SIXTH REPORT PURSUANT TO SECTION 202(E) OF THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT PUB. L. NO. 111-203 (2010)

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

JULY 2025

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I. Introduction

In response to the global economic turmoil that began in late 2007, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) introduced a broad array of regulatory reforms in the financial sector. This report focuses on the reforms in Title II of the Dodd-Frank Act, which are intended to mitigate risks posed by the failure of systemically important financial institutions. Title II directs the Administrative Office of the United States Courts (AOUSC) to study the resolution of these institutions and report on its findings. The AOUSC submitted its first five reports pursuant to 12 U.S.C. § 5382(e) on July 21, 2011 (First Report), July 17, 2012 (Second Report), July 19, 2013 (Third Report), July 10, 2015 (Fourth Report), and July 16, 2020 (Fifth Report). The AOUSC submits this report in compliance with the directive of section 5382(e).[1]

The report proceeds as follows:

- Part II provides an executive summary of the report's primary research, findings, and analysis.
- Part III describes the AOUSC's mandate under section 5382(e) of the Dodd-Frank Act and the scope of this Sixth Report. Brief summaries of the First, Second, Third, Fourth, and Fifth Reports are included in Appendix B.
- Part IV surveys various recent and historical case studies of bank failures and cryptocurrency (crypto) lender collapses to illustrate the different ways in which distressed financial institutions have been resolved, highlighting the interplay between Federal Deposit Insurance Corporation (FDIC) receivership processes, bankruptcy proceedings, and the distinct challenges posed by each institution's unique risk profile.
- Part V discusses additional areas of growing concern in modern credit and lending markets, including nonbank lending, merchant cash advances, private credit funds, and other emerging unregulated financing structures, emphasizing how these developments raise fresh regulatory questions and potential need for closer oversight.

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[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 202(e)(2), 124 Stat. 1376, 1449 (2010), codified under 12 U.S.C. § 5382(e)(2). The Dodd-Frank Act requires that the AOUSC summarize the results of its study in a report "[n]ot later than 1 year after the date of enactment of th[e] Act [and] in each successive year until the third year" and in every fifth year after the date of enactment. *Id.* The AOUSC appointed a Working Group to study the issues identified in section 5382(e). This Working Group is chaired by Judge Michelle M. Harner, United States Bankruptcy Court for the District of Maryland. Other members of the Working Group include: Judge Brian M. Cogan, United States District Court for the Eastern District of New York; Judge Lisa Beckerman, United States Bankruptcy Court for the Southern District of New York; Judge Craig T. Goldblatt, United States Bankruptcy Court for the District of Delaware; Judge Deborah Lee Thorne, United States Bankruptcy Court for the Northern District of Illinois; Vito Genna, bankruptcy court clerk for the Southern District of New York; and Professor Diane Lourdes Dick, University of Iowa College of Law, as the academic representative. AOUSC and Federal Judicial Center staff provided support for the Working Group. A list of defined terms used in this report is set forth in Appendix A.

II. Executive Summary

This report examines how over a century of bank failures and related financial distress have shaped the legal and regulatory environment for depository institutions and nonbank intermediaries, encompassing emerging financial technology (fintech) companies and crypto-asset platforms. It acknowledges the historical trajectory of early collapses, such as those that led to deposit insurance and the Banking Act of 1933, and follows the thread through more recent upheavals, including the wave of failures that drove the post-2008 reforms embodied in the Dodd-Frank Act. While these initiatives helped stabilize large, systemically important institutions, recent events suggest that the existing framework still leaves mid-sized banks and novel financial actors susceptible to destabilizing runs, liquidity shortfalls, and governance breakdowns.

Underlying vulnerabilities persist in areas such as capital adequacy, liquidity risk, and operational oversight. Some mid-sized banks have faced abrupt deposit outflows linked to interest rate exposures and high concentrations of uninsured balances, prompting regulators to intervene and, at times, to guarantee deposits beyond normal insurance limits. Meanwhile, nonbank intermediaries—particularly fintech lenders and crypto firms—often operate outside standard prudential requirements yet engage in bank-like activities. This can create conditions for "shadow banking," in which deposit-like products and credit intermediation occur without parallel risk management or deposit insurance safeguards. Failures in the crypto sector, along with the collapse of certain tech-focused banks, underscore the innovative potential of uncharted financial realms and the systemic dangers posed when governance lapses and thinly capitalized balance sheets collide.

This report draws on several recent failures—including Silicon Valley Bank, Citizens Bank of Sac City, and crypto platforms such as FTX—to examine how existing legal tools have responded to financial distress outside traditional banking models. The report also explores how FDIC receiverships and bankruptcy courts play distinct yet interwoven roles. Traditional FDIC processes prioritize depositor protection and quick asset transfers, while holding companies and other affiliates can reorganize through federal bankruptcy law, which offers a broader mechanism for resolving complex claims and preserving going-concern value. Such dual-track resolutions underscore the importance of consistent capital rules, transparent custody arrangements, and carefully calibrated legal provisions for derivatives and other qualified financial contracts. Where large institutions benefit from extensive protections, smaller entities sometimes lack robust support, raising questions of equity and prompting calls for updated insurance thresholds and more uniform deposit-coverage rules.

The analysis concludes that while Dodd-Frank significantly enhanced resolution options for systemically important financial institutions, significant gaps remain in handling distressed mid-sized banks, fintech businesses, and crypto-based intermediaries. Lawmakers and industry leaders continue to debate ways to refine regulatory mandates, harmonize administrative receivership with modernized bankruptcy processes, and address the cross-border challenges of digital assets. Lessons from past crises can inform targeted reforms that uphold depositor confidence, contain moral hazard, and balance innovation with stability, ensuring that both traditional and emerging financial entities can manage risk and meet the credit needs of a dynamic economy.

III. AOUSC Reports Under Title II

Title II of the Dodd-Frank Act mandates various studies to consider the implications and alternatives of the insolvency scheme created for covered financial companies under the Dodd-Frank Act.[2] This report relates to the study mandated by 12 U.S.C. § 5382(e), "Study of Bankruptcy and Orderly Liquidation Process for Financial Companies."

Section 5382(e) requires the AOUSC to study the following three issues:

1. the effectiveness of chapter 7 or chapter 11 of the Bankruptcy Code in facilitating the orderly liquidation or reorganization of financial companies;
2. ways to maximize the efficiency and effectiveness of the Court [Title II defines "Court" to mean "the United States District Court for the District of Columbia, unless the context otherwise requires"]; and
3. ways to make the orderly liquidation process under the Bankruptcy Code for financial companies more effective.

Section 5382(e) further requires the AOUSC to submit a report summarizing the results of the study "[n]ot later than 1 year after [July 21, 2010]"—that is July 21, 2011.[3] It also requires the AOUSC to file two subsequent annual reports in July 2012 and 2013, and then a report "every fifth year after that date."[4]

The Dodd-Frank Act implemented a series of changes in the regulation of financial institutions, financial products, and various market participants that were designed to promote financial stability and more adequately address the financial distress of large, complex financial institutions. The provisions most relevant to the AOUSC's reports under section 202(e) of the Dodd-Frank Act are Title I of the Dodd-Frank Act, Financial Stability, which creates the Financial Stability Oversight Council (FSOC); and Title II of the Dodd-Frank Act, Orderly Liquidation Authority (OLA), which creates a regulatory process for the FDIC to act as receiver and liquidate certain covered financial companies, as defined by the Dodd-Frank Act and implementing regulations.[5]

The First, Second, Third, Fourth, and Fifth Reports systematically and objectively evaluated the resolution of distressed financial institutions and compared processes under the Bankruptcy Code to procedures under the OLA. Brief descriptions of the substance of these Reports are included in Appendix B.

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[2] 12 U.S.C. § 5382(e)–(g); Pub. L. No. 111-203, § 217, 124 Stat. at 1519–20.
[3] 12 U.S.C. § 5382(e)(2).
[4] *Id.*
[5] *Id.* §§ 5321, 5383.

This Sixth Report focuses on how the historical evolution of bank failures informs contemporary regulatory and resolution mechanisms, particularly with regard to mid-sized bank collapses, fintech innovations, and crypto-driven credit markets, while also examining new proposals to protect depositors and maintain market stability. A comprehensive Definitions section appears in Appendix A. Readers seeking clarifications on key terms—such as "stablecoin," "nonbank intermediary," or "resolution authority"—are encouraged to consult that appendix for reference throughout the report.

IV. How Existing Bank Liquidation Procedures and Bankruptcy Systems Have Handled Recent Bank Failures

This report examines how bank failures and other forms of financial distress have unfolded historically, what legislative reforms they inspired, and why newer developments—such as mid-sized bank collapses, fintech platforms, and crypto lenders—continue to test the boundaries of existing resolution mechanisms. It explores the interplay among FDIC receivership, bankruptcy, and emerging regulatory proposals, underscoring how each approach must be recalibrated to address both traditional banks and new market entrants that challenge long-held assumptions about depositor protection, systemic risk, and governance.

A. Bank Failures, Then and Now

This section surveys the progression of bank failures and the regulatory responses that followed, offering insights into both historical and modern vulnerabilities. It begins by tracing early collapses that prompted the creation of foundational safeguards like deposit insurance,[6] then examines the wave of failures culminating in the Dodd-Frank Act's overhaul of resolution authority.[7] Finally, it turns to recent developments—ranging from mid-sized bank collapses to fintech and crypto-asset turmoil—to show how regulatory gaps persist and may demand further legislative or policy refinement.

1. Bank Failures Historically

Bank failures have long been a recurring phenomenon in financial history, often set off by adverse economic conditions, inadequate or uneven regulatory oversight, and internal mismanagement.[8] In the United States, early waves of bank collapses were fueled by depositor runs during the Great Depression, prompting the establishment of the FDIC and the

[6] *See* Federal Deposit Insurance Act, 12 U.S.C. §§ 1811–1831 (establishing the Federal Deposit Insurance Corporation and providing federal insurance for bank deposits to protect depositors against losses resulting from bank failures).

[7] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, tit. II, 124 Stat. 1376, 1442–1520 (2010) (codified at 12 U.S.C. §§ 5381–5394) (establishing the OLA, granting FDIC power to liquidate or reorganize systemically important financial institutions to mitigate systemic risk).

[8] *See, e.g.*, STEN JÖNSSON, A COMPARATIVE HISTORY OF BANK FAILURES: FROM MEDICI TO BARINGS (2019).

Banking Act of 1933 (the Glass-Steagall Act) to separate deposit-taking from riskier investment banking.[9]

Just as bank failures during the Great Depression exposed the dangers of mismatched asset and liability structures, the collapse of more than 500 banks during and in the wake of the 2007–2008 financial crisis demonstrated similar vulnerabilities, echoing the earlier savings and loan crisis of the 1980s, when institutions funded high-risk, long-term investments with unstable, short-term deposits.[10] These episodes illustrated how moral hazard can emerge from deposit insurance and implicit "too big to fail" guarantees, since depositors lose some incentive to monitor bank activities, and some institutions take bolder risks than they might otherwise.[11] Internal governance lapses—such as fraud or insider abuse—intensified these problems, contributing to collapses that might have been avoided under stronger oversight or more prudent lending strategies.[12]

2. Bank Failures that Prompted the Passage of the Dodd-Frank Act

Traditionally, the FDIC responded to failing banks through administrative receiverships, which safeguarded insured depositors but often necessitated hasty liquidations of assets at below-market prices, especially when multiple institutions failed in quick succession.[13] At the same time, certain safe harbors in the Bankruptcy Code exempted qualified financial contracts—like derivatives—from the automatic stay.[14] These safe harbors were originally enacted to prevent systemic disruption by ensuring that large-scale securities clearance transactions would not be halted by bankruptcy's automatic stay provisions.[15] However, the collapse of Lehman Brothers revealed significant unintended consequences, notably

[9] Julia Maues, *Banking Act of 1933 (Glass-Steagall)*, FED. RSRV. HIST., https://www.federalreservehistory.org/essays/glass-steagall-act [https://perma.cc/3KMR-U8U7] (last visited Mar. 2, 2025).

