.56	87.85	69.00	43.74
Noncurrent assets plus other real estate owned to assets	3.11	1.90	2.38	1.62	3.71	2.89	1.22	0.81	1.69	3.48
Equity capital ratio	11.15	14.96	8.93	10.86	11.42	10.06	11.00	16.32	11.02	12.04
Core capital (leverage) ratio	8.89	12.76	6.96	9.92	9.60	9.38	10.50	14.65	10.56	8.69
Tier 1 risk-based capital ratio	12.71	14.24	11.87	13.97	12.59	19.19	14.12	34.59	17.73	11.81
Total risk-based capital ratio	15.28	16.91	15.03	15.13	14.59	20.25	15.29	35.63	18.88	14.95
Net loans and leases to deposits	75.82	188.43	50.17	74.85	86.24	84.64	92.76	33.80	65.77	69.73
Net loans to total assets	53.63	79.39	33.18	62.15	66.25	58.35	73.88	26.36	54.84	50.20
Domestic deposits to total assets	59.11	37.91	33.27	83.03	75.40	68.85	79.53	76.67	83.39	60.99
Structural Changes										
New charters	11	0	0	0	6	1	0	2	0	2
Institutions absorbed by mergers	197	0	0	35	119	28	0	0	6	9
Failed institutions	157	0	0	3	143	6	1	1	2	1
PRIOR FULL YEARS (The way it was...)										
Number of institutions 2009	8,012	23	4	1,568	4,453	766	83	289	770	56
2007	8,534	27	5	1,592	4,773	784	109	373	815	56
2005	8,833	33	4	1,685	4,617	886	125	425	995	63
Total assets (in billions) 2009	$13,087.0	$501.6	$3,107.1	$182.0	$4,546.9	$810.1	$96.5	$38.0	$116.1	$3,688.7
2007	13,033.9	479.2	2,784.3	157.5	4,619.0	1,328.1	94.9	37.8	110.4	3,422.7
2005	10,879.3	359.1	1,851.2	142.3	4,257.3	1,647.2	117.3	47.7	128.7	2,328.5
Return on assets (%) 2009	-0.07	-4.51	0.08	0.81	-0.42	0.65	0.33	0.74	0.80	0.53
2007	0.81	3.35	0.58	1.20	0.83	0.03	1.26	2.56	1.03	0.88
2005	1.28	2.90	0.86	1.27	1.36	1.07	1.55	2.18	1.09	1.34
Net charge-offs to loans & leases (%) 2009	2.52	9.77	3.07	0.65	2.02	1.24	2.74	0.78	0.54	2.19
2007	0.59	3.95	0.77	0.22	0.35	0.40	0.87	0.29	0.22	0.39
2005	0.49	4.64	0.87	0.18	0.23	0.12	1.44	0.26	0.23	0.24
Noncurrent assets plus OREO to assets (%) 2009	3.36	2.40	2.75	1.55	3.87	3.17	1.45	0.69	1.34	3.66
2007	0.95	1.54	0.68	0.83	1.10	1.52	1.64	0.23	0.65	0.68
2005	0.50	1.32	0.46	0.61	0.48	0.56	0.51	0.24	0.54	0.39
Equity capital ratio (%) 2009	10.88	21.49	8.75	10.95	10.48	9.48	11.15	17.74	11.27	11.95
2007	10.34	21.26	8.01	11.17	11.00	8.38	12.62	19.98	11.46	10.32
2005	10.28	21.51	8.30	10.55	10.83	9.40	10.11	19.47	10.83	9.52

* See Table V-A (page 10) for explanations.

TABLE IV-A. Full Year 2010, All FDIC-Insured Institutions

		Asset Size Distribution				Geographic Regions*					
FULL YEAR (The way it is...)	All Insured Institutions	Less than $100 Million	$100 Million to $1 Billion	$1 Billion to $10 Billion	Greater than $10 Billion	New York	Atlanta	Chicago	Kansas City	Dallas	San Francisco
Number of institutions reporting	7,658	2,625	4,367	559	107	949	1,022	1,602	1,825	1,601	659
Commercial banks	6,530	2,328	3,693	423	86	492	905	1,321	1,728	1,484	600
Savings institutions	1,128	297	674	136	21	457	117	281	97	117	59
Total assets (in billions)	$13,320.0	$148.6	$1,292.0	$1,430.2	$10,449.1	$2,694.9	$2,930.1	$2,950.2	$1,686.6	$789.3	$2,268.8
Commercial banks	12,066.4	132.2	1,059.0	1,089.0	9,786.2	2,027.0	2,806.8	2,825.0	1,635.8	694.8	2,076.9
Savings institutions	1,253.6	16.5	233.0	341.3	662.9	667.9	123.3	125.2	50.8	94.5	191.8
Total deposits (in billions)	9,423.0	125.4	1,069.5	1,101.5	7,126.6	1,809.1	2,128.2	2,033.9	1,245.4	637.6	1,568.7
Commercial banks	8,514.4	112.3	884.8	841.0	6,676.3	1,338.0	2,036.0	1,939.9	1,206.2	561.4	1,432.8
Savings institutions	908.6	13.1	184.7	260.5	450.3	471.1	92.2	94.0	39.2	76.2	135.9
Bank net income (in millions)	86,206	421	3,585	3,057	79,144	20,201	10,469	17,671	14,141	5,414	18,310
Commercial banks	77,948	418	2,943	1,711	72,877	16,108	10,453	17,865	13,922	4,598	15,003
Savings institutions	8,258	3	642	1,346	6,267	4,094	16	-194	220	816	3,307
Performance Ratios (annualized, %)											
Yield on earning assets	4.70	5.18	5.17	4.90	4.60	5.40	4.39	3.80	5.77	4.90	4.55
Cost of funding earning assets	0.94	1.30	1.38	1.24	0.83	1.12	0.88	0.79	0.82	1.00	1.03
Net interest margin	3.76	3.88	3.78	3.65	3.77	4.28	3.51	3.01	4.95	3.90	3.52
Noninterest income to assets	1.79	1.28	0.97	1.27	1.97	1.67	1.65	2.01	2.27	1.39	1.61
Noninterest expense to assets	2.97	3.91	3.22	2.95	2.93	2.86	2.91	3.03	3.51	3.18	2.62
Loan and lease loss provision to assets	1.19	0.56	0.86	1.18	1.24	1.43	1.24	0.88	1.77	0.86	0.94
Net operating income to assets	0.61	0.25	0.22	0.19	0.72	0.74	0.28	0.51	0.87	0.65	0.78
Pretax return on assets	0.94	0.39	0.42	0.48	1.08	1.13	0.55	0.82	1.27	0.91	1.16
Return on assets	0.65	0.29	0.28	0.21	0.76	0.76	0.36	0.60	0.85	0.69	0.81
Return on equity	5.90	2.39	2.74	1.94	6.85	6.15	3.11	6.83	7.38	6.55	6.98
Net charge-offs to loans and leases	2.55	0.79	1.11	1.80	2.93	3.57	2.42	2.02	2.88	1.27	2.29
Loan and lease loss provision to net charge-offs	84.04	115.56	115.74	101.85	80.20	71.63	90.64	90.41	90.09	103.56	79.61
Efficiency ratio	57.22	80.51	71.60	62.06	54.81	51.14	61.17	64.66	50.73	64.16	55.03
% of unprofitable institutions	21.81	22.74	21.39	22.54	12.15	15.81	43.64	20.35	14.79	14.74	36.72
% of institutions with earnings gains	66.51	62.32	68.31	69.95	77.57	75.45	62.23	67.23	65.97	61.77	71.47
Condition Ratios (%)											
Earning assets to total assets	86.75	91.15	91.61	90.65	85.56	87.34	84.50	86.50	87.47	90.36	87.50
Loss allowance to:											
Loans and leases	3.13	1.71	1.90	2.27	3.49	3.30	3.07	3.16	3.47	2.19	3.06
Noncurrent loans and leases	64.44	65.51	53.38	51.79	67.36	93.90	50.74	57.74	64.66	59.20	72.97
Noncurrent assets plus other real estate owned to assets	3.11	2.38	3.43	3.56	3.02	2.14	3.93	2.98	4.24	3.14	2.51
Equity capital ratio	11.15	11.71	10.17	11.21	11.26	12.58	11.61	8.71	11.33	10.56	12.11
Core capital (leverage) ratio	8.89	11.28	9.65	9.83	8.63	9.88	8.28	7.16	9.13	9.49	10.35
Tier 1 risk-based capital ratio	12.71	17.72	14.10	14.45	12.23	14.41	11.50	10.70	11.29	13.62	15.88
Total risk-based capital ratio	15.28	18.84	15.32	15.78	15.16	16.69	14.66	13.90	13.76	15.33	17.55
Net loans and leases to deposits	75.82	70.08	78.01	80.60	74.85	80.42	75.40	66.83	89.14	77.65	71.39
Net loans to total assets	53.63	59.11	64.58	62.07	51.05	53.99	54.77	46.07	65.82	62.73	49.36
Domestic deposits to total assets	59.11	84.36	82.70	76.46	53.46	59.40	63.91	54.43	67.96	80.30	44.69
Structural Changes											
New charters	11	2	2	6	1	2	3	1	2	2	1
Institutions absorbed by mergers	197	69	108	18	2	22	44	17	43	52	19
Failed institutions	157	36	102	18	1	14	56	25	18	7	37
PRIOR FULL YEARS (The way it was...)											
Number of institutions 2009	8,012	2,848	4,492	565	107	986	1,121	1,647	1,879	1,660	719
2007	8,534	3,440	4,424	551	119	1,043	1,221	1,763	1,986	1,742	779
2005	8,833	3,864	4,339	512	118	1,110	1,227	1,874	2,070	1,791	761
Total assets (in billions) 2009	$13,087.0	$158.9	$1,354.4	$1,461.6	$10,112.1	$2,567.3	$3,427.3	$2,934.4	$1,145.6	$784.9	$2,227.5
2007	13,033.9	181.9	1,308.8	1,422.0	10,121.2	2,441.0	3,329.6	2,842.5	976.3	738.3	2,706.3
2005	10,879.3	200.8	1,247.6	1,394.3	8,036.7	2,769.2	2,683.9	2,505.8	803.7	607.7	1,508.9
Return on assets (%) 2009	-0.07	-0.05	-0.10	-0.36	-0.03	-0.83	0.01	0.18	0.76	0.35	-0.25
2007	0.81	0.74	0.97	0.96	0.77	0.77	0.81	0.86	1.46	1.00	0.52
2005	1.28	0.99	1.24	1.28	1.29	1.21	1.36	0.99	1.62	1.19	1.60
Net charge-offs to loans & leases (%) 2009	2.52	0.88	1.25	1.90	2.87	2.76	2.29	2.36	2.40	1.34	3.44
2007	0.59	0.24	0.25	0.42	0.68	0.90	0.33	0.47	0.78	0.30	0.77
2005	0.49	0.20	0.19	0.24	0.60	0.80	0.23	0.33	0.56	0.24	0.70
Noncurrent assets plus OREO to assets (%) 2009	3.36	2.24	3.29	3.58	3.36	2.33	4.16	3.20	4.28	3.04	3.19
2007	0.95	0.96	1.07	1.09	0.92	0.81	0.81	0.94	1.37	1.00	1.12
2005	0.50	0.69	0.52	0.44	0.50	0.44	0.30	0.54	0.86	0.73	0.59
Equity capital ratio (%) 2009	10.88	11.96	9.86	10.73	11.02	12.53	11.66	8.59	10.70	10.30	11.11
2007	10.34	13.73	10.49	11.34	10.12	12.06	10.30	9.23	9.74	10.22	10.24
2005	10.28	12.16	10.20	10.66	10.18	10.53	9.80	9.23	10.45	10.17	12.40

* See Table V-A (page 11) for explanations.

TABLE V-A. Loan Performance, All FDIC-Insured Institutions

March 31, 2011	All Insured Institutions	Asset Concentration Groups* Credit Card Banks	International Banks	Agricultural Banks	Commercial Lenders	Mortgage Lenders	Consumer Lenders	Other Specialized <$1 Billion	All Other <$1 Billion	All Other >$1 Billion
Percent of Loans 30-89 Days Past Due										
All loans secured by real estate	1.88	1.51	2.46	1.29	1.51	1.57	1.11	1.55	1.79	2.39
Construction and development	2.23	0.00	2.62	2.11	2.23	2.25	2.37	1.20	2.22	2.19
Nonfarm nonresidential	1.14	0.00	0.78	1.13	1.18	1.26	0.51	1.33	1.43	1.03
Multifamily residential real estate	1.02	0.00	0.45	0.75	1.12	1.06	0.05	0.31	0.88	1.34
Home equity loans	1.12	1.29	1.63	0.56	0.86	0.69	0.98	0.80	0.96	1.17
Other 1-4 family residential	2.67	1.94	3.64	1.72	2.02	1.69	1.33	1.98	2.07	3.48
Commercial and industrial loans	0.65	2.09	0.47	1.33	0.75	0.87	0.84	1.24	1.43	0.47
Loans to individuals	1.72	1.79	2.01	1.57	1.48	0.87	1.42	1.88	1.83	1.68
Credit card loans	1.77	1.75	2.49	1.05	1.12	1.50	0.89	1.86	0.97	1.75
Other loans to individuals	1.66	2.74	1.75	1.58	1.53	0.82	1.64	1.89	1.85	1.66
All other loans and leases (including farm)	0.40	0.01	0.28	0.83	0.52	0.61	0.88	0.46	0.65	0.42
Total loans and leases	1.52	1.75	1.59	1.21	1.31	1.52	1.31	1.49	1.69	1.73
Percent of Loans Noncurrent**										
All real estate loans	7.01	5.94	9.85	2.48	5.36	4.64	1.50	2.77	2.58	9.83
Construction and development	15.99	0.00	13.97	10.15	16.13	12.19	3.98	9.28	7.96	17.07
Nonfarm nonresidential	4.29	0.00	5.73	3.16	4.05	3.97	2.71	2.65	2.69	5.21
Multifamily residential real estate	3.62	0.00	2.87	4.10	3.68	2.80	3.96	0.90	2.85	4.51
Home equity loans	1.79	4.69	2.40	1.08	1.39	1.11	0.97	0.73	0.83	1.96
Other 1-4 family residential	9.60	7.77	16.18	1.69	5.12	4.96	1.52	2.10	2.10	14.26
Commercial and industrial loans	1.90	2.19	2.35	2.11	2.03	2.24	0.61	1.62	2.12	1.46
Loans to individuals	1.65	2.08	1.89	0.69	1.23	0.49	1.54	0.79	0.81	1.14
Credit card loans	2.05	2.03	2.22	0.74	1.95	1.44	1.02	1.21	0.70	2.35
Other loans to individuals	1.21	3.11	1.72	0.69	1.13	0.41	1.75	0.75	0.81	0.85
All other loans and leases (including farm)	1.00	0.02	1.38	0.67	1.11	0.33	0.44	0.92	0.70	0.71
Total loans and leases	4.71	2.02	5.57	1.95	4.20	4.42	1.48	2.29	2.26	6.13
Percent of Loans Charged-off (net, YTD)										
All real estate loans	1.45	6.09	2.12	0.31	1.40	0.93	1.37	0.45	0.29	1.58
Construction and development	3.65	0.00	0.98	1.33	4.26	3.16	0.87	1.35	1.09	2.57
Nonfarm nonresidential	0.87	0.00	1.63	0.40	0.96	0.42	0.80	0.32	0.25	0.60
Multifamily residential real estate	0.79	0.00	1.33	0.65	0.82	0.35	-6.31	0.06	0.40	0.35
Home equity loans	2.21	2.62	2.65	1.02	1.46	1.47	2.38	0.46	0.36	2.71
Other 1-4 family residential	1.32	9.13	2.46	0.28	1.09	0.89	0.84	0.44	0.23	1.41
Commercial and industrial loans	1.14	8.17	1.40	0.61	1.12	1.91	4.25	1.52	0.71	0.48
Loans to individuals	4.30	6.81	3.77	0.45	1.60	1.50	1.73	0.60	0.57	2.68
Credit card loans	6.69	6.75	5.52	1.41	5.43	3.16	4.05	3.44	1.21	8.68
Other loans to individuals	1.34	8.14	2.37	0.34	0.82	1.23	0.59	0.27	0.45	0.95
All other loans and leases (including farm)	0.44	0.01	0.69	0.00	0.46	0.30	4.54	2.87	0.40	0.26
Total loans and leases	1.82	6.67	1.96	0.30	1.31	0.97	1.76	0.74	0.36	1.40
Loans Outstanding (in billions)										
All real estate loans	$4,158.5	$0.1	$488.4	$73.2	$1,859.1	$425.7	$23.0	$10.3	$56.3	$1,222.6
Construction and development	295.5	0.0	6.9	4.1	198.9	7.8	0.6	0.8	3.4	73.0
Nonfarm nonresidential	1,064.5	0.0	28.6	21.4	744.4	30.9	2.1	3.5	14.4	219.2
Multifamily residential real estate	214.4	0.0	37.6	1.7	128.8	9.7	0.4	0.3	1.3	34.5
Home equity loans	624.0	0.0	113.2	1.5	199.7	35.7	10.0	0.4	2.3	261.0
Other 1-4 family residential	1,833.8	0.0	249.6	19.0	554.1	340.5	9.8	4.8	31.0	625.1
Commercial and industrial loans	1,204.5	29.1	200.9	15.8	538.4	12.2	4.1	1.9	7.1	395.0
Loans to individuals	1,275.2	527.6	159.3	5.9	201.0	14.7	59.4	1.7	6.9	298.7
Credit card loans	663.2	505.1	55.6	0.1	25.5	1.1	17.4	0.1	0.1	58.0
Other loans to individuals	612.0	22.5	103.7	5.8	175.5	13.6	42.0	1.6	6.7	240.7
All other loans and leases (including farm)	612.5	18.1	204.7	26.5	133.8	2.7	0.3	0.8	4.7	220.9
Total loans and leases (plus unearned income)	7,250.7	574.9	1,053.3	121.4	2,732.3	455.3	86.7	14.6	75.0	2,137.2
Memo: Other Real Estate Owned (in millions)										
All other real estate owned	52,376.0	-5.0	4,664.1	881.5	31,219.2	3,141.3	102.7	140.8	697.2	11,534.2
Construction and development	17,957.5	0.0	4.0	327.4	14,833.7	450.7	22.0	54.5	195.4	2,070.0
Nonfarm nonresidential	10,719.4	0.0	162.0	290.4	8,106.8	239.4	19.1	41.7	193.2	1,666.8
Multifamily residential real estate	2,476.7	0.0	746.0	33.4	1,108.1	51.4	20.6	3.9	32.4	480.9
1-4 family residential	13,279.5	0.2	1,201.1	171.9	6,191.5	1,741.5	39.5	38.0	227.9	3,667.9
Farmland	423.2	0.0	0.0	57.9	328.5	3.8	1.5	2.7	16.1	12.6
GNMA properties	7,316.1	0.0	2,359.0	0.6	632.0	656.5	0.0	0.0	32.1	3,636.0

*** Asset Concentration Group Definitions (Groups are hierarchical and mutually exclusive):**
Credit-card Lenders - Institutions whose credit-card loans plus securitized receivables exceed 50 percent of total assets plus securitized receivables.
International Banks - Banks with assets greater than $10 billion and more than 25 percent of total assets in foreign offices.
Agricultural Banks - Banks whose agricultural production loans plus real estate loans secured by farmland exceed 25 percent of the total loans and leases.
Commercial Lenders - Institutions whose commercial and industrial loans, plus real estate construction and development loans, plus loans secured by commercial real estate properties exceed 25 percent of total assets.
Mortgage Lenders - Institutions whose residential mortgage loans, plus mortgage-backed securities, exceed 50 percent of total assets.
Consumer Lenders - Institutions whose residential mortgage loans, plus credit-card loans, plus other loans to individuals, exceed 50 percent of total assets.
Other Specialized < $1 Billion - Institutions with assets less than $1 billion, whose loans and leases are less than 40 percent of total assets.
All Other < $1 billion - Institutions with assets less than $1 billion that do not meet any of the definitions above, they have significant lending activity with no identified asset concentrations.
All Other > $1 billion - Institutions with assets greater than $1 billion that do not meet any of the definitions above, they have significant lending activity with no identified asset concentrations.
** Noncurrent loan rates represent the percentage of loans in each category that are past due 90 days or more or that are in nonaccrual status.

