Office of Inspector General

Office of Audits and Evaluations
Report No. EVAL-13-004

The FDIC's Resolution Planning Process

September 2013

Office of Inspector General

Executive Summary

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Why We Did The Evaluation

Between 2008 and 2012, the FDIC resolved 465 failed insured depository institutions that caused more than $86 billion in potential losses to the Deposit Insurance Fund (DIF). Total assets in these institutions at the time of failure exceeded $674 billion. Each resolution presents challenges and sometimes unique risks for the Corporation, and it is important that the FDIC's resolution program is designed to resolve failing institutions efficiently and in the least costly manner.

The evaluation objective was to determine whether the resolution planning process is designed to enable the FDIC to efficiently and effectively identify and manage risks involved with resolving financial institutions. The FDIC continues to manage risks presented by failed depository institutions after the institution has been resolved and the FDIC has been appointed as Receiver. Consequently, we also gained an understanding of the controls particularly relevant to risk mitigation associated with receivership processes, and those controls are discussed briefly in this report.

Background

The FDIC is responsible for orderly and efficiently managing and disposing of the assets of failed depository institutions. To fulfill this responsibility, the FDIC uses a variety of business practices typically associated with either the resolution or receivership processes.

The resolution process involves evaluating and marketing a failing depository institution, soliciting and accepting bids for the sale of the institution, determining which bid is least costly to the DIF, and working with the acquiring institution (AI) through the closing process. A key step in the resolution process is developing a strategic resolution plan (SRP) that documents resolution planning efforts, identifies significant issues and unique risks associated with a failure, and serves as an operational guide for closing the institution.

The receivership process involves performing the closing function at the failed depository institution, and, as Receiver, liquidating any remaining failed institution assets, and distributing any proceeds of the liquidation to the FDIC and other creditors of the receivership.

The FDIC's Division of Resolutions and Receiverships (DRR) is responsible for resolving failed depository institutions and managing the resulting receiverships.

Evaluation Results

We concluded that the resolution planning process is designed to identify and manage risks associated with the resolution of failing depository institutions, focusing on risks that factor into DRR's marketing of the failing depository institution and the extent to which assets and liabilities will remain with an FDIC receivership. To reach our conclusion, we considered whether the FDIC established effective internal controls to identify and manage risks involved with resolving failed depository institutions.

The FDIC is statutorily required to resolve institutions in the least costly manner and to maximize recoveries from receiverships. Accordingly, many of the risks and challenges facing the FDIC stem from the possibility that the FDIC may not meet these statutory objectives. The FDIC employs several resolution scenarios and each type presents its own set of risks. For most failed institutions, the FDIC successfully transfers certain assets to a healthy AI. Resolution scenarios where the FDIC is unable to pass assets to an acquirer, such as a bridge bank or deposit payout, present additional financial, operational, and reputational risks for the FDIC. For those scenarios, the FDIC has developed additional processes and controls to identify and manage the associated resolution and receivership risks.

While DRR works to identify potential resolution risks prior to closing an institution, DRR also designed its receivership processes to mitigate risks that are identified before and after a financial institution is closed. We gained an understanding of controls particularly relevant to risk mitigation that are associated with receivership processes such as policies and procedures, functional area responsibilities, and management activity reporting. However, assessing to what extent those controls were properly designed and implemented was outside of the scope of this evaluation.

We observed that the FDIC may benefit from collecting quantitative data on historical trends and outstanding and estimated indemnification claims and discussed our observation with management during the course of our review. Given the limited significance of the matter, we are not presenting it as a finding or making associated recommendations in this report.

Corporation Comments

Because this report contained no recommendations, the Director, DRR, was not required to, and chose not to provide a formal response to a draft of this report. However, DRR and the Legal Division provided informal comments on the draft that we considered and reflected in this report, as appropriate.

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Federal Deposit Insurance Corporation
3501 Fairfax Drive, Arlington, VA 22226

Office of Audits and Evaluations
Office of Inspector General

DATE: September 27, 2013

MEMORANDUM TO: Bret D. Edwards, Director
Division of Resolutions and Receiverships

/signed/

FROM: Stephen M. Beard
Deputy Inspector General for Audits and Evaluations

SUBJECT: *The FDIC's Resolution Planning Process*
(Report No. EVAL-13-004)

This report presents the results of our evaluation of the FDIC's resolution planning process. Between 2008 and 2012, the FDIC resolved 465 failed insured depository institutions[1] that caused over $86 billion in potential losses to the Deposit Insurance Fund (DIF). Total assets in these institutions at the time of failure exceeded $674 billion. The FDIC is required by the Federal Deposit Insurance (FDI) Act to minimize resolution losses and to maximize asset recoveries. Each resolution presents challenges and sometimes unique risks for the FDIC, and it is important that its resolution program is designed to resolve failing institutions efficiently and in the least costly manner.

Our objective was to determine whether the resolution planning process is designed to enable the FDIC to efficiently and effectively identify and manage risks involved with resolving failed depository institutions. To achieve that objective, we assessed the design of internal controls surrounding the resolution process, which concludes when an insured depository institution's charter is revoked, the failing institution is closed, and the chartering authority appoints the FDIC as Receiver. The FDIC continues to manage risks presented by failed depository institutions after the institution has been resolved and the FDIC has been appointed as Receiver. Consequently, we also gained an understanding of the controls particularly relevant to risk mitigation associated with receivership processes, and those controls are discussed briefly in this report.

We conducted this evaluation in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*. Appendix 1 of this report includes additional details on our objective, scope, and methodology. Appendix 4 contains a glossary of key terms, and Appendix 5 contains a list of acronyms and abbreviations.

[1] Terms that are underlined when first used in this report are defined in Appendix 3, *Glossary*.

Background

The FDIC is responsible for orderly and efficiently managing and disposing of the assets of failed depository institutions. To fulfill this responsibility, the FDIC uses a variety of business practices typically associated with either the resolution or receivership processes.

The resolution process involves evaluating and marketing a failing depository institution, soliciting and accepting bids for the sale of the institution, determining which bid is least costly to the DIF, and working with the acquiring institution (AI) through the closing process. A key step in the resolution process is developing a strategic resolution plan (SRP) that documents resolution planning efforts, identifies significant issues and unique risks associated with a failure, and serves as an operational guide for closing the institution.

The receivership process involves performing the closing function at the failed depository institution, liquidating any remaining failed institution assets, and distributing any proceeds of the liquidation to the FDIC and other creditors of the receivership. The FDIC's Division of Resolutions and Receiverships (DRR) is responsible for resolving failed depository institutions and managing the resulting receiverships.

Evaluation Results

The FDIC's resolution planning process is designed to identify and manage risks associated with resolving failing depository institutions, focusing on risks that factor into DRR's marketing of the failing depository institution franchise and the extent to which assets and liabilities will remain with an FDIC receivership. We concluded that DRR had adequate controls in place, including directives, procedures, and management reporting to provide reasonable assurance that FDIC management's resolution objectives are met.