[10] Drew DeSilver, *Most U.S. Bank Failures Have Come in a Few Big Waves*, PEW RSCH. CTR. (Apr. 11, 2023), https://www.pewresearch.org/short-reads/2023/04/11/most-u-s-bank-failures-have-come-in-a-few-big-waves/ [https://perma.cc/Y5HB-S9UX].

[11] For a more detailed discussion of the moral hazard concerns, see ADMINISTRATIVE OFFICE OF THE U.S. COURTS, FIFTH REPORT PURSUANT TO SECTION 202(E) OF THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT 9 (2020).

[12] John P. O'Keefe & Chiwon A. Yom, *Detection of Insider Abuse and Bank Fraud Among U.S. Failed Banks,* CLS BLUE SKY BLOG (Apr. 18, 2018), https://clsbluesky.law.columbia.edu/2018/04/18/detection-of-insider-abuse-and-bank-fraud-among-u-s-failed-banks/ [https://perma.cc/42HB-E82K].

[13] LYNN SHIBUT, CRISIS AND RESPONSE: AN FDIC HISTORY, 2008–2013, ch. 6 (2017), available at https://www.fdic.gov/resources/publications/crisis-response/book/crisis-response.pdf.

[14] 11 U.S.C. § 362 (2018) (providing for an automatic stay against creditor collection efforts in order to give the debtor-in-possession or trustee breathing room); 11 U.S.C. §§ 362(b)(6), (7), (17); 555; 556; 559–562 (2024) (providing safe harbors from the automatic stay for certain financial contracts, including securities contracts, commodities and forward contracts, repurchase agreements, and swap agreements).

[15] Mark J. Roe, *The Derivatives Market's Payment Priorities as Financial Crisis Accelerator*, 63 STAN. L. REV. 539, 546–49 (2011) (discussing legislative intent behind bankruptcy safe harbors as aimed primarily at protecting the securities clearance and settlement system from systemic disruptions).

enabling counterparties to immediately terminate contracts and liquidate collateral, exacerbating systemic contagion by precipitating rapid asset liquidation and value destruction.[16]

Motivated by the global financial crisis of 2007–2008, Congress passed the Dodd-Frank Act.[17] Title II introduced the OLA, under which the FDIC could place systemically important financial institutions into receivership if conventional bankruptcy was deemed inadequate for safeguarding the broader economy.[18] The Single Point of Entry (SPOE) resolution model—whereby a holding company would absorb losses while critical subsidiaries continued operating—became a central feature, enabling capital and liquidity to be allocated where needed during a crisis.[19] Alongside these measures, living wills required large banks to streamline their corporate structures and clarify contingency plans for emergencies.[20]

3. Bank Failures Today, with Special Attention to Recent Developments in the Financial Markets

Although the Dodd-Frank Act's enhanced prudential standards and resolution planning requirements bolstered resilience among the largest banks, some analysts note that mid-sized banks and nonbank intermediaries—such as fintech lenders and nonbank financial institutions—remain outside critical aspects of the regulatory perimeter, leaving them not fully covered by these and related reforms.[21] Some analysts have specifically pointed to the rise of fintech and shadow banking as gaps in the existing regulatory landscape.[22] Others emphasize that mid-sized banks were excluded from many Dodd-Frank Act requirements by subsequent regulatory rollbacks, notably the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018.[23]

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[16] Edward J. Janger, *Equity for Intermediaries: The Resolution of Financial Firms in Bankruptcy and Bank Resolution*, 41 YALE J. ON REGUL. 965, 989–92 (2024).

[17] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[18] *Id*. §§ 201–217, 124 Stat. at 1442–1520.

[19] *Id*; RANDALL D. GUYNN, "SINGLE POINT OF ENTRY" RESOLUTION STRATEGY FOR U.S. GLOBAL SYSTEMICALLY IMPORTANT BANKING GROUPS (G-SIBS) 1–13 (June 6, 2018), https://thedocs.worldbank.org/en/doc/857691528991163692-0130022018/original/GuynnDavisPolkSessionTwo.pdf.

[20] Under § 165(d) of the Dodd-Frank Act, banks with assets exceeding $50 billion, as well as financial institutions designated by the Financial Stability Oversight Council, must submit annual resolution plans. These "living wills" detail strategies for rapid and orderly resolution in the event of financial distress or failure. 12 U.S.C. § 5365(d) (2018).

[21] *See, e.g.*, Kathryn Judge, *Information Gaps and Shadow Banking*, 103 VA. L. REV. 411 (2017).

[22] *See, e.g.*, Greg Buchak et al., *Fintech, Regulatory Arbitrage, and the Rise of Shadow Banks*, 130 J. FIN. ECON. 453 (2018); Hilary J. Allen, *DeFi: Shadow Banking 2.0?*, 64 WM. & MARY L. REV. 919 (2023).

[23] Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, § 401, 132 Stat. 1296, 1356–57 (2018) (raising the threshold for enhanced prudential standards from $50 billion to $250 billion); *see also* Sahil Kapur, *Silicon Valley Bank Puts New Spotlight on a 2018 Bank Deregulation Law*, NBC NEWS (Mar. 13, 2023), https://www.nbcnews.com/politics/congress/silicon-valley-bank-collapse-puts-new-spotlight-2018-bank-deregulation-rcna74655 [https://perma.cc/2ZTY-QZ7A].

These critiques expose an inherent tension: while the canonical aim of financial regulation has long been to prevent system-wide contagion, intermediate levels of risk can, in certain circumstances, contribute to systemic risk. This is because, in practice, financial distress often manifests as localized disruptions that, while not threatening global markets, significantly impair regional economies or specific sectors, making them more vulnerable to subsequent shocks. For instance, the collapse of a community bank can devastate small business lending or household financial access in rural areas, just as the failure of a narrowly focused digital asset platform can spark losses for thousands of retail users. As such, regulatory tools should be calibrated not only to guard against macroprudential instability but also to promote fairness, confidence, and continuity in economically vital but non-systemic institutions.

With respect to nonbanks in particular, while some argue for broader application of regulatory principles, they also recognize the need for tailored rules given the operational differences between banks and nonbank financial firms.[24] Proposals to modify the Bankruptcy Code's treatment of derivatives and other qualified financial contracts have ranged from maintaining the existing safe harbors to imposing a short-term stay that allows orderly resolution while preserving counterparties' offset and netting rights.[25]

Issues have also arisen within crypto-asset exchanges, which often hold customer funds resembling deposits yet do not comply with comparable capital or liquidity standards.[26] Recent failures among crypto lending firms highlight how high-leverage investments, conducted alongside deposit-like liabilities, can pose systemic threats.[27] These collapses have left courts to determine whether customer tokens or deposits remain client property or become part of the estate upon bankruptcy.[28] In parallel, some lawmakers and state regulators

[24] Buchak et al., *supra* note 22, at 454–55; Allen, *supra* note 22, at 937–43; Judge, *supra* note 21, at 438–39.

[25] *See, e.g.*, Edward R. Morrison et al., *Rolling Back the Repo Safe Harbors*, 69 BUS. LAW. 1015 (2014); Roe, *supra* note 15.

[26] *See* FIN. STABILITY OVERSIGHT COUNCIL, 2023 ANNUAL REPORT (2023), https://home.treasury.gov/system/files/261/FSOC2023AnnualReport.pdf [https://perma.cc/BW7E-GB5S] (highlighting risks related to, among other things, nonbank mortgage servicers and crypto-asset markets); *see also* BASEL COMM. ON BANKING SUPERVISION, PRUDENTIAL TREATMENT OF CRYPTOASSET EXPOSURES (Dec. 2022), https://www.bis.org/bcbs/publ/d545.pdf [https://perma.cc/M8DQ-M5X4] (discussing the regulatory gaps and liquidity risks inherent in crypto-asset intermediaries).

[27] Systemic risks are recently considered in Lev E. Breydo, *Contagion. FTX, A Sector's Crisis & Crypto's Silent Victims*, 98 AM. BANKR. L.J. 97 (2024) and Eric W. Hess, *Bridging Policy and Practice: A Pragmatic Approach to Decentralized Finance, Risk, and Regulation*, 128 PENN ST. L. REV. 347 (2024).

[28] *See, e.g.*, Memorandum Opinion and Order Regarding Ownership of Earn Account Assets at 4, *In re* Celsius Network LLC, No. 22-10964 (Bankr. S.D.N.Y. Jan. 4, 2023) (that a cryptocurrency decentralized bank and investment platform (rather than its customers) owns most of the cryptocurrency held pursuant to its "Earn" program).

have contemplated extending resolution features traditionally associated with bank failures to nonbank lenders and other emerging entities.[29]

Studies suggest that living wills and stricter capital obligations encourage large, systemically important banks to simplify their structures,[30] but critics argue that the resulting constraints may drive innovation—and risk—into less-regulated niches.[31] To limit moral hazard and avoid haphazard failures, regulators and commentators have proposed additional steps, such as requiring mid-sized depositories to develop resolution plans,[32] clarifying the legal definition of "deposit-taking,"[33] and setting consistent standards for custody accounts in new financial markets.[34] Consumer-protection considerations also factor in, since retail depositors or token holders may bear significant losses if a financial intermediary collapses and lacks federal insurance or strong reserve requirements.

Another key concern is cross-border harmonization. While the OLA and SPOE strategies have advanced in the United States, the European Union's Bank Recovery and Resolution Directive[35] and other international frameworks illustrate parallel efforts to address similar challenges. However, recognized international standards on asset repatriation and

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[29] For example, the California Department of Financial Protection and Innovation, established under the California Consumer Financial Protection Law, has broadened its oversight to include entities such as debt collectors, nonbank mortgage lenders, and student loan servicers. This expansion aims to enhance consumer protection and ensure financial stability across a wider array of financial service providers. *See* California Assembly Bill 1864 (passed August 31, 2020).

[30] Nicola Cetorelli & James Traina, *Resolving "Too Big to Fail"*, FED. RSRV. BANK OF N.Y. STAFF REP. NO. 859 (June 2018), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr859 [https://perma.cc/64LC-L5HL].

[31] Buchak et al., *supra* note 22 (finding that increased regulatory burdens on traditional banks after the financial crisis significantly contributed to the growth of fintech and nonbank lenders).

[32] Final Rule Regarding Treatment of Financial Assets Transferred in Connection with a Securitization or Participation, 75 Fed. Reg. 60, 287 (Sept. 30, 2010) (codified at 12 C.F.R. pt. 360), available at https://www.fdic.gov/board/final-rule-12-cfr-36010-federal-register-notice.pdf [https://perma.cc/BEY3-MJEF] (requiring the submission of resolution plans by insured depository institutions (IDIs) with $100 billion or more in total assets and informational filings by IDIs with at least $50 billion but less than $100 billion in total assets).