TABLE V-A. Loan Performance, All FDIC-Insured Institutions

March 31, 2011	All Insured Institutions	Asset Size Distribution: Less than $100 Million	$100 Million to $1 Billion	$1 Billion to $10 Billion	Greater than $10 Billion	Geographic Regions*: New York	Atlanta	Chicago	Kansas City	Dallas	San Francisco
Percent of Loans 30-89 Days Past Due											
All loans secured by real estate	1.88	1.87	1.62	1.32	2.08	1.52	2.09	1.81	2.37	1.61	1.78
Construction and development	2.23	2.31	2.48	2.12	2.17	2.81	1.79	2.54	2.54	1.69	2.62
Nonfarm nonresidential	1.14	1.77	1.43	1.08	1.01	1.29	1.21	1.20	1.01	1.05	0.93
Multifamily residential real estate	1.02	1.22	1.21	1.14	0.94	0.97	1.40	0.84	1.27	1.36	0.89
Home equity loans	1.12	0.97	0.88	0.78	1.17	0.69	1.37	1.26	1.01	0.87	0.96
Other 1-4 family residential	2.67	2.24	1.84	1.57	2.99	1.78	2.90	2.53	3.94	2.34	2.66
Commercial and industrial loans	0.65	1.75	1.31	0.93	0.53	0.89	0.57	0.71	0.73	0.81	0.39
Loans to individuals	1.72	1.97	1.55	1.73	1.72	1.72	1.87	1.49	2.03	1.12	1.56
Credit card loans	1.77	1.17	2.00	1.80	1.76	1.61	1.84	1.54	2.23	0.82	1.80
Other loans to individuals	1.66	1.98	1.52	1.70	1.66	2.09	1.88	1.48	1.73	1.27	1.37
All other loans and leases (including farm)	0.40	0.88	0.66	0.47	0.37	0.33	0.33	0.49	0.54	0.50	0.25
Total loans and leases	1.52	1.76	1.53	1.27	1.56	1.42	1.67	1.42	1.86	1.37	1.32
Percent of Loans Noncurrent**											
All real estate loans	7.01	3.07	4.03	5.18	8.22	4.77	9.05	7.86	8.24	4.66	5.50
Construction and development	15.99	9.95	12.90	16.76	17.12	18.60	17.93	14.85	14.05	10.45	19.67
Nonfarm nonresidential	4.29	3.48	3.46	4.13	4.81	3.88	5.01	4.42	4.36	3.11	4.55
Multifamily residential real estate	3.62	3.53	3.20	3.82	3.66	2.64	5.69	3.75	3.41	4.54	3.20
Home equity loans	1.79	1.45	1.37	1.45	1.85	1.20	1.92	1.97	2.28	1.29	1.16
Other 1-4 family residential	9.60	2.34	2.86	4.12	11.72	4.82	12.27	12.61	12.98	5.00	6.67
Commercial and industrial loans	1.90	2.56	2.46	2.41	1.76	2.31	1.52	2.07	1.85	1.58	2.04
Loans to individuals	1.65	1.03	0.77	1.12	1.71	1.91	1.32	1.38	1.85	0.64	1.73
Credit card loans	2.05	0.72	1.54	1.75	2.06	2.02	1.98	2.31	2.23	0.84	2.01
Other loans to individuals	1.21	1.03	0.71	0.91	1.28	1.53	0.98	1.12	1.26	0.53	1.49
All other loans and leases (including farm)	1.00	0.83	0.86	0.91	1.02	0.29	0.51	0.89	0.95	1.19	2.33
Total loans and leases	4.71	2.63	3.54	4.29	4.99	3.42	6.10	5.20	5.25	3.58	3.75
Percent of Loans Charged-off (net, YTD)											
All real estate loans	1.45	0.40	0.71	1.30	1.68	0.90	1.95	1.53	1.38	0.78	1.72
Construction and development	3.65	1.32	2.42	4.89	3.69	2.76	5.33	4.64	1.83	1.96	3.25
Nonfarm nonresidential	0.87	0.44	0.52	0.99	0.99	0.84	0.96	1.23	0.54	0.45	0.97
Multifamily residential real estate	0.79	0.50	0.62	0.82	0.83	0.57	0.95	0.72	0.37	0.43	1.62
Home equity loans	2.21	0.55	0.70	1.16	2.41	0.95	2.80	1.96	2.94	1.46	1.92
Other 1-4 family residential	1.32	0.29	0.52	0.74	1.56	0.75	1.54	1.23	1.30	0.62	2.24
Commercial and industrial loans	1.14	0.67	0.98	1.27	1.15	1.68	0.68	1.16	1.11	0.76	1.45
Loans to individuals	4.30	0.49	1.09	1.93	4.57	6.01	3.45	2.12	5.37	1.54	3.43
Credit card loans	6.69	2.46	5.93	5.10	6.73	6.91	7.57	5.70	7.87	3.27	4.67
Other loans to individuals	1.34	0.37	0.62	0.68	1.47	2.42	0.96	0.84	1.08	0.50	2.10
All other loans and leases (including farm)	0.44	0.00	0.33	0.48	0.45	0.13	0.19	0.32	0.25	0.27	1.38
Total loans and leases	1.82	0.41	0.75	1.32	2.09	2.29	1.81	1.41	2.01	0.82	1.98
Loans Outstanding (in billions)											
All real estate loans	$4,158.5	$60.1	$645.6	$660.8	$2,792.1	$815.5	$1,019.7	$803.8	$607.9	$336.1	$575.6
Construction and development	295.5	4.1	66.6	67.4	157.4	43.3	90.6	48.7	41.7	45.0	26.1
Nonfarm nonresidential	1,064.5	18.0	256.7	268.2	521.6	225.2	232.7	191.6	151.0	123.0	141.0
Multifamily residential real estate	214.4	1.8	30.8	44.5	137.3	62.4	29.8	62.7	19.2	9.7	30.7
Home equity loans	624.0	1.9	35.8	47.9	538.4	89.1	178.3	155.6	110.4	23.1	67.5
Other 1-4 family residential	1,833.8	26.1	222.3	220.6	1,364.8	389.4	478.7	330.5	260.8	123.2	251.1
Commercial and industrial loans	1,204.5	11.1	105.1	133.4	954.9	184.2	286.5	247.8	173.3	90.3	222.4
Loans to individuals	1,275.2	5.8	37.5	71.6	1,160.3	382.6	219.9	180.9	217.4	44.4	229.9
Credit card loans	663.2	0.1	2.4	18.0	642.7	295.7	76.7	40.6	132.3	14.9	103.0
Other loans to individuals	612.0	5.7	35.1	53.6	517.6	86.8	143.3	140.4	85.2	29.4	126.9
All other loans and leases (including farm)	612.5	8.8	36.5	33.1	534.1	98.6	114.2	156.4	112.9	21.7	108.5
Total loans and leases (plus unearned income)	7,250.7	85.9	824.6	898.9	5,441.4	1,480.9	1,640.4	1,389.0	1,111.5	492.5	1,136.4
Memo: Other Real Estate Owned (in millions)											
All other real estate owned	52,376.0	1,226.7	13,930.5	10,881.7	26,337.1	4,723.9	14,516.9	11,266.3	9,538.3	5,873.9	6,456.8
Construction and development	17,957.5	420.2	6,463.0	5,373.9	5,700.4	1,320.0	5,684.5	2,535.6	3,224.4	2,919.9	2,273.2
Nonfarm nonresidential	10,719.4	370.6	3,792.5	2,784.8	3,771.4	1,181.5	2,537.8	2,161.8	2,071.8	1,375.2	1,391.3
Multifamily residential real estate	2,476.7	39.9	449.6	383.3	1,603.8	208.2	415.9	440.2	337.0	166.5	908.9
1-4 family residential	13,279.5	363.7	2,917.8	2,153.3	7,844.8	1,665.9	4,093.3	2,705.4	2,366.7	1,241.4	1,206.8
Farmland	423.2	33.1	229.3	117.5	43.2	16.5	83.1	89.7	67.1	111.6	55.2
GNMA properties	7,316.1	0.4	79.2	69.8	7,166.6	312.6	1,703.4	3,333.7	1,471.7	59.2	435.7

*** Regions:**

New York - Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, U.S. Virgin Islands

Atlanta - Alabama, Florida, Georgia, North Carolina, South Carolina, Virginia, West Virginia

Chicago - Illinois, Indiana, Kentucky, Michigan, Ohio, Wisconsin

Kansas City - Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota

Dallas - Arkansas, Colorado, Louisiana, Mississippi, New Mexico, Oklahoma, Tennessee, Texas

San Francisco - Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Pacific Islands, Utah, Washington, Wyoming

** Noncurrent loan rates represent the percentage of loans in each category that are past due 90 days or more or that are in nonaccrual status.

TABLE VI-A. Derivatives, All FDIC-Insured Commercial Banks and State-Chartered Savings Banks

(dollar figures in millions; notional amounts unless otherwise indicated)	1st Quarter 2011	4th Quarter 2010	3rd Quarter 2010	2nd Quarter 2010	1st Quarter 2010	% Change 10Q1-11Q1	Asset Size Distribution: Less than $100 Million	Asset Size Distribution: $100 Million to $1 Billion	Asset Size Distribution: $1 Billion to $10 Billion	Asset Size Distribution: Greater than $10 Billion
ALL DERIVATIVE HOLDERS										
Number of institutions reporting derivatives	1,144	1,168	1,207	1,159	1,148	-0.3	82	690	291	81
Total assets of institutions reporting derivatives	$10,944,288	$10,834,403	$10,888,467	$10,650,392	$10,745,975	1.8	$6,000	$284,265	$844,995	$9,809,028
Total deposits of institutions reporting derivatives	7,705,985	7,545,587	7,402,157	7,248,634	7,281,782	5.8	5,113	232,834	662,006	6,806,032
Total derivatives	246,083,864	232,210,712	236,472,606	225,518,995	218,807,591	12.5	145	17,146	66,052	246,000,521
Derivative Contracts by Underlying Risk Exposure										
Interest rate	199,547,520	193,497,885	196,558,711	188,621,077	182,641,534	9.3	141	16,825	61,231	199,469,323
Foreign exchange*	28,788,641	22,002,935	22,531,799	20,245,402	19,202,392	49.9	0	77	3,843	28,784,722
Equity	1,471,260	1,363,760	1,679,128	1,615,062	1,570,974	-6.3	4	109	578	1,470,568
Commodity & other (excluding credit derivatives)	1,377,484	1,195,150	1,153,316	1,076,212	941,687	46.3	0	16	215	1,377,253
Credit	14,898,959	14,150,982	14,549,653	13,961,242	14,451,004	3.1	0	118	185	14,898,655
Total	246,083,864	232,210,712	236,472,606	225,518,995	218,807,591	12.5	145	17,146	66,052	246,000,521
Derivative Contracts by Transaction Type										
Swaps	152,747,048	149,256,558	146,962,909	141,427,435	136,333,735	12.0	27	9,228	45,935	152,691,858
Futures & forwards	39,084,278	35,712,439	39,643,697	36,793,865	34,747,283	12.5	46	3,582	10,233	39,070,418
Purchased options	19,021,195	16,174,116	16,911,279	15,399,619	15,759,306	20.7	20	665	3,543	19,016,967
Written options	18,256,144	15,904,093	16,697,323	15,898,211	15,910,886	14.7	52	3,553	5,758	18,246,780
Total	229,108,665	217,047,205	220,215,208	209,519,129	202,751,210	13.0	145	17,027	65,469	229,026,023
Fair Value of Derivative Contracts										
Interest rate contracts	92,290	92,057	107,170	98,102	94,739	-2.6	1	4	121	92,164
Foreign exchange contracts	8,198	12,340	-7,464	-4,874	1,329	516.9	0	-1	-16	8,215
Equity contracts	1,763	-2,126	-1,777	311	-849	N/M	0	2	8	1,754
Commodity & other (excluding credit derivatives)	-916	-1,068	-721	-503	1,064	N/M	0	2	2	-920
Credit derivatives as guarantor	-40,236	-68,248	-131,318	-222,427	-121,494	66.9	0	0	5	-40,240
Credit derivatives as beneficiary	50,612	82,772	150,801	242,490	141,389	-64.2	0	0	-2	50,613
Derivative Contracts by Maturity**										
Interest rate contracts < 1 year	92,443,214	90,842,757	90,921,190	89,002,955	84,010,725	10.0	15	5,394	10,994	92,426,812
1-5 years	34,896,628	33,496,837	35,145,181	33,352,707	33,334,968	4.7	17	4,981	25,024	34,866,606
> 5 years	24,922,192	24,306,863	24,550,151	23,099,484	24,121,171	3.3	28	2,297	14,841	24,905,025
Foreign exchange contracts < 1 year	18,023,979	14,467,367	13,362,678	11,959,585	11,092,119	62.5	0	74	2,577	18,021,327
1-5 years	2,741,047	2,432,756	2,582,310	2,356,096	2,440,019	12.3	0	2	79	2,740,966
> 5 years	1,432,790	1,289,279	1,431,627	1,306,940	1,329,332	7.8	0	0	149	1,432,641
Equity contracts < 1 year	349,752	296,198	352,002	326,743	320,739	9.0	0	30	98	349,624
1-5 years	204,151	190,861	217,579	205,295	220,454	-7.4	0	28	240	203,882
> 5 years	84,177	84,629	86,713	80,595	84,000	0.2	0	0	11	84,165
Commodity & other contracts < 1 year	504,234	382,507	311,897	324,203	287,660	75.3	0	7	128	504,099
1-5 years	225,140	239,847	241,288	207,019	177,250	27.0	0	5	45	225,090
> 5 years	25,209	26,176	33,836	30,459	31,220	-19.3	0	0	0	25,209
Risk-Based Capital: Credit Equivalent Amount										
Total current exposure to tier 1 capital (%)	37.7	41.3	48.6	45.0	41.4		0.0	0.4	1.0	42.4
Total potential future exposure to tier 1 capital (%)	86.8	84.0	83.1	83.1	89.1		0.1	0.2	0.4	98.0
Total exposure (credit equivalent amount) to tier 1 capital (%)	124.5	125.2	131.7	128.1	130.4		0.1	0.7	1.4	140.5
Credit losses on derivatives***	77.0	668.4	554.7	259.2	100.1	-23.1	0.0	0.0	5.3	71.7
HELD FOR TRADING										
Number of institutions reporting derivatives	193	196	201	189	195	-1.0	6	73	56	58
Total assets of institutions reporting derivatives	9,075,286	8,968,803	9,001,809	8,882,869	8,949,192	1.4	354	31,875	227,681	8,815,377
Total deposits of institutions reporting derivatives	6,418,885	6,279,414	6,139,890	6,078,628	6,095,318	5.3	286	25,561	177,905	6,215,132
Derivative Contracts by Underlying Risk Exposure										
Interest rate	196,013,964	191,773,865	194,585,711	186,781,466	180,761,592	8.4	12	1,195	13,417	195,999,341
Foreign exchange	26,378,493	20,853,441	20,699,946	18,086,768	17,462,757	51.1	0	0	2,621	26,375,872
Equity	1,465,412	1,357,525	1,672,913	1,608,817	1,563,707	-6.3	0	1	120	1,465,291
Commodity & other	1,356,822	1,184,245	1,145,723	1,070,966	934,851	45.1	0	0	121	1,356,701
Total	225,214,690	215,169,076	218,104,293	207,548,018	200,722,908	12.2	12	1,195	16,277	225,197,206
Trading Revenues: Cash & Derivative Instruments										
Interest rate	4,584	1,413	4,150	68	270	1,597.8	0	0	24	4,560
Foreign exchange	29	1,892	-1,087	4,312	3,906	-99.3	0	0	4	25
Equity	747	365	405	418	979	-23.7	0	0	4	743
Commodity & other (including credit derivatives)	2,043	-226	609	1,912	3,024	-32.4	0	0	1	2,042
Total trading revenues	7,403	3,444	4,077	6,710	8,178	-9.5	0	0	32	7,370
Share of Revenue										
Trading revenues to gross revenues (%)	6.2	2.8	3.5	5.5	6.6		0.0	0.0	1.2	6.4
Trading revenues to net operating revenues (%)	40.7	25.5	28.4	47.7	76.1		0.0	0.0	21.9	40.9
HELD FOR PURPOSES OTHER THAN TRADING										
Number of institutions reporting derivatives	1,035	1,057	1,084	1,046	1,032	0.3	76	625	257	77
Total assets of institutions reporting derivatives	10,593,072	10,475,733	10,535,035	10,261,969	10,324,307	2.6	5,646	257,038	729,138	9,601,249
Total deposits of institutions reporting derivatives	7,496,306	7,333,179	7,198,525	7,015,274	7,035,315	6.6	4,826	210,868	569,248	6,711,363
Derivative Contracts by Underlying Risk Exposure										
Interest rate	3,533,556	1,724,020	1,973,000	1,839,611	1,879,942	88.0	129	15,631	47,815	3,469,982
Foreign exchange	333,908	136,970	124,108	120,010	134,258	148.7	0	77	825	333,007
Equity	5,848	6,235	6,214	6,244	7,268	-19.5	4	109	458	5,277
Commodity & other	20,662	10,905	7,593	5,246	6,835	202.3	0	16	94	20,552
Total notional amount	3,893,975	1,878,129	2,110,915	1,971,111	2,028,303	92.0	133	15,832	49,192	3,828,817

All line items are reported on a quarterly basis. N/M - Not Meaningful

*Include spot foreign exchange contracts. All other references to foreign exchange contracts in which notional values or fair values are reported exclude spot foreign exchange contracts.

** Derivative contracts subject to the risk-based capital requirements for derivatives.

*** The reporting of credit losses on derivatives is applicable to all banks filing the FFIEC 031 report form and to those banks filing the FFIEC 041 report form that have $300 million or more in total assets.

TABLE VII-A. Servicing, Securitization, and Asset Sales Activities (All FDIC-Insured Commercial Banks and State-Chartered Savings Banks)

(dollar figures in millions)	1st Quarter 2011	4th Quarter 2010	3rd Quarter 2010	2nd Quarter 2010	1st Quarter 2010	% Change 10Q1-11Q1	Asset Size Distribution: Less than $100 Million	$100 Million to $1 Billion	$1 Billion to $10 Billion	Greater than $10 Billion
Assets Sold and Securitized with Servicing Retained or with Recourse or Other Seller-Provided Credit Enhancements										
Number of institutions reporting securitization activities	144	137	135	125	125	15.2	22	68	24	30
Outstanding Principal Balance by Asset Type										
1-4 family residential loans	$753,780	$752,619	$760,102	$759,032	$778,241	-3.1	$375	$841	$2,726	$749,838
Home equity loans	0	0	0	0	15	-100.0	0	0	0	0
Credit card receivables	11,607	13,748	14,320	15,452	16,133	-28.1	0	721	0	10,886
Auto loans	234	298	329	486	600	-61.0	0	0	40	194
Other consumer loans	4,138	4,234	4,333	5,021	5,610	-26.2	0	0	0	4,138
Commercial and industrial loans	257	4,014	4,340	871	849	-69.7	0	13	27	216
All other loans, leases, and other assets	206,893	192,394	213,203	209,600	195,433	5.9	2	39	109	206,743
Total securitized and sold	976,910	967,307	996,627	990,463	996,881	-2.0	377	1,615	2,903	972,015
Maximum Credit Exposure by Asset Type										
1-4 family residential loans	4,547	4,683	4,834	4,953	5,166	-12.0	2	44	54	4,447
Home equity loans	0	0	0	0	14	-100.0	0	0	0	0
Credit card receivables	552	609	574	664	730	-24.4	0	228	0	324
Auto loans	4	5	6	6	6	-33.3	0	0	4	0
Other consumer loans	201	185	207	245	237	-15.2	0	0	0	201
Commercial and industrial loans	0	9	9	86	86	-100.0	0	0	0	0
All other loans, leases, and other assets	397	440	1,165	270	281	41.3	0	5	0	392
Total credit exposure	5,701	5,931	6,795	6,224	6,521	-12.6	2	276	58	5,364
Total unused liquidity commitments provided to institution's own securitizations	125	208	211	166	162	-22.8	1	0	2	122
Securitized Loans, Leases, and Other Assets 30-89 Days Past Due (%)										
1-4 family residential loans	4.7	5.8	6.0	5.6	6.0		3.4	0.1	2.2	4.7
Home equity loans	0.0	0.0	0.0	0.0	0.0		0.0	0.0	0.0	0.0
Credit card receivables	1.1	1.1	1.2	1.6	1.5		0.0	1.8	0.0	1.0
Auto loans	1.5	1.6	1.4	1.2	1.2		0.0	0.0	1.0	1.6
Other consumer loans	3.3	3.8	3.4	3.7	3.3		0.0	0.0	0.0	3.3
Commercial and industrial loans	0.7	0.0	0.0	0.9	1.2		0.0	12.4	0.0	0.0
All other loans, leases, and other assets	1.3	1.1	1.5	2.5	2.2		0.0	0.0	0.4	1.3
Total loans, leases, and other assets	3.9	4.7	4.9	4.9	5.2		3.4	1.0	2.1	4.0
Securitized Loans, Leases, and Other Assets 90 Days or More Past Due (%)										
1-4 family residential loans	9.1	9.1	10.5	10.9	13.1		2.4	0.1	3.5	9.1
Home equity loans	0.0	0.0	0.0	0.0	0.0		0.0	0.0	0.0	0.0
Credit card receivables	0.5	0.5	0.5	0.7	0.8		0.0	2.9	0.0	0.3
Auto loans	0.0	0.4	0.3	0.2	0.3		0.0	0.0	0.1	0.0
Other consumer loans	2.9	2.9	2.9	2.7	2.7		0.0	0.0	0.0	2.9
Commercial and industrial loans	0.0	0.0	0.0	0.5	0.5		0.0	0.0	0.0	0.0
All other loans, leases, and other assets	5.8	7.4	9.7	8.4	7.4		35.4	0.0	0.3	5.8
Total loans, leases, and other assets	8.2	8.6	10.1	10.1	11.7		2.5	1.3	3.3	8.3
Securitized Loans, Leases, and Other Assets Charged-off (net, YTD, annualized, %)										
1-4 family residential loans	0.3	1.9	1.5	0.7	0.3		0.0	0.0	0.0	0.3
Home equity loans	0.0	0.0	0.0	0.0	0.0		0.0	0.0	0.0	0.0
Credit card receivables	1.4	7.9	6.2	4.2	2.2		0.0	2.3	0.0	1.3
Auto loans	0.0	1.4	0.9	0.4	0.3		0.0	0.0	-0.1	0.0
Other consumer loans	0.3	1.8	1.4	0.9	0.4		0.0	0.0	0.0	0.3
Commercial and industrial loans	0.0	0.0	0.0	0.1	0.0		0.0	0.0	0.0	0.0
All other loans, leases, and other assets	0.1	0.4	0.2	0.1	0.0		0.0	0.0	0.0	0.1
Total loans, leases, and other assets	0.3	1.7	1.2	0.6	0.3		0.0	1.0	0.0	0.3
Seller's Interests in Institution's Own Securitizations - Carried as Loans										
Home equity loans	0	0	0	0	0	0.0	0	0	0	0
Credit card receivables	8,157	7,350	6,073	5,088	4,831	68.8	0	47	0	8,111
Commercial and industrial loans	2	2	2	3	4	-50.0	0	2	0	0
Seller's Interests in Institution's Own Securitizations - Carried as Securities										
Home equity loans	0	0	0	0	0	0.0	0	0	0	0
Credit card receivables	0	0	0	0	0	0.0	0	0	0	0
Commercial and industrial loans	0	0	0	0	0	0.0	0	0	0	0
Assets Sold with Recourse and Not Securitized										
Number of institutions reporting asset sales	857	855	847	835	819	4.6	161	534	120	42
Outstanding Principal Balance by Asset Type										
1-4 family residential loans	66,156	64,175	60,998	62,747	62,207	6.3	7,930	12,052	5,014	41,161
Home equity, credit card receivables, auto, and other consumer loans	1,417	1,455	41	41	40	3,442.5	0	6	14	1,397
Commercial and industrial loans	102	379	445	537	669	-84.8	0	40	33	29
All other loans, leases, and other assets	54,961	53,860	53,588	53,130	50,039	9.8	1	61	286	54,613
Total sold and not securitized	122,637	119,870	115,073	116,455	112,954	8.6	7,932	12,159	5,347	97,201
Maximum Credit Exposure by Asset Type										
1-4 family residential loans	14,139	15,587	14,996	14,196	13,705	3.2	132	1,866	2,997	9,146
Home equity, credit card receivables, auto, and other consumer loans	135	132	20	21	21	542.9	0	3	3	129
Commercial and industrial loans	81	90	77	77	62	30.6	0	29	32	20
All other loans, leases, and other assets	13,420	13,115	12,969	12,809	10,481	28.0	1	42	13	13,363
Total credit exposure	27,776	28,925	28,061	27,103	24,269	14.5	134	1,941	3,044	22,658
Support for Securitization Facilities Sponsored by Other Institutions										
Number of institutions reporting securitization facilities sponsored by others	162	166	155	129	80	102.5	23	89	35	15
Total credit exposure	30,579	29,581	29,189	10,206	7,467	309.5	31	248	144	30,156
Total unused liquidity commitments	626	514	504	418	846	-26.0	0	0	0	626
Other										
Assets serviced for others*	5,749,124	5,783,491	5,892,026	5,956,566	5,995,635	-4.1	4,472	87,085	104,319	5,553,249
Asset-backed commercial paper conduits										
Credit exposure to conduits sponsored by institutions and others	9,895	10,009	11,649	10,699	10,653	-7.1	5	0	52	9,838
Unused liquidity commitments to conduits sponsored by institutions and others	62,396	61,364	74,623	70,087	63,181	-1.2	0	0	1,557	60,840
Net servicing income (for the quarter)	4,675	4,793	2,963	3,576	5,164	-9.5	37	148	178	4,313
Net securitization income (for the quarter)	99	150	164	156	13	661.5	0	3	3	92
Total credit exposure to Tier 1 capital (%)**	5.4	5.5	5.5	3.8	3.4		1.0	2.0	2.3	6.4

* The amount of financial assets serviced for others, other than closed-end 1-4 family residential mortgages, is reported when these assets are greater than $10 million.
** Total credit exposure includes the sum of the three line items titled "Total credit exposure" reported above.

INSURANCE FUND INDICATORS

- ***DIF Reserve Ratio Rises 10 Basis Points to -0.02 Percent***
- ***Insured Deposits Grow by 1.4 Percent***
- ***26 Institutions Failed during First Quarter***
- ***$894 Billion Temporarily Insured in Noninterest-bearing Transaction Accounts***

Total assets of the nation's 7,574 FDIC-insured commercial banks and savings institutions increased by 0.7 percent ($94.7 billion) during the first quarter of 2011. Total deposits increased by 1.9 percent ($178.8 billion), domestic office deposits increased by 1.5 percent ($117.4 billion), and foreign office deposits increased by 4.0 percent ($61.4 billion). Domestic noninterest-bearing deposits increased by 3.5 percent ($58.3 billion) and domestic interest-bearing deposits increased by 1.0 percent ($59.1 billion). For the 12 months ending March 31, total domestic deposits grew by 3.9 percent ($298.2 billion), as interest-bearing deposits increased by 1.2 percent ($76.8 billion) and non-interest-bearing deposits rose by 14.5 percent ($221.3 billion).

