

Troubled Bank Task Force Frequently Asked Questions (FAQs)



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 created the Deposit Insurance National Bank of Santa Clara (“**DINB**”). At the time of closing, the FDIC, as receiver, immediately transferred to the DINB all insured deposits of SVB. SVB is the first FDIC-insured institution to fail this year and the second largest failure in U.S. History.

Below are initial high-level responses to some of the most common questions regarding the situation with SVB (“**FAQ**”). **If you have any questions that are not addressed here, please contact any of us. We plan to periodically update this FAQ as additional information is released by the FDIC.**

1. How many uninsured deposits are at SVB?

A: As of December 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. Customers with accounts in excess of \$250,000 should contact the FDIC toll-free at 1-866-799-0959.

2. Will depositors have access to deposits?

A: According to the Treasury Department and Federal Reserve, all depositors will have access to their deposits, insured and uninsured, on Monday, March 13, 2023. The FDIC uses the records of SVB to make deposit insurance and amount determinations.

3. Will banking activities at SVB continue?

A: According to the FDIC, SVB had 17 branches in California and Massachusetts. **The main office and all branches of SVB will reopen on Monday, March 13, 2023.** The DINB will maintain SVB's normal business hours. Banking activities will resume no later than Monday, March 13, 2023, including on-line banking and other services. **SVB's official checks will continue to clear.** The DINB was created so that customers will have continued access to their insured funds.

4. Should I seek to replace any SVB services at this time?

A: The FDIC has recommended that accountholders act quickly to replace the following services:

- AUTOMATIC PAYMENT and BILL PAY
- ATM/DEBIT CARD
- DIRECT DEPOSIT AND SOCIAL SECURITY

The FDIC is currently determining end dates on the above-mentioned services.

5. What will the FDIC do with SVB's assets?

A: The FDIC, as receiver, will retain all the assets from SVB for later disposition in an attempt to make uninsured depositors and creditors as whole as possible. We understand the Biden Administration and FDIC are seeking a buyer of the SVB assets, but it may take weeks or months for the sale process to play out.

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

A: No. The DINB will not allow overdrafts. Checks overdrawing an account prior to Monday, March 13, 2023, will be returned unpaid. ALL LINES OF CREDIT, including home equity lines, will be permanently frozen as of the closing on March 10, 2023. Accountholders will need to establish a new line of credit with a new bank.

7. What will happen to direct deposits?

A: According to guidance published by the FDIC, all direct deposits, including Social Security deposits, will continue until the end of the DINB. However, accountholders should arrange to move any automatic deposits or withdrawals as soon as possible to the institution of their choice.

Direct deposits from anyone other than the Federal government cannot be automatically redirected, so accountholders **must contact** the sender and arrange for these deposits to be made to another financial institution.

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

A: 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, clients inquiring about this issue should consult counsel and their other advisers.**

Non-deposit products that are not insured by the FDIC 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).

9. What happens to any loans held by SVB?

A: 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 DINB's assets for sale to a healthy financial institution (usually an institution that will be assuming the deposits upon the bank's closing) and to other potential acquirers in the broader financial market. As noted, Loans not sold at the time of the 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,

Until the FDIC sells your loan, DINB will service that loan. The FDIC has asked that clients who have loans with SVB to continue to make their payments as usual. Clients are advised to consider with counsel and their other advisers how to deal with their loans in light of their particular circumstances.

10. Can portions of uninsured or insured deposits be used to setoff of repay a SVB Loan?

A: Likely yes. The FDIC has published guidance advising that borrowers may be able to offset their uninsured amount against a loan in the same name as the uninsured deposit account. The FDIC recommends that borrowers should make a telephone appointment with an FDIC Claims Agent at 1-866-799-0959 to discuss each specific situation.

11. What will happen with my SVB letter of credit?

A: At this time, the FDIC has not stated whether it will honor any letters of credit issued by SVB, stating that DINB will retain those assets for disposition at a later time. By law, the FDIC has the right to repudiate or disaffirm any of the failed institution's contracts, including letters of credit, within a reasonable time. Holders of SVB 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 SVB.

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

A: Directors and senior executive officers owe a fiduciary duty to the entities in which 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 SVB should be monitoring developments and informing themselves independently and through collaboration with their fellow directors and officers to the fullest extent possible regarding the failure of SVB. This would include meeting as a board to discuss the situation and options, ensuring their entities contact SVB on Monday to collect their insured funds and contacting the FDIC toll-free number at 1-866-799-0959 to place a claim for any uninsured deposit amounts, among other things.

13. What are my rights vis-a-vis SVB as a lender in a syndicate?

A: Defaulting lender provisions in loan agreements generally protect borrowers against lenders who fail to follow through on their funding obligations. Generally, regardless of a bank failure, borrowers are obligated to make payments under and comply with all loan agreement provisions; but you need to review particular loan agreements to determine that. In the case of SVB, the FDIC has indicated that it intends to retain all assets for later disposition; and it has asked that

loan customers continue to make their payments as usual. Clients 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 the 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.

Borrowers should review defaulting lender provisions closely to determine whether the receivership bank fits within the definition. A typical defaulting lender provision in a loan agreement generally permits the following actions to be taken: (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.

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

A: The company will need to engage in cash management to prioritize payments and attempt to negotiate terms or stretch certain payables. But, bear in mind that 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.

15. Are there options for companies facing liquidity constraints pending SVB liquidation?

A: Companies may be able to 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 some 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 SVB situation develops. A client who is uncertain as to whether or how to proceed in this regard consult bankruptcy and restructuring counsel and other knowledgeable advisers.

Public Company Disclosure:

Q: Our client is a public company with accounts at SVB. What disclosure should they consider making to the market through a press release or Form 8-K or 6-K?

A: Each client's situation varies and must be evaluated based upon its particular facts and circumstances. We are aware that many issuers recently filed Forms 8-K and 6-K with respect to SVB, some of which disclosed exposure to SVB, while others disclosed a lack of exposure or *de minimis* exposure to SVB. A public issuer should consider, among other things, the impact of the SVB 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, whether business can continue in the ordinary course and for how long. A public issuer should additionally consider any other SVB-related matters that may be material to its operations. Significantly, because the SVB situation is fluid, the attendant facts may change rapidly and draft disclosures may require modification before publication.

Employment Issues:

Q: Our client needs help dealing with labor and employment issues arising from the SVB 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 and other employment obligations and other employment-related issues resulting from the SVB circumstances?

A: Each client's situation will vary and will need to be evaluated based on its facts and circumstances and the applicable law. Clients 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 not certain as to the requirements or their applicability in one's particular circumstances, counsel and other knowledgeable advisers should be consulted.

This FAQ will be updated as we obtain new information.