The FDIC employs several resolution scenarios and each type presents its own set of risks. For most failed institutions, the FDIC successfully transfers certain assets to a healthy AI. Resolution scenarios where the FDIC is unable to pass assets to an acquirer, such as a bridge bank or deposit payout, present additional financial, operational, and reputational risks for the FDIC. For those scenarios, the FDIC has developed additional processes and controls to identify and manage the associated resolution and receivership risks.

DRR's receivership processes also play a role in mitigating risks that are identified before and after a depository institution is closed. We gained an understanding of controls particularly relevant to risk mitigation that are associated with receivership processes such as policies and procedures, functional area responsibilities, and management activity reporting, and those controls are outlined in our report. However, assessing to what extent those controls were properly designed and implemented was outside of the scope of this evaluation.

Regardless of the resolution scenario, the FDIC faces some risk from indemnifications to the acquirer or purchaser that the FDIC places on failed institution assets. These indemnifications are generally standard in the banking industry, and FDIC officials indicated that sustained claims have been immaterial. We observed that the FDIC may benefit from collecting quantitative data on historical trends and outstanding and estimated indemnification claims and discussed our observation with management during the course of our review. Given the limited significance of the matter, we are not presenting it as a finding or making associated recommendations in this report.

The Resolution Planning Process is Designed to Identify and Manage Risks Associated with Resolving Failing Institutions

We concluded the resolution planning process is designed to identify and manage risks associated with the resolution of failing depository institutions. To reach our conclusion, we considered whether the FDIC had established effective internal controls to identify and manage risks involved with resolving failed depository institutions.[2]

The FDIC is statutorily required to resolve institutions in the least costly manner[3] and to maximize recoveries from receiverships. Accordingly, many of the risks and challenges facing the FDIC stem from the possibility that the FDIC may not meet these statutory objectives. We verified that DRR had policy manuals and procedures in place to guide resolution planning and closing activities. DRR also has established roles and responsibilities for key positions in the resolution processes that segregate duties. DRR has developed systems that maintain information pertaining to resolutions and generate reports for FDIC management. Finally, DRR conducts compliance reviews and internal reviews that monitor whether controls are in place and effective for ensuring that management's resolution objectives are met.

Overview of the Resolution Planning Process

The FDIC initiates the resolution process when notified by an institution's primary regulator that the insured bank or thrift is about to fail. A depository institution typically is closed by its chartering authority when it becomes insolvent, is critically undercapitalized, its examiners discover fraud, it is unable to meet deposit outflows (i.e., lacks liquidity), or has unsafe and unsound banking practices. Once the FDIC receives notification that an institution is about to fail, DRR's Franchise and Asset Marketing Branch (FAMB) takes the lead in planning the resolution, valuing the failing institution's assets, and marketing the failing institution.

DRR has several policy manuals for the resolution process, including the following:

- *Resolutions Manual*, dated March 28, 2011, which covers the FAMB resolution process for a potentially failing insured depository institution up to the date the institution fails.

[2] We considered the Committee of Sponsoring Organizations of the Treadway Commission's (COSO) *Internal Control Integrated Framework*, widely recognized guidance on what constitutes effective internal control that is described further in Appendix 1, *Objectives, Scope, and Methodology*, in evaluating the FDIC's controls in this area. The framework notes that internal control is a system of checks and balances to help mitigate risks and to provide reasonable – not absolute – assurance that an organization can achieve its objectives.
[3] The one exception to this requirement is if a transaction is necessary to avoid serious adverse effects on economic conditions or financial stability.

- *FDIC Asset Valuation Reference*, revised May 2013, which provides a general overview of how the FDIC implements valuations necessary to carry out its mission, while maintaining appropriate internal controls around the processes.

- *Failed Financial Institution Closing Manual*, dated October 2012, which is the authoritative reference for DRR closing procedures and contains the current procedures for conducting the closing of an FDIC-insured depository institution.

- *Proforma Manual*, dated June 2011, which provides general information and guidance to FDIC personnel regarding the activities needed to substantiate the individual assets and liabilities for a failed depository institution, balance the failed institution's accounts after closing, and provide information to the Receiver and AI of their share of the substantiated assets and liabilities.

- *Asset Resolution Manual*, effective May 2011, which focuses on the policies and guiding principles that are to be used during the process of managing and marketing the assets resulting from the failure of a depository institution, noting the asset resolution strategy is to market assets and return them to the private sector as soon as practicable. The manual also provides protocols, procedures, and links to job aids to assist DRR staff in accomplishing the various tasks that comprise the asset resolution function.

- *Bridge Bank Manual*, dated May 2011, which addresses the overall resolution policies and general procedures related to the establishment and operation of a temporary open institution until the FDIC can effect a permanent resolution.

The following sections describe the FDIC's resolution planning efforts and identify key control objectives that are met. A process map of the resolution and receivership process is shown in Appendix 2.

Supervisory Information

For FAMB to analyze potential failing depository institutions and plan for orderly resolution, DRR must have timely and appropriate access to supervisory information. The FDIC established procedures between DRR and the former Division of Supervision and Consumer Protection, now the Division of Risk Management Supervision (RMS) to maintain open communication and to collect and share information on insured institutions that appear likely to fail. Under FDIC Circular 7000.1, *DSC/DRR Information Sharing*, dated December 22, 2005, DRR may access depository institutions' Consolidated Reports of Condition and Income (Call Reports) and Bank Structure File[4] databases to facilitate resolution work on potential depository institution failure

[4] RMS establishes and updates at each on-site visit information indicating: (a) an institution's corporate structure; (b) the type of accounting system employed; (c) the location of accounting records; (d) the location of assets not held on institution premises; (e) a list of all loan-servicing arrangements for loans serviced by a third party or as a servicer for third parties; (f) whether an institution has securitized assets and, when it does, a list of the contact names for trustees and master servicers; (g) a list of subsidiaries with their engaged activities, and a list of officers and directors; (h) an inventory of significant contracts with a brief description of the nature and terms of each

situations. The directive indicates RMS will provide DRR a Failure Projection Report, and DRR Resolution and Closing Managers may request relevant information concerning insured institutions that are likely to fail, such as institutions placed on the Failure Projection Report, institutions that exhibit unsafe and unsound practices and critically deficient performance; or institutions that have critical liquidity problems. RMS may consult with DRR when developing a supervisory strategy or solution for a failing institution to avoid constructing a solution that would be harmful to a receivership.

The FDIC established similar information sharing procedures with the Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System and Federal Reserve banks. Further, an Interagency Memorandum of Understanding on Special Examinations, dated July 14, 2010, allows the FDIC to coordinate with a depository institution's primary regulator to conduct a special examination to determine the institution's condition for insurance purposes.

Early access to failing depository institution supervisory information allows DRR to understand the failing institution and begin assessing assets and operations to determine the resolution marketing strategy.

Resolution Team and Roles

DRR first assigns a resolution team to plan for an institution's failure. The resolution team consists of specialists in several functional areas, as follows:

- Dallas Marketing Specialists develop the marketing strategy, establish a resolution timeline, and recommend the resolution strategy; market the failing institution; and manage the bid process, including working with potential bidders during the due diligence process.

