

Alert | Troubled Bank Task Force



March 2023

The 2023 Banking Contagion: Questions & Answers for Insured and Uninsured Depositors, Other Affected Parties

On March 10, 2023, the California Department of Financial Protection and Innovation closed Silicon Valley Bank, Santa Clara, California (SVB) and appointed the Federal Deposit Insurance Corporation (FDIC) as receiver of SVB. To protect insured depositors, the FDIC initially created the Deposit Insurance National Bank of Santa Clara. However, upon approval of a **systemic risk exception** by U.S. Secretary of the Treasury Janet L. Yellen two days after the failure of SVB, the FDIC transferred all deposits and substantially all assets of SVB to Silicon Valley Bank, N.A., a full-service bank the FDIC will operate as it markets the institution to potential bidders.

On March 12, 2023, Signature Bank, New York, NY (SigBank) was closed by the New York State Department of Financial Services, which also appointed the FDIC as receiver. As with SVB, to protect depositors, the FDIC transferred all deposits and substantially all assets of SigBank to Signature Bridge Bank, N.A., a full-service bank the FDIC will operate as it markets the institution to potential bidders.

These FAQs provide: (A) initial high-level statutory and regulatory responses to the general FDIC receivership process; and (B) initial high-level responses to common questions regarding the failure of each of SVB and SigBank. Every situation will present its own facts and circumstances; we encourage affected persons and entities to consult their counsel as needed to understand the bespoke dynamics of their situations.

THESE FAQs WERE LAST UPDATED MARCH 14, 2023.

A. GENERAL FDIC RECEIVERSHIP FAQs

*These General FDIC Receivership FAQs provide responses based on applicable statutes and regulations related to the FDIC's authority to act as a receiver or conservator of a failed bank. While these responses may provide an indication as to how the agency may act with respect to SVB and/or SigBank, **they are not meant to provide specific answers with respect to either of these institutions.***

1. What type of accounts are covered or not covered by FDIC insurance?

FDIC insurance is provided for deposit products only. These are: (i) checking accounts; (ii) savings accounts; (iii) money market deposit accounts; (iv) certificates of deposit (CD); (v) most escrow accounts and (vi) prepaid cards (assuming certain FDIC requirements are met).

Depositors are insured at each bank for up to at least the standard maximum deposit insurance amount (SMDIA). The SMDIA is \$250,000 per depositor, per insured bank, for each of 14 separate account ownership categories identified under FDIC rules, ranging from individual to joint accounts to employee benefit accounts to business accounts. The FDIC provides separate coverage held in the 14 different account ownership categories. Deposits made under each of the 14 ownership categories are insured separately up to the SMDIA, provided the depositor meets the specific requirements for each of the ownership categories. **Because there is complexity and nuance under the FDIC rules for calculating total deposit insurance available to customers, interested parties inquiring about this issue should consult counsel and their other advisers.**

Non-deposit products that the FDIC does not insure include:

- Stock investments.
- Bond investments.
- Mutual funds.
- Crypto assets.
- Life insurance policies.
- Annuities.
- Municipal securities.
- Safe deposit boxes or their contents
- U.S. Treasury bills, bonds, or notes (these investments are backed by the full faith and credit of the U.S. government).

2. What happens to loans held by a failed bank?

The FDIC as receiver is expected to try to dispose of all loans and other assets to the private sector, indeed as quickly as possible. To accomplish this, the FDIC will likely offer some or all of the failed bank's assets for sale to a healthy financial institution (usually an institution that will be assuming the deposits upon the failed bank's closing) and to other potential acquirers in the broader financial market. As noted, loans not sold at the time of the failed bank's closing will be packaged and offered for sale through other means (e.g., cash sales, securitizations, and other structured sales) to the broader market.

The FDIC generally requires borrowers who have loans with a failed bank to continue making their payments as usual. Borrowers are advised to consider with counsel and their other advisers on how to deal with their loans in light of their particular circumstances.