Brokered deposits decreased by 1.7 percent ($9.8 billion) during the first quarter. At the end of the first quarter of 2011, 42 percent (3,215) of FDIC-insured banks and thrifts used brokered deposits and 798 of these institutions had brokered deposits that exceeded 10 percent of their domestic deposits. Reciprocal brokered deposits spread among 1,471 institutions totaled $28.6 billion, representing 5.1 percent of total outstanding brokered deposits.[1] Data newly provided in quarterly financial reports on deposits that institutions obtained through listing services indicate that 1,359 institutions held such deposits, which in aggregate amounted to $40.8 billion.[2]

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), enacted on July 21, 2010, provides temporary unlimited deposit insurance coverage for noninterest-bearing transaction accounts from December 31, 2010, through December 31, 2012, regardless of the balance in the account and the ownership capacity of the funds. The unlimited coverage is available to all depositors, including consumers, businesses and government entities. The coverage is separate from, and in addition to, the insurance coverage provided for a depositor's other accounts held at an FDIC-insured bank.[3] Insured commercial banks and savings institutions had $1.75 trillion in domestic noninterest-bearing deposits on March 31, 2011, 60 percent ($1.05 trillion) of which was in noninterest-bearing transaction accounts larger than $250,000. Of this total, $894 billion exceeded the basic coverage limit of $250,000 per account, but was fully insured by the temporary unlimited coverage. Banks with under $10 billion in assets funded 3.3 percent of their assets with deposits receiving the temporary unlimited coverage. Banks with more than $10 billion in assets had deposits receiving temporary coverage equal to 7.6 percent of assets. The table on the following page shows the distribution of accounts receiving unlimited coverage on noninterest-bearing transaction accounts by institution asset size.

Total estimated insured deposits increased by 1.4 percent in the quarter ending March 31, 2011, and rose by a total of 16.7 percent over the past four quarters. The large four-quarter increase was primarily attributable to the additional temporary coverage of non-interest bearing transaction accounts authorized by the Dodd-Frank Act. For institutions existing at the start and the end of the most recent quarter, insured deposits increased during the quarter at 5,114 institutions (68 percent), decreased at 2,427 institutions (32 percent), and remained unchanged at 32 institutions.

[1] Reciprocal brokered deposits are deposits that an insured depository institution receives through a deposit placement network on a reciprocal basis, such that: (1) For any deposit received, the institution (as agent for depositors) places the same amount with other insured depository institutions through the network; and (2) each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members.

[2] Listing service deposits are obtained as a result of a bank having its rates listed by a deposit service that is compensated for the listing by either the bank listing the rates or by the person or entities who view the listed rates.

[3] Beginning July 21, 2011, per Dodd-Frank insured institutions will no longer be prohibited from paying interest on commercial demand deposits. At that time, if an institution modifies the terms of its demand deposit accounts so that the account may earn interest, the account will no longer satisfy the definition of a noninterest-bearing transaction account, and will no longer be eligible for the temporary unlimited coverage.

Insured Commercial Banks and Savings Institutions as of March 31, 2011 Distribution of Noninterest-Bearing Domestic Deposits, by Asset Size							
			Dodd - Frank Domestic Noninterest-Bearing Transaction Accounts Larger than $250,000				
Asset Size	Number of Institutions	Total Assets ($ Bil.)	Total ($ Bil.)	Amount above the $250,000 Coverage Limit ($ Bil.)	Average Account Size ($000)	Average Number of Accounts per Institution	Other Noninterest-Bearing Deposits* ($ Bil.)
Less than $1 Billion	6,904	1,431.5	59.2	37.5	682	13	112.7
$1 - $10 Billion	563	1,429.1	80.5	58.3	904	158	77.7
$10 - $50 Billion	71	1,411.5	97.5	78.9	1,314	1,045	64.6
$50 - $100 Billion	17	1,179.0	70.8	59.3	1,550	2,685	39.0
Over $100 Billion	19	7,963.6	745.4	659.8	2,178	18,012	400.0
Total	7,574	13,414.7	1,053.3	**893.9**	1,651	84	694.1

* Includes noninterest-bearing transaction accounts smaller than $250,000 and noninterest-bearing deposits not classified as transaction accounts.

The condition of the Deposit Insurance Fund (DIF) continues to improve. The DIF increased by $6.3 billion during the first quarter of 2011 to negative $1.0 billion (unaudited), the fifth consecutive quarterly increase. Assessment income of $3.5 billion and a $3.1 billion negative provision for insurance losses were the primary contributors to the improvement in the DIF balance. Interest earnings, combined with unrealized gains on available-for-sale securities and other net revenue, increased the fund by another $151 million. Operating expenses reduced the fund balance by $395 million.

The number of bank failures has fallen three quarters in a row. A total of 26 insured institutions with combined assets of $9.8 billion failed during the first quarter of 2011, at an estimated cost to the DIF of $1.9 billion. The DIF's reserve ratio was negative 0.02 percent on March 31, 2011, up from negative 0.12 percent at December 31, 2010, and the negative 0.39 percent low point reached at the end of 2009.

Effective April 1, 2011, the deposit insurance assessment base has changed to average consolidated total assets minus average tangible equity. Revisions to insurance assessment rates and pricing rules for large banks (banks with assets greater than $10 billion) also became effective on that date. The Fourth Quarter 2010 Quarterly Banking Profile includes a more detailed explanation of these changes.

Dodd-Frank required that, for at least five years, the FDIC must make available to the public the reserve ratio and the DRR using both estimated insured deposits and the new assessment base. The new assessment base will require some changes in reporting, so only an estimate is available at this time. As of March 31, 2011, the FDIC estimates that the reserve ratio would have been -0.01 percent using the new assessment base (compared to -0.02 percent using estimated insured deposits) and that the proposed 2 percent DRR using estimated insured deposits would have been approximately 1 percent using the estimated new assessment base.

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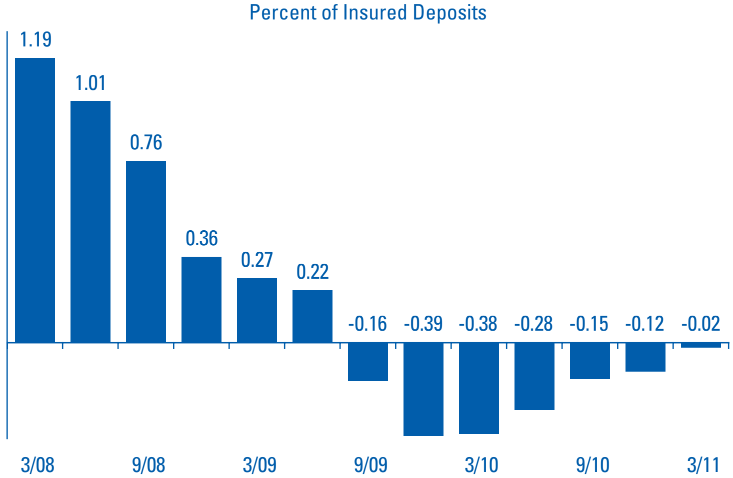
Table I-B. Insurance Fund Balances and Selected Indicators

(dollar figures in millions)	Deposit Insurance Fund*												
	1st Quarter 2011	4th Quarter 2010	3rd Quarter 2010	2nd Quarter 2010	1st Quarter 2010	4th Quarter 2009	3rd Quarter 2009	2nd Quarter 2009	1st Quarter 2009	4th Quarter 2008	3rd Quarter 2008	2nd Quarter 2008	1st Quarter 2008
Beginning Fund Balance	-$7,352	-$8,009	-$15,247	-$20,717	-$20,862	-$8,243	$10,368	$13,007	$17,276	$34,588	$45,217	$52,843	$52,413
Changes in Fund Balance:													
Assessments earned	3,484	3,498	3,592	3,242	3,278	3,042	2,965	9,095	2,615	996	881	640	448
Interest earned on investment securities	28	39	40	64	62	76	176	240	212	277	526	651	618
Realized gain on sale of investments	0	0	0	0	0	0	732	521	136	302	473	0	0
Operating expenses	395	452	414	382	345	379	328	298	266	290	249	256	238
Provision for insurance losses	-3,089	2,446	-3,763	-2,552	3,021	17,766	21,694	11,615	6,637	19,163	11,930	10,221	525
All other income, net of expenses	66	48	94	55	22	2,721	308	375	2	15	16	1	0
Unrealized gain/(loss) on available-for-sale securities	57	-30	163	-61	149	-313	-770	-957	-331	551	-346	1,559	127
Total fund balance change	6,329	657	7,238	5,470	145	-12,619	-18,611	-2,639	-4,269	-17,312	-10,629	-7,626	430
Ending Fund Balance	-1,023	-7,352	-8,009	-15,247	-20,717	-20,862	-8,243	10,368	13,007	17,276	34,588	45,217	52,843
Percent change from four quarters earlier	NM	NM	NM	NM	NM	NM	NM	-77.07	-75.39	-67.04	-33.17	-11.73	4.13
Reserve Ratio (%)	-0.02	-0.12	-0.15	-0.28	-0.38	-0.39	-0.16	0.22	0.27	0.36	0.76	1.01	1.19
Estimated Insured Deposits**	6,388,688	6,302,499	5,421,718	5,437,760	5,472,259	5,407,742	5,315,920	4,817,783	4,831,748	4,750,783	4,545,198	4,468,086	4,438,256
Percent change from four quarters earlier	16.75	16.55	1.99	12.87	13.26	13.83	16.96	7.83	8.87	10.68	7.13	5.50	4.55
Domestic Deposits	8,006,187	7,887,746	7,753,409	7,681,284	7,702,447	7,705,353	7,561,334	7,561,996	7,546,996	7,505,408	7,230,326	7,036,264	7,076,717
Percent change from four quarters earlier	3.94	2.37	2.54	1.58	2.06	2.66	4.58	7.47	6.65	8.43	7.15	5.04	5.58
Number of institutions reporting	7,584	7,668	7,771	7,840	7,944	8,022	8,109	8,205	8,257	8,315	8,394	8,462	8,505

DIF Reserve Ratios
Percent of Insured Deposits



Deposit Insurance Fund Balance and Insured Deposits
($ Millions)

	DIF Balance	DIF-Insured Deposits
3/08	$52,843	$4,438,256
6/08	45,217	4,468,086
9/08	34,588	4,545,198
12/08	17,276	4,750,783
3/09	13,007	4,831,748
6/09	10,368	4,817,783
9/09	-8,243	5,315,920
12/09	-20,862	5,407,742
3/10	-20,717	5,472,259
6/10	-15,247	5,437,760
9/10	-8,009	5,421,718
12/10	-7,352	6,302,499
3/11	-1,023	6,388,688

Table II-B. Problem Institutions and Failed/Assisted Institutions

(dollar figures in millions)	2011***	2010***	2010	2009	2008	2007	2006
Problem Institutions							
Number of institutions	888	775	884	702	252	76	50
Total assets	$397,252	$431,189	$390,017	$402,782	$159,405	$22,189	$8,265
Failed Institutions							
Number of institutions	26	41	157	140	25	3	0
Total assets	$9,839	$22,140	$92,085	$169,709	$371,945	$2,615	$0
Assisted Institutions****							
Number of institutions	0	0	0	8	5	0	0
Total assets	$0	$0	$0	$1,917,482	$1,306,042	0	0

* Quarterly financial statement results are unaudited. NM - Not meaningful

** Beginning in the third quarter of 2009, estimates of insured deposits are based on a $250,000 general coverage limit. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) temporarily provides unlimited coverage for noninterest bearing transaction accounts for two years beginning December 31, 2010. Beginning in the fourth quarter of 2010, estimates of insured deposits include the entire balance of noninterest bearing transaction accounts.

***Through March 31

**** Assisted institutions represent five institutions under a single holding company that received assistance in 2008, and eight institutions under a different single holding company that received assistance in 2009.

Table III-B. Estimated FDIC-Insured Deposits by Type of Institution

(dollar figures in millions)

March 31, 2011	Number of Institutions	Total Assets	Domestic Deposits*	Est. Insured Deposits
Commercial Banks and Savings Institutions				
FDIC-Insured Commercial Banks	6,453	$12,157,324	$7,063,538	$5,547,794
FDIC-Supervised	4,267	1,941,847	1,485,978	1,209,714
OCC-Supervised	1,366	8,483,600	4,529,753	3,516,251
Federal Reserve-Supervised	820	1,731,876	1,047,806	821,829
FDIC-Insured Savings Institutions	1,121	1,257,331	926,968	826,107
OTS-Supervised Savings Institutions	724	931,664	685,654	613,452
FDIC-Supervised State Savings Banks	397	325,667	241,314	212,656
Total Commercial Banks and Savings Institutions	7,574	13,414,655	7,990,506	6,373,901
Other FDIC-Insured Institutions				
U.S. Branches of Foreign Banks	10	30,790	15,682	14,786
Total FDIC-Insured Institutions	7,584	13,445,445	8,006,187	6,388,688

* Excludes $1.6 trillion in foreign office deposits, which are uninsured.

Table IV-B. Distribution of Institutions and Domestic Deposits Among Risk Categories

Quarter Ending December 31, 2010

(dollar figures in billions)

	Annual Rate in Basis Points*	Number of Institutions	Percent of Total Institutions	Domestic Deposits	Percent of Total Domestic Deposits
Risk Category I	7.00-12.00	1,791	23.36	$791	10.03
	12.01-14.00	1,524	19.87	1,709	21.67
	14.01-15.99	1,683	21.95	1,931	24.48
	16.00-24.00	325	4.24	382	4.84
Risk Category II	17.00-22.00	1,236	16.12	2,256	28.60
	22.01-43.00	216	2.82	496	6.29
Risk Category III	27.00-32.00	567	7.39	186	2.36
	32.01-58.00	136	1.77	80	1.01
Risk Category IV	40.00-45.00	149	1.94	41	0.52
	45.01-77.50	41	0.53	15	0.19

Note: Institutions are categorized based on supervisory ratings, debt ratings and financial data as of December 31, 2010.
* Assessment rates with a given risk category vary for several reasons, see 12 CFR Part 327.

Notes to Users

This publication contains financial data and other information for depository institutions insured by the Federal Deposit Insurance Corporation (FDIC). These notes are an integral part of this publication and provide information regarding the comparability of source data and reporting differences over time.

Tables I-A through VIII-A.

The information presented in Tables I-A through V-A of the *FDIC Quarterly Banking Profile* is aggregated for all FDIC-insured institutions, both commercial banks and savings institutions. Tables VI-A (Derivatives) and VII-A (Servicing, Securitization, and Asset Sales Activities) aggregate information only for insured commercial banks and state-chartered savings banks that file quarterly Call Reports. Table VIII-A (Trust Services) aggregates Trust asset and income information collected annually from all FDIC-insured institutions. Some tables are arrayed by groups of FDIC-insured institutions based on predominant types of asset concentration, while other tables aggregate institutions by asset size and geographic region. Quarterly and full-year data are provided for selected indicators, including aggregate condition and income data, performance ratios, condition ratios, and structural changes, as well as past due, noncurrent, and charge-off information for loans outstanding and other assets.

Tables I-B through IV-B.

A separate set of tables (Tables I-B through IV-B) provides comparative quarterly data related to the Deposit Insurance Fund (DIF), problem institutions, failed/assisted institutions, estimated FDIC-insured deposits, as well as assessment rate information. Depository institutions that are not insured by the FDIC through the DIF are not included in the *FDIC Quarterly Banking Profile*. U.S. branches of institutions headquartered in foreign countries and non-deposit trust companies are not included unless otherwise indicated. Efforts are made to obtain financial reports for all active institutions. However, in some cases, final financial reports are not available for institutions that have closed or converted their charters.

DATA SOURCES

The financial information appearing in this publication is obtained primarily from the Federal Financial Institutions Examination Council (FFIEC) *Consolidated Reports of Condition and Income* (*Call Reports)* and the OTS *Thrift Financial Reports* submitted by all FDIC-insured depository institutions. This information is stored on and retrieved from the FDIC's Research Information System (RIS) data base.

COMPUTATION METHODOLOGY

Parent institutions are required to file consolidated reports, while their subsidiary financial institutions are still required to file separate reports. Data from subsidiary institution reports are included in the *Quarterly Banking Profile* tables, which can lead to double-counting. No adjustments are made for any double-counting of subsidiary data. Additionally, certain adjustments are made to the OTS *Thrift Financial Reports* to provide closer conformance with the reporting and accounting requirements of the FFIEC *Call Reports*.

All asset and liability figures used in calculating performance ratios represent average amounts for the period (beginning-of-period amount plus end-of-period amount plus any interim periods, divided by the total number of periods). For "pooling-of-interest" mergers, the assets of the acquired institution(s) are included in average assets since the year-to-date income includes the results of all merged institutions. No adjustments are made for "purchase accounting" mergers. Growth rates represent the percentage change over a 12-month period in totals for institutions in the base period to totals for institutions in the current period.

All data are collected and presented based on the location of each reporting institution's main office. Reported data may include assets and liabilities located outside of the reporting institution's home state. In addition, institutions may relocate across state lines or change their charters, resulting in an inter-regional or inter-industry migration, e.g., institutions can move their home offices between regions, and savings institutions can convert to commercial banks or commercial banks may convert to savings institutions.

ACCOUNTING CHANGES

Extended Net Operating Loss Carryback Period – The Worker, Homeownership, and Business Assistance Act of 2009, which was enacted on November 6, 2009, permits banks and other businesses, excluding those banking organizations that received capital from the U.S. Treasury under the Troubled Asset Relief Program, to elect a net operating loss carryback period of three, four, or five years instead of the usual carryback period of two years for any one tax year ending after December 31, 2007, and beginning before January 1, 2010. For calendar year banks, this extended carryback period applies to either the 2008 or 2009 tax year. The amount of the net operating loss that can be carried back to the fifth carryback year is limited to 50 percent of the available taxable income for that fifth year, but this limit does not apply to other carryback years.

Under generally accepted accounting principles, banks may not record the effects of this tax change in their balance sheets and income statements for financial and regulatory reporting purposes until the period in which the law was enacted, i.e., the fourth quarter of 2009. Therefore, banks should recognize the effects of this fourth quarter 2009 tax law change on their current and deferred tax assets and liabilities, including valuation allowances for deferred tax assets, in their Call Reports for December 31, 2009. Banks should not amend their Call Reports for prior quarters for the effects of the extended net operating loss carryback period.

The American Recovery and Reinvestment Act of 2009, which was enacted on February 17, 2009, permits qualifying small businesses, including FDIC-insured institutions, to elect a net operating loss carryback period of three, four, or five years instead of the usual carryback period of two years for any tax year ending in 2008 or, at the small business's election, any tax year beginning in 2008. Under generally accepted accounting principles, institutions may not record the effect of this tax change in their balance sheets and income statements for financial and regulatory reporting purposes until the period in which the law was enacted, i.e., the first quarter of 2009.

Troubled Debt Restructurings – Many institutions are restructuring or modifying the terms of loans to provide payment relief for those borrowers who have suffered deterioration in their financial condition. Such loan restructurings may include, but are not limited to, reductions in principal or accrued interest, reductions in interest rates, and extensions of the maturity date. Modifications may be executed at the original contractual interest rate on the loan, a current market interest rate, or a below-market interest rate. Many of these loan modifications meet the definition of a troubled debt restructuring (TDR).

The TDR accounting and reporting standards are set forth in ASC Subtopic 310-40, Receivables—Troubled Debt Restructurings by Creditors (formerly FASB Statement No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings," as amended). This guidance specifies that a restructuring of a debt constitutes a TDR if, at the date of restructuring, the creditor for economic or legal reasons related to a debtor's financial difficulties grants a concession to the debtor that it would not otherwise consider.

In the Call Report, until a loan that is a TDR is paid in full or otherwise settled, sold, or charged off, it must be reported in the appropriate loan category, as well as identified as a performing TDR loan, if it is in compliance with its modified terms. If a TDR is not in compliance with its modified terms, it is reported as a past due and nonaccrual loan in the appropriate loan category, as well as distinguished from other past due and nonaccrual loans. To be considered in compliance with its modified terms, a loan that is a TDR must not be in nonaccrual status and must be current or less than 30 days past due on its contractual principal and interest payments under the modified repayment terms. A loan restructured in a TDR is an impaired loan. Thus, all TDRs must be measured for impairment in accordance with ASC Subtopic 310-10, Receivables—Overall (formerly FASB Statement No. 114, "Accounting by Creditors for Impairment of a Loan," as amended), and the Call report Glossary entry for "Loan Impairment."

Accounting for Loan Participations – Amended ASC Topic 860 (formerly FAS 166) modified the criteria that must be met in order for a transfer of a portion of a financial asset, such as a loan participation, to qualify for sale accounting. These changes apply to transfers of loan participations on or after the effective date of amended ASC Topic 860 (January 1, 2010, for banks with calendar year fiscal year), including advances under lines of credit that are transferred on or after the effective date of amended ASC Topic 860 even if the line of credit agreements were entered into before this effective date. Therefore, banks with a calendar year fiscal year must account for transfers of loan participations on or after January 1, 2010, in accordance with amended ASC Topic 860. In general, loan participations transferred before the effective date of amended ASC Topic 860 are not affected by this new accounting standard.

Under amended ASC Topic 860, if a transfer of a portion of an entire financial asset meets the definition of a "participating interest," then the transferor (normally the lead lender) must evaluate whether the transfer meets all of the conditions in this accounting standard to qualify for sale accounting.

Other-Than-Temporary Impairment – When the fair value of an investment in a debt or equity security is less than its cost basis, the impairment is either temporary or other-than-temporary. To determine whether the impairment is other-than-temporary, an institution must apply other pertinent guidance in ASC Topic 320 , Investments-Debt and Equity Securities—Overall; ASC Subtopic 325-20, Investments-Other—Cost Method Investments; and ASC Subtopic 325-40, Investments-Other—Beneficial Interests in Securitized Financial Assets (formerly paragraph 16 of FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities)*; FASB Staff Position (FSP) FAS 115-1 and FAS 124-1, *The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments*; FSP FAS 115-2 and FAS 124-2, *Recognition and Presentation of Other-Than-Temporary Impairments*; paragraph 6 of Accounting Principles Board Opinion No. 18, *The Equity Method of Accounting for Investments in Common Stock*; Emerging Issues Task Force (EITF) Issue No. 99-20, *Recognition of Interest Income and Impairment on Purchased Beneficial Interests and Beneficial Interests That Continue to Be Held by a Transferor in Securitized Financial Assets*; and FSP EITF 99-20-1, *Amendments to the Impairment Guidance of EITF Issue No. 99-20*. Under ASC Topic 320, if an institution intends to sell a debt security or it is more likely than not that it will be required to sell the debt security before recovery of its amortized cost basis, an other-than-temporary impairment has occurred and the entire difference between the security's amortized cost basis and its fair value at the balance sheet date must be recognized in earnings. In these cases, the fair value of the debt security would become its new amortized cost basis. In addition, under ASC Topic 320, if the present value of cash flows expected to be collected on a debt security is less than its amortized cost basis, a credit loss exists. In this situation, if an institution does not intend to sell the security and it is not more likely than not that the institution will be required to sell the debt security before recovery of its amortized cost basis less any current-period credit loss, an other-than-temporary impairment has occurred. The amount of the total other-than-temporary impairment related to the credit loss must be recognized in earnings, but the amount of the total impairment related to other factors must be recognized in other comprehensive income, net of applicable taxes.

ASC Topic 805 (formerly Business Combinations and Noncontrolling (Minority) Interests) – In December 2007, the FASB issued Statement No. 141 (Revised), *Business Combinations* FAS 141(R)), and Statement No. 160, *Noncontrolling Interests in Consolidated Financial Statements* (FAS 160). Under FAS 141(R), all business combinations, including combinations of mutual entities, are to be accounted for by applying the acquisition method. FAS 160 defines a noncontrolling interest, also called a minority interest, as the portion of equity in an institution's subsidiary not attributable, directly or indirectly, to the parent institution. FAS 160 requires an institution to clearly present in its consolidated financial statements the equity ownership in and results of its subsidiaries that are attributable to the noncontrolling ownership interests in these subsidiaries. FAS 141(R) applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. Similarly, FAS 160 is effective for fiscal years beginning on or after December 15, 2008. Thus, for institutions with calendar year fiscal years, these two accounting standards take effect in 2009. Beginning in March 2009, Institution equity capital and Noncontrolling interests are separately reported in arriving at Total equity capital and Net income.