- Washington Resolution Specialists prepare the failing institution board case for the FDIC Board of Directors, evaluate bids and perform the least cost analysis, and monitor the resolution process and report status information to the FDIC Chairman.

- Team Leaders manage the day-to-day, on-site resolution project, gather information and documents from the failing institution and post information to a collaborative on-line SharePoint site; oversee the valuation contractor; and closely monitor the on-site due diligence process.

- Business Information System (BIS) Specialists support the resolution team with computer hardware and software, obtain asset and deposit downloads from the failing institution or its servicer, and prepare a data processing overview and technology and operations questionnaire to facilitate the resolution.

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contract; (i) a list of pending litigation; and (j) when an institution is an active credit card originator, a description of the extent and nature of involvement and the names of the counterparties.

- Asset Marketing Specialists analyze loan portfolios and review approved asset pools, facilitate obtaining imaged loan files to be provided to bidders, and prepare marketing plans and asset bid packages for post-closing asset sales.

- Legal Division Attorneys prepare the purchase and assumption (P&A) agreement and other legal documents, provide counsel to DRR, and make recommendations on conforming and non-conforming bids.

- Investigations Specialists determine, in conjunction with the Legal Division, the existence of pending or potential claims that could be maintained by the FDIC, as Receiver, against the institution's fidelity bond carrier, directors, officers, and other professionals.

- Claims Specialists determine the uninsured deposit estimate for the failing institution.

Assigning specialists with defined roles and responsibilities ensures duties are adequately segregated and management's objectives to resolve failing institutions efficiently and in the least costly manner are met.

Asset Valuation

DRR must value the assets of a failing depository institution to determine the best method of resolution. The marketing and sale process begins with the receipt of asset valuations conducted primarily by third-party financial advisors on a portfolio-level basis. The Asset Valuation Review (AVR) is a set of FDIC-designed templates (Valuation, Asset Categories, Percentages of Default, Assumptions, etc.) into which a financial advisor allocates the portfolio data based on loan-level detail extracted from the institution's records by the FDIC BIS group and verified through an on-site visit by the financial advisor. The resulting AVR report is used to set reserve prices for asset pools to be offered in a resolution and is instrumental in determining the least costly resolution transaction for the institution. The estimated loss is also used to establish a loss reserve on the FDIC's books and may be disclosed to the public in a press release.

According to *The FDIC Asset Valuation Reference* manual, DRR has internal controls around the AVR process to ensure the FDIC has a reasonable estimate of the value of various loan pools so that the FDIC can intelligently assess offeror bids and maximize recoveries on assets.

Bidder Information and Due Diligence

FAMB uses a Virtual Data Room (VDR) to provide extensive information to bidders about the failing depository institution and the marketing process. The VDR is a secure Web site hosted by a third-party vendor where the FDIC posts information for bidders, regulators, and other FDIC stakeholders. The site contains information about the failing institution, including:

- loan and deposit data files,

- the general ledger,

- detailed loan and deposit reports,
- operational information, and
- contracts.

As discussed further in this report, the resolution planning process is primarily concerned with marketing an institution and identifying and managing risks that could inhibit a potential acquirer. In that regard, according to DRR officials, DRR staff and its contractors generally would not perform an in-depth review of standard loan documents as part of DRR's analysis of loan portfolios and gathering of loan-related documentation, and those activities are not geared to pick up errors that may exist in loan documents. DRR officials indicated that it would not be practical or cost-effective for that review to be so thorough. Instead, they explained that potential bidders are provided the opportunity to analyze the loan documents as part of their due diligence.

DRR has controls surrounding the VDR and bidder due diligence process to ensure that personally identifiable and confidential information is protected and that potential bidders are on a "level playing field."

Institution Marketing

FAMB markets failing institutions to all interested and qualified bidders. The overall goal of the failing institution marketing process is to develop and analyze options to arrive at a strategy that encourages competition among potential acquirers and results in the least costly resolution of the failing institution. This entails determining a timeline; selecting the transaction types to offer; developing a bidders list; actively marketing the institution; coordinating due diligence; and describing to bidders the terms of the transaction, the bid process, and the characteristics of the institution.

The Washington Marketing Specialist coordinates the preparation of a Failing Bank Board Case that is presented to the FDIC Board of Directors for its approval. The case includes the supervisory history of the failing institution, the resolution transactions that will be offered to acquirers, an estimate of the FDIC's cost to liquidate the failing institution, and any unique risks associated with the institution.

Broadly marketing the failing institution helps to ensure that a large number of institutions have an opportunity to bid on the failing institution, encourages competition, and helps to achieve the least costly resolution.

Resolution Methods and Associated Risks

The FDIC determines the resolution method based on results of marketing and bidder interest. Each resolution method has its own risks. The FDIC attempts to pass most of the failed institution assets and deposits to a healthy AI through P&A transactions. However, in some cases, the FDIC may have to continue to operate the failed institution until the FDIC can find an acquirer or may have to pay out the failed institution's deposits.

P&A Transactions. The FDIC most often uses P&A transactions to resolve failed depository institutions. The FDIC resolved 440 of the 465 insured institutions that failed between 2008 and 2012 through P&A transactions. With a P&A transaction, a "healthy" institution purchases certain assets and assumes certain liabilities of the failed institution. The P&As developed over time, and the FDIC now uses the P&A transaction variations summarized in Table 1.

Table 1: Marketing Structure Evolution

P&A Variation	Marketing Rationale and Benefit(s)
Whole Bank P&A (Insured Deposits or All Deposits)	With a whole bank P&A, a healthy institution purchases all of the assets of a failed institution and assumes some or all of the liabilities, with the option to include all deposits or only insured deposits. Some categories of assets always remain with the FDIC, as Receiver, such as claims against former directors and officers, claims under banker's blanket bonds and director and officer insurance policies, prepaid assessments, and tax receivables.
P&A with Optional Loan Pools (Insured Deposits or All Deposits)	For institutions with a diverse loan portfolio, the FDIC offers the loan portfolio in separate pools of homogeneous loans (that is, those with the same collateral, terms, payment history, or location). Potential acquirers are allowed to submit proposals for the franchise (all deposits or only insured deposits) and for any or all of the pools.
Modified Whole Bank P&A (Insured Deposits or All Deposits)	In a modified P&A, the winning bidder purchases the same assets and liabilities as in a Whole Bank P&A except for all nonperforming loans; acquisition, development and construction loans, land, and owned real estate (ORE).
Whole bank with loss share option, allowing an 80/20 (FDIC/AI) percentage loss share for a first tranche and a 95/5 percentage loss share for a second tranche	Starting in 2008, the FDIC added a loss share option to whole bank P&A transactions. Loss share options incorporate a shared loss agreement (SLA) where the FDIC agrees to share in a portion of future asset losses and recoveries for a specific amount of time with the AIs of failed institution assets. The objective of loss sharing is to reduce the FDIC's resolution costs by having the private sector manage and own a greater volume of assets. Loss sharing softens the impact on the local community by keeping the assets in an institutional environment, realizing the intrinsic value of the assets rather than liquidating them.
Modified whole bank with the loss share option	In 2009, the FDIC offered modified whole bank transactions with a loss share option.
Updated whole bank with loss share, allowing 80/20 percentage loss share for both the first and second tranches	As market conditions stabilized, in 2010 the FDIC was able to market institutions without bearing the increased loss burden for a second tranche.
Flexible bidding and asset premium discount bidding options	In 2010, the FDIC allowed institutions to bid any percentage of loss share for either tranche, provided the percentage did not exceed 80 percent or a fixed dollar amount.
Whole bank and modified whole bank with no loss share option	By 2013, as the real estate market improved in many geographic areas, the perceived risk of bidding on a whole bank without a loss share decreased.