3. What are my rights vis-à-vis the failed bank as a lender in a syndicate?

Defaulting lender provisions in loan agreements generally protect borrowers against lenders who fail to follow through on their funding obligations. Similarly, regardless of a bank failure, borrowers are usually obligated to make payments under and comply with all loan agreement provisions; but you need to review particular loan agreements to determine such course of action. Companies are advised to consider with counsel and their other advisers how to deal with loans in light of their particular circumstances.

As noted, loans not sold at the time of a bank's closing are typically packaged and offered for sale through other means (e.g., cash sales, securitizations, and other structured sales) to the broader market.

Borrowers should review defaulting lender provisions closely to determine whether the receivership bank fits within the definition. For example, typical defaulting lender provisions in a loan agreement generally allow for the following actions: (1) replacement of defaulting lender or termination of their commitments; (2) exclusion of the defaulting lender from voting under the loan agreement; and (3) suspension of entitlement to receive commitment and other fees under the loan agreement. However, certain provisions of the Federal Deposit Insurance Act may temporarily or permanently prohibit the exercise of such defaulting lender provisions or make them unenforceable, depending on the triggering "event" that is alleged to have occurred.

With respect to unfunded commitments under loan agreements, the commitments of defaulting lenders will generally be allocated to the commitments of non-defaulting lenders up to such revolving lender's maximum commitment.

However, there can be no certainty at this time how the respective bank receivers for SVB and SigBank will address these situations.

4. What happens to letters of credit during an FDIC receivership?

By law, the FDIC has the right to repudiate or disaffirm any of the failed bank's contracts, including letters of credit, within a reasonable time. Holders of a failed bank's letters of credits should review their letter of credit agreements and attempt to modify and/or replace with letters of credit issued by other financial institutions or provide other credit enhancement instruments to support existing letters of credit issued by the failed bank.

At this time, the FDIC has not stated whether it will honor any letters of credit issued by either SVB or SigBank.

5. What steps should I take if I am a director or senior executive officer of an entity that maintains a deposit account at a failed bank?

Directors and senior executive officers owe a fiduciary duty to the entities they serve. They should continue to be advised by counsel and their other advisers based on the particular circumstances of their entity. But, as a general guideline, directors and senior executive officers of entities maintaining deposit or other accounts at a failed bank should be monitoring developments and informing themselves independently and through collaboration with their fellow directors and officers to the fullest extent possible. This would include, among other steps, meeting as a board to discuss the current situation and potential options, arranging for their entities to contact the failed bank as soon as such contact is made available by the FDIC to collect their insured funds, and contacting the FDIC directly to place a claim for any uninsured deposit amounts if and where no action has been taken with respect to access to the uninsured deposit amounts.

6. If a company no longer has access to deposits with a failed bank, how does that company continue to operate and satisfy liabilities?

The company will need to engage in cash management to prioritize payments and attempt to negotiate terms or stretch certain payables. That said, stretching payables or other liquidity management can result in unintended defaults under lender credit agreements and other contracts. If a company requires assistance with cash management and liquidity planning, it should consult bankruptcy and restructuring counsel and other knowledgeable advisers.

7. Are there options for companies facing liquidity constraints pending a failed bank's liquidation?

Companies should look into whether they can access additional liquidity within their capital structure or from their existing or alternative lenders and investors. In addition, a restructuring process (whether Chapter 11 or other insolvency process, in or out of court) may be an option to maintain the status quo, stay payment of past due liabilities, or otherwise buy time as the failed bank's situation develops. Companies who are uncertain as to whether or how to proceed in this regard should consult bankruptcy and restructuring counsel and other knowledgeable advisers.

Public Company Disclosure:

8. For public companies with accounts at a failed bank: What disclosure should the company consider making to the market through a press release or Form 8-K or 6-K?

Each company's situation varies and must be evaluated based upon its particular facts and circumstances. Several issuers recently filed Forms 8-K and 6-K with respect to recently failed banks, some of which disclosed exposure to the failed bank, while others disclosed a lack of exposure or *de minimis* exposure. A public issuer should consider, among other things, the impact of the failed bank's situation on such issuer's liquidity, whether such impact is material, and whether disclosure, if made, should address other financial resources that may be available in the near term, and whether business can continue in the ordinary course and for how long. A public issuer should additionally consider any other matters related to a failed bank that may be material to its operations.