ASC Topic 820 (formerly FASB Statement No. 157 *Fair Value Measurements* issued in September 2006) and ASC Topic 825 (formerly FASB Statement No. 159 *The Fair Value Option for Financial Assets and Financial Liabilities*) issued in February 2007 – both are effective in 2008 with early adoption permitted in 2007. FAS 157 defines fair value and establishes a framework for developing fair value estimates for the fair value measurements that are already required or permitted under other standards. FASB FSP 157-4, issued in April 2009, provides additional guidance for estimating fair value in accordance with FAS 157 when the volume and level of activity for the asset or liability have significantly decreased. The FSP also includes guidance on identifying circumstances that indicate a transaction is not orderly. The FSP is effective for interim and annual reporting periods ending after June 15, 2009, with early adoption permitted for periods ending after March 15, 2009.

Fair value continues to be used for derivatives, trading securities, and available-for-sale securities. Changes in fair value go through earnings for trading securities and most derivatives. Changes in the fair value of available-for-sale securities are reported in other comprehensive income. Available-for-sale securities and held-to-maturity debt securities are written down to fair value if impairment is other than temporary and loans held for sale are reported at the lower of cost or fair value.

FAS 159 allows institutions to report certain financial assets and liabilities at fair value with subsequent changes in fair value included in earnings. In general, an institution may elect the fair value option for an eligible financial asset or liability when it first recognizes the instrument on its balance sheet or enters into an eligible firm commitment.

ASC Topic 715 (formerly FASB Statement No. 158 *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans*) – issued in September 2006 requires a bank to recognize in 2007, and subsequently, the funded status of its postretirement plans on its balance sheet. An overfunded plan is recognized as an asset and an underfunded plan is recognized as a liability. An adjustment is made to equity as accumulated other comprehensive income (AOCI) upon application of FAS 158, and AOCI is adjusted in subsequent periods as net periodic benefit costs are recognized in earnings.

ASC Topic 860 (formerly FASB Statement No. 156 *Accounting for Servicing of Financial Assets*) – issued in March 2006 and effective in 2007, requires all separately recognized servicing assets and liabilities to be initially measured at fair value and allows a bank the option to subsequently adjust that value by periodic revaluation and recognition of earnings or by periodic amortization to earnings.

ASC Topic 815 (formerly FASB Statement No. 155 *Accounting for Certain Hybrid Financial Instruments*) – issued in February 2006, requires bifurcation of certain derivatives embedded in interests in securitized financial assets and permits fair value measurement (i.e., a fair value option) for any hybrid financial instrument that contains an embedded derivative that would otherwise require bifurcation under FASB Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities* (FAS 133). In addition, FAS 155 clarifies which interest-only and principal-only strips are not subject to FAS 133.

Purchased Impaired Loans and Debt Securities – ASC Topic 310 (formerly Statement of Position 03-3, *Accounting for Certain Loans or Debt Securities Acquired in a Transfer*) – The SOP applies to loans and debt securities acquired in fiscal years beginning after December 15, 2004. In general, this Statement of Position applies to "purchased impaired loans and debt securities" (i.e., loans and debt securities that a bank has purchased, including those acquired in a purchase business combination, when it is probable, at the purchase date, that the bank will be unable to collect all contractually required payments receivable). Banks must follow Statement of Position 03-3 for Call Report purposes. The SOP does not apply to the loans that a bank has originated, prohibits "carrying over" or creation of valuation allowances in the initial accounting, and any subsequent valuation allowances reflect only those losses incurred by the investor after acquisition.

GNMA Buy-back Option – If an issuer of GNMA securities has the option to buy back the loans that collateralize the GNMA securities, when certain delinquency criteria are met, ASC Topic 860 (formerly FASB Statement No. 140) requires that loans with this buy-back option must be brought back on the issuer's books as assets. The rebooking of GNMA loans is required regardless of whether the issuer intends to exercise the buy-back option. The banking agencies clarified in May 2005 that all GNMA loans that are rebooked because of delinquency should be reported as past due according to their contractual terms.

ASC Topics 860 & 810 (formerly FASB Statements 166 & 167) – In June 2009, the FASB issued Statement No. 166, *Accounting for Transfers of Financial Assets* (FAS 166), and Statement No. 167, *Amendments to FASB Interpretation* No. 46(R) (FAS 167), which change the way entities account for securitizations and special purpose entities. FAS 166 revised FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, by eliminating the concept of a "qualifying special-purpose entity," creating the concept of a "participating interest," changing the requirements for derecognizing financial assets, and requiring additional disclosures. FAS 167 revised FASB Interpretation No. 46(R), *Consolidation of Variable Interest Entities*, by changing how a bank or other company determines when an entity that is insufficiently capitalized or is not controlled through voting or similar rights, i.e., a "variable interest entity" (VIE), should be consolidated. Under FAS 167, a bank must perform a qualitative assessment to determine whether its variable interest or interests give it a controlling financial interest in a VIE. If a bank's variable interest or interests provide it with the power to direct the most significant activities of the VIE, and the right to receive benefits or the obligation to absorb losses that could potentially be significant to the VIE, the bank is the primary beneficiary of, and therefore must consolidate, the VIE.

Both FAS 166 and FAS 167 take effect as of the beginning of each bank's first annual reporting period that begins after November 15, 2009, for interim periods therein, and for interim and annual reporting periods thereafter (i.e., as of January 1, 2010, for banks with a calendar year fiscal year). Earlier application is prohibited. Banks are expected to adopt FAS 166 and FAS 167 for Call Report purposes in accordance with the effective date of these two standards. Also, FAS 166 has modified the criteria that must be met in order for a transfer of a portion of a financial asset, such as a loan participation, to qualify for sale accounting. These changes apply to transfers of loan participations on or after the effective date of FAS 166. Therefore, banks with a calendar year fiscal year must account for transfers of loan participations on or after January 1, 2010, in accordance with FAS 166. In general, loan participations transferred before the effective date of FAS 166 (January 1, 2010, for calendar year banks) are not affected by this new accounting standard and pre-FAS 166 participations that were properly accounted for as sales under FASB Statement No. 140 will continue to be reported as having been sold.

ASC Topic 740 (formerly FASB Interpretation No. 48 on Uncertain Tax Positions) – FASB Interpretation No. 48, *Accounting for*

Uncertainty in Income Taxes (FIN 48), was issued in June 2006 as an interpretation of FASB Statement No. 109, *Accounting for Income Taxes*. Under FIN 48, the term "tax position" refers to "a position in a previously filed tax return or a position expected to be taken in a future tax return that is reflected in measuring current or deferred income tax assets and liabilities." FIN 48 further states that a "tax position can result in a permanent reduction of income taxes payable, a deferral of income taxes otherwise currently payable to future years, or a change in the expected realizability of deferred tax assets." FIN 48 was originally issued effective for fiscal years beginning after December 15, 2006. Banks must adopt FIN 48 for Call Report purposes in accordance with the interpretation's effective date except as follows. On December 31, 2008, the FASB decided to defer the effective date of FIN 48 for eligible nonpublic enterprises and to require those enterprises to adopt FIN 48 for annual periods beginning after December 15, 2008. A nonpublic enterprise under certain conditions is eligible for deferral, even if it opted to issue interim or quarterly financial information in 2007 under earlier guidance that reflected the adoption of FIN 48.

ASC Topic 718 (formerly FASB Statement No. 123 (Revised 2004) and Share-Based Payments – refer to previously published Quarterly Banking Profile notes: http://www2.fdic.gov/qbp/2008dec/qbpnot.html

ASC Topic 815 (formerly FASB Statement No. 133 *Accounting for Derivative Instruments and Hedging Activities*) – refer to previously published Quarterly Banking Profile notes: http://www2.fdic.gov/qbp/2008dec/qbpnot.html

Accounting Standards Codification – In June 2009, the FASB issued Statement No. 168, *The FASB Accounting Standards CodificationTM and the Hierarchy of Generally Accepted Accounting Principles* (FAS 168), to establish the FASB Codification as the single source of authoritative nongovernmental U.S. generally accepted accounting principles (U.S. GAAP). The FASB Codification reorganizes existing U.S. accounting and reporting standards issued by the FASB and other related private-sector standard setters, and all guidance contained in the FASB Codification carries an equal level of authority. All previously existing accounting standards documents are superseded as described in FAS 168. All other accounting literature not included in the FASB Codification is nonauthoritative. The FASB Codification can be accessed at http://asc.fasb.org/. The FASB Codification is effective for interim and annual periods ending after September 15, 2009. This is an FFIEC reference guide at http://www.ffiec.gov/pdf/ffiec_forms/CodificationIntroduction_201006.pdf.

DEFINITIONS (in alphabetical order)

All other assets – total cash, balances due from depository institutions, premises, fixed assets, direct investments in real estate, investment in unconsolidated subsidiaries, customers' liability on acceptances outstanding, assets held in trading accounts, federal funds sold, securities purchased with agreements to resell, fair market value of derivatives, prepaid deposit insurance assessments, and other assets.

All other liabilities – bank's liability on acceptances, limited-life preferred stock, allowance for estimated off-balance-sheet credit losses, fair market value of derivatives, and other liabilities.

Assessment base – assessable deposits consist of DIF deposits (deposits insured by the FDIC Deposit Insurance Fund) in banks' domestic offices with certain adjustments.

Assets securitized and sold – total outstanding principal balance of assets securitized and sold with servicing retained or other seller- provided credit enhancements.

Capital Purchase Program (CPP) – As announced in October 2008 under the TARP, the Treasury Department purchase of noncumulative perpetual preferred stock and related warrants that is treated as Tier 1 capital for regulatory capital purposes is included in "Total equity capital." Such warrants to purchase common stock or noncumulative preferred stock issued by publicly-traded banks are reflected as well in "Surplus." Warrants to purchase common stock or noncumulative preferred stock of not-publicly-traded bank stock classified in a bank's balance sheet as "Other liabilities."

Construction and development loans – includes loans for all property types under construction, as well as loans for land acquisition and development.

Core capital – common equity capital plus noncumulative perpetual preferred stock plus minority interest in consolidated subsidiaries, less goodwill and other ineligible intangible assets. The amount of eligible intangibles (including servicing rights) included in core capital is limited in accordance with supervisory capital regulations.

Cost of funding earning assets – total interest expense paid on deposits and other borrowed money as a percentage of average earning assets.

Credit enhancements – techniques whereby a company attempts to reduce the credit risk of its obligations. Credit enhancement may be provided by a third party (external credit enhancement) or by the originator (internal credit enhancement), and more than one type of enhancement may be associated with a given issuance.

Deposit Insurance Fund (DIF) – the Bank (BIF) and Savings Association (SAIF) Insurance Funds were merged in 2006 by the Federal Deposit Insurance Reform Act to form the DIF.

Derivatives notional amount – the notional, or contractual, amounts of derivatives represent the level of involvement in the types of derivatives transactions and are not a quantification of market risk or credit risk. Notional amounts represent the amounts used to calculate contractual cash flows to be exchanged.

Derivatives credit equivalent amount – the fair value of the derivative plus an additional amount for potential future credit exposure based on the notional amount, the remaining maturity and type of the contract.

Derivatives transaction types:

Futures and forward contracts – contracts in which the buyer agrees to purchase and the seller agrees to sell, at a specified future date, a specific quantity of an underlying variable or index at a specified price or yield. These contracts exist for a variety of variables or indices, (traditional agricultural or physical commodities, as well as currencies and interest rates). Futures contracts are standardized and are traded on organized exchanges which set limits on counterparty credit exposure. Forward contracts do not have standardized terms and are traded over the counter.

Option contracts – contracts in which the buyer acquires the right to buy from or sell to another party some specified amount of an underlying variable or index at a stated price (strike price) during a period or on a specified future date, in return for compensation (such as a fee or premium).

The seller is obligated to purchase or sell the variable or index at the discretion of the buyer of the contract.

Swaps – obligations between two parties to exchange a series of cash flows at periodic intervals (settlement dates), for a specified period. The cash flows of a swap are either fixed, or determined for each settlement date by multiplying the quantity (notional principal) of the underlying variable or index by specified reference rates or prices. Except for currency swaps, the notional principal is used to calculate each payment but is not exchanged.

Derivatives underlying risk exposure – the potential exposure characterized by the level of banks' concentration in particular underlying instruments, in general. Exposure can result from market risk, credit risk, and operational risk, as well as, interest rate risk.

Domestic deposits to total assets – total domestic office deposits as a percent of total assets on a consolidated basis.

Earning assets – all loans and other investments that earn interest or dividend income.

Efficiency ratio – noninterest expense less amortization of intangible assets as a percent of net interest income plus noninterest income. This ratio measures the proportion of net operating revenues that are absorbed by overhead expenses, so that a lower value indicates greater efficiency.

Estimated insured deposits – in general, insured deposits are total domestic deposits minus estimated uninsured deposits. Beginning March 31, 2008, for institutions that file Call reports, insured deposits are total assessable deposits minus estimated uninsured deposits. Beginning September 30, 2009, insured deposits include deposits in accounts of $100,000 to $250,000 that are covered by a temporary increase in the FDIC's standard maximum deposit insurance amount (SMDIA).

Failed/assisted institutions – an institution fails when regulators take control of the institution, placing the assets and liabilities into a bridge bank, conservatorship, receivership, or another healthy institution. This action may require the FDIC to provide funds to cover losses. An institution is defined as "assisted" when the institution remains open and receives assistance in order to continue operating.

Fair Value – the valuation of various assets and liabilities on the balance sheet—including trading assets and liabilities, available-for-sale securities, loans held for sale, assets and liabilities accounted for under the fair value option, and foreclosed assets—involves the use of fair values. During periods of market stress, the fair values of some financial instruments and nonfinancial assets may decline.

FHLB advances – all borrowings by FDIC insured institutions from the Federal Home Loan Bank System (FHLB), as reported by Call Report filers and by TFR filers.

Goodwill and other intangibles – intangible assets include servicing rights, purchased credit card relationships, and other identifiable intangible assets. Goodwill is the excess of the purchase price over the fair market value of the net assets acquired, less subsequent impairment adjustments. Other intangible assets are recorded at fair value, less subsequent quarterly amortization and impairment adjustments.

Loans secured by real estate – includes home equity loans, junior liens secured by 1-4 family residential properties, and all other loans secured by real estate.

Loans to individuals – includes outstanding credit card balances and other secured and unsecured consumer loans.

Long-term assets (5+ years) – loans and debt securities with remaining maturities or repricing intervals of over five years.

Maximum credit exposure – the maximum contractual credit exposure remaining under recourse arrangements and other seller-provided credit enhancements provided by the reporting bank to securitizations.

Mortgage-backed securities – certificates of participation in pools of residential mortgages and collateralized mortgage obligations issued or guaranteed by government-sponsored or private enterprises. Also, see "Securities," below.

Net charge-offs – total loans and leases charged off (removed from balance sheet because of uncollectibility), less amounts recovered on loans and leases previously charged off.

Net interest margin – the difference between interest and dividends earned on interest-bearing assets and interest paid to depositors and other creditors, expressed as a percentage of average earning assets. No adjustments are made for interest income that is tax exempt.

Net loans to total assets – loans and lease financing receivables, net of unearned income, allowance and reserves, as a percent of total assets on a consolidated basis.

Net operating income – income excluding discretionary transactions such as gains (or losses) on the sale of investment securities and extraordinary items. Income taxes subtracted from operating income have been adjusted to exclude the portion applicable to securities gains (or losses).

Noncurrent assets – the sum of loans, leases, debt securities, and other assets that are 90 days or more past due, or in nonaccrual status.

Noncurrent loans & leases – the sum of loans and leases 90 days or more past due, and loans and leases in nonaccrual status.

Number of institutions reporting – the number of institutions that actually filed a financial report.

New charters – insured institutions filing quarterly financial reports for the first time.

Other borrowed funds – federal funds purchased, securities sold with agreements to repurchase, demand notes issued to the U.S. Treasury, FHLB advances, other borrowed money, mortgage indebtedness, obligations under capitalized leases and trading liabilities, less revaluation losses on assets held in trading accounts.

Other real estate owned – primarily foreclosed property. Direct and indirect investments in real estate ventures are excluded. The amount is reflected net of valuation allowances. For institutions that file a Thrift Financial Report (TFR), the valuation allowance subtracted also includes allowances for other repossessed assets. Also, for TFR filers the components of other real estate owned are reported gross of valuation allowances.

Percent of institutions with earnings gains – the percent of institutions that increased their net income (or decreased their losses) compared to the same period a year earlier.

"Problem" institutions – federal regulators assign a composite rating to each financial institution, based upon an evaluation of financial and operational criteria. The rating is based on a scale of 1 to 5 in ascending order of supervisory concern. "Problem" institutions are those institutions with financial, operational, or managerial weaknesses that threaten their continued financial viability. Depending upon the degree of risk and supervisory concern, they are rated either a "4" or "5." The number and assets of "problem" institutions are based on FDIC composite ratings. Prior to March 31, 2008, for institutions whose primary federal regulator was the OTS, the OTS composite rating was used.

Recourse – an arrangement in which a bank retains, in form or in substance, any credit risk directly or indirectly associated with an asset it has sold (in accordance with generally accepted accounting principles) that exceeds a pro rata share of the bank's claim on the asset. If a bank has no claim on an asset it has sold, then the retention of any credit risk is recourse.

Reserves for losses – the allowance for loan and lease losses on a consolidated basis.

Restructured loans and leases – loan and lease financing receivables with terms restructured from the original contract. Excludes restructured loans and leases that are not in compliance with the modified terms.

Retained earnings – net income less cash dividends on common and preferred stock for the reporting period.

Return on assets – bank net income (including gains or losses on securities and extraordinary items) as a percentage of average total (consolidated) assets. The basic yardstick of bank profitability.

Return on equity – bank net income (including gains or losses on securities and extraordinary items) as a percentage of average total equity capital.

Risk-based capital groups – definition:

(Percent)	Total Risk-Based Capital*		Tier 1 Risk-Based Capital*		Tier 1 Leverage		Tangible Equity
Well-capitalized	≥10	and	≥6	and	≥5		–
Adequately capitalized	≥8	and	≥4	and	≥4		–
Undercapitalized	≥6	and	≥3	and	≥3		–
Significantly undercapitalized	<6	or	<3	or	<3	and	>2
Critically undercapitalized	–		–		–		≤2

* As a percentage of risk-weighted assets.

Risk Categories and Assessment Rate Schedule – The current risk categories became effective January 1, 2007. Capital ratios and supervisory ratings distinguish one risk category from another. The following table shows the relationship of risk categories (I, II, III, IV) to capital and supervisory groups as well as the initial base assessment rates (in basis points), effective April 1, 2009, for each risk category. Supervisory Group A generally includes institutions with CAMELS composite ratings of 1 or 2; Supervisory Group B generally includes institutions with a CAMELS composite rating of 3; and Supervisory Group C generally includes institutions with CAMELS composite ratings of 4 or 5. For purposes of risk-based assessment capital groups, undercapitalized includes institutions that are significantly or critically undercapitalized.

<table>
<tr><th rowspan="2">Capital Category</th><th colspan="3">Supervisory Group</th></tr>
<tr><th>A</th><th>B</th><th>C</th></tr>
<tr><td>1. Well Capitalized</td><td>I
12–16 bps</td><td rowspan="2">II
22 bps</td><td rowspan="2">III
32 bps</td></tr>
<tr><td>2. Adequately Capitalized</td><td>II
22 bps</td></tr>
<tr><td>3. Undercapitalized</td><td colspan="2">III
32 bps</td><td>IV
45 bps</td></tr>
</table>

Effective April 1, 2009, the initial base assessment rates are 12 to 45 basis points. An institution's total assessment rate may be less than or greater than its initial base assessment rate as a result of additional risk adjustments.

The base assessment rates for most institutions in Risk Category I are based on a combination of financial ratios and CAMELS component ratings (the financial ratios method).

For large institutions in Risk Category I (generally those with at least $10 billion in assets) that have long-term debt issuer ratings, assessment rates are determined by equally weighting the institution's CAMELS component ratings, long-term debt issuer ratings, and the financial ratios method assessment rate. For all large Risk Category I institutions, additional risk factors are considered to determine whether assessment rates should be adjusted. This additional information includes market data, financial performance measures, considerations of the ability of an institution to withstand financial stress, and loss severity indicators. Any adjustment is limited to no more than one basis point.

Effective April 1, 2009, the FDIC introduced three possible adjustments to an institution's initial base assessment rate: (1) a decrease of up to 5 basis points for long-term unsecured debt and, for small institutions, a portion of Tier 1 capital; (2) an increase not to exceed 50 percent of an institution's assessment rate before the increase for secured liabilities in excess of 25 percent of domestic deposits; and (3) for non-Risk Category I institutions, an increase not to exceed 10 basis points for brokered deposits in excess of 10 percent of domestic deposits. After applying all possible adjustments, minimum and maximum total base assessment rates for each risk category are as follows:

Total Base Assessment Rates*

	Risk Category I	Risk Category II	Risk Category III	Risk Category IV
Initial base assessment rate	12–16	22	32	45
Unsecured debt adjustment	-5–0	-5–0	-5–0	-5–0
Secured liability adjustment	0–8	0–11	0–16	0–22.5
Brokered deposit adjustment	–	0–10	0–10	0–10
Total base assessment rate	7–24.0	17–43.0	27–58.0	40–77.5

*All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

Beginning in 2007, each institution is assigned a risk-based rate for a quarterly assessment period near the end of the quarter following the assessment period. Payment is generally due on the 30th day of the last month of the quarter following the assessment period. Supervisory rating changes are effective for assessment purposes as of the examination transmittal date. For institutions with long-term debt issuer ratings, changes in ratings are effective for assessment purposes as of the date the change was announced.

Special Assessment – On May 22, 2009, the FDIC board approved a final rule that imposed a 5 basis point special assessment as of June 30, 2009. The special assessment was levied on each insured depository institution's assets minus its Tier 1 capital as reported in its report of condition as of June 30, 2009. The special assessment was collected September 30, 2009, at the same time that the risk-based assessment for the second quarter of 2009 was collected. The special assessment for any institution was capped at 10 basis points of the institution's assessment base for the second quarter of 2009 risk-based assessment.

Prepaid Deposit Insurance Assessments – In November 2009, the FDIC Board of Directors adopted a final rule requiring insured depository institutions (except those that are exempted) to prepay their quarterly risk-based deposit insurance assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012, on December 30, 2009. Each institution's regular risk-based deposit insurance assessment for the third quarter of 2009, which is paid in arrears, also is payable on December 30, 2009.

Risk-weighted assets – assets adjusted for risk-based capital definitions which include on-balance-sheet as well as off-balance-sheet items multiplied by risk-weights that range from zero to 200 percent. A conversion factor is used to assign a balance sheet equivalent amount for selected off-balance-sheet accounts.

Securities – excludes securities held in trading accounts. Banks' securities portfolios consist of securities designated as "held-to-maturity," which are reported at amortized cost (book value), and securities designated as "available-for-sale," reported at fair (market) value.

Securities gains (losses) – realized gains (losses) on held-to-maturity and available-for-sale securities, before adjustments for income taxes. Thrift Financial Report (TFR) filers also include gains (losses) on the sales of assets held for sale.

Seller's interest in institution's own securitizations – the reporting bank's ownership interest in loans and other assets that have been securitized, except an interest that is a form of recourse or other seller-provided credit enhancement. Seller's interests differ from the securities issued to investors by the securitization structure. The principal amount of a seller's interest is generally equal to the total principal amount of the pool of assets included in the securitization structure less the principal amount of those assets attributable to investors, i.e., in the form of securities issued to investors.

Subchapter S Corporation – a Subchapter S corporation is treated as a pass-through entity, similar to a partnership, for federal income tax purposes. It is generally not subject to any federal income taxes at the corporate level. This can have the effect of reducing institutions' reported taxes and increasing their after-tax earnings.