[33] The question was thoughtfully explored in Rhys Bollen, *What is a Deposit (and Why Does It Matter)?*, 13 MURDOCH U. ELECTRONIC J. L. 202, 206 (2006) ("The right to repayment the customer holds in relation to money deposited is a chose in action."); for a more recent exploration in the context of cryptocurrencies, see Shawn Bayern, *Dynamic Common Law and Technological Change: The Classification of Bitcoin*, 71 WASH. & LEE L. REV. ONLINE 22 (2014), https://scholarlycommons.law.wlu.edu/wlulr-online/vol71/iss2/2 [https://perma.cc/U8LP-EXHY].

[34] Notice of Proposed Rulemaking on Requirements for Custodial Deposit Accounts, 89 Fed. Reg. 80135 (proposed Sept. 2024) (to be codified at 12 C.F.R. pt. 375), available at https://www.fdic.gov/system/files/2024-09/fr-npr-on-requirements-for-custodial-deposit-accounts.pdf [https://perma.cc/S8TC-G29N].

[35] Directive 2014/59, of the European Parliament and of the Council of 15 May 2014 Establishing a Framework for the Recovery and Resolution of Credit Institutions and Investment Firms, 2014 O.J. (L 173) 190.

cooperation remain imperfect, hampering smooth coordination when large institutions or fintech companies operate across multiple jurisdictions.[36]

Past crises—from the Great Depression to the savings and loan collapse and the turmoil of 2007–2008—reveal the evolving nature of bank failures and the perennial risk of contagion. Dodd-Frank Act reforms, including the OLA and SPOE, have indeed bolstered stability for major banks, yet gaps persist for smaller institutions and newer entities offering bank-like services. As interest rates and macroeconomic conditions shift, recent mid-sized bank failures and crypto-lender collapses serve as reminders of these vulnerabilities. The core challenge remains to integrate administrative receivership tools, modernized bankruptcy procedures, and global coordination to protect depositors, avert damaging contagion, and handle claims equitably. Lessons from earlier downturns meanwhile continue to inform proposals for a broader, more cohesive approach to the supervision and resolution of banks and other financial intermediaries.

B. Overview of the Business and Legal Ecosystem for Distressed Banks and Other Financial Intermediaries

1. Regulatory and Legal Approaches to Bank and Financial Institution Failures

This portion of the report reviews how past crises shaped current regulatory approaches to bank failures and highlights emerging concerns that remain unaddressed. First, it surveys the historical patterns of collapse, from the Great Depression onward, revealing how depositor runs, moral hazard, and lax oversight triggered the foundational reforms we know today. Next, it examines the wave of insolvencies that led to the Dodd-Frank Act, focusing on how landmark failures like Lehman Brothers prompted the OLA and SPOE strategies. Finally, it turns to present-day vulnerabilities in mid-sized banks, fintechs, and crypto platforms, assessing ongoing debates about safe harbors, cross-border coordination, and the challenge of preserving both depositor protection and going-concern value.

a. Regulatory Resolution of Banks

The regulatory resolution of banks primarily falls under the jurisdiction of the FDIC, which serves as the receiver for failed banks under the Federal Deposit Insurance Act (FDIA).[37] When a bank is declared insolvent, the FDIC intervenes through an administrative receivership process aimed at minimizing disruptions to the financial system while protecting depositors and creditors.

The FDIC's resolution process typically involves separating the failed bank into a "good bank," which retains the core performing assets and is sold to another solvent financial institution, and a "bad bank," which retains distressed assets that the FDIC later

[36] International coordination challenges are raised in Federico Lupo-Pasini & Ross P. Buckley, *International Coordination in Cross-Border Bank Bail-ins: Problems and Prospects*, 16 EUROPEAN BUS. ORG. L. REV. 203 (2015).

[37] *See supra* note 6.

liquidates. This process allows for seamless continuity for depositors and maintains market confidence. The FDIC has also been granted OLA under Title II of the Dodd-Frank Act to manage the resolution of financial firms whose failure could threaten broader financial stability.[38]

b. Resolution of Systemically Important Financial Institutions

The 2007–2008 financial crisis underscored the systemic risks posed by large, interconnected financial institutions. The failure of Lehman Brothers, exacerbated by the bankruptcy safe harbors that allowed counterparties to terminate derivatives contracts immediately, triggered global market instability. In response, the Dodd-Frank Act introduced a structured approach to resolving systemically important financial institutions (SIFIs) through the SPOE strategy.

Under SPOE, a failing SIFI is resolved at the holding company level, while its subsidiaries continue operating. The holding company recapitalizes its distressed subsidiaries using internal liquidity and loss-absorbing capital, preventing disorderly failures. If bankruptcy courts are deemed unsuitable for resolution, the FDIC can invoke its OLA powers to oversee the firm's liquidation.

Another critical component of this regime is the International Swaps and Derivatives Association (ISDA) Stay Protocol, which mitigates the risk of market runs by imposing a two-day stay on the termination of qualified financial contracts, allowing regulators to orchestrate an orderly resolution. While this approach has strengthened the resilience of SIFIs, the failures of non-SIFI institutions in recent years suggest that contagion risks remain unaddressed outside of the largest institutions.

c. The Role of Bankruptcy Courts

Bankruptcy courts play a vital but constrained role in the resolution of failing financial institutions. Unlike the FDIC's receivership process, bankruptcy courts handle financial distress through reorganization or liquidation under the Bankruptcy Code. While banks are generally excluded from the Bankruptcy Code's purview,[39] their holding companies and nonbank subsidiaries—as well as other nonbank intermediaries—are not and therefore must rely on standard bankruptcy procedures, such as the automatic stay, the use of estate assets, and the plan confirmation process, to reorganize or liquidate.

Building upon the principle of absolute priority, bankruptcy law implements "equitable realization," which locks in creditor positions as of the petition date to facilitate the fair and orderly distribution of a debtor's assets.[40] However, the ability of bankruptcy courts to stabilize financial firms is limited by statutory carve-outs, such as the safe harbors for

[38] *See id.*

[39] 11 U.S.C. § 109 (b)(2) and (d) bar FDIC-insured banks from filing under chapters 7 and 11, respectively.

[40] *See* Melissa B. Jacoby & Edward J. Janger, *Tracing Equity: Realizing and Allocating Value in Chapter 11*, 96 TEX. L. REV. 673, 676–709 (2018) (distinguishing "equitable realization," which fixes creditor positions at the petition date, from the traditional concept of absolute priority).

derivatives and repurchase agreements.[41] These provisions allow counterparties to close out contracts immediately upon bankruptcy, arguably undermining the automatic stay and worsening liquidity crises.

Bankruptcy cases such as Lehman Brothers and recent crypto failures like Celsius Network and FTX highlight the challenges bankruptcy courts face in managing the aftermath of complex financial firm failures. Unlike FDIC receiverships, bankruptcy proceedings often lack the regulatory tools necessary to contain systemic contagion, emphasizing the need for legislative reforms to harmonize the treatment of financial institutions across different resolution regimes.

When deployed proactively earlier in the distress cycle, however, bankruptcy proceedings can create opportunities to preserve or strategically redirect struggling financial institutions, rather than merely liquidate them. For instance, the 2013 bankruptcy filing of Anchor BanCorp Wisconsin Inc. illustrates how a bank holding company can effectively use chapter 11 to address financial distress without forcing its subsidiary bank into FDIC receivership.[42] Anchor BanCorp's main challenge stemmed from a slump in the regional real estate market and an accumulation of nonperforming loans, coupled with liquidity pressures that threatened to undermine the parent company's ability to recapitalize the bank.[43] Instead of allowing regulators to seize the institution, management and key stakeholders, including private equity investors, orchestrated a prepackaged reorganization plan.[44] This approach infused new equity into the holding company, helping restore capital ratios at the bank level and maintain depositor confidence.

The chapter 11 filing itself targeted the holding company rather than the insured depository, allowing Anchor BanCorp to negotiate with its creditors, restructure liabilities, and secure new capital commitments in a centralized forum. Such a strategy leveraged the flexibility of bankruptcy procedures—particularly the automatic stay and plan confirmation—to facilitate an orderly balance-sheet restructuring and protect the going-concern value of the bank subsidiary. Meanwhile, depositors at the bank remained insulated from the proceedings, as their accounts and day-to-day banking activities were unaffected by the parent's bankruptcy. Once the court confirmed Anchor BanCorp's plan, the restructured entity emerged with strengthened capital buffers and a more sustainable debt load, allowing the subsidiary bank to continue operations under stable ownership.[45]

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[41] *See supra* note 14 and sources cited therein.

[42] Chris Cumming, *Anchor in Wis. Files for Chapter 11, Plans $175M Offering*, AMER. BANKER (Aug. 13, 2013), https://www.americanbanker.com/news/anchor-in-wis-files-for-chapter-11-plans-175m-offering [https://perma.cc/PSA9-88V6].

[43] The financial pressures leading up to the bankruptcy filing are discussed in Securities and Exchange Commission v. Anchor Bancorp Wisconsin Inc. et al., No. 13-cv-1241, complaint filed (D.D.C. Aug. 14, 2013).

[44] The plan is detailed in Lev E. Breydo, *Bank Recapitalization Through Ch. 11*, AM. BANKR. INST. J., July 2015, at 44.

[45] Jacqueline Palank, *Judge Confirms Anchor BanCorp Chapter 11 Restructuring Plan*, WALL ST. J., Sept. 3, 2013.

This proactive approach contrasts sharply with FDIC receivership, which often involves a swift sale of the bank's assets and deposits to another institution. While receivership can protect insured depositors in a crisis, it typically leaves existing shareholders and unsecured creditors of the parent with few avenues to preserve value or negotiate recoveries. In Anchor BanCorp's case, the parent's chapter 11 ultimately preserved more residual value for creditors and enabled the bank's ongoing business to remain intact without requiring extraordinary governmental intervention. Observers regard it as a notable example of how a well-structured holding company bankruptcy can serve as an alternative resolution method for troubled banking enterprises.[46]

2. FinTech and Other Novel Intermediaries

Fintech firms and other nontraditional financial intermediaries—often financed by venture capital and focused on application-based consumer lending, payments, or wealth management—are reshaping the marketplace by operating outside the strictures of traditional banking regulations. Because they may not hold deposit accounts or issue insured liabilities, many of these companies have avoided robust oversight from the FDIC and similar prudential regulators. Instead, they typically face limited supervision from the CFPB or state licensing authorities, depending on the precise nature of their services.[47] This scattered framework has allowed fintech entities to experiment with new technologies, but it has also raised questions about systemic risk and consumer protection.

Amid rapidly evolving business models, the legal classification of fintech firms remains fluid. Traditional principles governing deposits, securities, and money transmission do not always map cleanly onto products such as blockchain-based lending or peer-to-peer payment platforms. Although these intermediaries rarely hold full banking charters, they often provide "bank-like" services—particularly in lending and payments—without the same capital and liquidity constraints that apply to regulated banks.[48] As a result, regulators and courts are increasingly called upon to interpret longstanding rules in novel contexts, illuminating both the promise of innovation and the potential perils of regulatory gaps.