Source: DRR Resolution Handbook and DRR presentation, *The Failing Bank Marketing Process: Marketing Structures 2007-2013*, May 15, 2013.

The overarching benefit of these variations is the FDIC is able to structure deals that result in greater value for failed institutions. FAMB initially markets the failing institution with the standard Whole Bank P&A transaction and the Whole Bank P&A with Optional Shared Loss Agreements. When bidder interest is not strong, the Marketing Specialist will recommend to the

Resolution Strategy Committee[5] to offer additional bidding options, including the Modified Whole Bank P&A with or without Optional Shared-Loss Agreements and the P&A Agreement with or without Optional Loan Pools.

P&A agreements help to meet the FDIC's goal of keeping failed financial institution assets in the private sector. P&As are a less costly form of resolution than payouts. However, for those P&A agreements with SLAs, the FDIC has to monitor the AI's compliance to ensure that recoveries on receivership assets are maximized. The FDIC established controls and processes to monitor SLAs and ensure AIs comply with the terms and conditions of the SLAs, manage covered assets properly, and minimize losses. Those controls and processes include AI financial reports, on-site reviews, contractor-performed analysis of loss claim certificates, and examination procedures generally focused on AI compliance with SLAs.

Continuing Operations Transactions. The FDIC resolved 3 of the 465 insured institutions that failed between 2008 and 2012 with continuing operations transactions. After appointment as Receiver, the FDIC has authority to organize a new depository institution. A bridge bank is a temporary national bank or Federal savings association[6] established and operated by the FDIC on an interim basis to acquire the assets and assume the liabilities of a failed depository institution until final resolution can be accomplished. The FDIC may establish a bridge bank when an insured institution fails and there is inadequate time to market the franchise due to the size or complexity of the institution or for other circumstances. Generally, the receivership retains assets with substantially impaired values and some liabilities, along with uninsured deposits, to enhance the intrinsic value of the bridge bank franchise. As the term implies, a bridge bank usually provides a temporary solution that gives the FDIC flexibility and time to evaluate an institution's situation, stabilize the institution, determine the appropriate type of resolution to offer, and market the franchise. A bridge bank's charter is for 2 years with the possibility of three 1-year extensions.

Before the FDIC had authority to create bridge banks for failed thrifts,[7] Section 11 of the FDI Act, 12 U.S.C. § 1821(c)(1), allowed the FDIC to be appointed as conservator of a newly organized thrift institution. Under that earlier authority, a conservatorship for a savings institution operated similarly to a bridge bank. The conservatorship was operated on an interim basis under direct FDIC supervision. It was generally limited to situations where more time was needed to permit the least costly resolution. Conservatorships were primarily used by the Resolution Trust Corporation, a temporary federal agency that operated from 1989 through 1995 to oversee the disposal of assets from failed savings and loan institutions, and then rarely by the FDIC thereafter. Because of the dissolution of the Office of Thrift Supervision, and the

[5] The Resolution Strategy Committee involves senior DRR management in the development of the resolution strategy of each failing institution. Among other things, the committee determines the types of transaction to offer, discusses assets to be included in various sale initiatives, and considers unique characteristics of the failing institution's balance sheet and any issues that may cause changes during marketing.
[6] The FDIC's ability to organize a Federal savings association as a bridge bank became effective July 21, 2011 under authorities transferred from the former Office of Thrift Supervision under the Dodd-Frank Wall Street Reform and Consumer Protection Act.
[7] The Competitive Equality Banking Act of 1987 expanded the FDIC's power in Section 12(n) of the FDI Act, 12 U.S.C. § 1821(n), to resolve depository institution failures by granting bridge bank authority.

enactment of bridge authority for all types of charters, it is unlikely that conservatorships will be used in the future.

Because bridge banks present financial, operational, and reputational risk, the decision to create a bridge bank must be based primarily on the scenario that will result in the least costly resolution to the DIF. A bridge bank structure should be considered for:

- institutions with attractive franchises where it is believed a bridge bank will preserve value;
- large complex institutions (e.g., multi-bank holding companies) when little advance notice of their failure is available;
- institutions where failure would present a systemic risk concern; or
- institutions where additional marketing is warranted.

The FDIC's *Bridge Bank Manual* contains overall procedures and resolution policies related to establishing and operating a temporary institution until the FDIC can permanently resolve the failed institution. That manual provides guidance for:

- establishing the role and selecting a bridge bank board of directors and a chief executive officer responsible for overseeing the management of the institution's assets and liabilities that have been passed from the FDIC, as Receiver, to the bridge bank;
- reviewing and establishing delegations of authority for institution personnel, such as lending authority for certain institution officers;
- reviewing existing institution policy to determine what policies and procedures worked well in the past, as well as those that did not, and making appropriate recommendations;
- evaluating the institution's condition, identifying losses, and recommending the most viable alternatives for cost-effective resolution;
- identifying and evaluating any subsidiary assets and real and contingent liabilities; installing new officers for the subsidiary, and deciding whether to hold, sell, merge, dissolve, abandon, or bankrupt the subsidiary; and
- approving a strategic business plan that establishes goals and objectives for the management of the institution up until final resolution.

Notably, the *Bridge Bank Manual* states that DRR personnel should immediately interview failed institution personnel for an understanding of the failed institution's loan products, and to determine the feasibility of continuing with those loan programs. Discussions with the examiner-in-charge of the last supervisory examination are encouraged in order to ensure that problem loan programs have been clearly identified and either modified or discontinued completely. Changes to the loan programs may be necessary to bring the lending practices into compliance with current regulatory guidelines and to enhance the value of the bridge bank while it is being marketed. Consideration should be given to focusing loan programs to service the institution's local community and to honor existing commitments that would not create further losses.

We concluded that while bridge banks generally increase the FDIC's resolution risks, the FDIC has established policies and procedures and instituted controls to reasonably address those risks.

Deposit Payouts. The FDIC considers deposit payout transactions if P&A transaction bids do not meet the least cost test or if the FDIC receives no P&A bids. The FDIC resolved 22 of the 465 insured institutions that failed between 2008 and 2012 with deposit payout transactions. With deposit payout transactions, the FDIC ensures the failed institution's customers receive the full amount of their insured deposits. Deposit payout transactions include:

- an insured deposit transfer to a healthy bank that acts as a paying agent,
- a straight deposit payout with the FDIC issuing checks directly to the depositor, or
- a Deposit Insurance National Bank (DINB).