Temporary Liquidity Guarantee Program (TLGP) – was approved by the FDIC Board on October 13, 2008. The TLGP was designed to help relieve the crisis in the credit markets by giving banks access to liquidity during a time of global financial distress. Participation in the TLGP is voluntary. The TLGP has two components:

> ***Transaction Account Guarantee Program (TAGP)*** provides a full guarantee of non-interest-bearing deposit transaction accounts above $250,000, at depository institutions that elected to participate in the program. On August 26, 2009, the FDIC Board voted to extend the TAGP six months beyond its original expiration date to June 30, 2010. On April 13, 2010, the FDIC Board adopted an interim rule extending the TAG program for six months through December 31, 2010, with a possibility of an additional 12-month extension, through December 31, 2011. (Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provides temporary unlimited insurance coverage to noninterest-bearing transaction accounts at all FDIC-insured institutions. The separate coverage for these accounts becomes effective on December 31, 2010, and ends on December 31, 2012.)
>
> ***Debt Guarantee Program (DGP)*** provides a full guarantee of senior unsecured debt[1] issued by eligible institutions after October 14, 2008. Initially, debt issued before June 30, 2009, and maturing on or before June 30, 2012, could be guaranteed. On March 17, 2009, the deadline for issuance under the program was extended to October 31, 2009, and the expiration of the guarantee was set at the earlier of maturity of the debt or December 31, 2012. Institutions eligible for participation in the debt guarantee program include insured depository institutions, U.S. bank holding companies, certain U.S. savings and loan holding companies, and other affiliates of an insured depository institution that the FDIC designates as eligible entities. The FDIC Board adopted a final rule on October 20, 2009, that established a limited six-month emergency guarantee facility upon expiration of the DGP.

Trust assets – market value, or other reasonably available value of fiduciary and related assets, to include marketable securities, and other financial and physical assets. Common physical assets held in fiduciary accounts include real estate, equipment, collectibles, and household goods. Such fiduciary assets are not included in the assets of the financial institution.

Unearned income & contra accounts – unearned income for Call Report filers only.

Unused loan commitments – includes credit card lines, home equity lines, commitments to make loans for construction, loans secured by commercial real estate, and unused commitments to originate or purchase loans. (Excluded are commitments after June 2003 for originated mortgage loans held for sale, which are accounted for as derivatives on the balance sheet.)

Volatile liabilities – the sum of large-denomination time deposits, foreign-office deposits, federal funds purchased, securities sold under agreements to repurchase, and other borrowings.

Yield on earning assets – total interest, dividend, and fee income earned on loans and investments as a percentage of average earning assets.

[1] Senior unsecured debt generally includes term Federal funds purchased, promissory notes, commercial paper, unsubordinated unsecured notes, certificates of deposit (CDs) standing to the credit of a bank, and U.S. dollar denominated bank deposits owed to an insured depository institution.

Feature Article:

"We Must Resolve to End Too Big to Fail"

The following are remarks by FDIC Chairman Sheila C. Bair on May 5, 2011, before the 47th Annual Conference on Bank Structure and Competition sponsored by the Federal Reserve Bank of Chicago.

I am very pleased to have the opportunity to address this conference once again as FDIC Chairman. For nearly 50 years, the Bank Structure Conference has been a vitally important forum for addressing the challenges facing the financial services industry. It all began in the early 1960s as a series of symposia on competition and market structure in what was then, in many respects, a much more heavily regulated banking industry. In those days, branching restrictions, product and service limitations, and interest-rate ceilings were the norm. But by the 1970s, the focus shifted somewhat to the need for banking deregulation in a fast-changing financial landscape.

With the crises of the 1980s, the issues of moral hazard—resulting from the federal safety net and the resulting need for better market discipline—came to the fore. And more recently, the emphasis has shifted again to financial innovation and nonbank financial providers, followed, of course, by debate as to the causes of the recent crisis and the reforms needed to prevent such a disaster from recurring.

Besides its uncanny knack for identifying emerging policy issues, this conference series is also remarkable for the way it brings together three groups of people—academics, bankers, and regulators—who sometimes speak different languages, but who must work together to resolve those difficult issues. And what keeps you coming back to this conference year after year, I suspect, is a shared commitment to some common goals.

All of us have a vital stake in financial stability. And we all want to see a financial system that consistently supports the real economy by efficiently allocating capital and credit to its highest and best use.

Balancing the Government's Role

Because banking and finance are so critical to our economy, and because they are prone to bouts of instability, we have long recognized a vital—but limited—role for government in our financial system. Public confidence, market liquidity, and financial stability are all inherently public goods. Only government has the capacity to carry out prudential supervision, serve as lender of last resort, provide iron-clad guarantees that can forestall runs, and promptly and efficiently resolve banking institutions when they fail.

Under the guidance of statute, the FDIC, the Federal Reserve, and the other banking authorities have long sought to achieve a delicate balance in the role that government plays in the banking industry. One important task is to promote confidence and stability through the deposit insurance guarantee and the lender-of-last-resort function. But it is equally important that we uphold regulatory discipline through prudential supervision and promote market discipline by clearly limiting the extent of the government backstop.

In the wake of the recent crisis, we are working to implement an updated statutory mandate under the Dodd-Frank Act. As we do so, there is once again much debate over the lessons of the crisis and the proper role of government in the financial sector.

On one hand, there is concern that new regulations could impose onerous costs on banks and our economy, stifling financial innovation and economic growth. On the other, there is genuine alarm about the immense scale and seemingly indiscriminate nature of the government assistance provided to large banks and nonbank financial companies during the crisis, and what effects these actions will have on the competitive landscape in banking.

These bailouts were necessary because these institutions had been permitted to become so large, complex, and interconnected that the prospect of their failure was a threat to overall financial stability. They were Too Big to Fail. Richmond Federal Reserve Bank President Jeffrey Lacker recently reminded us of the drawbacks of a federal safety net policy of constructive ambiguity that allows regulators to talk tough during good times, but keep their options open during a crisis. But if there ever was a constructive ambiguity about the scope of the federal safety net and the existence of Too Big to Fail, it was surely made obsolete by the events of late 2008 and early 2009.

In the wake of that experience, all of us in this room have a vital interest and a collective responsibility to do what it takes to restore the balance between a safety net that ensures stability and public confidence, and the need to place clear and credible limits on that safety net. In short, we must restore market discipline in the financial sector. That will be the focus of my remarks today.

The Roots of the Problem

The financial crisis of 2008 centered on the so-called shadow banking system—a network of large-bank affiliates, special-purpose vehicles, and nonbank financial companies that existed largely outside of the prudential supervision and capital requirements that apply to federally insured depository institutions in the U.S. In addition, the shadow banking system also fell largely outside of the FDIC's process for resolving failed insured financial institutions through receivership.

Several large, complex U.S. financial companies at the center of the 2008 crisis could not be wound down in an orderly manner when they became nonviable. Major segments of their operations were subject to the commercial bankruptcy code, as opposed to bank receivership laws, or they were located abroad and therefore outside of U.S. jurisdiction. The size and complexity of these institutions, and the inadequacy of the bankruptcy process as a means to preserve value after their failure, rendered these companies Too Big to Fail.

In the heat of the crisis, policymakers frequently resorted to bailouts instead of letting these firms collapse into bankruptcy. The fear was that the losses generated in a failure would cascade through the financial system, freezing financial markets and stopping the economy in its tracks. The worst fears of policymakers were realized when Lehman Brothers—a large, complex nonbank financial company—filed for bankruptcy on September 15, 2008.

The long-term outcome for Lehman creditors clearly demonstrates the shortcomings of bankruptcy as a means to resolve failed financial companies. The firm managing the Lehman bankruptcy reports that more than $75 billion in value was destroyed by the bankruptcy process itself, including tens of billions of dollars from the inability to roll over valuable derivatives contracts. More than two-and-a-half years after Lehman's failure, the process has cost over $1.2 billion in legal and other professional fees, and many creditors still don't know what their claims will be worth.

Anticipating the complications of this process, counterparties across the financial system reacted to the Lehman failure by running for the safety of cash and other government obligations. Subsequent days and weeks saw the collapse of interbank lending and commercial paper issuance, and a near complete disintermediation of the shadow banking system. The only remedy was massive intervention on the part of governments around the world, which pumped equity capital into banks and other financial companies, guaranteed certain nondeposit liabilities, and extended credit backed by a wide range of illiquid assets to banks and nonbank firms alike. Even with these emergency measures, the economic consequences of the crisis have been enormous.

Competitive Implications of Too Big to Fail

The dilemma policymakers faced in the failure of large, complex financial institutions resembles a classic hostage drama, where the imperative of saving lives in the short run comes at the expense of encouraging more hostage-taking in the future. And so it is with the largest U.S. banks and other financial companies, which have every incentive to render themselves so large, so complex, and so opaque that no policymaker would dare risk letting them fail in a crisis. With the benefit of this implicit safety net, these institutions are insulated from the normal discipline of the marketplace that applies to smaller banks and practically every other private company.

Understanding the game, and having recently seen the nation's largest financial institutions receive hundreds of billions of dollars in taxpayer assistance, the market appears to expect more of the same going forward. In February, Moody's reported that its ratings on the senior unsecured debt of eight large U.S. banking organizations received an average "uplift" of 2.2 ratings notches because of the expectation of future government support. Meanwhile, the largest banks continue to enjoy a large competitive advantage over community banks in funding markets. In the fourth quarter of last year, the average interest cost of funding earning assets for banks with more than $100 billion in assets was about half the average for community banks with less than $1 billion in assets. Indeed, I would also argue that well-managed large banks are disadvantaged. Too Big to

Fail narrows the funding advantage they would otherwise enjoy over weaker competitors.

This situation can only be regarded as a new and dangerous form of state capitalism, where the market assumes large, complex, and powerful financial companies are in line to receive generous government subsidies in times of financial distress. Unless reversed, we can expect to see more concentration of market power in the hands of the largest institutions, more complexity in financial structures and relationships, more risk-taking at the expense of the public, and, in due time, another financial crisis.

The New SIFI Resolution Framework

At the core of the reform legislation passed last summer are measures that create a new resolution framework that will apply to the so-called systemically important financial institutions, or SIFIs, that are associated with the problem of Too Big to Fail.

This new SIFI resolution framework has three basic elements. First, the new Financial Stability Oversight Council, chaired by Treasury and made up of the other financial regulatory agencies, is responsible for designating SIFIs based on criteria that are now being established by regulation. Once designated, the SIFIs will be subject to heightened supervision by the Federal Reserve and required to maintain detailed resolution plans that demonstrate that they are resolvable under bankruptcy—not bailout—if they should run into severe financial distress.

Not only will these plans provide valuable advance information that will assist in implementing an orderly resolution, but the law also authorizes the FDIC and the Federal Reserve to require, if necessary, changes in the structure or activities of these institutions to ensure that they meet the standard of being "resolvable" in a crisis.

Finally, the law provides for a third alternative to bankruptcy or bailout—an Orderly Liquidation Authority, or OLA, that gives the FDIC many of the same trustee powers over SIFIs that we have long used to manage failed-bank receiverships. While this authority strictly prohibits bailouts, the FDIC could use it to conduct advance planning, to temporarily operate and fund the institution under government control to preserve its value as a going concern, and to quickly pay partial recoveries to creditors through advance dividends, as we have long done in failed-bank receiverships. The result would be a faster resolution of claims against the failed institution, smaller losses for creditors, reduced impact on the wider financial system, and an end to the cycle of bailouts.

The history of the recent crisis is replete with examples of missed opportunities to sell or recapitalize troubled institutions before they failed. But with bailout off the table, management will have a greater incentive to bring in an acquirer or new investors before failure, and shareholders and creditors will have more incentive to go along with such a plan in order to salvage the value of their claims. These new incentives to be more proactive in dealing with problem SIFIs will reduce their incidence of outright failure and also lessen the risk of systemic effects arising from such failures.

Doubts and Misconceptions about the New Resolution Framework

The problem is that, even as we put this game plan into action, some still don't believe that policymakers have the means or the will to take the difficult steps needed to close down the SIFIs in a crisis, and will ultimately back down and just bail them out again. Part of the problem is a misunderstanding of the process. And part of it is a low opinion of the political will in Washington to make hard and unpopular decisions.

For example, we have heard some say that being designated as a SIFI will confer a competitive advantage by anointing an institution as Too Big to Fail. But the reality is that SIFIs will be subject to heightened supervision and higher capital requirements. They will also be required to maintain resolution plans and could be required to restructure their operations if they cannot demonstrate that they are resolvable.

Needless to say, nobody is signing up in advance to be a SIFI. In fact, it is just the opposite. It might be far better to fall just short of SIFI status in terms of size, complexity, and interconnectedness. In that case, your institution would be spared all of the additional regulatory burdens, but policymakers could still face significant challenges in effecting an orderly resolution in a crisis. That's why it is important that the FSOC move forward and develop some hard metrics to guide the SIFI designation process. We need to be able to gather information on a broad range of potential SIFIs in order to develop a sense of the difficulties that might arise in resolving them.

Ultimately, the "resolvability" of an institution should determine if it is designated as a SIFI. Upholding this standard will be essential if we are to avoid the "deathbed designation" of SIFIs that would put the resolution authority in the worst possible position in a crisis.

Misunderstandings also abound as to the nature of the Orderly Liquidation Authority. Some have called it a bailout mechanism, while others see it as a fire sale that will destroy the value of receivership assets. Neither is true.

While it is positioned as a backup plan in cases where bankruptcy would threaten to result in wider financial disorder, the OLA is actually a better-suited framework for resolving claims against failed financial institutions. It is a transparent process that operates under fixed rules that prohibit any bailout of shareholders and creditors or any other type of political favoritism, which is a legitimate concern in the case of an ad-hoc emergency rescue program. Not only would the OLA work faster and preserve value better than bankruptcy, but the regulatory authorities who will administer the OLA are in a far better position to coordinate with foreign regulators in the failure of an institution with significant international operations.

The FDIC has made considerable progress in forging bilateral agreements with other countries that will facilitate orderly cross-border resolutions. And we currently co-chair the Cross Border Resolutions Group of the Basel Committee.

It is worth noting that not a single other advanced country plans to rely on bankruptcy to resolve large, international financial companies. Most are implementing special resolution regimes similar to the OLA. Under the OLA, we can buy time, if necessary, and preserve franchise value by running the institution as a bridge bank, and then eventually sell it in parts or as a whole. It is a game-changer in terms of the ability to provide continuity and minimize losses in financial institution failures.

Resolution Plans Must Be Credible and Actionable

A major improvement in the SIFI resolution process is also one that, in my opinion, has been somewhat underestimated by the skeptics. And that is the requirement for SIFI resolution plans.

When a large, complex financial institution gets into trouble, time is the enemy. The larger, more complex, and more interconnected a financial company is, the longer it takes to assemble a full and accurate picture of its operations and develop a resolution strategy. By requiring detailed resolution plans in advance, and authorizing an on-site FDIC team to conduct pre-resolution planning, the SIFI resolution framework regains the informational advantage that was lacking in the crisis of 2008.

The FDIC recently released a paper detailing how the filing of resolution plans, the ability to conduct advance planning, and other elements of the framework could have dramatically changed the outcome if they had been available in the case of Lehman. Under the new SIFI resolution framework, the FDIC should have a continuous presence at all designated SIFIs, working with the firms and reviewing their resolution plans as part of their normal course of business. So our presence will in no way be seen as a signal of distress. Instead, it is much more likely to provide a stabilizing influence that encourages management to more fully consider the downside consequences of its actions, to the benefit of the institution and the stability of the system as a whole.

As far-reaching as these changes are, their ultimate effectiveness will still depend on the willingness of the FDIC and the Federal Reserve to actively use their authority to require organizational changes that promote the ability to resolve SIFIs. As currently structured, many large banks and nonbank SIFIs maintain thousands of subsidiaries and manage their activities within business lines that cross many different organizational structures and regulatory jurisdictions. This can make it very difficult to implement an orderly resolution of one part of the company without triggering a costly collapse of the entire company.

To solve this problem, the FDIC and the Fed must be willing to insist on organizational changes that better align business lines and legal entities well before a crisis occurs. Unless these structures are rationalized and simplified in advance, there is a real danger that their complexity could make a SIFI resolution far more costly and more difficult than it needs to be.

Such changes are also likely to have collateral benefits for the firm's management in the short run. A simplified organizational structure will put management in a better position to understand and monitor risks and the inter-relationships among business lines, addressing what many see as a major challenge that contributed to the crisis. That is why—well before the test of another major crisis—we must define high informational standards for resolution plans and be willing to insist on organizational changes where necessary in order to ensure that SIFIs meet the standard of resolvability.

What You Can Do to Shape the Outcome

In the wake of a crisis, there is a natural tendency for memories to fade. The economic pain caused by the financial crisis will subside in time, and even the Bank Structure Conference will eventually move on to consider other topics and other challenges. In an ever-changing financial landscape, it can be difficult to maintain a long-term focus on the lessons of the last crisis and the imperatives of preparing to deal with the next one. Most of all, it is extremely difficult to overcome the political resistance that comes from large, powerful financial organizations when they are asked to make potentially costly changes at a time when the danger of a financial crisis appears remote.

As I mentioned at the outset, everyone in this room has a vital stake in the outcome of these reforms. And, because this is such a knowledgeable and influential group, all of you have a role to play in their failure or their success. Given the challenges before us, one response that many seem to have is a certain cynicism and detachment about the process. It's easy to be a doubter and simply resign yourself to the idea that it is just too difficult, and that we will never be able to really put an end to Too Big to Fail.

If enough of us do that, then the ratings agencies will end up being right in terms of their expectation of future government support. Open-ended state subsidies to large financial companies in times of crisis could become a permanent part of the landscape, with all of the attendant implications that has for risk-taking and the competitive structure in banking.

But, knowing this group as I do now, after almost five years as FDIC Chairman, I think you have a far more productive role to play in shaping the outcome of this critical policy debate. I urge you to actively use your influence to ensure that the new SIFI resolution framework will be equal to the great task that is before us. Conduct your own analysis of the regulations as they are proposed, and engage the process in comment letters, op-eds, blog posts, and research papers. Ask the hard questions that need asking:

Are regulators carrying out the intent of the reforms?

Are all the right firms designated as SIFIs?

Are they developing credible resolution plans?

Are the largest financial companies structured in a way that renders them resolvable in a crisis?

Is progress being made in coordinating resolution regimes on the international front?

And, most important, are we meeting the market test of credibility? The answer to this question will be evident in credit spreads, funding costs, and other market indicators.

Conclusion

While it is important that you critique the actions of all parties to this debate—including regulators, financial companies, and other market participants—it is equally important that you use your knowledge and your influence to help explain the parameters of this debate and the stakes involved to the American people. These issues are complex and are generally not well-understood by the public. But the people in this room are among the world's leading experts on these issues. With your active engagement, I am confident that we can build the broad-based political support that will be needed to change the status quo and build the foundation for a stronger and more competitive financial sector in the years ahead.

Feature Article:

The Orderly Liquidation of Lehman Brothers Holdings Inc. under the Dodd-Frank Act

Introduction

The bankruptcy filing of Lehman Brothers Holdings Inc. (Lehman or LBHI) on September 15, 2008, was one of the signal events of the financial crisis. The disorderly and costly nature of the LBHI bankruptcy—the largest, and still ongoing, financial bankruptcy in U.S. history—contributed to the massive financial disruption of late 2008. This paper examines how the government could have structured a resolution of Lehman under the orderly liquidation authority of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and how the outcome could have differed from the outcome under bankruptcy.

The Dodd-Frank Act grants the Federal Deposit Insurance Corporation (FDIC) the powers and authorities necessary to effect an orderly liquidation of systemically important financial institutions. These authorities are analogous to those the FDIC uses to resolve failed insured depository institutions under the Federal Deposit Insurance Act (FDI Act).[1] The keys to an orderly resolution of a systemically important financial company that preserves financial stability are the ability to plan for the resolution and liquidation, provide liquidity to maintain key assets and operations, and conduct an open bidding process to sell the company and its assets and operations to the private sector as quickly as practicable. The FDIC has developed procedures that have allowed it to efficiently use its powers and authorities to resolve failed insured institutions for over 75 years. The FDIC expects to adapt many of these procedures, modified as necessary, to the liquidation of failed systemically important financial institutions.

The Events Leading to the Lehman Bankruptcy

Background

The events leading up to Lehman's bankruptcy are documented in a number of books and articles; but perhaps most extensively in two documents: the Report of Anton R. Valukas, Examiner, Bankruptcy of Lehman Brothers Holdings Inc., and the Trustee's Preliminary Investigation Report of the Attorneys for James W. Giddens, Trustee for the Securities Investors Protection Act (SIPA) Liquidation of Lehman Brothers, Inc. The analysis in this paper assumes that the events leading up to Lehman's bankruptcy filing took place roughly as described in these two reports.

Prior to 2006, Lehman had been described as being in the "moving business," primarily originating or purchasing loans and then selling them through securitizations.[2] Beginning in 2006, the firm shifted to an aggressive-growth business strategy, making "principal" investments in long-term, high-risk areas such as commercial real estate, leveraged lending and private equity. Even as the sub-prime crisis grew, the firm continued its rapid growth strategy throughout 2007.

At the beginning of 2008, with no end of the sub-prime crisis in sight, Lehman again revised its business strategy and began the process of deleveraging. However, by the end of the first quarter of 2008, the firm had made no substantial progress in either selling assets or in raising large amounts of equity. Richard S. Fuld, Jr., Lehman's CEO, told the Examiner that he had decided that Lehman would not raise equity unless it was at a premium above book value.[3]

After Bear Stearns failed and was purchased by JPMorgan Chase on March 15, 2008, Lehman was seen by many as the next most vulnerable investment bank.[4] At this time, Lehman began raising equity and seeking investment partners. In late March, Lehman contacted Warren E. Buffett, unsuccessfully seeking an investment from either Mr. Buffett or one of Berkshire Hathaway's subsidiaries. At the beginning of April, Lehman completed a $4 billion convertible preferred stock issuance. In late May, Lehman began talks with a consortium of Korean banks, but no deal was reached. On June 7, Lehman announced a $2.8 billion loss for the second

[1] 12 U.S.C. § 1811 *et seq.*

[2] Anton R. Valukas, *Examiner's Report: Bankruptcy of Lehman Brothers Holdings Inc.,* Vol. 2, 43, (Mar. 11, 2010) (hereinafter, Examiner's Report).

[3] *Id.* at 150–52. Lehman did raise capital at a later date. Presumably more could have been raised at this time if Lehman had been willing to consider less favorable terms to the then-current shareholders.

[4] *Id.* at 612–13.

quarter and on June 12 it raised $6 billion in preferred and common stock, resulting in $10 billion in the aggregate of new capital for the second quarter of 2008.

By mid-June, Lehman recognized that its commercial real estate portfolio was a major problem and began to develop a "good bank-bad bank" plan to spin off the portfolio. It identified $31.6 billion in assets that would be placed in a so-called bad bank to be named SpinCo, which would reduce Lehman's balance sheet and shed risky assets. For a number of reasons, the plan never came to fruition.[5]

Although the consortium of Korean banks withdrew from negotiations, one of the consortium's banks, the government-owned Korean Development Bank (KDB), continued to express an interest in buying or making a substantial investment in Lehman. The talks between Lehman and KDB went through a number of iterations, with KDB becoming increasingly concerned about Lehman's risky assets. In August, KDB proposed an investment in a "Clean Lehman," where all risk of future losses (risky assets) would be spun off from Lehman. By late August, KDB decided that the deteriorating global financial situation and the declining value of Korea's currency made that transaction too problematic and withdrew from further negotiations.[6]

In July 2008, Lehman contacted Bank of America with a proposal whereby Bank of America would buy a 30 percent interest in LBHI, but the discussions never culminated in a transaction. In late August, Lehman again contacted Bank of America, this time about helping finance SpinCo. Lehman subsequently asked Bank of America to consider buying the entire firm, but Bank of America did not pursue a transaction.

