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IN FOCUS

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Bank Failures and Congressional Oversight

The failures of three large banks in spring 2023—Silicon Valley Bank (SVB), Signature, and First Republic—has resulted in congressional attention on how the federal banking agencies—the Federal Reserve (the Fed), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC)—supervise, resolve, and provide banks with assistance during financial turmoil. Some Members have asserted that because supervisory information is confidential, there is insufficient transparency, and that hampers effective oversight.

The Senate and House committees of jurisdiction have already conducted hearings with the regulators that brought to light new information about the supervision and failures of SVB and Signature. On May 24, 2023, the House Financial Services Committee ordered H.R. 3556 to be reported in the nature of a substitute. It includes provisions that would enhance reporting requirements, testimony requirements, and transparency for the banking agencies. On June 22, 2023, the Senate Banking Committee reported S. 2190, which would, among other things, enhance reporting requirements and inspector general (IG) oversight of large bank failures and supervision. This In Focus examines current practices and discusses policy options.

Background

Despite the banking agencies' relative independence, Congress seeks to conduct effective oversight to determine whether the agencies are accomplishing their statutory mandates. Some say too much congressional involvement and disclosure could undermine regulators' independence and effectiveness, however. Oversight can take the form of hearings, investigations, and reporting requirements. Congress also relies on investigations by the agencies' IGs and the Government Accountability Office (GAO) to assist with oversight. Effective oversight depends on agency transparency, which can take the form of public or congressional access to relevant agency and company information. The Freedom of Information Act (FOIA; 5 U.S.C. §552) ensures that agencies make information accessible to the public but allows agencies to keep records confidential if they meet any of the statutory exemptions to public disclosure.

Congressional oversight has focused on two aspects of the 2023 bank failures: (1) what caused the failures and (2) what emergency actions regulators took in response to the failures. Oversight can shed light on whether regulators' authority was insufficient, supervision was inadequate, and the banks violated any laws or regulatory requirements.

Legislative proposals have included extending FOIA to the Federal Reserve regional banks. (The Board is already covered.) Congress has also proposed requiring regulators to give congressional requests for information greater priority and provide congressional access to specific confidential information for oversight purposes. Such access could risk the improper exposure of confidential information. To address similar concerns, Congress has created guardrails surrounding congressional access to other types of sensitive information (e.g., classified intelligence).

Oversight of Supervision

Regulators supervise banks to verify compliance with regulatory and legal requirements, including that they operate in a safe and sound manner. (For background on supervisory terms and concepts discussed in this section, see CRS Report R46648, *Bank Supervision by Federal Regulators: Overview and Policy Issues*.) They require banks to periodically report extensive data on their financial conditions in call reports, which are publicly released. If a bank is publicly listed—as was the case with the three banks that failed—it must disclose more information in its public filings about its operations and material risks. Some of the factors that led to the banks' failures, such as unrealized losses on their assets, were reported in these call reports, while others could have been gleaned only from more detailed information that only regulators could have accessed. That information is confidential under FOIA due to its sensitive nature. For example, publicizing information about a bank's operations could affect its financial viability or make the banking system less stable. (Some confidential information can be released after the bank's failure, as the bank is no longer an ongoing concern.) Supervisory decisions about a bank's financial health—such as its exam ratings (called CAMELS ratings), prompt corrective action (PCA) status, and whether matters requiring attention (MRAs) have been issued—are not public. The need for sensitive information to be confidential is balanced against the desire for transparency and effective oversight of supervision. Without access to this information, it is difficult for an outside observer to judge whether supervisors erred and a failure was preventable.

The agencies publish limited aggregate data on supervisory actions. The FDIC reports the number of "problem" banks and their assets quarterly. In its annual report, the FDIC reports how many banks have poor CAMELS ratings and the number of MRAs by subject. The Fed sometimes—but not consistently—provides data on supervisory ratings and MRAs in its semi-annual regulation report, but it did not provide any such data in May 2023. The OCC semi-annually identifies the share of MRAs by subject but not the total number. Formal enforcement actions, which contain penalties and/or requirements for remedial actions, are made public when issued.

The Fed and FDIC have voluntarily published previously confidential supervisory and other information about the failures of SVB and Signature. But this does not provide forward-looking transparency about supervision or risks in the banking industry. Up to a point, more aggregate data on supervisory actions could be published without undermining confidentiality to enhance transparency and oversight. For example, the regulators could periodically provide standardized aggregate data on how many banks receive each CAMELS rating and are in each PCA category and how many MRAs are outstanding and for how long. Some of this information was previously required by P.L. 101-73—before it was repealed in 1996 by P.L. 104-208—which required bank (and other) regulators to annually report to Congress data on formal and informal supervisory, administrative, and enforcement actions; civil monetary penalties; and criminal referrals, investigations, and prosecutions. H.R. 3556 would require the regulators to disclose more aggregate data and information on supervisory findings.