One recent example illustrating these dynamics is the bankruptcy of Synapse Financial Technologies, Inc., filed in 2024 in the Central District of California.[49] Synapse served as a middleware platform between consumer-facing fintech apps and banking partners, including Evolve Bank & Trust. Following Synapse's failure, over $200 million in customer

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[46] *See, e.g.*, Brian Christiansen, et al., *The Use of Pre-Packs in Bank Restructuring and M&A*, FINANCIER WORLDWIDE, Jan. 2014.

[47] The CFPB, for example, may supervise certain fintechs engaged in consumer lending, mortgage origination, or remittances, especially if they meet statutory thresholds for larger participant supervision. However, firms offering digital wallets, buy-now-pay-later services, or crypto-based payments often operate in regulatory gray zones.

[48] The traditionally narrow definition of banking charters is critically challenged in David Zaring, *Modernizing the Bank Charter*, 61 WM. & MARY L. REV. 1397 (2020).

[49] Voluntary Petition, *In re* Synapse Financial Technologies, Inc., No. 1:24-BK-10646-MB (Bankr. C.D. Cal. Apr. 22, 2024).

funds were frozen across multiple institutions, and discrepancies totaling roughly $96 million emerged between Synapse's ledger balances and actual bank-held assets.[50] Many customers erroneously believed their funds were FDIC-insured, highlighting gaps in consumer understanding and the fragmentation of liability across fintech-bank partnerships. The case underscores the urgent need for clearer regulatory guidance and resolution protocols tailored to multi-entity fintech ecosystems.

3. Current FinTech-Specific Regulatory Proposals

A range of proposed legislative and regulatory measures aim to bring fintech operations more firmly under the purview of federal and state supervisors. At the national level, lawmakers have introduced bills that would modernize the Bank Service Company Act,[51] clarify the scope of "deposit-like" liabilities, and require certain fintech lenders to meet minimum capital or liquidity standards akin to those imposed on depository institutions.[52] Some of these measures focus specifically on transparency, requiring detailed disclosures of interest rates, fees, or potential risks associated with digital lending or money transmission services. Meanwhile, state regulators have pursued so-called "sandbox" regimes that allow limited testing of new fintech products within controlled environments, contingent on consumer safeguards and data reporting.[53]

Another core area of interest involves a type of cryptocurrency known as stablecoins, digital assets designed to maintain a stable value relative to a currency like the U.S. dollar.[54] Multiple proposals before Congress would create a federal regulatory framework for stablecoin issuers, borrowing from rules currently governing bank issuance of deposits.[55]

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[50] *See, e.g.*, Leo Schwartz and Allie Garfinkle, *The spectacular Synapse collapse: The ugliest divorce in fintech left $200 million in customer money frozen—and shows the risks of financial apps*, FORTUNE, Mar. 7, 2025.

[51] 12 U.S.C. § 1861.

[52] Congress has introduced legislation to modernize financial regulation in several areas. The Bank Service Company Examination Coordination Act of 2023 seeks to amend the Bank Service Company Act to improve coordination between state and federal banking agencies in supervising bank service companies. *See* Bank Service Company Examination Coordination Act of 2023, H.R. 1109, 118th Cong. (2023), https://www.congress.gov/bill/118th-congress/house-bill/1109 [https://perma.cc/DHJ3-8WWL] (last visited Feb. 22, 2025). The Community Advantage Loan Program Act of 2023 proposes stricter oversight of non-bank lenders participating in the Small Business Administration's 7(a) loan program, potentially subjecting certain fintech companies to capital and liquidity requirements similar to those imposed on traditional depository institutions. *See* Community Advantage Loan Program Act of 2023, S. 2482, 118th Cong. (2023), https://www.congress.gov/bill/118th-congress/senate-bill/2482/titles [https://perma.cc/A996-V7SH] (last visited Mar. 11, 2025).

[53] *See* Hunter A. Becker, *Chartering into FinTech Waters: The Impact of Financial Technologies on Banking Regulations*, 23 J. HIGH TECH. L. 62 (2022).

[54] For a thoughtful analysis of stablecoins, see Kara Bruce et al., *The Private Law of Stablecoins*, 54 ARIZ. ST. L.J. 1073, 1073 (2022).

[55] *See* Owen Tedford, *The Likely Path Forward For Stablecoin Legislation In Congress*, FORBES (Feb. 12, 2025), https://www.forbes.com/sites/owentedford/2025/02/12/the-likely-path-forward-for-stablecoin-legislation-in-congress/ [https://perma.cc/E6R4-7AW4].

Collectively, these initiatives reflect broader concerns that unregulated fintech activities—especially those enabling large-scale consumer payments or credit—could precipitate systemic spillovers and complicate monetary policy if left outside existing safeguards.

In the current Congress, Senator Bill Hagerty (R-TN) introduced the Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025 (S. 1582), or GENIUS Act, which proposes a regulatory framework for stablecoin issuance and includes provisions amending the Bankruptcy Code to clarify how such digital assets would be treated in insolvency. The Senate subsequently passed this measure with bipartisan support by a vote of 68 to 30 in June 2025. A parallel House bill, the STABLE Act of 2025 (H.R. 2392), would impose reserve, audit, and disclosure requirements on issuers, while authorizing limited access to the Federal Reserve system for qualifying entities. Together, these proposals reflect bipartisan recognition that stablecoin providers may require bespoke bankruptcy treatment and ongoing prudential oversight.

4. Private Ordering Solutions

Beyond governmental measures, market participants have pioneered private ordering arrangements to address risk management and potential insolvency among fintech startups and nonbank intermediaries. One prominent example involves strategic partnerships between traditional banks and fintech firms, whereby banks grant the fintech entities limited charters or serve as their "sponsor" for FDIC-insured deposit products.[56] In these deals, both sides aim to align incentives and share compliance burdens—banks gain technological expertise and access to fresh markets, while fintechs enjoy capital support and the confidence-inspiring effect of a banking partner's license and regulatory standing.

Mergers and acquisitions have also become a key strategy in rescuing distressed intermediaries or allowing investors to consolidate market share. Larger financial institutions, private equity firms, or established fintechs themselves may purchase struggling competitors at a discount, injecting liquidity and operational oversight into an imperiled enterprise.[57] This approach mirrors the FDIC's long-standing practice of arranging sales of failed banks to stable buyers and highlights how private ordering can achieve orderly resolutions without requiring direct taxpayer or deposit-insurance outlays. Nevertheless, there is a risk that these deals may prioritize investor recoveries over broader consumer or systemic interests, underscoring the need for balanced protections alongside free-market solutions.

[56] Partnerships of this sort are the subject of Xan Myburgh, *Hand In Hand: Are Strategic Partnerships The Future Of Fintech Lending?*, FORBES (May 29, 2024), https://www.forbes.com/councils/forbesfinancecouncil/2024/05/29/hand-in-hand-are-strategic-partnerships-the-future-of-fintech-lending/ [https://perma.cc/5PQ3-PPDD].

[57] Fintech mergers and acquisitions are empirically examined in Hao Zheng & Mike Qinghao Mao, *Fintech Mergers and Acquisitions*, 143 J. INT'L MONEY & FIN. 103076 (2024).

5. Proposed Regulatory Changes

Recent proposals to strengthen capital adequacy and other prudential rules include extending the enhanced requirements of Basel III—particularly its finalized reforms known as Basel IV—to a broader swath of depository institutions, including mid-sized banks and certain large nonbank intermediaries deemed systemically significant.[58] Although Basel III's framework—encompassing higher minimum capital ratios, a leverage ratio, and liquidity requirements like the Liquidity Coverage Ratio—was initially adopted to reduce systemic risk among global systemically important banks (G-SIBs), its relatively narrow application leaves material gaps.[59] In particular, large regional banks and nonbank financial intermediaries have grown significantly, raising concerns that their activities could create systemic risks outside traditional regulatory oversight.

In response, some commentators have suggested lowering the asset threshold for enhanced requirements or applying aspects of Basel III Finalization (Basel IV), such as standardized risk-weighting and net stable funding ratios, to a wider array of regulated entities. Others have recommended targeted amendments to Basel-based rules to address emerging risks, including fintech lending, digital asset custody, and new stress-testing parameters that reflect faster deposit outflows in an era of mobile banking and digital payments.

A related concern is that imposing Basel III–style constraints on a wider group of banks may inadvertently push certain activities into less regulated areas, such as nonbank lenders or fintech platforms. Smaller banks struggling to meet heightened capital requirements might be tempted to shift more of their lending, or even their entire business model, toward affiliates or partnerships that do not fall under the same regulatory regime. This could lead to regulatory arbitrage, where risk-taking migrates from tightly regulated banks to less supervised entities, increasing systemic vulnerabilities. As a result, extending Basel III frameworks without simultaneously addressing gaps in nonbank oversight could unintentionally amplify financial instability.[60]

While uniform application of strict Basel standards could stifle smaller institutions and limit financial innovation, proponents argue that more robust, risk-sensitive capital buffers are necessary to maintain financial stability. In an era where significant disruptions can emerge from mid-sized banks and tech-driven nonbank intermediaries, ensuring adequate capital reserves would appear to be critical to avoiding future crises.

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[58] *See, e.g.*, Viral V Acharya, *Basel III Endgame was inevitable for large banks, but what about non-banks and smaller banks?*, WHARTON INITIATIVE ON FIN. POL'Y AND REGUL. (Mar. 20, 2024), available at https://wifpr.wharton.upenn.edu/blog/basel-iii-endgame-was-inevitable-for-large-banks-but-what-about-non-banks-and-smaller-banks/ [https://perma.cc/A659-A822].

[59] *See* Marco Bodellini, *The Long 'Journey' of Banks from Basel I to Basel IV: Has the Banking System Become More Sound and Resilient than it Used to be?*, 20 ERA Forum 285 (2019).

[60] Randall S. Kroszner, *White Paper on Basel III Endgame Proposal* (Feb. 5, 2024), available at https://www.fdic.gov/system/files/2024-06/2023-regulatory-capital-rule-large-banking-organizations-3064-af29-c-306.pdf [https://perma.cc/S4GH-SFWH].

C. Approaches to Managing Firm-Specific Failures

This section examines how a range of recent and historical firm-specific failures reveal different pathways to resolving financial distress and protecting depositor and stakeholder interests. In some cases—such as Silicon Valley Bank—regulators and the bankruptcy court addressed overlapping issues when the main bank entered FDIC receivership but its parent holding company turned to chapter 11 for a more intricate reorganization. Other failures, like Citizens Bank of Sac City and The First National Bank of Lindsay, illustrate the classic FDIC resolution approach for smaller institutions, while also exposing ongoing debates over depositor coverage and local economic impact. Republic First Bank and First Republic Bank underscore how excessive concentration in certain loan segments or depositor bases can quickly lead to a liquidity crisis and regulatory seizure, even in institutions previously regarded as stable. Finally, the turmoil in crypto lending and exchange platforms highlights an emerging sector where unregulated, deposit-like products can crumble under runs and governance lapses, raising questions about whether existing mechanisms can be adapted to preserve value for customers. Taken together, these case studies highlight the spectrum of regulatory, legal, and market-driven approaches to failure and show how each institution's size, business model, and risk profile shape both the process and the outcome.