MetLife had also been in contact with Lehman about a possible purchase. MetLife began due diligence in early August, but decided within a few days that Lehman's commercial real estate and residential real estate assets were too risky. Also in August, the Investment Corporation of Dubai explored a potential investment principally in Lehman's Neuberger Berman wealth and asset management business. Discussions ceased in early September.[7]

By the late summer of 2008, Lehman's liquidity problems were becoming acute. Lehman's urgent need to find a buyer was precipitated in part by panic in the financial markets following the two largest players in the U.S. mortgage market, Fannie Mae and Freddie Mac, being placed into conservatorship on September 7, 2008, and the ensuing devaluation of those institutions' common and preferred stock. On September 9, Treasury Secretary Henry M. Paulson, Jr. contacted Bank of America and asked it to look into purchasing Lehman.[8] During that conversation on September 9, Secretary Paulson informed Bank of America that the government would not provide any assistance.[9] Bank of America began due diligence, and on September 11 told Secretary Paulson that there were so many problems with the assets on Lehman's balance sheet that Bank of America was unwilling to pursue a privately negotiated acquisition. Secretary Paulson then told Bank of America that, although the government would not provide any assistance, he believed a consortium of banks could be encouraged by the government to assist Bank of America in an acquisition of Lehman by taking the bad assets in a transaction similar in certain respects to the 1998 rescue of Long-Term Capital Management.[10] Bank of America then agreed to continue to consider the purchase of Lehman. At various times in the following two days, Bank of America discussed its analysis of Lehman with the Treasury Department and concluded that Lehman had approximately $65-67 billion in commercial real estate and residential mortgage-related assets and private equity investments that it was unwilling to purchase in any acquisition without the government providing loss protection. Independently, on September 13, Merrill Lynch approached Bank of America and shortly thereafter Bank of America agreed to acquire Merrill Lynch.[11]

Lehman reported further losses on September 10, and announced plans to restructure the firm.[12] The panic also affected Lehman's trading counterparties, which began to lose confidence in the firm. Many of these counterparties withdrew short-term funding, demanded increasingly greater overcollateralization on borrowings or clearing exposures, demanded more collateral to cover their derivatives positions and subsequently began to move their business away from Lehman. Lehman's clearing banks also began to demand billions of dollars of additional collateral.

[5] *Id.* at 640–62.
[6] *Id* at 668–81.
[7] *Id* at 687–94.

[8] Henry M. Paulson, Jr., *On the Brink: Inside the Race to Stop the Collapse of the Global Financial System*, 177 (2010) (hereinafter, *On the Brink*).
[9] *Id.* at 177, 184–85.
[10] *Id.* at 199–206.
[11] Examiner's Report at 696–703.
[12] Lehman Brothers Holdings Inc., Periodic Report on Form 8-K, Sept. 10, 2008.

A final attempt at a sale of Lehman occurred on September 11, 2008, when Lehman was contacted by Barclays, a large U.K. commercial and investment bank.[13] Barclays commenced due diligence of Lehman on September 12 and soon identified $52 billion in assets that it believed Lehman had overvalued and that Barclays would not purchase as part of the transaction. As in the case of Bank of America, these assets were concentrated in commercial real estate, residential real estate, and private equity investments. For a variety of reasons, Barclays could not get immediate regulatory approval from the U.K. authorities and the transaction was abandoned on September 14.[14]

LBHI started work on a plan for an "orderly" wind-down. The plan estimated it would take six months to unwind Lehman's positions and made the assumption that the Federal Reserve Bank of New York would assist Lehman during the wind-down process.[15] On September 14, 2008, the Federal Reserve Bank of New York told LBHI that, without the Barclay's transaction, it would not fund Lehman.

Chapter 11 Filing

With no firm willing to acquire LBHI and without funding from the central bank, LBHI filed for Chapter 11 bankruptcy on September 15, 2008.[16] On that date, a number of LBHI affiliates also filed for bankruptcy protection and Lehman's U.K. broker-dealer, Lehman Brothers International (Europe) (LBIE), filed for administration in the United Kingdom. These events adversely affected the ability of Lehman's U.S. broker-dealer, Lehman Brothers Inc. (LBI), to obtain adequate funding and settle trades. LBI remained in operation until September 19, when it was placed into a SIPA liquidation.[17]

The Lehman bankruptcy had an immediate and negative effect on U.S. financial stability and has proven to be a disorderly, time-consuming, and expensive process.[18] Of Lehman's creditors, the one that experienced the most disruption was the Reserve Primary Fund, a $62 billion money market fund. On the day of the filing, the fund held $785 million of Lehman's commercial paper, representing 13.8 percent of the amount outstanding as of May 31, 2008.[19] The fund immediately suffered a run, facing redemptions of approximately $40 billion over the following two days. With depleted cash reserves, the fund was forced to sell securities in order to meet redemption requests, which further depressed valuations. The fund's parent company announced it would "break the buck" when it re-priced its shares at $0.97 on September 16, 2008. During the remainder of the week, U.S. domestic money market funds experienced approximately $310 billion in withdrawals, representing 15 percent of their total assets and eventually prompting the U.S. Treasury to announce a temporary guarantee of money market funds.[20]

LBHI's default also caused disruptions in the swaps and derivatives markets and a rapid, market-wide unwinding of trading positions for those financial markets contracts not subject to the automatic stay in bankruptcy. For example, LBHI's bankruptcy filing affected LBI's exposure in the commodities markets via its positions that settled on markets operated by CME Group. LBI's assets on CME Group markets were largely contracts to hedge risk for the energy business conducted in its other entities. LBHI typically was guarantor of the swap contracts of its subsidiaries and affiliates. For those derivative financial instruments for which LBHI acted as guarantor, the Chapter 11 filing of LBHI constituted a default under the International Swaps and Derivatives Association agreements governing the swaps, which had the effect of allowing termination of those trades. This left naked hedges and exposed LBI to considerable pricing risk since it was not able to offer both sides of the hedge when liquidating the portfolio.[21] Similarly, the Options Clearing Corporation (OCC) threatened to invoke its emergency clearing house rules which would allow it to

[13] Similar to the case of Bank of America, Barclays contacted Lehman at Treasury's encouragement. Barclays and Bank of America were proceeding under similar expectations that there would not be any government assistance.

[14] Examiner's Report at 703–11 and *On the Brink* at 203–11.

[15] Examiner's Report at 720–21.

[16] LBHI filed for bankruptcy protection on Monday, September 15, 2008, at 1:30 am EDT. *Id.* at 726.

[17] LBHI's demise left LBI unable to obtain adequate financing on an unsecured or secured basis. LBI lost customers and experienced both an increase in failed transactions and additional demands for collateral by clearing banks and others. See *Trustee's Preliminary Investigation Report of the Attorneys for James W. Giddens, Trustee for the SIPA Liquidation of Lehman Brothers, Inc.*, 10, 25-26, 56.

[18] After more than two years in bankruptcy proceedings, total fees paid to advisers involved in the Lehman bankruptcy have exceeded $1 billion. *See* Liz Moyer, *Lehman Fees Hit $1 Billion and Counting*, Wall Street Journal, Nov. 23, 2010, *available at* http://online.wsj.com/article/SB20001424052748704243904575630653803513816.html.

[19] Lehman used November 30 as its year end for financial reporting purposes. Accordingly, May 31, 2008, was the date of the close of its second quarter financial period.

[20] *President's Working Group on Financial Markets: Money Market Fund Reform Options* (Oct. 2010), *available at* http://www.treasury.gov/press-center/press-releases/Documents/10.21%20PWG%20Report%20Final.pdf.

[21] SIPA Trustee Report Section V.B., p. 66.

liquidate all of LBI's positions unless a performing third party agreed to assume the positions. The Depository Trust & Clearing Corporation (DTCC) shared the same concerns as the CME Group and the OCC, and was unwilling to perform settlement and transfer functions for LBI unless a performing third party assumed all potential liability. When Barclays refused to assume the potential liability, the DTCC began liquidating LBI's positions as a broker-dealer whose membership had been terminated on September 22, 2008. Consequently, account transfer requests from customers that were already in process were canceled. The DTCC also reversed all account transfers that had taken place on September 19, 2008, a Friday. As a result, $468 million of customer assets that otherwise would have been immune from seizure were seized.[22] It was not until February 11, 2009, that a court order restored the reversed transactions.

Other unsecured creditors of LBHI are projected to incur substantial losses. Immediately prior to its bankruptcy filing, LBHI reported equity of approximately $20 billion; short-term and long-term indebtedness of approximately $100 billion, of which approximately $15 billion represented junior and subordinated indebtedness; and other liabilities in the amount of approximately $90 billion, of which approximately $88 billion were amounts due to affiliates. The modified Chapter 11 plan of reorganization filed by the debtors on January 25, 2011, estimates a 21.4 percent recovery for senior unsecured creditors. Subordinated debt holders and shareholders will receive nothing under the plan of reorganization, and other unsecured creditors will recover between 11.2 percent and 16.6 percent, depending on their status.[23]

Just prior to Lehman's bankruptcy filing, the firm had identified $31.6 billion in commercial real estate assets of questionable value. Potential acquirers of Lehman had identified additional problematic assets—for a total value between $50 billion and $70 billion. Even if there had been a total loss on these assets, which would have eliminated any shareholder and subordinated debt holder potential for recovery, a quick resolution of LBHI that maintained the operational integrity of the company including its systems and personnel could have left general unsecured creditors with substantially more value than projected from the bankruptcy. By preserving the going-concern value of the firm, creditors could have been provided with an immediate payment on a portion of their claims through either an advance dividend or the prompt distribution of proceeds from the sale of assets. The panic selling that ensued—further precipitating a decline in asset values and a decline in the value of collateral underlying the firm's derivatives portfolio—could have been avoided and markets would likely have remained more stable.

The Resolution and Receivership Process for Failed Banks

Resolution Process

The FDIC has been successful in using its authority under the FDI Act to maintain stability and confidence in the nation's banking system, including in the resolution of large, complex insured depository institutions. The FDIC, as receiver for an insured depository institution, is given broad powers and flexibility under the FDI Act to resolve an insured depository institution in a manner that minimizes disruption to the banking system and maximizes value. The FDIC is given similar tools to those under the Dodd-Frank Act to accomplish these goals, including the ability to create one or more bridge banks, enforce cross-guarantees among sister banks, sell and liquidate assets, and settle claims.

When an insured bank fails, the FDIC is required by statute to resolve the failed bank in the least costly way, to minimize any loss to the deposit insurance fund, and, as receiver, to maximize the return on the assets of the failed bank.[24] Banks and thrifts are typically closed by their chartering authority when they become critically undercapitalized and have not been successful in their plan to restore capital to the required levels.[25] The

[22] *Id.* at 73.

[23] Joseph Checkler, *Lehman's New Creditor Plan Doesn't Factor in Key Group*, Wall Street Journal, Jan. 27, 2011. The plan of reorganization is subject to approval by creditors.

[24] The FDIC is required, pursuant to 12 U.S.C. § 1823(c)(4), to resolve failed insured depository institutions in the manner that is least costly to the deposit insurance fund. The Dodd-Frank Act does not require that a least cost determination be made in respect of a covered financial company, though the FDIC is required, to the greatest extent practicable, to maximize returns and minimize losses in the disposition of assets. *See* section 210(a)(9)(E) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(9)(E).

[25] Some banks, particularly large banks, may also be closed due to a liquidity failure (an inability to pay debts as they become due).

FDIC is then appointed receiver.[26] When structuring a bank resolution, the FDIC can pay off insured depositors and liquidate the bank's assets, sell the bank in whole or in part (a purchase and assumption transaction, or P&A), or establish a bridge institution—a temporary national bank or federal thrift—to maintain the functions of the failed bank during the process of marketing the bank's franchise. Senior management and boards of directors are not retained, and no severance pay or "golden parachutes" are permitted.

Final planning and marketing for a bank resolution normally begins 90–100 days prior to the institution being placed into receivership, though the process may be accelerated in the event of a liquidity failure. It begins when a bank's problems appear to be severe enough to potentially cause it to fail. During this period, the FDIC coordinates its actions—including the scheduling of the failure—with other regulators. When a bank becomes critically undercapitalized, the primary federal regulator (PFR) has up to 90 days to close the institution and appoint the FDIC as receiver. The FDIC and the PFR require that the bank seek an acquirer or merger partner, and insist that top management responsible for the bank's failing condition leave in order to improve the prospects for such, before the FDIC has to exercise its powers as receiver. The FDIC's authority to take over a failed or failing institution, thus wiping out stockholders and imposing losses on unsecured and uninsured creditors, not only provides an incentive for management to actively seek an acquirer, but also encourages the institution's board of directors to approve (or recommend for approval to shareholders) such transactions to avoid the risk of an FDIC receivership.

During this planning phase, the FDIC collects as much information as possible about the bank and structures the resolution transaction. This information assists the FDIC in determining the best transaction structures to offer potential acquirers. The FDIC also values bank assets and determines which assets may be particularly problematic for an acquiring institution and may need to be retained in the receivership for disposition after resolution or covered by some level of risk protection. Qualified bidders are contacted to perform due diligence, subject to a confidentiality agreement. Due diligence is offered both on-site and off-site through the use of secure internet data rooms. Bidders are then asked to submit bids on the basis of the transaction structures offered by the FDIC. The FDIC analyzes the bids received and accepts the bid that resolves the failed bank in the least costly manner to the deposit insurance fund. The least-cost requirement ensures that the deposit insurance fund will not be used to protect creditors other than insured depositors and prevents differentiation between creditors except where necessary to achieve the least costly resolution of the failed bank. Then, at the point of failure, the institution is placed into receivership and immediately sold—with the sale resulting in a transfer of deposits and assets that renders the process seamless to insured depositors. The FDIC is also able to make an immediate payment, or advance dividend, to uninsured creditors not assumed by the assuming institution based upon estimated recoveries from the liquidation.

The Orderly Liquidation of Covered Financial Companies

Introduction

Title II of the Dodd-Frank Act defines the framework for orderly resolution proceedings and establishes the powers and duties of the FDIC when acting as receiver for a covered financial company.[27] The policy goal of the Dodd-Frank Act is succinctly summarized in section 204(a) as the liquidation of "failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard." Creditors and shareholders are to "bear the losses of the financial company" and the FDIC is instructed to liquidate the covered financial company in a manner that maximizes the value of the company's assets, minimizes losses, mitigates risk, and minimizes moral hazard.[28]

This section discusses the key provisions of Title II and highlights the differences between the resolution of a

[26] As a receiver, the FDIC succeeds to the rights, powers, and privileges of the failed bank and its stockholders, officers, and directors. It may collect all obligations and money due to the institution, preserve and liquidate the institution's assets and property, and perform any other function of the institution consistent with its appointment as receiver. It has the power to sell a failed bank to another insured bank, and to transfer the failed bank's assets and liabilities without the consent or approval of any other agency, court, or party with contractual rights. The FDIC may also, as permitted by statute, repudiate contracts such as leases that are burdensome to the receivership and may rid the receivership of burdensome obligations. The FDIC operates its receiverships independently of the court or bankruptcy system, although certain of the FDIC's actions are subject to judicial review.

[27] A failed systemically important financial institution is deemed a covered financial company for purposes of Title II of the Dodd-Frank Act once a systemic determination has been made by the Secretary of the Treasury pursuant to section 203(b) thereof, 12 U.S.C. § 5383(b). *See* "—Appointment," *infra.*

[28] *See* sections 204(a)(1) and 210(a)(9)(E) of the Dodd-Frank Act, 12 U.S.C. §§ 5384(a)(1) and 5390(a)(9)(E).

systemically important financial institution under Title II of the Dodd-Frank Act and a proceeding under the Bankruptcy Code.[29] What follows is a brief summary of the appointment process and five of the most important elements of the authority available to the FDIC as receiver of a covered financial company. Those five elements are: (i) the ability to conduct advance resolution planning for systemically important financial institutions through a variety of mechanisms similar to those used for problem banks (these mechanisms will be enhanced by the supervisory authority and the resolution plans, or living wills, required under section 165(d) of Title I of the Dodd-Frank Act); (ii) an immediate source of liquidity for an orderly liquidation, which allows continuation of essential functions and maintains asset values; (iii) the ability to make advance dividends and prompt distributions to creditors based upon expected recoveries; (iv) the ability to continue key, systemically important operations, including through the formation of one or more bridge financial companies; and (v) the ability to transfer all qualified financial contracts[30] with a given counterparty to another entity (such as a bridge financial company) and avoid their immediate termination and liquidation to preserve value and promote stability.[31]

Appointment

Under section 203 of the Dodd-Frank Act, at the Secretary of the Treasury's (Secretary) request, or of their own initiative, the Board of Governors of the Federal Reserve System (Federal Reserve) and the FDIC are to make a written recommendation requesting that the Secretary appoint the FDIC as receiver for a systemically important financial institution that is in default or danger of default.[32] The recommendation to place a broker or dealer, or a financial company in which the largest domestic subsidiary is a broker or dealer, into receivership is made by the Federal Reserve and the Securities and Exchange Commission (SEC), in consultation with the FDIC. Similarly, the recommendation to place an insurance company or a financial company in which the largest domestic subsidiary is an insurance company, is made by the Federal Reserve and Director of the newly established Federal Insurance Office, in consultation with the FDIC.

The Secretary is responsible for making a determination as to whether the financial company should be placed into receivership, and that determination is based on, among other things, the Secretary's finding that the financial company is in default or in danger of default; that the failure of the company and its resolution under otherwise applicable State or Federal law would have serious adverse consequences on the financial stability of the United States; and that no viable private sector alternative is available to prevent the default of the financial company.[33]

The Dodd-Frank Act provides an expedited judicial review process of the Secretary's determination. Should the board of directors of the covered financial company object to the appointment of the FDIC as receiver, a hearing is held in federal district court, and the court must make a decision on the matter within 24 hours. Upon a successful petition (or should the court fail to act within the time provided), the Secretary is to appoint the FDIC receiver of the covered financial company.[34]

Special Powers under Title II

Ability to Preserve Systemic Operations of the Covered Financial Company. The Dodd-Frank Act provides an efficient mechanism—the bridge financial company—to quickly preserve the going-concern value of the

[29] 11 U.S.C. § 101 *et seq.*

[30] Generally, qualified financial contracts are financial instruments such as securities contracts, commodities contracts, forwards contracts, swaps, repurchase agreements, and any similar agreements. *See* section 210(c)(8)(D)(i) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(8)(D)(i).

[31] *See generally* section 165 of Title I of the Dodd-Frank Act, 12 U.S.C. § 5365 and "The Orderly Resolution of Covered Financial Companies—Special Powers under Title II—Oversight and Advanced Planning," *infra.*

[32] Upon a 2/3 vote by the boards of both the FDIC and the Federal Reserve, a written recommendation is delivered to the Secretary. The recommendation includes: an evaluation of whether the financial company is in default or is in danger of default; a description of the effect the failure of the financial company would have on U.S. financial stability; an evaluation of why a case under the Bankruptcy Code is not appropriate; an evaluation of the effect on creditors, counterparties, and shareholders of the financial company and other market participants, and certain other evaluations required by statute. *See* section 203(a)(2) of the Dodd-Frank Act, 12 U.S.C. § 5383(a)(2).

[33] *See* section 203(b) of the Dodd-Frank Act, 12 U.S.C. § 5383(b).

[34] *See* section 202(a)(1)(A) of the Dodd-Frank Act, 12 U.S.C. § 5382(a)(1)(A).

firm's assets and business lines. There are no specific parallel provisions in the Bankruptcy Code,[35] and therefore it is more difficult for a debtor company operating under Chapter 11 of the Bankruptcy Code to achieve the same result as expeditiously, particularly where circumstances compel the debtor company to seek bankruptcy protection before a wind-down plan can be negotiated and implemented. Where maximizing or preserving value depends upon a quick separation of good assets from bad assets, implementation delays could adversely impact a reorganization or liquidation proceeding.

The Dodd-Frank Act authorizes the FDIC, as receiver of a covered financial company, to establish a bridge financial company to which assets and liabilities of the covered financial company may be transferred.[36] Fundamental to an orderly liquidation of a covered financial company is the ability to continue key operations, services, and transactions that will maximize the value of the firm's assets and operations and avoid a disorderly collapse in the marketplace. To facilitate this continuity of operations, the receivership can utilize one or more bridge financial companies. The bridge financial company is a newly established, federally chartered entity that is owned by the FDIC and includes those assets, liabilities, and operations of the covered financial company as necessary to achieve the maximum value of the firm. Shareholders, debt holders, and other creditors whose claims were not transferred to the bridge financial company will remain in the receivership and will receive payments on their claims based upon the priority of payments set forth in section 210(b) of the Dodd-Frank Act. Like the bridge banks used in the resolution of large insured depository institutions,[37] the bridge financial company authority permits the FDIC to stabilize the key operations of the covered financial company by continuing valuable, systemically important operations.

While the covered financial company's board of directors and the most senior management responsible for its failure will be replaced, as required by section 204(a)(2) of the Dodd-Frank Act,[38] operations may be continued by the covered financial company's employees under the strategic direction of the FDIC, as receiver, and contractors employed by the FDIC to help oversee those operations. These contractors would typically include firms with expertise in the sector of the covered financial company. In addition, former executives, managers and other individuals with experience and expertise in running companies similar to the covered financial company would be retained to oversee those operations.

A bridge financial company also provides the receiver with flexibility in preserving the value of the assets of the covered financial company and in effecting an orderly liquidation. The receiver can retain certain assets and liabilities of the covered financial company in the receivership and transfer other assets and liabilities, as well as the viable operations of the covered financial company, to the bridge financial company. The receiver may also transfer certain qualified financial contracts to the bridge financial company, as discussed below. The bridge financial company can operate until the receiver is able to stabilize the systemic functions of the covered financial company, conduct marketing for its assets and find one or more appropriate buyers.[39]

Transfer of Qualified Financial Contracts. Under the Bankruptcy Code, counterparties to qualified financial contracts with the debtor company are permitted to terminate the contract and liquidate and net out their position. The debtor company or trustee has no authority to continue these contracts or to transfer the contracts to a third party, absent the consent of the

[35] Similar to the FDIC's repudiation powers provided by section 210(c)(1) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(1), a bankruptcy trustee is authorized to reject certain contracts (which may be related to certain problem assets) of the debtor.

[36] *See* section 210(h) of the Dodd-Frank Act, 12 U.S.C. § 5390(h). There are statutorily imposed limitations upon the transfer of assets and liabilities from the receiver to the bridge financial company, including a prohibition against a bridge financial company assuming any liability that is regulatory capital of the covered financial company. *See* section 210(h)(1)(B)(i) of the Dodd-Frank Act, 12 U.S.C. § 5390(h)(1)(B)(i). Additionally, the liabilities transferred from a covered financial company to a bridge financial company are not permitted to exceed the assets so transferred. *See* section 210(h)(5)(F) of the Dodd-Frank Act, 12 U.S.C. § 5390(h)(5)(F).

[37] *See* 12 U.S.C. § 1821(n).

[38] This may be contrasted with a typical Chapter 11 resolution, in which the management of the pre-insolvency institution will continue to manage the operations of the debtor institution.

[39] In 2008, the FDIC implemented a successful resolution of IndyMac Bank through a transaction involving a "pass-through conservatorship," which is similar to the utilization of a bridge financial company. The transfer of assets to a *de novo* institution, named IndyMac Federal Bank, and its subsequent sale to a private investor in 2009 enabled the FDIC to sell the core business intact. This was more efficient and less costly than a liquidation and retained the value of the institution's assets. As of January 31, 2009, IndyMac Federal Bank had total assets of $23.5 billion and total deposits of $6.4 billion. The assuming institution agreed to purchase all deposits and approximately $20.7 billion in assets at a discount of $4.7 billion. The FDIC retained the remaining assets for future disposition. *See* Press Release, FDIC, *FDIC Closes Sale of IndyMac Federal Bank*, Pasadena, California (March 20, 2009), *available at* http://www.fdic.gov/news/news/press/2009/pr09042.html.

counterparty, after the debtor company's insolvency. A complex, systemic financial company can hold very large positions in qualified financial contracts, often involving numerous counterparties and back-to-back trades, some of which may be opaque and incompletely documented. A disorderly unwinding of such contracts triggered by an event of insolvency, as each counterparty races to unwind and cover unhedged positions, can cause a tremendous loss of value, especially if lightly traded collateral covering a trade is sold into an artificially depressed, unstable market. Such disorderly unwinding can have severe negative consequences for the financial company, its creditors, its counterparties, and the financial stability of the United States.