A DINB is a new national bank with a limited life and powers that assumes only the insured deposits of a failed institution. DINBs allow a failed institution's customers a brief time to move their deposit account(s) to other institutions. Seven of the 22 deposit payout transactions to resolve insured institutions that failed between 2008 and 2012 were DINBs.

A payout or DINB results in the FDIC assuming all of the failed institution's assets into the receivership. This creates additional risks because the FDIC must manage these assets until they can be sold. In later sections of our report, we discuss controls that the FDIC has put in place as part of its receivership processes to address such risks.

Bid Evaluation and Approval

FAMB accepts the bids for the failing institution. All bids must be evaluated for the least costly transaction. DRR uses its Least Cost Test (LCT) model to determine the liquidation value of a failing institution, evaluate bids submitted to purchase a failing institution, and compare all possible resolution transactions. The winning transaction is the resolution transaction that is the least costly resolution transaction to the DIF. A bid approval memorandum is prepared to record the DRR Director's approval, and arrangements are made for the successful acquirers to execute the legal documents prior to the closure.

The LCT model helps ensure all bids are considered and evaluated consistently, and that the FDIC has a consistent process for selecting the least costly method of resolution.

Strategic Resolution Plan

The FDIC appoints a Receiver-in-Charge (RIC) and Closing Manager (CM) to develop an interdivisional Strategic Resolution Plan (SRP). The SRP addresses significant issues and events germane to the potential resolution. The SRP is intended to facilitate the resolution of a failing institution by identifying significant issues, operational risks, or corporate risks that could negatively affect the closing and resolution process or increase the FDIC's resolution costs. The SRP acts as the coordinating mechanism for early identification of unique issues and conduit to ensure that each issue is being addressed within the specific planning activities of the appropriate functional reporting areas. The RIC and CM oversee the process as well as plan, manage, and coordinate all activities related to the closing.

DRR has an SRP template; however, each SRP is unique due to the different characteristics of each institution. SRPs generally include the following information:

- Summary page of pertinent entity, financial, resolution, and contact information.
- Background and relevant historical information about the institution.
- Discussion of significant issues related to the resolution.
- Schedules of assets (including loan portfolios) and liabilities (including deposits).
- Strategies for marketing the institution and gaining control of offices and branches during the closing.
- Closing weekend strategies for asset marketing and capital markets functional areas.
- Loan portfolio analysis, including outstanding participations, unfunded commitments, criticized loans, etc.
- Investments in any subsidiaries.
- Analysis of depositor claims, including an uninsured deposit estimate.
- Strategy for financial accounting (Proforma), investigations, and legal support.
- BIS information technology (IT) strategy, including failed institution data center, Web site, and technology service provider information.
- FDIC ombudsman, public affairs, physical security, and records management strategy.
- FDIC closing team organizational chart and closing team staffing information.

DRR established an SRP Review Committee, which reviews SRPs for failing institutions with assets in excess of $250 million, minority depository institutions, or institutions with unique circumstances.

A part of developing an SRP is a general risk assessment of the failing institution. Table 2 shows the factors the closing team should consider as they complete the SRP. Figure 1 on page 14 provides an overview of the strategic resolution planning process.