1. Silicon Valley Bank

Silicon Valley Bank's collapse in March 2023 ranks among the largest U.S. bank failures in recent memory.[61] The crisis stemmed from a combination of poor interest rate hedging—particularly overexposure to long-term Treasury bonds whose market value eroded as rates rose—and a depositor base composed heavily of tech startups and venture capital firms that pulled their funds en masse when signs of stress emerged. As soon as the run became imminent, the FDIC placed Silicon Valley Bank into receivership, ensuring that insured depositors remained protected and selling off the bank's core assets to maintain broader financial stability.[62]

Recognizing the potential systemic risk, federal regulators invoked a systemic risk exception, allowing the FDIC to guarantee all deposits, including those above the standard insurance limit of $250,000.[63] This move ensured that all depositors had full access to their funds, effectively stabilizing the situation and preventing broader financial contagion. While Silicon Valley Bank's shareholders and management were not protected—consistent with longstanding policy—the FDIC's intervention nonetheless bore key features of a public backstop. By guaranteeing all deposits, including those above the $250,000

[61] The Associated Press and Ken Sweet, *Silicon Valley Bank has officially failed after less than a day of panicked selling as the federal government takes it over*, FORTUNE, Mar. 10, 2023.

[62] *See* Krystal Hu, Anna Tong, & Ananya Mariam Rajesh, *Silicon Valley Bank scrambles to reassure clients after 60% stock wipe-out*, REUTERS, Mar. 10, 2023.

[63] *See, e.g.*, Anthony Noto, *SVB Deposits Saved, But Is It A Bailout?*, GLOB. FIN. (Mar. 14, 2023), https://gfmag.com/features/silicon-valley-bank-bailout/ [https://perma.cc/FRM2-56BU].

insurance cap, the FDIC absorbed approximately $20 billion in losses through its Deposit Insurance Fund. Although this fund is industry-supported, the increased costs are likely to be passed through to bank customers. Consequently, some commentators have characterized the intervention as a form of de facto bailout, because it shielded large depositors from loss and may have contributed to moral hazard.[64]

Notably, the FDIC opted not to invoke its OLA under Title II of the Dodd-Frank Act, even though doing so might have shifted more losses to the bank's parent company shareholders and long-term creditors, thereby reducing the burden on the Deposit Insurance Fund. The reasons for bypassing OLA in this instance remain unclear, though time constraints and legal uncertainties may have played a role.

Meanwhile, unlike the bank itself—which was required to be resolved administratively in FDIC receivership—Silicon Valley Bank's parent holding company, SVB Financial Group, filed for protection under chapter 11 in the U.S. Bankruptcy Court for the Southern District of New York.[65] This placed major disputes within the jurisdiction of the bankruptcy court, including disagreements over ownership of large federal and state tax refunds, as well as the fate of billions of dollars' worth of net operating loss carryforwards and other tax attributes.[66]

A key illustration of the bankruptcy court's role is the debate regarding substantial tax refunds generated by the bank's past losses that were claimed by the holding company as the group's designated agent for tax filings.[67] The FDIC asserted that the value of these refunds properly belonged to the receivership for the benefit of the failed bank, citing contractual language that characterized the holding company as a mere custodian of bank-derived tax benefits. SVB Financial Group and its creditors, by contrast, argued that the checks and tax attributes were property of the bankruptcy estate, at least pending a formal determination of ownership under the Tax Code and the relevant tax allocation agreements. These overlapping proceedings highlight how, in a modern financial failure, FDIC receivership objectives (securing depositors and resolving the bank's assets) can intersect with the bankruptcy court's mandate to preserve value and allocate recoveries among a broader set of stakeholders—particularly when corporate tax assets, contracts with the bank, and other intangible sources of potential value remain unsettled.

Regulators have since acknowledged the need to reassess and strengthen liquidity rules to prevent similar occurrences in the future. One immediate response to Silicon Valley Bank's collapse was the creation of new liquidity backstops. In the wake of Silicon Valley Bank's failure in March 2023, the U.S. Treasury Department authorized the use of $25 billion from the Exchange Stabilization Fund to support the Federal Reserve's Bank Term

[64] *See id*.

[65] Voluntary Petition for Non-Individuals Filing for Bankruptcy, *In re* SVB Fin. Grp., Case No. 23-10367 (Bankr. S.D.N.Y. Mar. 17, 2023).

[66] *See* Diane Lourdes Dick, *Silicon Valley Bank's Multibillion-Dollar Tax Battle in Bankruptcy Court*, 43 No. 7 BANKR. L. LETTER (2023).

[67] *See id.*

Funding Program (BTFP).[68] The BTFP offered one-year loans to insured depository institutions secured by high-quality collateral, including Treasuries and agency MBS, valued at par. This extraordinary liquidity backstop aimed to reassure markets and prevent panic-driven withdrawals during a period of heightened uncertainty.

These liquidity challenges were compounded by heavy reliance on the Federal Home Loan Bank (FHLB) system by distressed banks. Silicon Valley Bank, Signature Bank, and Silvergate collectively borrowed over $30.6 billion in FHLB advances in the year preceding their failures.[69] While the FHLB system traditionally supports affordable housing finance, its role as a lender of last resort to struggling institutions raises questions about moral hazard and the alignment of public missions with emergency liquidity support.

2. Citizens Bank of Sac City, Iowa

Citizens Bank of Sac City, Iowa, was closed by the Iowa Division of Banking on November 3, 2023, after examiners discovered significant loan losses that had not been previously reported.[70] The FDIC was appointed as receiver and facilitated the sale of the bank's assets and deposits to Iowa Trust & Savings Bank, Emmetsburg, Iowa, through a purchase and assumption agreement.[71] The closure was attributed to financial difficulties stemming from a concentration of commercial trucking loans, which resulted in heavy losses.[72]

At the time of closure, Citizens Bank had approximately $65.6 million in total assets and $58.9 million in total deposits.[73] Examiners identified a concentration of out-of-territory and out-of-state loans in the commercial trucking sector that led to severe losses.[74] A consent order filed by the FDIC and the Iowa Superintendent of Banking in August 2023

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[68] James Lee & David Wessel, *What Did the Fed Do After Silicon Valley Bank and Signature Bank Failed?*, BROOKINGS (Jan. 25, 2024), https://www.brookings.edu/articles/what-did-the-fed-do-after-silicon-valley-bank-and-signature-bank-failed/ [https://perma.cc/T8SZ-5JKM].

[69] U.S. Gov't Accountability Off., *Federal Home Loan Banks: Actions Related to the Spring 2023 Bank Failures*, GAO-24-106957 (Mar. 8, 2024), https://www.gao.gov/products/gao-24-106957 [https://perma.cc/Q53A-ZQVZ].

[70] Iowa Div. of Banking, *IDOB Closed Citizens Bank, Sac City* (Nov. 3, 2023), https://idob.iowa.gov/news/2023-11-03/idob-closed-citizens-bank-sac-city [https://perma.cc/9T2Y-S8NP].

[71] *Id*.

[72] Craig Fuller, *Iowa bank failure tied to bad trucking loans*, FREIGHTWAVES (Nov. 5, 2023), https://www.freightwaves.com/news/iowa-bank-failure-tied-to-bad-trucking-loans [https://perma.cc/3BQ3-Q8TH].

[73] Alex Graf & Zuhaib Gull, *Annual failed bank total climbs to 6-year high with fall of Iowa community bank*, S&PGLOBAL (Nov. 8, 2023), https://www.spglobal.com/market-intelligence/en/news-insights/articles/2023/11/annual-failed-bank-total-climbs-to-6-year-high-with-fall-of-iowa-community-bank-78276908 [https://perma.cc/S8TE-E4A5].

[74] Caitlin Mullen, *'Lax lending practices' led to Iowa bank's downfall: FDIC OIG*, BANKINGDIVE (Mar. 25, 2024), https://www.bankingdive.com/news/lax-lending-practices-citizens-bank-iowa-failure-fdic-oig-report/711241/ [https://perma.cc/75DT-VD7A].

confirmed that the bank had failed to properly reserve for these losses in a timely manner, rendering it insolvent.[75]

A March 2024 memorandum from the FDIC's Office of Inspector General cited management's poor lending practices, excessive concentration in trucking loans, and repeated failures to comply with regulatory recommendations as key factors leading to the bank's insolvency.[76] The memorandum further detailed that the FDIC and Iowa Division of Banking had issued multiple enforcement actions prior to the closure, including a 2023 consent order requiring the bank to improve its lending policies and capital management. The FDIC estimated the cost to the Deposit Insurance Fund (DIF) to be $14.8 million, making Iowa Trust & Savings Bank's acquisition a relatively low-cost resolution.

The two branches of Citizens Bank reopened under the new ownership, ensuring continuity for depositors.[77] No consumer, business, or public deposits were lost as a result of the failure.[78] Although the failure undoubtedly caught the local community by surprise, as it was the first bank closure in Iowa since 2011, the quick transition to new ownership minimized disruption to local banking services.

3. The First National Bank of Lindsay

The failure of The First National Bank of Lindsay highlights critical issues in bank governance, regulatory oversight, and depositor protection, shedding light on systemic risks even within smaller financial institutions. Prior to its closure, the bank played a key role in the local economy, providing commercial, consumer, and agricultural loans to businesses and individuals in south-central Oklahoma.[79] However, a combination of poor asset quality, liquidity pressures, regulatory noncompliance, and mismanagement ultimately led to its downfall.

A forensic audit conducted by the state revealed gross mismanagement, reinforcing concerns about governance failures and internal controls.[80] Reports also suggest that fraud may have played a role in the bank's collapse, raising questions about executive decision

[75] *Id*.

[76] Federal Deposit Insurance Corporation, Office of Inspector General, Failed Bank Review: Citizens Bank, Sac City, Iowa, AEC Memorandum No. 24-02 (Mar. 2024), https://www.fdicoig.gov/sites/default/files/reports/2024-03/Citizens%20Bank%20Failed%20Bank%20Review%20Memorandum_0.pdf [https://perma.cc/3ZJ7-TN37].

[77] Press Release, Fed. Deposit Ins. Corp., Iowa Trust & Savings Bank, Sac City, Iowa, Assumes All of the Deposits of Citizens Bank, Sac City, Iowa (Nov. 3, 2023), https://www.fdic.gov/news/press-releases/2023/pr23091 [https://perma.cc/B2ZB-4N47].

[78] *Id*.

[79] Bennett Brinkman, *Amid bank failure fallout, City of Lindsay audit reveals 'gross mismanagement'*, NONDOC (Nov. 15, 2024), https://nondoc.com/2024/11/15/amid-bank-failure-fallout-city-of-lindsay-audit-reveals-gross-mismanagement/ [https://perma.cc/DW52-HYVA].

[80] Mike W. Ray, *State Forensic Audit of Lindsay Reveals 'Gross Mismanagement'*, SW. LEDGER, Nov. 20, 2024.

making and regulatory oversight.[81] These issues were compounded by an overly aggressive loan portfolio, which had a higher-than-average loan-to-deposit ratio compared to similarly situated banks.[82] The bank's Community Reinvestment Act (CRA) evaluation provides additional insights.[83] While the bank met credit needs in its assessment area and had a strong loan origination record, it struggled with borrower distribution and did not serve low- and moderate-income communities as effectively as possible.[84] The bank's heavy exposure to high-risk loans, coupled with an inability to maintain sufficient liquidity, left it vulnerable when market conditions deteriorated.