Significantly, as these situations are typically fast-moving and fluid, the attendant facts may change rapidly, and disclosures may require modification and updating after release.

Employment Issues:

- 9. I need help dealing with labor and employment issues arising from the failed bank situation, such as potential inability to make payroll, pay bonuses, pay payroll taxes or make other employment-related payments, the potential need to restructure workforces in light of cashflow interruptions, potential liability for the inability to meet (or delayed ability to meet) payroll, other employment obligations, and other employment-related issues in the wake of the bank failure.**

Each company's situation will need to be evaluated based on its facts and circumstances and the applicable law. Companies with employees in multiple states may also be faced with varying obligations, as laws vary by jurisdiction. Obligations may also be governed by contractual provisions. If in doubt or uncertain as to the requirements or their applicability in one's particular circumstances, consult with counsel and other knowledgeable advisers.

Sweep Accounts:

- 10. What if I have funds in a Sweep Account?**

If there are sweeps out of the failed bank into deposits or investment vehicles not on the books of the depository institution, the FDIC will treat the swept funds as they were in the end-of-day ledger balances of the failed bank and the external entity as of the earlier of either the failed bank's normal cut-off time for that specific type of transaction or the time established as a cut-off point by the FDIC as appointed receiver (the "Cutoff Time"). If, for example, funds held in a money market sweep account are wired from a customer's deposit account and settled in the external entity prior to the Cutoff Time on the date the institution fails, the FDIC will recognize that sweep transaction as completed for claims and receivership purposes and not part of the receivership estate. However, even though those funds are not part of the receivership estate, a depositor does not have direct access to these assets but must work through the FDIC or successor institution that acquires the assets. The FDIC will take some time to assess its confidence in the books and records of the failed institution and whether the failed institution has any claim to the swept assets. While a depositor ultimately may be entitled to such assets, it will typically take time to work through this process.

B. SVB and SIGBANK SPECIFIC FAQs

The responses set forth below are based on guidance published by the FDIC for each of these failed institutions and are current as of the date these FAQs were last updated. GT intends to continue monitoring these situations and will update these FAQs as needed to reflect current guidance.

SVB

- 1. How many deposits are at SVB?**

As of Dec. 31, 2022, SVB had approximately \$209.0 billion in total assets and about **\$175 billion in total deposits**. At the time of closing, the amount of deposits in excess of the insurance limits was undetermined. The amount of uninsured deposits will be determined once the FDIC obtains additional information from SVB and its customers.

2. What happened to my deposits at SVB?

According to the FDIC's published statements, no account holder will lose any deposits.

All deposits, regardless of dollar amount, and substantially all of SVB's assets were transferred to Silicon Valley Bank, N.A.

3. Can I continue using SVB banking services?

Generally, yes; but this should be considered in the context of your particular circumstances. Accountholders may continue to use the same checks, which will clear up to the balance in the accountholder's account. According to the FDIC, ATM/debit cards will continue to work as usual. The total account balances, including checking, savings, money markets, Certificates of Deposit, and retirement accounts, have been transferred to Silicon Valley Bank, N.A. and will be available for transactions daily. That said, the FDIC has yet to provide any specific guidance on credit cards issued by SVB or money market funds that are settled outside of SVB.

Direct deposits, for example, social security, payroll, veterans' benefits, disability, unemployment, or any payment received electronically are to continue as usual, as well as autopayments/bill pay/online banking.

Routing numbers and account numbers will remain the same until accountholders are notified in writing by Silicon Valley Bank, N.A. of any changes.

4. Will I receive interest on my Certificates of Deposit (CDs)?

Yes. Interest on deposits accrued through close of business on March 12, 2023, will be paid at the same rate. SVB's rates will be reviewed by Silicon Valley Bank, N.A., the receiver bank, and CD-holders will be notified in writing of any changes. CD-holders may withdraw funds from any transferred account without early withdrawal penalty until they enter into a new deposit agreement with Silicon Valley Bank, N.A.

