A Look At The Feds' Extraordinary Reaction To SVB Collapse

By **Franca Harris Gutierrez, Michael Held and Cory Hansen** (March 13, 2023)

Franca Harris Gutierrez

Michael Held

Cory Hansen

On Sunday evening, the U.S. Department of the Treasury, Federal Reserve, and the Federal Deposit Insurance Corporation announced measures to (1) prevent losses to all depositors — including all uninsured depositors — after Silicon Valley Bank and Signature Bank failed and entered into FDIC receivership and (2) provide liquidity support to banks.

Together, as made clear in the joint statement[1] issued by the agencies, the agencies are emphatic that the "actions demonstrate [their] commitment to take the necessary steps to ensure that depositors' savings remain safe." Viewed in tandem, this is an extraordinary combination of government support.

Even before the effects from the failures of SVB and Signature Bank are fully known — let alone understood — the focus even now is shifting to the consequences for responsible parties and putting in place stricter bank oversight to prevent additional bank failures.

The White House also emphasized "confidence that … bank deposits will be there when need[ed]" in its statement over the weekend and in live remarks from President Joe Biden on Monday.[2]

In addition, the president's remarks echoed the message contained in the White House statement that the government is "committed to holding those responsible for this mess fully accountable and to continuing our efforts to strengthen oversight and regulation of larger banks so that we are not in this position again." In live remarks, the president communicated the administration's position that it will do whatever it takes.

Protection of Depositors

To prevent potential losses to depositors at SVB and Signature Bank, the agencies invoked the so-called systemic risk exception.

The exception allows the Deposit Insurance Fund to protect "depositors for more than the insured portion of deposit" if doing so would "avoid or mitigate" the "serious adverse effects on economic conditions or financial stability" that would otherwise occur from landing a bank in receivership, per Title 12 of the U.S. Code, Section 1823(c)(4)(G).

The exception requires a two-third vote by the Boards of the Federal Reserve and FDIC and an emergency determination by the secretary of the treasury made in consultation with the president. The agencies noted that losses to the DIF will be recovered by a special assessment on banks as required by the systemic risk exception authority.

Liquidity Support

The Federal Reserve, with the support from the Treasury of up to $25 billion from the Exchange Stabilization Fund,[3] which was created in the Gold Reserve Act of 1934 to support "orderly exchange arrangements and an orderly system of exchange rates," announced the Bank Term Funding Program,[4] or BTFP, to support bank liquidity by lending against eligible collateral. Notably:

- Any U.S. federally insured depository institution — including a bank, savings association or credit union — or U.S. branch or agency of a foreign bank that is eligible for primary credit is eligible to borrow under the BTFP;
- The eligible collateral includes collateral eligible for purchase by the Federal Reserve Banks in open market operations that were owned by the borrower as of March 12;
- Advances will be up to the value of pledged collateral and the valuation of pledged collateral will be at par; and
- Advances will be made available for a term of up to one year.

The BTFP is expected to operate until "at least" March 11, 2024.

The BTFP appears to respond to concerns regarding maturity mismatch at SVB and potentially other banks, by enabling them to obtain funding to meet liquidity needs, collateralized by high quality securities owned by the bank.

The Federal Reserve stated in the announcement of the BTFP that it "will be an additional source of liquidity against high-quality securities, eliminating an institution's need to quickly sell those securities in times of stress."

What Is Next?

As a package, the measures are directed at calming concerns about depositor losses from the failures of SVB and Signature Bank and mitigating potential liquidity concerns at open banks.

As relayed in the joint statement, the actions are directed at "strengthening public confidence in our banking system." The overarching theme of the agencies and from the White House is that the government will do whatever it takes to keep the banking system safe and sound, but taxpayers broadly will not pay the costs.

It remains to be seen all who will.

So far, the administration stated that the banking sector would repay losses to the DIF from protecting uninsured deposits. With the receivership of two banks in almost as many days, the emerging pattern holds the banking sector as a whole responsible for losses at individual institutions.

If losses to any deposits are unacceptable going forward, the additional resources in the DIF necessary to protect them, and the responsibility of the banking sector to contribute to the DIF, may not end with special assessments to cover SVB and Signature Bank.

Attention in Washington, D.C., is already turning toward who else should be accountable, as Sen. Elizabeth Warren, D-Mass., notably pointed to 2018 legislation that removed regulatory requirements on SVB-sized banks, and agitated for individual liability for responsible individuals.[5]

Franca Harris Gutierrez and Michael Held are partners, and Cory C. Hansen is a senior associate, at WilmerHale.

Partners Yoon Hi Greene and Michael Dawson, senior counsel Julie L. Williams, and associate Andrew L. Lindsay also contributed to this article.

[1] See https://www.fdic.gov/news/press-releases/2023/pr23017.html.

[2] See https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/12/statement-from-president-joe-biden-on-actions-to-strengthen-confidence-in-the-banking-system/.

[3] The Exchange Stabilization Fund was created in the Gold Reserve Act of 1934 to support "orderly exchange arrangements and an orderly system of exchange rates." U.S. Department of the Treasury, Exchange Stabilization Fund (last accessed March 13, 2023), https://home.treasury.gov/policy-issues/international/exchange-stabilization-fund. "By law, the Secretary has considerable discretion in the use of ESF resources." Id.

[4] See https://www.federalreserve.gov/newsevents/pressreleases/monetary20230312a.htm.

[5] See https://www.nytimes.com/2023/03/13/opinion/elizabeth-warren-silicon-valley-bank.html.