Regulators acted decisively. The Office of the Comptroller of the Currency (OCC) formally appointed the FDIC as receiver, signaling severe financial distress and an imminent failure.[85] Upon closure, First Bank & Trust Co. of Duncan, Oklahoma, acquired the bank's deposits and assets in an FDIC-facilitated purchase-and-assumption transaction, ensuring continuity of banking services for insured depositors.[86]

In the wake of the bank's failure, broader concerns have emerged regarding a perceived double standard in regulatory responses. When large institutions such as Silicon Valley Bank and Signature Bank failed, regulators invoked systemic risk exceptions to provide full deposit protection, covering uninsured depositors well beyond the standard $250,000 FDIC insurance limit. In contrast, uninsured depositors at The First National Bank of Lindsay were left to absorb losses, as the bank was deemed non-systemic and no extraordinary intervention was undertaken.[87] This disparity has led to accusations that smaller banks and their depositors are treated unfairly within the current regulatory framework.[88] Critics argue that while large banks receive enhanced protections due to their systemic importance, smaller banks—despite serving vital community functions—are more likely to face outright liquidation with limited relief for uninsured depositors.[89]

This "too big to fail, too small to save" dynamic risks exacerbating industry consolidation, as depositors may begin to favor large institutions over community banks due to

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[81] Mike W. Ray, *Fraud Eyed in Closure of Lindsay Bank; Assets Sold to Duncan Bank*, SW. LEDGER, Oct. 22, 2024.

[82] COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION: THE FIRST NATIONAL BANK OF LINDSAY, OFFICE OF THE COMPTROLLER OF THE CURRENCY (June 1, 2023).

[83] *See id.*

[84] *Id*.

[85] *Id*.

[86] Press Release, Fed. Deposit Ins. Corp., First Bank & Trust Co., Duncan, OK, Acquires Insured Deposits of The First National Bank of Lindsay, Lindsay, OK (Oct. 18, 2024), https://www.fdic.gov/news/press-releases/2024/first-bank-trust-co-duncan-ok-acquires-insured-deposits-first-national [https://perma.cc/NZ5A-2D5A].

[87] Sujeet Indap, *A tiny Oklahoma bank failure reveals double standard in depositor bailouts*, FIN. TIMES (Nov. 22, 2024), https://www.ft.com/content/91c75c9e-4f58-4452-8ed1-3d16322ba02c [https://perma.cc/YND3-CZVL].

[88] *See, e.g.*, Jonathan Weil, *A Small Bank's Failure Leaves Big Depositors Feeling the Pain*, WALL ST. J., Oct. 22, 2024.

[89] *Id*.

perceived safety advantages. Additionally, the economic impact of small bank failures is often underestimated—while they may not pose national financial stability risks, they can cause severe disruptions in local economies, particularly in rural areas with fewer banking options.

Ultimately, the case of The First National Bank of Lindsay underscores the importance of sound internal governance, robust regulatory oversight, and equitable depositor protection policies. It also demonstrates that even smaller institutions can pose localized systemic risks, warranting closer scrutiny from regulators. The failure serves as a cautionary tale, emphasizing the need for enhanced risk assessment frameworks, stronger fraud detection measures, and more consistent application of federal bank resolution protocols to ensure financial stability across all institutions.

4. Republic First Bank

Before its spring 2024 closure, Republic First Bank, operating as Republic Bank, was a regional financial institution headquartered in Philadelphia, Pennsylvania, with branches across Pennsylvania, New Jersey, and New York.[90] The bank developed a reputation for customer-friendly services and a focus on small business and retail banking. However, a combination of financial instability, risk mismanagement, and regulatory scrutiny ultimately led to its failure.[91] The Pennsylvania Department of Banking and Securities closed Republic First in April 2024, citing an "unsafe and unsound condition."[92] The FDIC was appointed as the receiver, and substantially all of Republic First's assets and deposits were assumed by Fulton Bank, N.A.[93]

Republic First's financial decline was years in the making. A key factor was its excessive exposure to commercial real estate (CRE) lending, which made it vulnerable to economic downturns, particularly as interest rates rose and the post-pandemic real estate market softened.[94] The bank's asset quality deteriorated, with non-performing loans increasing

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[90] *See* Press Release, Fed. Deposit Ins. Corp., Fulton Bank, N.A. of Lancaster, Pennsylvania Assumes Substantially All Deposits of Republic First Bank, Philadelphia (Apr. 26, 2024), https://www.fdic.gov/news/press-releases/2024/fulton-bank-na-lancaster-pennsylvania-assumes-substantially-all-deposits [https://perma.cc/N9XG-8PSR].

[91] Ty Roush, *Here's What Led To Republic First's Collapse—And Why It's Different From 2023 Failures,* FORBES (Apr. 27, 2024), https://www.forbes.com/sites/tylerroush/2024/04/27/heres-what-led-to-republic-firsts-collapse-and-why-its-different-from-2023-failures/ [https://perma.cc/Q7PT-FC4Z].

[92] *See* Press Release, Pa. Dep't of Banking & Sec., Pennsylvania Department of Banking and Securities Takes Possession of Republic First Bank (Apr. 26, 2024), https://www.pa.gov/agencies/dobs/newsroom/pennsylvania-department-of-banking-and-securities-takes-possession-of-republic-first-bank-dba-republic-bank.html [https://perma.cc/REY8-94HB].

[93] *Id.*

[94] Andrew Coen, *CRE Markets Face Limited Impact From Republic First Bank Failure*, COM. OBSERVER (Apr. 29, 2024), https://commercialobserver.com/2024/04/cre-markets-limited-impact-republic-first-bank-failure/ [https://perma.cc/7KR2-2P78]; Tom Doolittle, et al., Bank Health and Future Commercial Real Estate Losses, Office of Financial Research Brief No. 24-04 (July 11, 2024),

significantly in the years leading up to its closure. Despite regulatory warnings and internal recognition of capital deficiencies, Republic First was unable to raise the funds necessary to stabilize its balance sheet. The bank's attempt to secure a $35 million investment from the Norcross Braca Group fell through in early 2024 after Republic First failed to meet the conditions of the agreement.[95] This failure further eroded confidence in the bank's ability to remain solvent.

Liquidity concerns played a crucial role in the bank's downfall. Depositor withdrawals accelerated in the months leading up to its closure, placing additional strain on the bank's already precarious financial position. Without access to emergency capital, Republic First could not meet regulatory capital requirements, prompting state banking authorities to seize the institution.[96] The FDIC facilitated an orderly resolution through a purchase and assumption agreement, transferring insured deposits and performing loans to Fulton Bank.[97] As with most bank failures, shareholders were effectively wiped out, and unsecured creditors faced significant losses.

Regulatory investigations following the bank's failure revealed additional troubling practices. A report released by the New Jersey Office of the Attorney General and the Division on Civil Rights found that Republic First engaged in unlawful mortgage redlining, systematically avoiding lending to Black, Hispanic, and Asian communities in New Jersey.[98] Between 2018 and 2022, the bank originated loans to Black borrowers at less than two-thirds the rate of its peer institutions, to Asian borrowers at approximately 40% of the peer average, and to Hispanic borrowers at less than one-third the rate of comparable lenders. The investigation found that Republic First concentrated its physical branches in predominantly White areas, conducted little advertising targeted at communities of color, and made loan underwriting exceptions for White and high-income borrowers while denying applications from minority applicants at higher rates. The State of New Jersey filed a claim with the FDIC seeking monetary relief for individuals affected by these discriminatory lending practices, while also urging Fulton Bank to take proactive steps to mitigate potential redlining risks associated with its acquisition of Republic First's mortgage portfolio.

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https://www.financialresearch.gov/briefs/files/OFRBrief-24-04-bank-health-and-future-commercial-real-estate-losses.pdf [https://perma.cc/3QWA-QYFK].

[95] *See* Gabrielle Saulsbery, *Investors Back Out of $35M Deal with Republic First*, BANKING DIVE (Mar. 1, 2024), https://www.bankingdive.com/news/investors-back-out-of-35-milliom-deal-republic-first-norcross-braca/709068/ [https://perma.cc/8EHX-3A98].

[96] *See* Luciana Lopez & Samantha Delouya, *FDIC says Republic First Bank is closed by Pennsylvania regulators*, CNN (Apr. 26, 2024), https://www.cnn.com/2024/04/26/business/regulators-seize-republic-first-bancorp/index.html [https://perma.cc/56S6-N87V].

[97] *See* Press Release, Pa. Dep't of Banking & Sec., Pennsylvania Department of Banking and Securities Takes Possession of Republic First Bank (Apr. 26, 2024), https://www.pa.gov/agencies/dobs/newsroom/pennsylvania-department-of-banking-and-securities-takes-possession-of-republic-first-bank-dba-republic-bank.html [https://perma.cc/REY8-94HB].

[98] *See* N.J. OFF. OF ATT'Y GEN., INVESTIGATION OF REPUBLIC FIRST BANK: PUBLIC REPORT AND SUMMARY OF FINDINGS, at 2 (Oct. 2024).

The failure of Republic First Bank underscores several key regulatory and risk management challenges. The bank's concentrated exposure to CRE lending highlights the risks of loan portfolio imbalances, particularly in a rising interest rate environment. Its inability to raise capital demonstrates the importance of liquidity buffers and robust stress-testing frameworks. Governance issues, including leadership disputes and strategic missteps, further weakened the institution's stability. The redlining investigation also raises questions about fair lending enforcement and the responsibilities of acquiring institutions in addressing past discriminatory practices.

The FDIC's resolution process ensured an orderly transition for depositors, but the case of Republic First raises broader concerns about regional banks with significant commercial real estate exposure and weak capital positions. Lawmakers or regulators may look to this failure as a basis for refining capital adequacy standards, liquidity requirements, and fair lending oversight to prevent similar collapses in the future. The discriminatory lending practices uncovered at Republic First were not merely violations of fair lending laws but may have exacerbated the bank's vulnerability to economic shocks. By limiting its exposure to more diverse borrower segments, the bank potentially reduced the resilience of its loan portfolio. Furthermore, reputational damage stemming from civil rights investigations likely impaired investor confidence and contributed to liquidity pressures.

The case of Republic First serves as a stark reminder of the importance of regulatory vigilance, proactive risk management, and fair lending compliance in maintaining the integrity and stability of the banking system.

5. First Republic Bank

First Republic Bank, founded in 1985 with a focus on wealth management and private banking services, built its brand around high-touch relationships, low mortgage rates, and a deposit base concentrated among affluent customers.[99] For many years, these strategies paid off, as clients were willing to accept lower yields on their deposits in exchange for personalized attention, convenience, and consistently favorable lending terms. However, when market interest rates rose quickly in early 2023, the value of First Republic's long-duration mortgage assets dropped, jeopardizing the balance sheet. Confidence eroded further after other regional banks experienced liquidity runs, leading many of First Republic's large, uninsured depositors—particularly those in the tech sector—to withdraw funds in short order.

Although a consortium of major financial institutions momentarily stemmed the outflows by depositing billions of dollars, the exodus continued, and First Republic was seized by federal regulators in May 2023. The FDIC brokered a deal for JPMorgan Chase to acquire the bank's core business, ensuring insured depositors had uninterrupted access to their money. The swift downfall of First Republic underscores the challenges of

[99] Matt Turner, *First Republic handed out billions in ultra-low-rate mortgages to the wealthy. It backfired horribly*, BUS. INSIDER (Apr. 25, 2023), https://www.businessinsider.com/why-first-republic-bank-in-trouble-mortgages-backfired-rising-rates-2023-4 [https://perma.cc/5NWZ-X2YS].

maintaining low-cost deposits in a rising-rate environment, the vulnerabilities associated with large uninsured deposit bases, and the potential for contagion once depositor confidence falters. It also illustrates how FDIC-administered resolutions and private capital injections can rapidly stabilize failing banks, albeit at the expense of the institution's independence, while revealing broader debates about the adequacy of regulatory oversight and liquidity requirements in a marketplace where one wave of deposit withdrawals can imperil an otherwise well-regarded franchise.