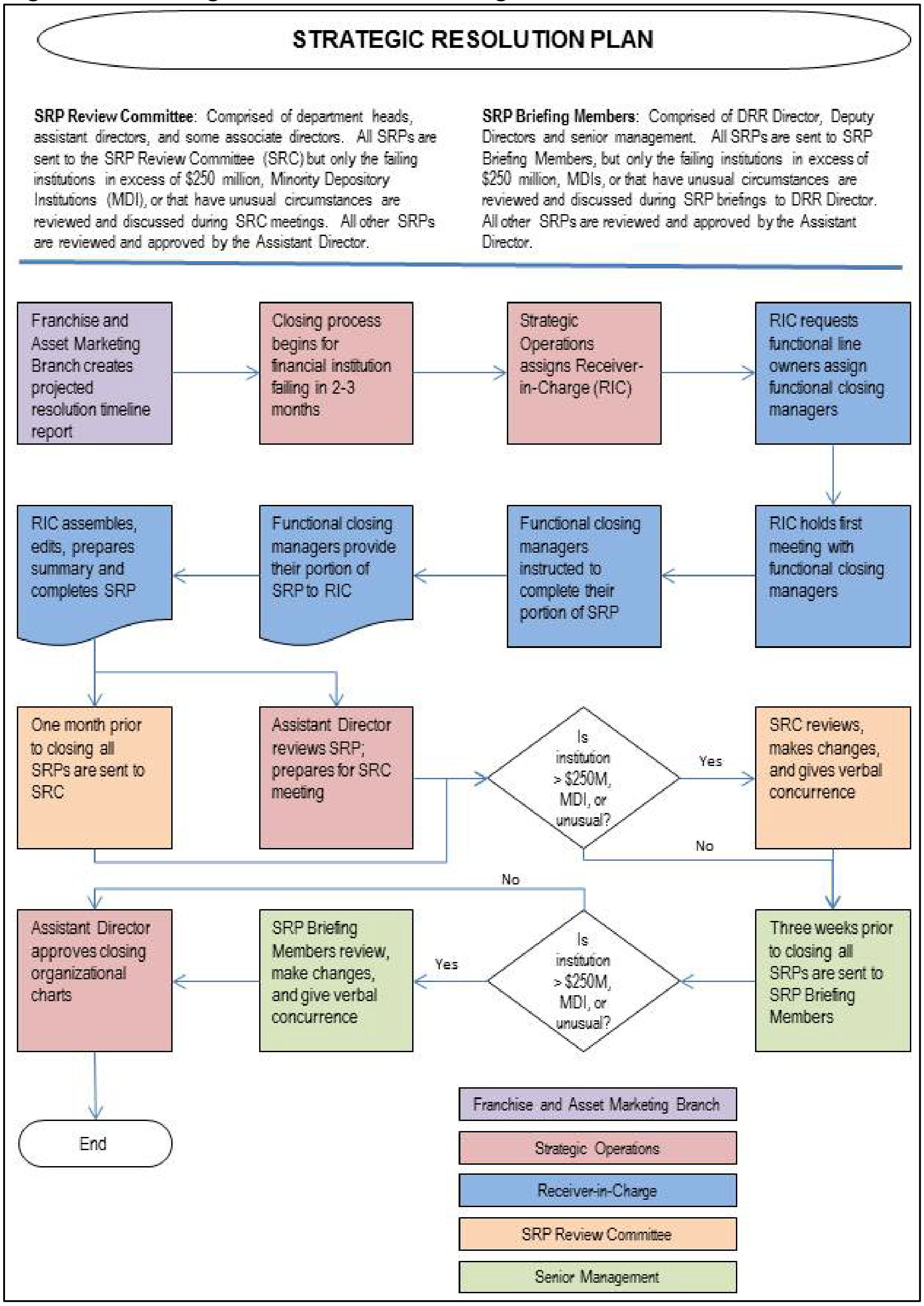
Table 2: Aggregate Risk Profile Process

Establish Context ▪ External Context – identify the FDIC's strengths, weaknesses, opportunities, and threats (SWOT) ▪ Internal Context – understand the FDIC's overall objective, strategies to achieve objective, and key performance indicators ▪ Risk Management Context – identifies the risk categories relevant to the FDIC and the degree of coordination throughout the organization
Identify Risks ▪ Strategic Risks – reputational risk, demographic and social/cultural trends, regulatory and political trends
Operational Risks ▪ Operational challenges of the resolution type ▪ Business Operations ▪ Fluid Events (team uncertainty, flexibility) ▪ Informational/business reporting (accounting, planning, budget)
Financial Risks ▪ Material cost to the DIF ▪ Material cost to staff/coordinate closing ▪ General depositor loss
Hazard Risks ▪ Weather or other natural perils ▪ Personal injury, theft, and other crime ▪ Geographic challenges ▪ Work-related injuries and diseases ▪ Liability Claims
Analyze/Quantify Risks ▪ Calibrating outcomes for each material risk.
Integrate Risks ▪ Aggregating all risk distributions, reflecting correlations and portfolio effects, and expressing the results in terms of impact on FDIC's key performance or the aggregate risk profile (ARP).
Assess/Prioritize Risks ▪ Determine the contribution of each risk to the ARP and prioritize.
Address Risks ▪ Describe different strategies or solutions within the Significant Issues or Strategies section of the SRP regarding avoiding, reducing, transferring, or responding to risk.

Source: SRP Job Aid.

DRR has an Internal Review section to help DRR improve its risk management and business processes, and ensure DRR has strong internal controls; complies with regulations, policies and procedures; and maintains high standards of integrity in performing its mission. At DRR management's request, the Internal Review section completed a review of DRR's SRP function in February 2013. The internal review found that DRR managed the SRP process well and the process complied with FDIC policies and procedures. Nonetheless, the review recommended changes related to risk assessments, SRP preparation, and documenting institution closing issues to improve the SRP process, which DRR management implemented. DRR management chose not to implement a recommendation to develop a detailed SRP review checklist.

Figure 1: Strategic Resolution Planning Process



Source: DRR Internal Review and OIG analysis.

Our review of a non-statistical sample of 15 SRPs for institutions the FDIC resolved in a variety of ways confirmed that SRPs capture the unique risk characteristics of each failing institution. For example, we reviewed SRPs for three bridge banks and confirmed they included information related to the risks of that resolution type. We concluded that the SRP increases assurance that resolutions are implemented efficiently and consistently, and in compliance with applicable policies and procedures.

DRR's Receivership Processes Also Play a Role in Mitigating Risks Associated with Resolutions

While DRR works to identify potential resolution risks prior to closing an institution, DRR also designed its receivership processes to mitigate risks that are identified before and after a financial institution is closed. The FDIC, as Receiver, retains any assets and liabilities an AI does not assume. The receivership processes begin after closing the institution and taking custody of the failed institution's premises and all its records, loans, and other assets. Those processes include liquidating the failed institution's assets and distributing liquidation proceeds to the FDIC and other receivership creditors. The following sections of the report outline our understanding of key controls associated with these processes. As discussed earlier, we did not assess the extent to which those controls were properly designed and implemented.

Establishing Receiverships

DRR establishes a team of officials to close the troubled institution. Key team members include the RIC and CM, as well as a financial (Proforma) team. Their responsibilities at this stage of the receivership process are as follows:

- RIC: Assuring that all the standard institution closing procedures are complete to start the process of disposing of the assets and liabilities and winding up all affairs of the receivership; handling all contacts with the media in conjunction with the FDIC Ombudsman's representative or the Office of Communications (formerly Office of Public Affairs); acting as Power of Attorney to execute documents on behalf of the receivership; and being the primary contact for the AI.

- CM: Planning, managing, and coordinating all activities relating to the closing; managing the Closing Team; acting as the primary contact for the failed institution employees; timely re-opening the institution (usually the next business day); and paying insured depositors.

- Financial (Proforma) Team: Closing out the books of the failed institution, reconciling general ledger accounts, and compiling an adjusted final balance sheet for the failed institution; compiling a balance sheet for the AI reflecting the assets and liabilities assumed per the P&A agreement, and a balance sheet of assets and liabilities retained by the FDIC; and coordinating continuation of asset servicing of FDIC loans by the AI per the Servicing Agreement.

The closing team also includes an asset and ORE manager, claims manager, IT Manager, financial manager, employee benefits manager, settlement manager, legal staff, and investigations staff.

The FDIC's *Failed Financial Institution Closing Manual* contains position summaries and checklists for each closing function. The circumstances of each institution failure may warrant the addition or deletion of certain tasks. Each checklist is designed to allow tasks to be assigned to specific closing team members, and to provide a tracking record as those tasks are completed by indicating that the task was completed or was not applicable to the institution. Tasks on the checklist must be marked to indicate that the task was either completed or not applicable and no checklist items should be left blank. Functional managers provide completed checklists to the CM before being released from the closing.

Receivership Oversight

FAMB manages failed institution assets that have not been transferred to other parties through P&A transactions or structured sales. DRR's *Receivership Oversight Manual* provides policies and procedures that identify risks and controls related to failed depository institutions. Because the FDIC, as Receiver, is separate from the FDIC in its corporate capacity, a receivership requires separate financial accounting. Once an institution is closed, the FDIC can eliminate contingent liabilities and terminate burdensome leases and contracts to limit the receivership's potential liabilities. The FDIC's authority as Receiver to repudiate contracts or leases allows the FDIC to limit the receivership's potential liabilities.

The FDIC manages receivership assets to preserve or enhance their value and disposes of them as quickly as possible. Asset disposition methods include loan sales, structured transactions, and securitizations.

- Loans acquired by the FDIC from failed financial institutions are generally sold in pools through sealed bid sale or by auction. Loan sales are essentially "as is" transactions with limited representations and warranties.

- Structured transactions allow the FDIC to retain an interest in assets, while transferring day-to-day management responsibility to private-sector professionals who also have a financial interest in the assets and share in the costs and risks associated with ownership. The FDIC has controls in place for regulated financial institutions and requires the private-sector professionals to provide monthly, semiannual, and annual reports. The FDIC also conducts regular transaction compliance monitoring in addition to an annual review of entity operations.

- A receivership also may securitize assets. Securitization packages assets with generally predictable cash flows and similar features into interest-bearing securities with marketable investment characteristics. When used, the FDIC hires a firm to perform detailed due diligence procedures that include comparing original source documents with the information included in the servicing information, and testing to confirm the loans complied with federal and state lending laws at origination.

DRR monitors receiverships at the receivership level, with receivership status reports that highlight significant transactions and their impact on the receivership. DRR also monitors receiverships at the portfolio level to provide FDIC executives with insight into information for all open receiverships by measuring performance of the organization and identifying problem receiverships as compared to the norm, and tracking and reporting other metrics. DRR maintains a centralized repository of receivership data to reference for inquiries, or respond to audits. The repository builds a history to identify changes in cash flow or receivership performance. By storing "action items" or "key issues" centrally, DRR enables receivership oversight specialists to explain transactions and anomalies across peer receiverships.