Title 12, Section 247b, of the *U.S. Code* requires the Fed's vice chair of supervision to testify semi-annually on supervision and regulation, and the Fed voluntary prepares a semi-annual report on those topics. H.R. 3556 and S. 2190 would make that report mandatory, and H.R. 3556 would extend reporting and testimony requirements to the other banking regulators. Congress has also considered requiring them to confidentially provide the committees with the identity of banks with less than satisfactory ratings and active formal or informal enforcement actions.

Oversight of Failures and Resolution

Failing banks are taken into FDIC resolution. Congressional interest in bank failures is due to their potential effects on financial stability and the FDIC's Deposit Insurance Fund (DIF), which is ultimately backed by the taxpayers. The FDIC publishes information on the outcome of all resolutions but little information on how that outcome was determined. The FDIC must generally choose the least-cost resolution option, but it does not publicly disclose how much the selected option would cost compared to the alternatives and what assumptions went into that estimate. Only the winning bid is made public. (See CRS In Focus IF10055, *Bank Failures and the FDIC*.)

The Fed and FDIC conducted their own internal reviews of SVB's and Signature's respective failures, which were released in April. S. 2190 would require the regulators to do so any time a large bank fails. Outside evaluations may provide a more critical perspective on the agencies' actions, however. Under Title 12, Section 1831o(k), of the *U.S. Code*, the IGs and GAO have formal oversight responsibilities when a bank failure causes a material loss to the DIF, as is the case with the three failures. The IG of the failed bank's primary regulator must conduct a "material loss review" (MLR) for each such failure, and a version of the MLR omitting confidential information must be publicly released. The report must explain why there was a material loss and make recommendations to avoid future losses. (S. 2190 would require a similar IG review for any large bank resolution.) Typically, MLRs are released several months after a failure. The IGs are also required to issue semi-annual reports reviewing all bank failures. GAO may review MLRs at its discretion but does not appear to do so regularly. In a 1995 report, GAO stated that "Congress should consider repealing our mandate to review MLRs on an annual basis."

Congress has also asked the IGs and GAO to study specific issues raised by the recent failures. GAO published a report requested by the chair and ranking member of the House Financial Services Committee on April 28, 2023, and had access to confidential supervisory information to perform its evaluation. The chair and majority members of the Senate Banking Committee also have a pending request for GAO to "re-examine the supervisory practices of bank regulators" in light of SVB's and Signature's failures.

Oversight of Emergency Assistance

The Fed and FDIC have emergency powers to provide financial support to firms to prevent crises, and congressional oversight ensures that those powers are used as intended. Use of these powers has attracted congressional scrutiny. Similar to the DIF, emergency assistance is ultimately backed by the taxpayers, and if financial firms expect assistance, it could potentially increase systemic risk. Statute requires the agencies to report on their use of those powers. In the case of the FDIC's systemic risk exception, which guaranteed uninsured deposits at SVB and Signature, the statute (12 U.S.C. §1823(c)(4)(G)) is not detailed: Within three days, the Treasury Secretary must send the committees of jurisdiction a letter describing the basis for the determination, and GAO is required to review the decision. (See CRS In Focus IF12378, *Bank Failures: The FDIC's Systemic Risk Exception*.)

The statutory reporting requirements for the Fed under its emergency authority found in Section 13(3) of the Federal Reserve Act (12 U.S.C. §343)—which authorized the Bank Term Funding Program in 2023—are more detailed and could provide a model for other emergency programs. (See CRS Insight IN12134, *Bank Term Funding Program (BTFP) and Other Federal Reserve Support to Banking System in Turmoil*.) Within seven days, the Fed must report to the committees of jurisdiction the justification for the action; the identity of the recipients; and the date, amount, and terms of the assistance. While assistance is outstanding, the Fed must report every 30 days the value of collateral backing the facility, the amount of interest and fees received, and the expected cost to taxpayers. The Fed has made these reports publicly available without information identifying borrowers. In addition, the Fed must publicly disclose borrowers and borrowing terms under any 13(3) facility one year after the facility has been terminated. (The Fed has also disclosed the total amount of loans it made to the FDIC bridge banks during the resolution but not the loans' terms, authority, or rationale.)

H.R. 3556 would require policymakers to provide the committees of jurisdiction any documentation related to use of these various emergency authorities while allowing the agency to request that the committees keep the information confidential, as is currently the case under Section 13(3).

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