6. Spotlight on Recent Crypto Failures

Looking beyond traditional banks and financial institutions, recent turmoil in the crypto-asset sector has highlighted how quickly digital finance platforms can fail when funding sources dry up or when core business activities prove unstable.[100] Unlike the bank failures discussed in the preceding subsections, the institutions in this subsection occupy a different position within the regulatory ecosystem. These crypto-based firms raise novel questions about the applicability of existing oversight frameworks, and their treatment in bankruptcy underscores the legal gaps confronting regulators and courts.

Notably, several prominent crypto firms specializing in lending, exchange services, or so-called "yield farming" collapsed in 2022 and 2023, leaving customers and counterparties scrambling to recover locked-up assets. Celsius Network exemplified these troubles when it halted withdrawals amid severe liquidity stress; the firm later entered bankruptcy proceedings in the U.S. Bankruptcy Court for the Southern District of New York, prompting heated debates about the ownership of deposited crypto tokens. In this and other high-profile bankruptcy cases, courts have had to weigh whether deposit-like account balances should be treated as customer property or as part of the general bankruptcy estate—a distinction with potentially enormous consequences for unsecured creditors.

As another example, FTX's high-profile downfall and bankruptcy filing underscored how interwoven governance failures and aggressive risk-taking can devastate a once-dominant marketplace. Though nominally organized in offshore jurisdictions, FTX maintained a vast network of U.S. affiliates, complicating efforts by regulators and courts to protect investors. Allegations of commingled funds and misappropriated deposits sparked heightened scrutiny of the broader digital-asset ecosystem. Even large, venture-backed crypto companies are not immune to abrupt run dynamics, particularly if most user balances are uninsured and subject to swift withdrawal demands during periods of market fear.

Beyond the immediate impact on retail customers, recent crypto failures also carry systemic implications. While still not on par with the deposit base of traditional banks, crypto platforms often replicate many bank-like functions—ranging from client deposits and payment services to leveraged lending—yet operate without parallel liquidity or capital requirements. Regulators and lawmakers around the world are now confronting the mismatch between these "shadow banking" activities and the limited oversight that previously

[100] *See* Allen, *supra* note 22 (discussing risks of decentralized finance and liquidity crises).

applied to them. Some jurisdictions are advancing new rules on reserve transparency, audits, or stablecoin issuance, aiming to mitigate contagion risk and ensure that customer assets are adequately segregated.

The confluence of abrupt platform collapses and complicated cross-border insolvency cases highlights a core challenge for courts and agencies alike: many digital-asset rules were designed for smaller or largely experimental projects, not multi-billion-dollar operations with millions of customers. As crypto lenders and exchanges continue to evolve, lawmakers debate whether to integrate them into established regulatory frameworks for banking and financial intermediaries, require robust capital reserves, or force a clearer delineation of custody arrangements to protect consumers. The recent wave of bankruptcies stands as a stark warning that, in an industry where innovation often outpaces regulation, robust guardrails and transparent business practices are essential to fostering long-term trust and stability.

Some fintech firms and industry associations have expressed conditional support for enhanced regulation, particularly where it would provide legal certainty or market credibility. For instance, organizations like the Financial Technology Association (FTA) and the Bank Policy Institute (BPI) have advocated for clear, proportionate standards for capital, disclosures, and resolution planning applicable to nonbank lenders and payment providers.[101] However, concerns remain about regulatory burdens potentially stifling innovation.

D. Key Takeaways from the Case Studies

Recent bank failures and crypto collapses offer a vivid illustration of how varied financial institutions can falter under changing market conditions, concentrated risk exposures, or governance shortcomings, and how regulators and bankruptcy courts respond in distinct ways depending on the circumstances. These episodes echo many of the vulnerabilities that led to the 2007–2008 financial crisis and the enactment of the Dodd-Frank Act. In several instances, Title I designation authority and Title II's resolution mechanisms were either underused or bypassed entirely, raising questions about the practical reach and readiness of the post-crisis framework. Each case study illustrates both the resilience and limitations of the current legal ecosystem and invites further inquiry into whether the tools Congress created in 2010 remain fit for purpose today.

A closer review of the case studies further illuminates how the Dodd-Frank Act shaped, and at times may have fallen short of addressing, these vulnerabilities. Silicon Valley Bank's collapse illustrates the risks associated with narrowing the Dodd-Frank Act's enhanced prudential standards, as regulatory rollbacks enacted in 2018 exempted mid-sized banks from heightened liquidity and capital planning requirements that might have mitigated the bank's exposure to interest rate risk and deposit concentration. Citizens Bank of

[101] *See, e.g.*, Austin Anton, *Financial Associations Recommend Action to Remove Barriers to Digital Assets Innovation*, BPI (May 1, 2025), https://bpi.com/financial-associations-recommend-action-to-remove-barriers-to-digital-assets-innovation/ [https://perma.cc/KM5Q-8SGR].

Sac City, Iowa, by contrast, demonstrates that while the Dodd-Frank Act significantly strengthened systemic oversight, smaller institutions continue to rely on localized supervisory vigilance, operating largely outside the Dodd-Frank Act's principal reforms. Similarly, the collapse of The First National Bank of Lindsay underscores enduring gaps in governance standards for non-systemic banks—gaps that the Dodd-Frank Act principally targeted at larger financial institutions. Republic First Bank's demise, accompanied by allegations of unlawful redlining, suggests that although the Dodd-Frank Act created the CFPB to enhance consumer oversight, challenges remain in enforcing fair lending obligations across the broader banking landscape. Moreover, the downfall of First Republic Bank reveals that even banks nominally subject to aspects of the Dodd-Frank Act's liquidity requirements may remain vulnerable to swift depositor runs in an era of digital banking and social media-driven market movements.

Recent crypto failures point to similar vulnerabilities in novel financial sectors where deposit-like accounts and leveraged lending operate outside the traditional regulatory perimeter. Platforms like Celsius and FTX halted withdrawals, tumbled into bankruptcy, and triggered far-reaching disputes over the ownership of deposited digital tokens. These collapses demonstrated how the fundamental logic of "runs" and liquidity mismatches applies even in the digital realm, where a lack of robust capital and liquidity requirements leaves companies exposed when conditions suddenly deteriorate.

Taken together, these episodes show how readily a bank or nonbank intermediary can succumb to interest rate risk, inadequate governance, or concentrated credit exposures. They also illustrate the interplay of FDIC resolutions, which protect insured depositors in a short timeframe, and federal bankruptcy proceedings, which address claims and operational uncertainty for nonbank affiliates or entities that do not qualify for administrative receivership. Larger institutions sometimes benefit from extraordinary measures under the banner of systemic risk, while smaller or regionally focused banks more often face outright liquidation and losses for uninsured depositors.

This dynamic has prompted renewed calls by some for an equitable approach to deposit coverage and a reevaluation of how capital rules, liquidity requirements, and lending oversight might better serve both consumer protection and market stability. At the same time, the crypto meltdown provides a stark reminder that the core mechanics of bank-like funding structures, if left unregulated, carry the same risk of a rapid "run" effect that can wreak havoc for millions of customers in a short span.

In addition to the traditional and emerging financial institution failures discussed above, broader shifts in lending markets are reshaping the landscape of credit provision. New forms of nonbank lending, merchant cash advances, private credit funds, and fintech-based financing structures are expanding rapidly outside the core regulatory perimeter. These developments introduce new risks and regulatory challenges that, while distinct from classic bank failures, share important parallels in terms of liquidity risk, consumer protection concerns, and potential systemic vulnerabilities. The next section explores these emerging trends and the regulatory issues they present.

V. Other Emerging Issues to Monitor

In addition to the challenges posed by distressed banks and crypto intermediaries, various fast-evolving lending markets and practices are reshaping access to credit and raising fresh concerns for regulators. Financial technology continues to democratize aspects of funding, yet new structures that facilitate borrowing outside of traditional chartered institutions introduce gaps in oversight and may increase systemic vulnerabilities. Nonbank lenders, for instance, have grown in both size and influence, often extending credit to underserved or higher-risk borrowers and filling niches vacated by banks retrenching under tighter capital rules. Merchant cash advance providers have proliferated as well, giving smaller businesses a flexible but often expensive source of working capital. Meanwhile, large private credit funds and other emerging platforms are transforming the competitive landscape for borrowers, as unregulated lending structures remain difficult for lawmakers to monitor or curtail. The following subsections explore these emerging areas of concern.

A. Nonbank Lending

In the wake of stricter post-crisis regulations on depository institutions, many traditional banks have reduced their involvement in certain riskier market segments, creating opportunities for nonbank lenders. These entities often fund their operations through warehouse lines of credit or other short-term arrangements, enabling them to originate higher-yield consumer and mortgage loans. Because nonbank lenders do not typically maintain customer deposits or face prudential requirements on capital or liquidity, they can operate with thinner margins but are also more prone to liquidity shortfalls when market conditions tighten.

The recent and rapid expansion of nonbank lenders in the residential mortgage sector, for instance, has raised worries about underwriting discipline and limited loss-absorbing capacity. The result is a credit environment that may expose both borrowers and counterparties to volatility if multiple nonbank firms simultaneously experience stress and are forced to exit the market. Regulators have begun grappling with whether existing consumer protection and licensing frameworks suffice for the risks posed by large, thinly capitalized actors heavily reliant on securitization or hedge-fund financing.

One emerging issue warranting further analysis is the legal basis for extending regulatory oversight to nonbank financial institutions. Although Title I of the Dodd-Frank Act empowers the FSOC to designate certain nonbank financial companies as systemically important and thereby subject them to enhanced prudential standards, this authority has been used sparingly and remains politically contested. Additional regulatory avenues could include statutory clarification of the term “financial company” under Title II or expanded rulemaking authority to cover novel intermediaries operating outside traditional banking frameworks. These legal mechanisms merit closer study, particularly in light of recent market instability emanating from such entities.

B. Merchant Cash Advance Financing

Merchant cash advances have emerged as an alternative to conventional small-business lending, allowing enterprises to receive upfront funds in return for a percentage of future revenue.[102] While this mechanism can be vital for merchants that lack collateral or strong credit scores, critics argue that the costs can be prohibitive, often translating to very high effective interest rates and frequent repayment terms that strain cash flows. Some small firms, lured by quick underwriting decisions, underestimate the financial burden of daily or weekly repayment from gross sales.

Because these agreements are structured as a purchase of receivables rather than a loan,[103] merchant cash advance providers typically face fewer regulatory requirements, creating a gray zone in which disclosures are inconsistent and enforcement can be patchy. Recent litigation in multiple states has addressed whether merchant cash advances must comply with usury laws or fall under separate commercial finance statutes.[104] Lawmakers continue to debate how best to protect vulnerable businesses without stifling innovative solutions that expedite small-batch financing for entrepreneurs who might not otherwise qualify for bank loans.

C. Private Credit Markets

Private credit funds, backed by institutional investors and wealthy individuals, have made considerable inroads into corporate lending and leveraged buyouts. These funds, sometimes referred to as "shadow banks," operate outside public capital markets and can move quickly to seize on opportunities that more heavily regulated lenders avoid. This influx of private capital has provided a lifeline to companies looking for rapid financing, occasionally on more flexible terms than a bank might offer.