In contrast, the Dodd-Frank Act expressly permits the FDIC to transfer qualified financial contracts to a solvent financial institution (an acquiring investor) or to a bridge financial company.[40] In such a case, counterparties are prohibited from terminating their contracts and liquidating and netting out their positions on the grounds of an event of insolvency.[41] The receiver's ability to transfer qualified financial contracts to a third party in order for the contracts to continue according to their terms—notwithstanding the debtor company's insolvency—provides market certainty and stability and preserves the value represented by the contracts.[42]

By the time of the failure of the troubled financial company, most if not all of its qualified financial contracts would be fully collateralized as counterparties sought to protect themselves from its growing credit risk. As a result, it is likely that a transfer of qualified financial contracts to a third party would involve the transfer of fully collateralized transactions and not expose the receiver to risk of loss.[43] To the extent the derivatives portfolio included qualified financial contracts which were under-collateralized or unsecured, the FDIC, as receiver of the covered financial company, would determine whether to repudiate or to transfer those qualified financial contracts to a third party based upon the FDIC's obligation to maximize value and minimize losses in the disposition of assets of the entire receivership.

Funding. A vital element in preserving continuity of systemically important operations is the availability of funding for those operations. A Chapter 11 debtor operating under the Bankruptcy Code will typically require funds in order to operate its business—referred to as debtor-in-possession financing (DIP financing). Although the Bankruptcy Code provides for a debtor company to obtain DIP financing with court approval, there are no assurances that the court will approve the DIP financing or that a debtor company will be able to obtain sufficient—or any—funding or obtain funding on acceptable terms, or what the timing of such funding might be. For a systemically important financial institution, the market may be destabilized by any delay associated with negotiating DIP financing or uncertainty as to whether the bankruptcy court will approve DIP financing. Further, the terms of the DIP financing may limit the debtor's options for reorganizing or liquidating and may diminish the franchise value of the company, particularly when the DIP financing is secured with previously unencumbered assets or when the terms of the DIP financing grant the lender oversight approval over the use of the DIP financing.

The Dodd-Frank Act provides that the FDIC may borrow funds from the Department of the Treasury, among other things, to make loans to, or guarantee obligations of, a covered financial company or a bridge financial company to provide liquidity for the operations of the receivership and the bridge financial company. Section 204(d) of the Dodd-Frank Act provides that the FDIC may make available to the receivership funds for the orderly liquidation of the

[40] *See* section 210(c)(9) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(9).

[41] The exemption from the automatic stay under the Bankruptcy Code in the case of qualified financial contracts generally works well in most cases. However, for systemically important financial institutions, in which the sudden termination and netting of a derivatives portfolio could have an adverse impact on U.S. financial stability, the nullification of the *ipso facto* clause is needed. By removing a right of termination based solely upon the failure of the counterparty, the bridge financial company structure provides the flexibility to incentivize qualified financial contract counterparties to either maintain their positions in such contracts, or exit their positions in a manner which does not jeopardize U.S. financial stability.

[42] There are implications under the Dodd-Frank Act to transferring all of a covered financial company's qualified financial contracts to a bridge financial company in order to avoid such contracts' termination by their counterparties. As such contracts continue, following such transfer, to be valid and binding obligations of the bridge financial company (before being eventually wound down), the bridge financial company is required to perform the obligations thereunder, including in respect of meeting collateral requirements, hedging, and being liable for gains and losses on the contracts.

[43] Title VII of the Dodd-Frank Act, 15 U.S.C. § 8301 *et seq.*, contemplates requirements for increased initial and variation margin.

covered financial company.[44] Funds provided by the FDIC under section 204(d) of the Dodd-Frank Act are to be given a priority as administrative expenses of the receiver or as amounts owed to the United States when used for the orderly resolution of the covered financial company, including, *inter alia*, to: (i) make loans to or purchase debt of the covered financial company or a covered subsidiary; (ii) purchase (or guarantee) the assets of the covered financial company or a covered subsidiary; (iii) assume or guarantee the obligations of a covered financial company or a covered subsidiary; and (iv) make additional payments or pay additional amounts to certain creditors. In the unlikely event that recoveries from the disposition of assets are insufficient to repay amounts owed to the United States, there will be a subsequent assessment on the industry to repay those amounts. By law, no taxpayer losses from the liquidation process are allowed.

Once the new bridge financial company's operations have stabilized as the market recognizes that it has adequate funding and will continue key operations, the FDIC would move as expeditiously as possible to sell operations and assets back into the private sector. Under certain circumstances the establishment of a bridge financial company may not be necessary, particularly when the FDIC has the ability to pre-plan for the sale of a substantial portion of the firm's assets and liabilities to a third party purchaser at the time of failure.

The rapid response, preservation of systemically important operations and immediate funding availability under the Dodd-Frank Act may be expected to provide certainty to the market, employees, and potential buyers. This promotes both financial stability and maximization of value in the sale of the assets of the covered financial company.

[44] The FDIC may issue or incur obligations pursuant to an approved orderly liquidation plan (up to 10 percent of the total consolidated assets of the covered financial company) and pursuant to an approved mandatory repayment plan (up to 90 percent of the fair value of the total consolidated assets of the covered financial company that are available for repayment). *See* section 210(n)(6) and (9) of the Dodd-Frank Act, 12 U.S.C. § 5390(n)(6) and (9). To the extent that the assets in the receivership are insufficient to repay Treasury for any borrowed funds, any creditor who received an additional payment in excess of what other similarly situated creditors received, which additional payment was not essential to the implementation of the receivership or the bridge financial company, may have the additional payment clawed back. See section 210(o)(1)(D)(i) of the Dodd-Frank Act, 12 U.S.C. § 5390(o)(1)(D)(i). This provision is consistent with Title II's directive to minimize moral hazard. To the extent that the clawbacks of additional payments are insufficient to repay Treasury for any borrowed funds, the FDIC is required to assess the industry. *See* section 210(o)(1)(B) of the Dodd-Frank Act, 12 U.S.C. § 5390(o)(1)(B).

Advance Dividends and Prompt Distributions. The FDIC, as receiver for a covered financial company, satisfies unsecured creditor claims in accordance with the relevant order of priorities set forth in section 210(b) of the Dodd-Frank Act. To provide creditors with partial satisfaction of their claims as expediently as practicable, the FDIC, as receiver, is able—though not required—to make advance dividends to unsecured general creditors based upon expected recoveries. The FDIC may use funds available to the receivership, including amounts borrowed as discussed above under "—Funding," to make these advance dividends in partial satisfaction of unsecured creditor claims.[45] These advance dividends would be made at an amount less than the estimated value of the receivership assets so as not to leave the receivership with a deficit in the event the realized value is less than the expected value of the liquidation.

The FDIC, as receiver, also makes periodic distributions to unsecured creditors from the sale of assets. Accordingly, an unsecured creditor will not be required to wait until all claims are valued, or until all assets are disposed of, before receiving one or more substantial payments on his claim. The ability promptly to provide creditors with partial satisfaction of claims following the failure of a covered financial company serves the Title II mandate of mitigating systemic impact, particularly in the case of key counterparties. The FDIC has successfully provided advance dividends to unsecured creditors (including uninsured depositors) and distributions from the sale of assets to unsecured creditors in the resolution of insured depository institutions under the FDI Act to quickly move funds to claimants and to help to stabilize local markets.

In large, complex bankruptcy cases such as Lehman, a creditor may not receive any payment on his claim for a considerable period of time following the commencement of the bankruptcy case. One reason for this is that it often takes a great deal of time to establish both the size of the pool of assets available for general unsecured creditors and the legitimate amounts of the claims held by such creditors. Litigation is typically needed to establish both of these numbers, which can require years of discovery followed by trial, then more years of appeals and remands.

If sufficient certainty can be attained regarding a portion of the claims, the Chapter 7 trustee will petition the

[45] Amounts which may be borrowed from the Department of the Treasury are based upon the assets, or assets available for repayment, of the covered financial company. *See* footnote 44, *supra*.

court for permission to make an interim distribution, or the Chapter11 trustee or debtor-in-possession will provide in the plan of reorganization or plan of liquidation for interim distributions as various stages of the restructuring are reached.[46] However, except in the case of "prepackaged" plans of reorganization, even an interim distribution can take months or years to materialize. In the case of LBHI, there has been no distribution to general unsecured creditors more than two years after LBHI's initial bankruptcy filing.

Oversight and Advanced Planning. An essential prerequisite for any effective resolution is advance planning, a well-developed resolution plan, and access to the supporting information needed to undertake such planning.

Bankruptcy proceedings are typically challenging in the case of systemically important financial institutions in part because the participants have little notice or opportunity for advance preparation or coordination. The bankruptcy court, which must approve actions by the debtor outside of the ordinary course of business, may have little or no knowledge about the systemically important financial institution, and would have to rely upon the management of such institution for requisite information.

Title I of the Dodd-Frank Act significantly enhances regulators' ability to conduct advance resolution planning in respect of systemically important financial institutions through a variety of mechanisms, including heightened supervisory authority and the resolution plans, or living wills, required under section 165(d) of Title I of the Dodd-Frank Act.[47] The examination authority provided by Title I of the Dodd-Frank Act will provide the FDIC with on-site access to systemically important financial institutions, including the ability to access real-time data.[48] This will enable the FDIC, working in tandem with the Federal Reserve and other regulators, to collect and analyze information for resolution planning purposes in advance of the impending failure of the institution.

An essential part of such plans will be to describe how this process can be accomplished without posing systemic risk to the public and the financial system. If the company does not submit a credible resolution plan, the statute permits increasingly stringent requirements to be imposed that, ultimately, can lead to divestiture of assets or operations identified by the FDIC and the Federal Reserve to facilitate an orderly resolution. The Dodd-Frank Act requires each designated financial company to produce a resolution plan, or living will, that maps its business lines to legal entities and provides integrated analyses of its corporate structure; credit and other exposures; funding, capital, and cash flows; domestic and foreign jurisdictions in which it operates; its supporting information systems and other essential services; and other key components of its business operations, all as part of the plan for its rapid and orderly resolution. The credit exposure reports required by the statute will also provide important information critical to the FDIC's planning processes by identifying the company's significant credit exposures, its component exposures, and other key information across the entity and its affiliates. The elements contained in a resolution plan will not only help the FDIC and other domestic regulators to better understand a firm's business and how that entity may be resolved, but the plans will also enhance the FDIC's ability to coordinate with foreign

[46] In recent years a common practice has developed in bankruptcy cases of allowing payments shortly after the filing of a Chapter 11 petition to certain priority creditors (wage claimants (up to $11,725), employee benefits claimants (up to $11,725), taxing authorities and several less frequently used groups) if sufficient assets are at hand, on the theory that such creditors will be paid first anyway at the time final distributions are made (thus, no creditor's rights will be impaired so long as the equity in available assets clearly exceeds the total priority claims). Permission to make such payments is generally sought as part of the debtor-in-possession's "first day motions," and such creditors generally receive payment within three to five days of the date of filing of the petition. A secondary consideration for paying prepetition wages is the desire on the part of management to retain an experienced work force at a time of turmoil. A second practice has developed in large Chapter 11 bankruptcy cases of paying "critical vendors" after obtaining a "first day order" shortly after the petition is filed. While such vendors have the status of general unsecured creditors, an argument is typically made to the Bankruptcy Court that certain trade creditors are considered key suppliers to the debtor-in-possession, and may refuse to do business with the Chapter 11 debtor unless they receive immediate payment on their prepetition claim, thus causing the entire reorganization effort to fail through loss of the going concern. This practice is more controversial than that of paying priority claimants, since (except in "prepackaged" bankruptcy cases) it is often very difficult to predict at the outset of the case what the percentage payout to general unsecured creditors will be at the end of the case. The practice has also come under criticism in recent years and has been cut back. One reason for the cutback is that there is little formal support in the Bankruptcy Code for the practice. *See In re Kmart Corp.*, 359 F. 3d 866 (7th Cir. 2004) and discussion in Turner, Travis N., "Kmart and Beyond: A 'Critical' Look at Critical Vendor Orders and the Doctrine of Necessity," 63 Wash. & Lee L.Rev. 431 (2006).

[47] *See generally* section 165 of Title I of the Dodd-Frank Act, 12 U.S.C. § 5365.

[48] *See* "Orderly Resolution of Lehman under the Dodd-Frank Act—March–July, Due Diligence and Structuring the Resolution—Planning in the Crisis Environment," infra.

regulators in an effort to develop a comprehensive and coordinated resolution strategy for a cross-border firm.[49]

Structure and Bidding

Once the structure is developed, the FDIC would seek bids from qualified, interested bidders for the business lines or units that have going-concern value. The FDIC would analyze the bids received and choose the bid or bids that would provide the highest recovery to the receivership. The winning bidder would be informed and would take control of the business lines or units concurrent with the closing of the institution. Losses would be borne by equity holders, unsecured debt holders, and other unsecured creditors that remain in the receivership. These creditors would receive payment on their claims in accordance with the priority of payment rules set forth in the Dodd-Frank Act.[50] The FDIC could make advance dividend payments to creditors based upon an upfront conservative valuation of total recoveries. As recoveries are realized, the FDIC could also pay out distributions to creditors as it has done successfully with failed insured banks. See "—Special Powers under Title II—Advance Dividends and Prompt Distributions," above.

Orderly Resolution of Lehman under the Dodd-Frank Act

March–July, Due Diligence and Structuring the Resolution

Planning in the Crisis Environment: As the financial crisis enveloped Bear Stearns, the FDIC would have worked closely with the Federal Reserve and other appropriate regulators to gather information about the systemically important firms that may fall under the FDIC's resolution authority. At a minimum, the firms' resolution plans would have been reviewed jointly by the FDIC and the Federal Reserve to make sure that the plans were credible and up-to-date. The information supporting these plans and any additional information that the FDIC and Federal Reserve would have received through on-site discussions with the firms during their review of the resolution plans would have provided the FDIC with valuable information necessary for effective resolution planning, information not available to the FDIC prior to the passage of the Dodd-Frank Act. In this regard the FDIC's presence would not be indicative that a resolution is imminent, but rather that in a crisis the FDIC seeks to assure that all firms' resolution plans are sufficiently robust to allow an orderly liquidation of any particular firm that might fail.

For Lehman, if senior management had not found an early private sector solution, the FDIC would have needed to establish an on-site presence to begin due diligence and to plan for a potential Title II resolution. Lehman was not the only firm in possible trouble and the FDIC would likely have had a heightened presence in other subject firms at the time. Thus, the market would not necessarily have taken the FDIC's heightened presence as a signal that a failure was imminent as the market already was aware of Lehman's problems. While it is possible in this situation or in other situations that the FDIC's on site presence could create signaling concerns, this argues for the FDIC having a continuous on-site presence for resolution planning during good times.

Discussions with Lehman: In the various accounts of the failure of Lehman it is noteworthy that senior management discounted the possibility of failure until the very last moment.[51] There was apparently a belief, following the government's actions in respect of Bear Stearns, that the government, despite statements to the contrary, would step in and provide financial assistance and Lehman would be rescued. If Title II of the Dodd-Frank Act had been in effect, the outcome would have been considerably different. Lehman's senior management would have understood clearly that the government would not and could not extend financial assistance outside of a resolution because of the clear requirements in the Dodd-Frank Act that losses are to be borne by equity holders and unsecured creditors, and management and directors responsible for the condition of the failed financial company are not to be retained.

[49] Domestic and foreign regulators are currently actively involved through the Financial Stability Board's Cross-Border Crisis Management Group to develop essential elements of recovery and resolution plans that will aid authorities in understanding subject firms' global operations and planning for the orderly resolution of a firm across borders. A number of jurisdictions are currently working to develop legislative and regulatory requirements for recovery and resolution plans, and domestic U.S. authorities are working to align regulatory initiatives in order to have a comprehensive and coordinated approach to resolution planning. For example, in January 2010, the FDIC and the Bank of England entered into a Memorandum of Understanding concerning the consultation, cooperation, and exchange of information related to the resolution of insured depository institutions with cross-border operations in the United States and the United Kingdom.

[50] *See* section 210(b)(1) of the Dodd-Frank Act, 12 U.S.C. § 5390(b)(1).

[51] According to the Examiner's Report, following the near collapse of Bear Stearns in March 2008, "Lehman knew that its survival was in question." Lehman's management believed, however, that government assistance would be forthcoming to prevent a failure. *See* Examiner's Report at 609, 618.

To convey this point to Lehman and its Board of Directors, the FDIC could have participated in a meeting in the spring of 2008, together with Lehman's Board of Directors, the Federal Reserve, and the SEC, to outline the circumstances that would lead to the appointment of the FDIC as receiver for one or more Lehman entities, and what that resolution would entail. The regulators would have emphasized that any open-company assistance or "too big to fail" transaction would be unavailable,[52] and that the alternative to a sale of the company or a substantial capital raising would be a bankruptcy under the Bankruptcy Code or a resolution under Title II with no expectation of any return to shareholders.

The regulators could have set a deadline of July to sell the company or raise capital. This would have clearly focused Lehman's Board of Directors on the urgency of the matter and encouraged the Board to accept the best non-government offer it received notwithstanding its dilutive nature; virtually any private sale would yield a better return for shareholders than the likely negligible proceeds shareholders would receive in an FDIC receivership, as equity holders have the lowest priority claims in a receivership.

Lehman's senior management and Board of Directors may have been more willing to recommend offers that were below the then-current market price if they knew with certainty that there would be no extraordinary government assistance made available to the company and that Lehman would be put into receivership. Such avenues may have been available. For instance, KDB is reported to have suggested paying $6.40 per share when Lehman's stock was trading at $17.50 on August 31—just 15 days prior to Lehman's bankruptcy filing.

Forcing Lehman to more earnestly market itself to a potential acquirer or strategic investor well in advance of Lehman's failure would serve several other goals, even if such private sector transaction were unsuccessful. The FDIC would be able to use this marketing information to identify appropriate bidders who would be invited to join in the FDIC-led due diligence and bidding process as described in "—Due Diligence" and "—Structuring the Transaction," below.

The preferred outcome under the Dodd-Frank Act is for a troubled financial company to find a strategic investor or to recapitalize without direct government involvement or the FDIC being appointed receiver. To that end, the recommendation and determination prescribed by section 203(a)(2)(E) and (b)(3) of the Dodd-Frank Act, respectively, concern the availability of a viable private sector alternative. Requiring a troubled financial company to aggressively market itself pre-failure helps to ensure that exercise of the orderly resolution authority in Title II is a last resort. In this matter, the FDIC's experience with troubled banks is instructive. The commencement of the FDIC's due diligence process has frequently provided the motivation senior management has needed to pursue sale or recapitalization more aggressively. Between 1995 and the end of 2007, the FDIC prepared to resolve 150 institutions. Of this number, only 56—that is, 37 percent—eventually failed. Of course, many fewer problem banks have been able to find merger partners or recapitalize since the crisis began. However, from 2008 to 2010, of the 432 banks where the FDIC began the resolution process, 110—25 percent—avoided failure, either by finding an acquirer or recapitalizing.

Due Diligence: Just as when an insured depository institution is a likely candidate for an FDI Act receivership, the FDIC will need to gather as much information as possible about a systemically important financial institution in advance of any Title II resolution. In the case of LBHI, the SEC and the Federal Reserve Bank of New York began on-site daily monitoring in March 2008, following the collapse and sale of Bear Stearns, at which point the FDIC would already have been on-site at Lehman to facilitate the FDIC's Title I resolution planning and monitoring activities.[53] The FDIC would have determined, jointly with other supervisors, the condition of the company for the purposes of ordering corrective actions to avoid failure, and it otherwise would have prepared for a Title II orderly resolution.

The FDIC would continue assembling information about the condition and value of Lehman's assets and various lines of business. In preparing for a Title II resolution of a company subject to heightened prudential standards under Title I, the FDIC will have access to the information included in such company's resolution

[52] The Preamble to the Dodd-Frank Act notes that it was enacted, *inter alia*, "to end 'too big to fail' [and] to protect the American taxpayer by ending bailouts."

[53] *See* "Orderly Resolution of Lehman under the Dodd-Frank Act—March–July, Due Diligence and Structuring the Resolution—Planning in the Crisis Environment," *supra*.

plan, or living will.[54] Though that resolution plan is designed to provide for the resolution of the systemically important financial institution under the Bankruptcy Code, it would provide regulators with invaluable information about the institution's structure, organization, and key operations that could form the basis for an orderly liquidation under Title II. It is the FDIC's experience that management of a troubled institution often has an overly optimistic view of the value of its franchise and the firm's prospect for recovery. Thus, while the resolution plan would provide key financial and other data about the consolidated entity, an independent examination of the troubled firm may have been necessary. The FDIC will also have access to real-time data from on-site monitoring conducted by the FDIC and other prudential regulators.

The FDIC's participation in gathering information and in exercising its examination authority would be done in coordination with the on-site monitoring activities of the SEC and the Federal Reserve Bank of New York. The development of additional information to facilitate a potential resolution would be done in a manner that would not disrupt the business operations or indicate an imminent failure of the financial company. As regulated entities under the Dodd-Frank Act, heightened supervision by the FDIC, the Federal Reserve, and other prudential regulators will be normal. As a result, these information-gathering activities should neither signal increased distress nor precipitate market reaction.

While conducting due diligence, the FDIC would have begun developing the transaction and bid framework by analyzing the legal structure of the firm, its operations, and its financial data. In this case, LBHI was a large holding company with major overseas operations.[55] As with any large, complex financial company, there were many interrelations among the major affiliates of the group. LBHI was the guarantor of all obligations of LBI and the source of funding for a number of other Lehman entities. LBI was the employer of record for much of the company, including various foreign subsidiaries. LBI was also the owner and operator of key IT systems used throughout the company and provided custody and trade execution services for clients of foreign Lehman entities, primarily for trades conducted by LBIE in the United States. Likewise, LBIE provided custody and trade execution services for clients of LBI conducting trades outside of the United States. The interconnected nature of Lehman's operations would have argued for maintaining maximum franchise value by developing a deal structure that would have maintained the continuing uninterrupted operation of the major business lines of the firm by transferring those assets and operations to an acquirer immediately upon the failure of the parent holding company.[56]

During the FDIC's investigation of the Lehman group, it would have identified subsidiaries which would be likely to fail in the event of a failure of LBHI but would likely not be systemic and would provide little or no value to the consolidated franchise. The FDIC would not have recommended a resolution under Title II for those subsidiaries, and they would likely have been resolved under the Bankruptcy Code or other applicable insolvency regime.[57] The assets of these subsidiaries would not have been part of a Title II receivership, other than the receiver's equity claim; the FDIC would have had no expected return on the equity for any such non-systemic subsidiary placed into bankruptcy. The FDIC also would have identified any subsidiary that would be likely to fail in the event of a failure of LBHI, and whose failure likely would be systemic. The FDIC would have made an evaluation as to whether the resolution of any such subsidiary under

[54] Had the Dodd-Frank Act been enacted sufficiently far in advance of Lehman's failure, undoubtedly much more supervisory information would have been available in March 2008. The Federal Reserve and the FDIC would have had the detailed information presented in Leh-man's statutorily required resolution plan under Title I of the Dodd-Frank Act. *See* section 165(d) of Title I of the Dodd-Frank Act, 12 U.S.C. § 5365(d).

[55] The principal operating entities in the holding company were LBI, the U.S. broker-dealer, and LBIE, the U.K.-based broker-dealer. Lehman also had a smaller Asian trading operation headquartered in Japan, and various smaller subsidiaries in other countries.

[56] By completing a sale at the time of failure of the parent holding company, the acquirer would have been able to "step into the shoes" of LBHI and provide liquidity, guarantees, or other credit support to the newly acquired subsidiaries. Were the FDIC unable to promptly complete such a transaction, it could provide any necessary liquidity to certain key subsidiaries, such as LBIE, pending a sale of those assets. *See* footnote 58, *infra.*

[57] *See* section 202(c)(1) of the Dodd-Frank Act, 12 U.S.C. § 5382(c)(1).

Title II would have aided in the orderly resolution of the parent company.[58]

As is the case with insured depository institutions that have foreign operations, the FDIC would have begun contacting key foreign financial authorities on a discrete basis to discuss what legal or financial issues might arise out of an FDIC receivership, or out of foreign resolution regimes in the case of Lehman entities operating outside of the United States, and how those resolutions could be coordinated. In addition, foreign financial authorities would have been consulted when foreign financial companies and investors expressed interest in investing in or purchasing Lehman. These discussions would have addressed, at a minimum, the financial strength of the acquirer, types of approvals that would be required to consummate a transaction, and any identified impediments to the transaction. Regular, ongoing contact would be particularly important after the transaction structure was determined and qualified bidders had been contacted and had expressed interest.