To address the risk of unnecessary delay in terminating a receivership, DRR assigns a receivership oversight specialist as soon as the institution fails and monitors the receivership's operational status and resolution of impediments to termination. To address the risk that receiverships are not managed cost effectively, DRR monitors reports for each receivership throughout the receivership's lifecycle and uses quantitative performance measures to evaluate receivership performance against peers. DRR works with the independent functional areas responsible for winding down the affairs of the receivership to identify, monitor, and facilitate the resolution of impediments at the lowest level to help ensure terminated receiverships do not transfer unacceptable financial risks or known financial liabilities to the FDIC in its corporate capacity. Before terminating a receivership, DRR's Receivership Oversight function sends each program area a certification clearance memo to confirm all impediments are resolved or the risk is acceptable to the FDIC and quantifiable.

While our work was limited in this area as it relates to assessing controls, we have performed prior reviews related to the FDIC's SLA monitoring program, individual SLAs, and structured transactions wherein we concluded that controls were in place and working. The reports resulting from those reviews are listed in Appendix 3.

Corporation Comments

Because this report contained no recommendations, the Director, DRR, was not required to, and chose not to provide a formal response to a draft of this report. DRR and the Legal Division provided informal comments on the draft that we considered and reflected in this report, as appropriate.

Objective, Scope, and Methodology

Objective

Our evaluation objective was to determine whether the resolution planning process is designed in a manner that enables the FDIC to efficiently and effectively identify and manage risks involved with resolving insured depository institutions. To achieve that objective, we assessed the design of internal controls surrounding the resolution process, which concludes when an insured depository institution's charter is revoked, the failing institution is closed, and the chartering authority appoints the FDIC as Receiver.

The FDIC continues to manage risks presented by failed depository institutions after the institution has been resolved and the FDIC has been appointed as Receiver. Consequently, we also gained an understanding of the controls particularly relevant to risk mitigation associated with receivership processes. We did not, however, assess the extent to which those controls were properly designed and implemented.

We performed our evaluation between April 2013 and July 2013 in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

Scope and Methodology

The scope of this evaluation included assessing control activities for various resolution scenarios, including those involving the FDIC becoming a conservator or indemnifying a purchaser of a failed depository institution. We primarily focused on resolution planning activities that occurred beginning in 2008; however, we considered and evaluated additional historical information where appropriate.

To fulfill our objective, we:

- Gained an understanding of the resolution planning process and how the FDIC implements the process, including gathering information for the SRP.

- Reviewed the existing SRP framework to gain an understanding of the FDIC's process for identifying and mitigating risks associated with SRPs.

- Reviewed prior OIG work and DRR Internal Review reports that covered the FDIC's resolution process and its SRP process to identify potential risk areas and the FDIC's actions to mitigate such risks.

- Determined what the FDIC has done to ensure a consistent approach to the way in which SRPs are prepared and implemented.

- Reviewed a non-statistical sample of 15 SRPs to assess characteristics, content, and consistency.

Objective, Scope, and Methodology

- Interviewed DRR and Legal Division headquarters and regional office officials responsible for implementing and monitoring various aspects of the resolution planning process.

- Considered COSO's *Internal Control Integrated Framework*, which is widely recognized guidance on what constitutes effective internal control, in evaluating the FDIC's controls surrounding the resolution process. The framework comprises five interrelated parts:

  - Control Environment: The set of standards, processes, and structures that provide the basis for carrying out internal control across the organization.

  - Risk Assessment: The dynamic and iterative process for identifying and assessing risk to the achievement of objectives and determining how risks will be managed.

  - Control Activities: The actions established through policies and procedures that help ensure that management's directives to mitigate risks to the achievement of objectives are carried out.

  - Information and Communication: The means by which information is disseminated through the organization, flowing up, down, and across the entity.

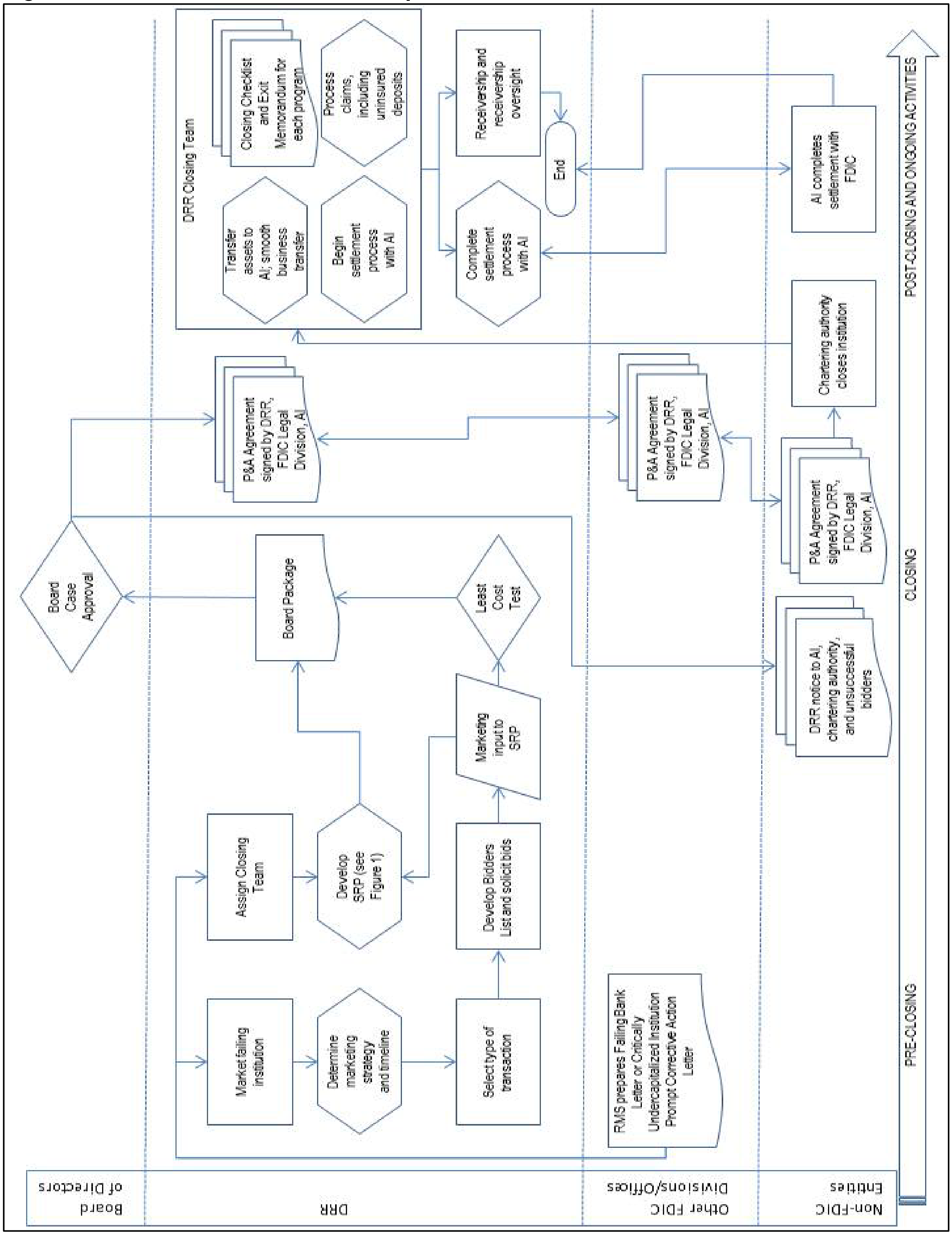
  - Monitoring: Ongoing or separate evaluations against criteria to ascertain that internal control is present and functioning.