5. What will happen to brokered deposits at SVB?

Brokered deposits have been assumed by Silicon Valley Bank, N.A. If you are a customer who has a SVB deposit through a broker, you must contact your broker with any questions.

6. Are overdrafts or the use of lines of credit allowed?

The FDIC does not allow overdrafts on accounts placed in receivership. As to lines of credit more generally, the FDIC has indicated that SVB lines of credit have been transferred to Silicon Valley Bridge Bank, N.A. In a receivership, the FDIC typically analyzes loans such as unfunded lines of credit and makes a case-by-case determination as to how to address them, depending on the best interest of the receivership, among other factors. Please contact Silicon Valley Bridge Bank, N.A. if you have additional questions regarding your accounts.

7. Should I continue to make loan payments?

You need to consider this in the context of your particular situation. However, the FDIC wishes that you continue to make your payments according to the terms of your loan. You may continue to send

your SVB loan payments to the same payment address with checks made payable to “Silicon Valley Bank.” Borrowers will receive a letter advising of any changes.

8. Can portions of uninsured or insured deposits held at SVB be used to set off of repay a loan?

It is unclear whether the FDIC will allow such setoffs. In the past, the FDIC has allowed borrowers to offset their uninsured amount against a loan in the same name as the uninsured deposit account. Initially, on March 10, 2023, the FDIC indicated it would employ the same practices with respect to loans held by SVB. However, as of the date of these FAQs, the FDIC has changed its guidance and now encourages borrowers with loans held at SVB to contact an FDIC Loan Representative at:

- Email at FDIC_Loans@fdic.gov
- [FDIC.gov](https://ask.fdic.gov/fdicinformationandsupportcenter/s/) or the support center link: <https://ask.fdic.gov/fdicinformationandsupportcenter/s/>

9. Will my escrow payments be made?

All services previously performed related to an SVB loan are to continue. If a borrower receives a notification that any portion of his/her taxes or insurance was not paid, they must notify the Bridge Bank immediately. As of the date of these FAQs, the FDIC has not published additional specific guidance on SVB escrow payments; therefore, customers should consult their counsel and other advisors as needed to understand what is likely to occur and what they should do in their situations.

10. If SVB owes me money, how do I file a claim?

SVB creditors must submit claims in writing, together with proof of the claim. To access the FDIC Claims Portal online, go to the [FDIC Claims Portal](#). To file a claim via mail, please send it to the following address:

FDIC as Receiver for Silicon Valley Bank
600 N. Pearl Street, Suite 700
Dallas, Texas 75201
Attention: Claims Agent

11. I am a shareholder of SVB; who should I reach out to?

The holding company, SVB Financial Group, Santa Clara, CA, owns all shares of SVB stock. The holding company was not included in the closing of the bank or the resulting receivership. If you are a shareholder, you are asked not to contact or file a claim with the FDIC. You should contact the holding company directly for more information at:

SVB Financial Group
3003 Tasman Drive
Santa Clara, CA 95054

12. Should I be worried about scams?

Yes. You will not receive any communication from the FDIC requesting any private information; so, beware and wary of any contact to you requesting such information, even if apparently in the name of an official entity or person. Exercise caution if individuals or entities contact you, stating they are acting on behalf of SVB, Silicon Valley Bank, N.A., or the FDIC, especially if they are seeking personal or private information or asking or advising you to transfer or otherwise handle funds and other assets as they direct.

SigBank

1. How many deposits are at SigBank?

As of Dec. 31, 2022, SigBank had approximately \$110.0 billion in total assets and about **\$89 billion in total deposits**. At the time of closing, the amount of deposits in excess of the insurance limits was undetermined. The amount of uninsured deposits will be determined once the FDIC obtains additional information from SigBank and its customers.

2. What happened to my deposits at SigBank?

According to the FDIC, no account holder will lose any deposits. All deposits, regardless of dollar amount, and substantially all assets of SigBank were transferred to Signature Bridge Bank, N.A.