Valuation and Identification of Problem Assets: On a consolidated basis, LBHI and its subsidiaries had total assets of $639 billion, with $26.3 billion in book equity and total unsecured long-term and short-term borrowings of $162.8 billion as of May 31, 2008. The parent company, LBHI, had $231 billion in assets, with $26.3 billion in book equity and $114.6 billion in unsecured long-term and short-term borrowings. On September 14 (just prior to bankruptcy), LBHI (unconsolidated) was slightly smaller with $209 billion in assets, $20.3 billion in book equity, and $99.5 billion in long-term and short-term unsecured debt, including $15 billion in subordinated debt. In addition, LBHI's short-term unsecured debt included $2.3 billion in commercial paper—almost 40 percent of the approximately $5.7 billion in commercial paper outstanding enterprise wide.

By March 2008, Lehman had recognized that its commercial real estate related holdings were a major impediment to finding a merger partner. Its SpinCo proposal identified $31.7 billion in significantly underperforming commercial real estate related assets. During the week leading up to Lehman's bankruptcy filing, Bank of America identified an additional $38.3 billion in suspect residential real estate related assets and private equity assets that it would not purchase in an acquisition. Barclay's identified $20.3 billion of similar potentially additional problem assets in its due diligence. In the FDIC's resolution process, the FDIC's structuring team as well as prospective bidders would have had sufficient time to perform due diligence and identify problem asset pools. While Lehman was seeking an investor pre-failure, the FDIC would have identified and valued these problem asset pools in order to set a defined bid structure for Lehman. The bid structure would have allowed prospective acquirers to bid upon options to purchase all of Lehman's assets in a whole financial company P&A with loss sharing on defined pools of problem assets, or a purchase which excludes those problem asset pools. In the latter bid option, the receivership estate would have purchased the problem assets out of Lehman's subsidiaries at their fair market value prior to consummating the purchase agreement with the acquirer. These problem assets, in addition to those directly owned by the holding company, could have been retained in the receivership or placed into a bridge financial company prior to future disposition. Either bid would have allowed a further option for the prospective acquirer to pay to assume the commercial paper and other critical short-term securities of Lehman. The bidding structure is discussed more fully in "—August, Begin Marketing Lehman," below.

Both bid structures are intended to provide comfort to not only the potential acquirer, but also to its regulators, concerning the potential down-side exposure to problem assets. In excluding pools of identified problem assets from a bid, an acquirer is protected directly by effectively capping its exposure to such assets—which are left with the receivership—at zero. This risk minimization comes at the cost of lost potential upside from returns on servicing the troubled assets, higher administrative costs of the receiver, and a less attractive bid. In the loss-sharing structure, a potential acquirer receives tail-risk protection: the acquirer is able to cap its exposure to an identified pool of problem assets at set levels. This comfort is particularly important where a potential

[58] Upon a parent entering a Title II receivership, the FDIC may appoint itself receiver over one or more domestic covered subsidiaries of a covered financial company in receivership in accordance with the self-appointment process set forth in section 210(a)(1)(E) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(1)(E). This appointment process requires a joint determination by the FDIC and the Secretary of the Treasury that the covered subsidiary is in default or danger of default, that putting it into receivership would avoid or mitigate serious adverse effects on U.S. financial stability, and that such action would facilitate the orderly liquidation of the covered financial company parent. Once in receivership, the covered subsidiary would be treated in a similar manner to any other covered financial company: its shareholders and unsecured creditors would bear the losses of the company, and management and directors responsible for the company's failure would not be retained. The receiver, to aid in the orderly liquidation of the company, could extend liquidity to it in accordance with section 204(d) of the Dodd-Frank Act, 12 U.S.C. § 5384(d).

acquirer is unable to undertake in-depth due diligence on such assets, or must do so on an abbreviated time table. This down-side protection will also be important to regulators, as it mitigates the risk of an acquirer experiencing financial distress due to the problem assets of an acquiree.[59]

Structuring the Resolution: During due diligence, the FDIC would have identified certain pools of assets of Lehman—including certain commercial real estate, residential real estate, and private equity assets—that would make a whole financial company P&A transaction difficult. See "—Valuation and Identification of Problem Assets," above. These troubled assets were estimated to be between $50 and $70 billion in book value.

The FDIC would have set up a data room to enable potential acquirers to conduct due diligence, and would have begun developing a marketing structure for Lehman and its assets. The FDIC would have identified potential acquirers of Lehman. Criteria would have included maximization of value on the sale, the stability of the potential acquirer, and the ability of the acquirer expediently to consummate an acquisition.[60] Having identified the potential acquirers, the FDIC would have explained the bid structure and invited the firms to conduct (or continue) due diligence of Lehman.

During this time, the FDIC would have continued to monitor Lehman's progress in marketing itself. This would have encouraged Lehman to consummate a non-government transaction, which remained the best outcome for all parties. It would also have provided the FDIC with key information concerning interested acquirers and potential issues and concerns of such acquirers in completing a transaction.

Also during this time, as is the case with insured depository institutions that have foreign operations, the FDIC would have continued a dialogue with key foreign financial authorities to discuss what legal or financial issues might arise out of an FDIC receivership, or out of foreign resolution regimes in the case of Lehman entities operating outside of the United States, and how those resolutions could be coordinated.[61] Specifically, the FDIC would address issues of ring-fencing of assets, particularly of Lehman's U.K.-based broker-dealer. See "—Due Diligence," above.

August, Begin Marketing Lehman

Assuming Lehman were unable to sell itself, the FDIC would have commenced with marketing Lehman.[62] The FDIC would have set a defined bidding structure. Prospective acquirers previously identified (as discussed in "—March–July, Due Diligence and Structuring the Resolution—Structuring the Transaction," above) would have been invited to bid based on the following options:

> *Option A:* Whole financial company purchase and assumption with partial loss share (loss-sharing P&A). Under this option, the assets and operations of Lehman are transferred to the acquirer with no government control and no ongoing servicing of Lehman assets by the government. Due to the problem assets discussed above, however, it may be necessary for the receivership estate to offer a potential acquirer protection from loss in respect of that identified pool of problem assets. In this type of transaction, the acquirer purchases the assets at their gross book value, and assumes, at a minimum, the secured liabilities. Depending on the bid, other liability classes may be assumed as well. Since the book value of assets must always exceed the amount of liabilities assumed in this structure, the acquirer, after factoring its discount bid for the assets, must also provide a combination of cash and a note payable to the receivership estate to balance out the transaction.[63] The receivership estate's share of loss

[59] Both Barclays and its U.K. regulators were concerned with exposure to problem assets of Lehman following a potential acquisition by Barclays. *See* footnote 68, *infra.*

[60] We also note the impact of section 622 of the Dodd-Frank Act, 12 U.S.C. § 1852, which could prohibit a large financial company from entering into a transaction to acquire another financial company if the *pro forma* liabilities would exceed certain statutory levels.

[61] For example, in the case of East West Bank's acquisition of United Commercial Bank, San Francisco, California, the FDIC engaged with the China Banking Regulatory Commission and the Hong Kong Monetary Authority in advance of the resolution to discuss potential acquirers, regulatory approvals and options for resolving or selling the assets and liabilities of United Commercial Bank's wholly owned subsidiary in China and its foreign branch in Hong Kong.

[62] Any agreement reached in respect of Lehman would be contingent upon its failure, a systemic determination under sections 203(b) or 210(a)(1)(E) of the Dodd-Frank Act, 12 U.S.C. §§ 5383(b) or 5390(a)(1)(E), as applicable, and the appointment of the FDIC as receiver under section 202 of the Dodd-Frank Act, 12 U.S.C. § 5382. In the case of Lehman, and for purposes of our analysis, had there been a viable acquirer or strategic investor pre-failure, no Title II resolution would be required. As discussed in "The Events Leading to the Lehman Bankruptcy," *supra,* and in footnote 68, *infra*, no such private sector alternative was available.

[63] A simple formula to reflect the amount of the acquirer's note payable is: Book value of assets purchased less the sum of (book value of liabilities assumed plus discount bid plus cash payment) is equal to note payable.

payments are made through reductions in the outstanding balance of the note payable as loss claims occur over time.

Transactions offering an option for a sharing of potential future losses between the acquirer and the FDIC have been frequently used to resolve failed banks. Loss-share transactions allow the FDIC to obtain better bids from potential assuming institutions by sharing a portion of the risk on a pool of assets. This has been particularly important during periods of uncertainty about the value of assets. The FDIC's experience has been that these transactions result in both better bid prices and improved recoveries for the receivership and receivership creditors.

Another benefit of loss sharing is that the FDIC is able to transfer administration of the failed financial company's problem assets to the assuming institution and receive a premium for the failed company's franchise value, thereby maximizing value. By having the assuming company absorb a portion of the loss, the FDIC induces rational and responsible credit management behavior from the assuming institution to minimize credit losses. Compared to the alternative of retaining problem assets in receivership, the loss-share structure tends to be more efficient, as it limits losses and administrative costs of the receivership.

The FDIC would therefore permit bidders to bid on a structure based on a sale of the whole financial company, with partial but substantial coverage of losses on those identified problem assets.[64] The loss-share structure encourages bidders to maximize their bids by offering downside credit risk protection from loss on an identified pool of problem assets. This can produce a more efficient outcome as it incentivizes the acquirer to maximize recoveries while reducing administrative costs of the receivership. See "The Resolution and Receivership Process for Failed Banks—Loss Share," above.

Option B: Modified purchase and assumption without loss share, which excludes certain identified problem assets (modified P&A, similar to a good bank–bad bank resolution strategy). Under this option, the majority of the assets and operations of Lehman are transferred to the acquirer. Identified pools of problem assets would not be included in the transaction, but retained for disposition at a later date.[65]

Liabilities: While the FDIC would transfer the assets of Lehman to the acquirer in accordance with Option A or Option B described above, most unsecured creditor claims would remain with the receivership, including shareholder claims and claims of holders of unsecured, long-term indebtedness. Fully secured claims would be transferred, along with the collateral, to the acquirer. The bid participants would have the opportunity to bid on acquiring certain short-term indebtedness of Lehman, particularly Lehman's outstanding commercial paper. In order for this bid structure to be successful, bidders would need to bid an amount sufficient to cover the loss that the commercial paper and other short-term creditors would have otherwise incurred had the creditors remained in the receivership.

In comparing bids under Option A and Option B, the receivership estate's cost of managing and disposing of the identified problem assets would be taken into consideration. Depending on the bid, the acquirer would purchase the acquired assets through a combination of one or more of cash, notes, and assumed liabilities.

It should be noted that the proposed bid structure represented by Option A and Option B represents one set of options for disposing of the assets and operations of a covered financial company in an efficient manner. The FDIC would have the flexibility to restructure these bids as the facts and circumstances of a particular covered financial company warrant in order to satisfy the FDIC's statutory mandates of promoting financial stability, maximizing recoveries, and minimizing losses.

Early September, Closing

Following due diligence, interested parties would have submitted closed, or sealed, bids. The FDIC would have evaluated the bids based upon the requirement under the Dodd-Frank Act to maximize value upon any disposition of assets.[66] Bids would have been evaluated on a

[64] To the extent problem assets were held directly by LBHI, or LBHI experienced significant intercompany exposures to losses in subsidiaries and affiliates, loss sharing would be more likely to be a preferred bid structure.

[65] As discussed under "—March–July, Due Diligence and Structuring the Resolution—Due Diligence," *supra*, subsidiaries holding such assets would generally be resolved under the Bankruptcy Code. To the extent any subsidiary was deemed systemic, it could be put into a separate receivership under Title II, its assets liquidated and its claims resolved in accordance with the Dodd-Frank Act.

[66] *See* section 210(a)(9)(E) of the Dodd-Frank Act, 12 U.S.C. § 5390(a)(9)(E).

present-value basis. The FDIC would have selected the winning bid, and the acquirer and the FDIC, as the receiver for LBHI, would enter into a conditional P&A agreement based upon the agreed upon bid structure.[67]

We have assumed, for the limited purpose of this discussion, that Barclays would have provided a winning bid to complete an acquisition of Lehman.[68]

We have further assumed that, as LBHI reached a point at which it was in default or in danger of default, a systemic determination would have been made by the Secretary of the Treasury and the FDIC would have been appointed receiver of LBHI.[69]

At the time a determination was made that Lehman should be put into receivership and the FDIC named receiver, the assets and select liabilities of Lehman would have been transferred to Barclays as the acquiring institution based upon the structure of the winning bid.[70] Barclays would have maintained the key operations of Lehman in a seamless manner, integrating those operations over time. Disruptions to the market likely would have been minimal. Barclays would have continued to make scheduled payments on liabilities transferred to it, including secured indebtedness and, to the extent assumed by Barclays, commercial paper.[71] To the extent Barclays' winning bid had been based upon a whole financial company with loss share, it would have been responsible for servicing problem assets in accordance with the terms of the loss-sharing P&A agreement.

Lehman's derivatives trading was conducted almost exclusively in its broker-dealer, LBI, and in LBI's subsidiaries.[72] As a result, Barclays' acquisition of the broker-dealer group would have transferred the derivatives operations, together with the related collateral, to Barclays in its entirety as an ongoing operation. At the moment of failure, Barclays would have assumed any parent guarantee by Lehman outstanding in respect of the subsidiaries' qualified financial contracts. This action should have substantially eliminated any commercial basis for the subsidiaries' counterparties to engage in termination and close-out netting of qualified financial contracts based upon the insolvency of the parent guarantor. This would have removed any financial incentive to do so as well, as a financially secure acquirer would have assumed the obligations and provided guarantees to the same extent as its predecessor, in part to preserve the significant franchise value of the derivatives portfolio (including the underlying collateral).[73] The more limited derivatives operations conducted by LBHI would have been subjected to haircuts to the extent that any net amount due to a counterparty was not collateralized or hedged. Particularly in the future, it is expected that the vast majority of the derivatives transactions of a covered financial company will be fully collateralized.

Barclays would have purchased the acquired assets through a combination of one or more of the following: cash, notes, and the assumption of liabilities. The FDIC, as receiver for Lehman, would have disposed of any problem assets left behind in the receivership or

[67] *See* footnote 62, *supra.*

[68] We note that this analysis is purely hypothetical in nature, and a bid conducted by the FDIC could have produced strong bids by a number of potential acquirers. Barclays, however, was close to completing a transaction with Lehman in September 2008. It was unable to proceed based upon the risk of financial loss due to problem assets it identified in its due diligence and the inability to gain an exemption from U.K. regulators from the requirement to hold a shareholder vote prior to approving a transaction with Lehman based upon the proposed structure. The FDIC believes it would have been able to alleviate Barclays' concerns—and facilitate requisite regulatory approvals—by structuring the transaction as a loss-sharing P&A or as a modified P&A. For the purpose of this discussion, therefore, a winning bid from Barclays would be one reasonable outcome from the bidding process outlined in "—August, Begin Marketing Lehman," *supra.*

[69] For a detailed discussion of the recommendation, determination, and appointment process under sections 203 and 202 of the Dodd-Frank Act, 12 U.S.C. §§ 5383 and 5382, *see* "The Orderly Liquidation of Covered Financial Companies—Appointment," *supra.*

[70] There is a danger of value dissipation—in proportion to the size and complexity of the covered financial company—the longer such covered financial company stays in receivership prior to a sale being consummated. Accordingly, the FDIC would generally prefer, where possible, to time a sale of the assets and operations of the covered financial company at or near the date of failure. The FDIC may also transfer key operations to a bridge financial company, as described under "The Orderly Resolution of Covered Financial Companies—Special Powers under Title II—Ability to Preserve Systemic Operations of the Covered Financial Company," *supra.* These same challenges are faced in the resolution of larger insured depository institutions under the FDI Act.

[71] Despite paying a premium to assume the commercial paper obligations, an acquirer may have been incentivized to bid on such business due to the incremental franchise value of the business line and to preserve customer goodwill.

[72] LBHI conducted its derivatives activities primarily in subsidiaries of LBI (the broker-dealer), including Lehman Brothers Special Financing Inc., Lehman Brothers Derivatives Products, Inc., and Lehman Brothers Financial Products, Inc.

[73] Under the International Swaps and Derivatives Association master agreements (and trades placed thereunder), parties may choose whether to be governed by New York or English law. To the extent that parties to a particular qualified financial contract are validly governed by English law (and a court recognizes and applies such choice of law), such contract may not be subject to the Dodd-Frank Act in terms of nullification of its *ipso facto* clause.

managed the loss-share agreement with Barclays in respect of those assets, and would have settled creditor claims in accordance with the priority for repayment set forth in the Dodd-Frank Act.[74]

The Likely Treatment of Creditors

As mentioned earlier, by September of 2008, LBHI's book equity was down to $20 billion and it had $15 billion of subordinated debt, $85 billion in other outstanding short- and long-term debt, and $90 billion of other liabilities, most of which represented intra-company funding. The equity and subordinated debt represented a buffer of $35 billion to absorb losses before other creditors took losses. Of the $210 billion in assets, potential acquirers had identified $50 to $70 billion as impaired or of questionable value. If losses on those assets had been $40 billion (which would represent a loss rate in the range of 60 to 80 percent), then the entire $35 billion buffer of equity and subordinated debt would have been eliminated and losses of $5 billion would have remained. The distribution of these losses would depend on the extent of collateralization and other features of the debt instruments.

If losses had been distributed equally among all of Lehman's remaining general unsecured creditors, the $5 billion in losses would have resulted in a recovery rate of approximately $0.97 for every claim of $1.00, assuming that no affiliate guarantee claims would be triggered. This is significantly more than what these creditors are expected to receive under the Lehman bankruptcy. This benefit to creditors derives primarily from the ability to plan, arrange due diligence, and conduct a well structured competitive bidding process.

The Dodd-Frank Act provides a further potential benefit to creditors: earlier access to liquidity. As described above, the acquirer would have provided a combination of cash and a note to the receiver. Under the Dodd-Frank Act, the FDIC could have promptly distributed the cash proceeds from the sale of assets to claimants in partial satisfaction of unsecured creditor claims.[75] The FDIC would also have been able to borrow up to 90 percent of the fair value of the note available for repayment—together with the fair value of any assets left in the receivership available for repayment—from the orderly liquidation fund and advance those funds to the receivership.[76] These borrowed funds could have been made available to creditors immediately in the form of advance dividends to satisfy a portion of creditor claims based upon the total expected recovery in the resolution. This is in contrast to the actual circumstances of the LBHI bankruptcy, in which there has been no confirmed plan of reorganization or cash distribution to unsecured creditors of LBHI more than two years after the failure of Lehman.

Conclusion

Title II of the Dodd-Frank Act provides "the necessary authority to liquidate failing financial companies that pose a systemic risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard."[77] These powers and authorities are analogous to those the FDIC uses to resolve failed insured depository institutions under the FDI Act. In the case of Lehman, following appointment by the Secretary of the Treasury, the FDIC could have used its power as receiver and the ability to facilitate a sale under Title II of the Dodd-Frank Act to preserve the institution's franchise value and transfer Lehman's assets and operations to an acquirer. The FDIC would have imposed losses on equity holders and unsecured creditors, terminated senior management responsible for the failure of the covered financial company, maintained Lehman's liquidity, and, most importantly, attempted to mitigate and prevent disruption to the U.S. financial system, including the commercial paper and derivatives markets. The very availability of a comprehensive resolution system that sets forth in advance the rules under which the government will act following the appointment of a receiver could have helped to prevent a "run on the bank" and the resulting financial instability. By maintaining franchise value and mitigating severe disruption in the financial markets, it is more likely that debt holders and other general creditors will receive greater recoveries on their claims under the Dodd-Frank Act than they would have otherwise received in a Chapter 7 liquidation or a Chapter 11 reorganization.

The key to an orderly resolution and liquidation of a systemically important financial institution is the ability to plan for its resolution and liquidation, provide liquidity to maintain key assets and operations, and preserve financial stability. During the planning phase, the FDIC, working in tandem with the Federal Reserve and

[74] *See* section 210(b)(1) of the Dodd-Frank Act, 12 U.S.C. § 5390(b)(1).

[75] *See* "The Orderly Resolution of Covered Financial Companies—Special Powers under Title II—Advance Dividends and Prompt Distributions," *supra*, for a discussion of the ability to make both prompt distributions and advance dividends in a Title II receivership.

[76] *See* footnote 44 and accompanying discussion, *supra.*

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

the SEC, would have been able to identify problem assets; require management to raise capital or find an acquirer; gather information about the institution's structure, organization, and key operations; prepare the resolution transaction structure and bids; and seek potential acquirers. During this phase, the FDIC would have contacted the relevant foreign and domestic regulatory authorities and governments to coordinate the resolution. Through this process, the FDIC would have minimized losses and maximized recoveries in the event the systemically important financial institution failed and was put into receivership.

Perhaps most importantly, the Dodd-Frank Act provides the means to preserve systemically important operations and reduce systemic consequences while limiting moral hazard by imposing losses on the stockholders and unsecured creditors of the failed systemically important financial institution rather than on the U.S. taxpayer. In so doing, the FDIC is able to fulfill its statutory mandate to preserve financial stability and serve the public interest.

Afterword

This paper has focused on how the government could have structured a resolution of Lehman under Title II of the Dodd-Frank Act following the failure of such firm. In so doing, we have made a number of assumptions and caveats to provide a framework for the analysis and to maintain consistency with the historical record. That is, while we have assumed that the Dodd-Frank Act had been enacted pre-failure, and that the FDIC would have been able to avail itself of the pre-planning powers available under Title I, including having access to key data of subject institutions through resolution plans and on-site monitoring, we have not assumed-away the failure of Lehman.

The orderly liquidation authority of Title II would be a remedy of last resort, to be used only after the remedies available under Title I—including the increased informational and supervisory powers—are unable to stave off a failure. In particular, it is expected that the mere knowledge of the consequences of a Title II resolution, including the understanding that financial assistance is no longer an option, would encourage a troubled institution to find an acquirer or strategic partner on its own well in advance of failure. Likewise, on-site monitoring and access to real-time data provided under Title I is expected to provide an early-warning system to the FDIC and other regulators well in advance of a subject institution's imminent failure.

We have also stuck closely to the facts in identifying the most likely acquirer of Lehman as Barclays, while also discussing the potential role played by Bank of America and KDB. Lehman, while a complex firm, had value primarily as an investment bank. Thus, its resolution was focused on keeping the investment bank's operations intact in order to preserve its going-concern value. In other cases, a large financial firm with many pieces such as a large commercial bank, an insurance company, and a broker-dealer, might represent a financial firm that is no longer too big to fail, but may be too big to continue to exist as one entity.[78] Over the longer term, the development of resolution plans will enable the FDIC to prepare to split up such a firm in order to facilitate a Title II liquidation. The FDIC could pursue a number of alternatives instead of a whole financial company purchase-and-assumption transaction, including a spin-off of assets, an initial public offering, a debt-to-equity conversion, or some other transaction that would satisfy regulatory concerns about concentration while minimizing losses to the failed company's creditors.

[78] *See* e.g., Simon Johnson & James Kwak, 13 Bankers: *The Wall Street Takeover and the Next Financial Meltdown* (2010); Michael McKee and Scott Lanman, "Greenspan Says U.S. Should Consider Breaking Up Large Banks," Bloomberg, Oct. 15, 2009, *available at* http://www.bloomberg.com/apps/news?pid= newsarchive&sid= aJ8HPmNUfchg; Lita Epstein, "Breaking up 'too big to fail' banks: Britain leads, will U.S. follow," DailyFinance, Nov. 2, 2009, available at http://www.dailyfinance.com/story/ investing/breaking-up-banks-too-big-to-fail-britian-leads-but-will-u-s/19220380/. The Dodd-Frank Act includes provisions intended to prevent the creation of ever-larger financial companies, including section 622 thereof, 12 U.S.C. § 1852. *See* footnote 60, *supra*.

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