Morgan Stanley estimates that the market grew from approximately $1 trillion in 2020 to $1.5 trillion by early 2024 and may reach $2.8 trillion by 2028.[105] This growth reflects investor demand for yield amid constrained bank lending, but also raises concerns about leverage, opacity, and systemic spillovers if defaults rise or underwriting standards deteriorate.

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[102] *See* Scott J. Bogucki, *How "Ordinary" Are Merchant Cash Advance Transactions?*, AM. BANKR. INST. J., December 2024, at 18. For additional background, see Kara J. Bruce, *Revenue-Based Finance in Bankruptcy and Beyond*, 45 No. 4 BANKR. L. LETTER 1 (April 2025); Kara J. Bruce, *The Murky Process of Characterizing Merchant Cash Advance Agreements*, 42 No. 4 BANKR. L. LETTER 1 (April 2022).

[103] The prototypical merchant cash advance arrangement is described in Haymount Urgent Care PC v. GoFund Advance, LLC, 609 F. Supp. 3d 237 (S.D.N.Y. 2022).

[104] *See, e.g.*, Colonial Funding Network, Inc. for TVT Cap., LLC v. Epazz, Inc., 252 F. Supp. 3d 274 (S.D.N.Y. 2017) (finding that a merchant cash advance transaction is not a loan within the meaning of New York's criminal usury law).

[105] Morgan Stanley, *Understanding Private Credit* (June 20, 2024), https://www.morganstanley.com/ideas/private-credit-outlook-considerations [https://perma.cc/Z66J-4RZ3].

There is concern that a prolonged economic downturn or a wave of defaults in private credit portfolios could send shockwaves through interconnected markets, especially if major private funds were to liquidate positions abruptly. Although some observers applaud the private credit sector's ability to serve niche borrower segments and diversify sources of capital, the absence of standardized reporting requirements makes it difficult to assess systemic risk or gauge whether underwriting practices are deteriorating as funds chase higher yields.

D. Other Emerging Unregulated Lending Markets

A host of alternative lending models continue to spring up, ranging from peer-to-peer platforms[106] and crypto-based lending protocols to buy-now-pay-later plans offered by e-commerce and point-of-sale providers. Common among these newer arrangements is a lack of traditional oversight, as they frequently take place online, involve international transactions, or rely on decentralized blockchains.

Without robust rules around capital reserves, loan underwriting, or consumer disclosures, these markets can balloon rapidly with minimal external checks. Enthusiasts suggest that technology-driven innovations expand access to credit and encourage competition, while critics note that the relative anonymity and fluid regulatory status of many such platforms heighten fraud and money-laundering risks.

Lawmakers and consumer advocates should continue to closely monitor these trends to determine whether new legislative or administrative steps might be needed, especially if these small but fast-growing markets start to affect broader financial stability.

VI. Conclusion

The evolving trajectory of bank failures, from early depositor runs during the Great Depression to today's complex landscape of mid-sized collapses and crypto insolvencies, underscores the persistent fragility of financial institutions. Although recent regulatory reforms such as the Dodd-Frank Act introduced critical mechanisms for addressing systemic financial distress, significant gaps remain. Lawmakers and regulators may wish to examine reforms to help ensure that the regulatory framework addresses contemporary financial stability risks.

First, lawmakers and regulators might consider whether to revise the deposit insurance framework to reduce incentives for runs and enhance systemic stability. For instance, Congress could consider increasing the deposit insurance limit or implementing a tiered insurance structure to protect vulnerable institutional depositors, particularly small and mid-sized businesses that lack effective deposit diversification strategies.

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[106] For an overview, see Sabeer Nelliparamban, *Beyond Traditional Banks: Lessons From Peer-To-Peer Lending*, FORBES (June 4, 2024), https://www.forbes.com/councils/forbesbusinesscouncil/2024/06/04/beyond-traditional-banks-lessons-from-peer-to-peer-lending/ [https://perma.cc/U5JY-J4FQ].

Second, liquidity standards could be updated to reflect the risk profiles of nonbank financial intermediaries, including mortgage lenders and crypto exchanges. Regulators could establish minimum liquidity and capitalization requirements explicitly tailored to these entities, reducing their susceptibility to liquidity crises and limiting contagion.

Third, safe harbor provisions under the Bankruptcy Code could be clarified and harmonized with resolution authority standards. Specifically, lawmakers could amend the Bankruptcy Code to establish a short, uniform stay on derivative contract termination rights for all financial institutions, regardless of systemic designation, thus aligning it more closely with the FDIC's receivership powers and preventing value destruction.

Additionally, clearer regulatory principles could be developed and applied consistently to fintech and private credit markets. One issue that warrants consideration is whether the FDIC's resolution authority should be expanded to more clearly encompass nonbank intermediaries engaged in crypto-based financial activity.

Finally, bankruptcy processes could be modernized to better accommodate the unique challenges posed by financial intermediaries. Bankruptcy courts could be provided (through legislation or regulations) with specialized procedures for the swift stabilization and resolution of distressed nonbank financial entities, including streamlined mechanisms for transferring consumer credit servicing obligations and managing borrower accounts without undue disruption.

No single statute or regulatory body can completely eliminate financial instability. However, by harmonizing administrative and judicial tools, updating regulatory standards to cover new market participants, and providing clear and equitable frameworks for resolving distressed institutions, lawmakers and regulators can significantly strengthen the resilience of the financial system.

Appendix A: List of Defined Terms Used in Report

Defined Acronyms and Abbreviations

AOUSC: Administrative Office of the United States Courts
BPI: Bank Policy Institute
BTFP: Bank Term Funding Program
CFPB: Consumer Financial Protection Bureau
CRA: Community Reinvestment Act
CRE: Commercial Real Estate
DIF: Deposit Insurance Fund
FDIA: Federal Deposit Insurance Act
FDIC: Federal Deposit Insurance Corporation
FHLB: Federal Home Loan Bank
FJC: Federal Judicial Center
FRB: Federal Reserve Board
FSOC: Financial Stability Oversight Council
FTA: Financial Technology Association
G-SIBs: Global Systemically Important Banks
ISDA: International Swaps and Derivatives Association
OCC: Office of the Comptroller of the Currency
OLA: Orderly Liquidating Authority
SIFIs: Systemically Important Financial Institutions
SPOE: Single Point of Entry

Other Defined Key Terms

Bankruptcy Code: Title 11 of the United States Code.
Basel III: an internationally agreed-upon set of measures for capital and liquidity standards in banking.
Basel IV: Basel III finalization.
Crypto: Cryptocurrency.
Dodd-Frank Act: Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.
Fintech: Financial technology.
Glass-Steagall Act: Banking Act of 1933.
Nonbank Intermediary: A financial entity that performs functions similar to those of a traditional bank—such as credit intermediation, payments, or asset custody—but does not hold a banking charter or accept federally insured deposits. Nonbank intermediaries include fintech lenders, mortgage servicers, payment platforms, crypto-asset exchanges,

and private credit funds. They typically fall outside the scope of prudential regulation by agencies such as the FDIC and OCC and may instead be subject to limited oversight by the CFPB or state-level regulators.

Resolution Authority: A legal and institutional framework that empowers designated public agencies—such as the FDIC under the FDIA or Title II of the Dodd-Frank Act—to resolve the failure of a financial institution in a manner that maintains financial stability, protects depositors or customers, and minimizes taxpayer exposure. Resolution authorities may use administrative tools (e.g., receivership, bridge banks, asset transfers) or judicial processes (e.g., bankruptcy) to wind down or restructure distressed firms, depending on the institution's charter, size, and systemic importance.

Stablecoin: A digital asset designed to maintain a stable value relative to a fiat currency, typically through reserve backing or algorithmic stabilization mechanisms. Regulatory and legal treatment varies depending on issuance structure, use cases, and integration with traditional financial systems.

Appendix B: First, Second, Third, Fourth, and Fifth Reports

The core contribution of the First Report was its systematic and thorough analysis of the key provisions of the Bankruptcy Code that likely would affect the reorganization or liquidation of a financial institution, with comparison to key OLA provisions. Relying on interviews with a range of stakeholders and case studies, the report explained the potential advantages and disadvantages of each resolution scheme in the context of large, complex financial institutions. It preliminarily concluded that the Bankruptcy Code generally functions well to address corporate distress, including that of bank holding companies and non-bank financial institutions.

The Second Report compared the relative efficiency and effectiveness of the claims resolution process under the Bankruptcy Code with that under the OLA. Notably, the OLA claims resolution procedure adopts certain aspects of the bankruptcy claims resolution procedure (e.g., requiring creditors to file proofs of claim and allowing the FDIC, as receiver, to object to claims). One critical OLA procedure, however, was contrary to the centralized claims resolution procedure fostered by the Bankruptcy Code (i.e., the ex post judicial review process whereby a creditor's claim is deemed rejected unless the FDIC allows the claim within the 180-day review period). The report suggested that the flexibility and concurrent court supervision inherent in the bankruptcy claims resolution procedure may allow that process to adapt more easily to the variety of distressed companies that require a claims resolution scheme.

The Third Report considered one of the Bankruptcy Code's provisions for the treatment of stakeholders' claims and interests under a plan of reorganization: the best interests test of section 1129(a)(7) of the Bankruptcy Code, which sets the minimum distribution that stakeholders are entitled to receive under a chapter 11 plan.[1] Certain provisions in the OLA, including a protection for creditors known as "minimum recovery," are similar to the best interests test. Specifically, the OLA requires that creditors receive at least as much in a resolution under OLA as they would otherwise receive in a hypothetical chapter 7 bankruptcy. The challenge in applying this provision compared to the best interests test is that unlike the similarity in priority and distribution schemes between chapter 11 and chapter 7, the OLA priority and distribution schemes do not align as well with the relevant provisions of the Bankruptcy Code.

The Fourth Report focused on section 363(b) of the Bankruptcy Code,[2] which permits a chapter 7 or chapter 11 debtor to sell all or substantially all of its assets outside of the ordinary course of business—i.e., as a going concern sale—after notice and hearing. It evaluated this provision and a proposal by the American Bankruptcy Institute Commission to Study the Reform of Chapter 11 to amend the Bankruptcy Code, as well as the going concern/restructuring models underlying the OLA and similar proposals submitted to

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[1] 11 U.S.C. § 1129(a)(7).
[2] *Id.* § 363(b).

Congress for incorporation into the Bankruptcy Code. Each of the sale-based models presents a potential opportunity to preserve value, but they also raise issues concerning, for example, due process, fair and equitable treatment of similarly situated creditors, and the impact of additional indebtedness incurred prior to a sale on value realization and allocation.

The Fifth Report focused on the unique restructuring needs of "nonbank lenders," which were defined to mean U.S. lenders that lack the traditional features of banks and operate outside of the traditional banking system. It explored the risks and benefits associated with increased nonbank lending activity, as well as certain legal and regulatory developments that have shaped nonbank lending in recent years. Additionally, the report analyzed existing approaches to managing nonbank lender failures, focusing on the use of the federal bankruptcy process to reorganize or liquidate firms. Examining three recent case studies, the report considered how the federal bankruptcy process was meeting the restructuring needs of failed nonbank lenders, their stakeholders, and the financial system. Finally, the report presented potential opportunities to enhance the efficiency and effectiveness of the Bankruptcy Code with respect to these unique financial company debtors.