3. Can I continue using SigBank banking services?

Generally, yes; but this should be considered in the context of your particular circumstances. Accountholders may continue to use the same checks, which will clear up to the balance in the accountholder's account. According to the FDIC, ATM/debit cards will continue to work as usual. The total account balances, including checking, savings, money markets, Certificates of Deposit, and retirement accounts, have been transferred to Signature Bridge Bank, N.A. and will be available for transactions daily. That said, the FDIC has yet to provide any specific guidance on credit cards issued by SigBank or money market funds that are settled outside of SigBank.

Direct deposits, for example, social security, payroll, veterans' benefits, disability, unemployment, or any payment received electronically will continue as usual, as well as autopayments/bill pay/online banking.

Routing numbers and account numbers will remain the same until accountholders are notified in writing by Signature Bridge Bank, N.A. of any changes.

4. Will I receive interest on my Certificates of Deposit (CDs)?

Yes. Interest on deposits accrued through close of business on March 12, 2023, will be paid at the same rate. SigBank's rates will be reviewed by Signature Bridge Bank, N.A. and CD-holders will be notified in writing of any changes. CD-holders may withdraw funds from any transferred account without early withdrawal penalty until they enter into a new deposit agreement with Signature Bridge Bank, N.A.

5. What will happen to brokered deposits at SigBank?

Brokered deposits have been assumed by Signature Bridge Bank, N.A. If you are a customer who has a SigBank deposit through a broker, you must contact your broker with any questions.

6. Are overdrafts or the use of lines of credit allowed?

The FDIC does not allow overdrafts on accounts placed in receivership. As to lines of credit more generally, the FDIC has indicated that Signature Bank lines of credit have been transferred to Signature Bridge Bank, N.A. In a receivership, the FDIC typically analyzes loans such as unfunded lines of credit and makes a case-by-case determination as to how to address them, depending on the best interest of the receivership, among other factors. Please contact Signature Bridge Bank, N.A. if you have additional questions regarding your accounts.

7. Should I continue to make loan payments?

You need to consider this in the context of your particular situation. However, the FDIC wishes that you continue to make your payments according to the terms of your loan. You may continue to send your SigBank loan payments to the same payment address with checks made payable to “Signature Bank.” Borrowers will receive a letter advising of any changes.

8. Can portions of uninsured or insured deposits held at SigBank be used to set off or repay a loan?

It is unclear whether the FDIC will allow such setoffs. In the past, the FDIC has allowed borrowers to offset their uninsured amount against a loan in the same name as the uninsured deposit account. As of the date of these FAQs, the FDIC has not issued specific guidance on setoffs and encourages borrowers with loans held at SigBank to contact an FDIC Loan Representative at:

- Email at FDIC_Loans@fdic.gov
- [FDIC.gov](https://ask.fdic.gov/fdicinformationandsupportcenter/s/) or the support center link: <https://ask.fdic.gov/fdicinformationandsupportcenter/s/>

9. Will my escrow payments be made?

All services previously performed related to a SigBank loan are to continue. If a borrower receives a notification that any portion of his/her taxes or insurance was not paid, they must notify the Bridge Bank immediately. As of the date of these FAQs, the FDIC has not published additional specific guidance on SVB escrow payments; therefore, customers should consult their counsel and other advisers as needed to understand what is likely to occur and what they should do in their situations.

10. If SigBank owes me money, how do I file a claim?

SigBank creditors must submit claims in writing, together with proof of the claim. To access the FDIC Claims Portal online, go to the [FDIC Claims Portal](#). To file a claim via mail, please send it to the following address:

FDIC as Receiver for Signature Bank
600 N. Pearl Street, Suite 700
Dallas, Texas 75201
Attention: Claims Agent

11. Should I be worried about scams?

Yes. You will not receive any communication from the FDIC requesting any private information; so, beware and wary of any contact to you requesting that, even if apparently in the name of an official entity or person. Exercise caution if you are contacted by individuals or entities stating they are acting on behalf of SigBank, Signature Bridge Bank, N.A., or the FDIC, especially those seeking personal or private information or asking or advising you to transfer or otherwise handle funds and other assets as they direct.

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