- Determined how the FDIC uses and tracks indemnifications, and representations and warranties clauses, in its transactions related to failed institutions.

- Documented the nexus between the resolution and receivership processes, and identified key controls associated with receivership processes designed to mitigate risks presented by failed depository institutions after the institution has been resolved.

Resolution and Receivership Process

Figure 2: Resolution and Receivership Process



Source: OIG analysis.

Recent OIG Receivership-Related Reports

DRR's Controls for Managing, Marketing, and Disposing of Owned Real Estate Assets (Report No. AUD-13-001), October 5, 2012

The FDIC's Structured Transactions with Rialto Capital Management, LLC (Report No. AUD-12-012), September 12, 2012

Corus Construction Venture, LLC Structured Asset Sale (Report No. AUD-12-009), April 9, 2012

The FDIC's Shared-Loss Agreements with BankUnited (Report No. AUD-12-008), March 30, 2012

Evaluation of the FDIC's Monitoring of Shared-Loss Agreements (Report No. EVAL-12-002), March 12, 2012

The FDIC's Shared-Loss Agreement with Banco Popular de Puerto Rico, San Juan, Puerto Rico (Report No. AUD-12-001), October 25, 2011

The FDIC's Acquisition and Management of Securities Obtained through Resolution and Receivership Activities (Report No. EVAL-12-001), October 6, 2011

Glossary

Term	Definition
Acquiring Institution	A healthy bank or thrift institution that purchases some or all of the assets and assumes some or all of the liabilities of a failed institution in a purchase and assumption transaction. The acquiring institution is also referred to as the assuming institution.
Chartering Authority	A state or federal agency that grants charters to new depository institutions. For state chartered institutions, the chartering authority is usually the state banking department; for national banks and savings associations, it is the OCC.
Consolidated Reports of Condition and Income (Call Report)	A report that includes basic financial data for insured institutions in the form of a balance sheet, an income statement, and supporting schedules, which national banks, state member banks, and insured nonmember banks are required to submit to the Federal Financial Institutions Examination Council's Central Data Repository (an Internet-based system used for data collection) quarterly.
Critically Undercapitalized	Having 2 percent or less tangible capital.
Depository Institution Franchise	A depository institution's efficiency, access to markets protected from competition, and lending relationships, which includes the institution's depositors and loan portfolio.
Deposit Insurance Fund	The fund that is established by Section 11(a)(4) of the FDI Act, and that is used by the FDIC to carry out the Corporation's insurance purposes in the manner provided by the subsection.
Failing Bank Board Case	A written recommendation to the FDIC Board of Directors requesting approval of the resolution transaction. The recommendation includes a copy of the least cost analysis and information about the share of the estimated loss that should be absorbed by customers with uninsured deposits.
Federal Savings Association	Any Federal savings association or Federal savings bank which is chartered under section 5 of the Home Owners' Loan Act.
Indemnification	In general, a collateral contract or assurance under which one person agrees to secure another person against either anticipated financial losses or potential adverse legal consequences.
Insolvent	Unable to pay debts, such as funding deposit withdrawals, as they fall due in the usual course of business.
Insured Depository Institution	Any bank or savings association, the deposits of which are insured by the FDIC pursuant to the FDI Act.
Internal Control	A process, effected by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the achievement of objectives in effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations.
Least Cost Test	A procedure mandated by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) that requires the FDIC to implement the resolution alternative that is determined to be least costly to the DIF of all possible resolution alternatives, including liquidation of the failed institution. Before enactment of FDICIA, the FDIC could pursue any resolution alternative, as long as it was less costly than a deposit payout combined with liquidation of the failed bank's assets.
Liquidity	An institution's ability to fund assets and meet obligations as they become due. Liquidity is essential in all depository institutions to compensate for expected and unexpected balance sheet fluctuations and provide funds for growth.
Minority Depository Institution	Any Federally insured depository institution where 51 percent or more of the voting stock is owned by minority individuals. "Minority" as defined by Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 means any "Black American, Asian American, Hispanic American, or Native American." The voting stock must be held by U.S. citizens or permanent legal U.S. residents to be counted in determining minority ownership.

Glossary

Term	Definition
National Bank	A federally-chartered financial institution which, in the normal course of its business operations, accepts deposits; pays, processes, or transacts checks or other deposit accounts; and performs related financial services for the public.
Repudiate	To disaffirm outstanding contractual obligations previously entered into. This action is a receiver's (or conservator's) right when an insured depository institution fails. The receiver (or conservator) may take such action only if (1) the contracts are considered burdensome and (2) repudiation will promote the orderly administration of the receivership estate. The FDI Act provides that certain contracts cannot be repudiated.
Strategic Resolution Plan	A DRR-developed document comprised of resolution planning efforts that identifies significant issues and unique risks associated with a failing insured depository institution that serves as an operational guide for closing the institution.
Uninsured Deposit	The portion of any deposit of a customer at an insured depository institution that exceeds the applicable FDIC insurance coverage for that depositor at that institution.
Unsafe and Unsound Banking Practices	Practices that are likely to have adverse effects on the safety and soundness of an insured depository institution or that are likely to result in violations of law, rule, or regulation.

Acronyms and Abbreviations

Acronym or Abbreviation	Definition
AI	Acquiring Institution
ARP	Aggregate Risk Profile
AVR	Asset Valuation Review
BIS	Business Information System
Call Report	Consolidated Reports of Condition and Income
CM	Closing Manager
COSO	Committee of Sponsoring Organizations of the Treadway Commission
DIF	Deposit Insurance Fund
DRR	Division of Resolutions and Receiverships
FAMB	Franchise and Asset Marketing Branch
FDI Act	Federal Deposit Insurance Act
FDIC	Federal Deposit Insurance Corporation
FDICIA	Federal Deposit Insurance Corporation Improvement Act of 1991
IT	Information Technology
LCT	Least Cost Test
OCC	Office of the Comptroller of the Currency
OIG	Office of Inspector General
ORE	Owned Real Estate
P&A	Purchase and Assumption
RIC	Receiver-in-Charge
RMS	Division of Risk Management Supervision
SLA	Shared Loss Agreement
SRP	Strategic Resolution Plan
SWOT	Strengths, Weaknesses, Opportunities, and Threats
U.S.C.	United States Code
VDR	Virtual Data Room