3-13-2020

The Resolution and Restructuring of IndyMac Bank

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IndyMac

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March 13, 2020

Abstract

IndyMac Bank grew to be one of the largest mortgage lenders in the United States in the early 2000s, but its reliance on a risky growth strategy made it vulnerable to the housing crisis. After a $1.3 billion deposit run in July 2008 and concerns about probable failure, IndyMac Bank was closed by the Office of Thrift Supervision (OTS) and placed under Federal Deposit Insurance Corporation (FDIC) receivership. The FDIC established IndyMac Federal Bank, a temporary bridge bank, to assume the deposits and liabilities and continue to provide banking services. Under FDIC conservatorship, the uninsured depositors were able to access 50 percent of their insured deposits immediately. The FDIC developed a loan modification program for seriously delinquent IndyMac borrowers in order to prevent foreclosure and maximize returns, which the FDIC later shared with other lenders, and the program was a precursor to the Treasury's Home Affordable Mortgage Program. The FDIC managed a bidding process for IndyMac, and the winning bid of $13.65 billion came from a consortium of private equity investors which established a newly chartered thrift institution, OneWest Bank. The acquisition included $6.5 billion of deposits, $20.7 billion in assets and a $4.7 billion discount, as well as the requirement that the consortium inject $1.3 billion in cash into OneWest when it took over operations on March 19, 2009. In addition, the FDIC entered a shared-loss agreement with OneWest under which OneWest would recognize the first $2.5 billion in losses on an eligible portfolio of loans; the next portion up to $3.3 billion would be allocated 80 percent to the FDIC and 20 percent to OneWest with the FDIC recognizing 95 percent of the losses in excess of $3.3 billion. The IndyMac failure remains the most expensive bank failure in FDIC history, with an estimated cost of $12.3 billion to the Deposit Insurance Fund. As of the writing of this case, the FDIC is continuing to manage the receivership of IndyMac.

Keywords: Global Financial Crisis, conservatorship, deposit insurance, bridge bank, bank run

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IndyMac

At a Glance

IndyMac Bank grew rapidly in the early 2000s and became one of the nation's largest mortgage lenders. IndyMac focused on Alt-A mortgage lending and pursued a high-risk and aggressive growth strategy, making it vulnerable to the housing crisis in 2007. IndyMac's condition deteriorated, and after a $1.3 billion deposit run in July 2008, it was closed by the Office of Thrift Supervision (OTS) on July 11, 2008 and placed under FDIC receivership. The FDIC, under its resolution authority, established IndyMac Federal Bank, for which it would operate under conservatorship, to open on July 14, 2008. IndyMac Federal assumed most of the deposits and assets of IndyMac Bank and continued to provide banking services. At the time of failure, the deposit insurance limit was $100,000. Uninsured depositors were able to access 50 percent of their uninsured deposits immediately, based the FDIC's estimated recovery. The FDIC implemented a loan modification program for delinquent borrowers at IndyMac Federal.

Summary of Key Terms	
Purpose: IndyMac Bank, a failing thrift, was closed by the OTS, and the FDIC established IndyMac Federal for which it was conservator before ultimately selling the deposits and most assets to OneWest	
Key Dates	*Closed*: July 11, 2008 *Bridge Bank Operational*: July 14, 2008 *Acquisition Announced*: December 31, 2008 *Sale Effective*: March 19, 2009
Regulatory Authority	Primary: OTS Secondary: FDIC
Resolution Authority	FDIC
Assets at Failure	~$28-32 billion
Deposits at Failure	~$18-19billion
Loss on Resolution	Estimated ~$12.3 billion loss to Deposit Insurance Fund
Acquisition Cost	OneWest purchased IndyMac for $13.65 billion
Notable features	Bank run leading up to failure; sale of IndyMac included loss-sharing arrangement between OneWest and FDIC

On March 19, 2009, the FDIC entered into a purchase and assumption agreement with IMB HoldCo, the holding company of OneWest Bank, a newly chartered thrift. The FDIC sought a buyer through competitive bidding, with a winning bid of $13.65 billion for IndyMac Federal. The sale included all deposits, $6.5 billion, and $20.7 billion in assets and a $4.7 billion discount. IMB HoldCo capitalized OneWest with $1.3 billion in cash. The sale included a shared-loss agreement on a portfolio of eligible loans. The SLA expired in 2019, and the FDIC is continuing to manage the receivership for IndyMac.

Summary Evaluation

The IndyMac failure remains the most expensive failure in FDIC history, with an estimated loss to the Deposit Insurance Fund of $12.4 billion. The timing of the closure led to customer confusion, and the media coverage has been criticized heavily by the FDIC. The OTS's supervision of IndyMac has also been criticized, and an investigation into the OTS by the OIG concluded that the OTS allowed IndyMac to backdate a capital contribution to maintain its status as "well-capitalized" in 2008. The shared-loss agreement with OneWest has received attention, as have OneWest's foreclosure practices.

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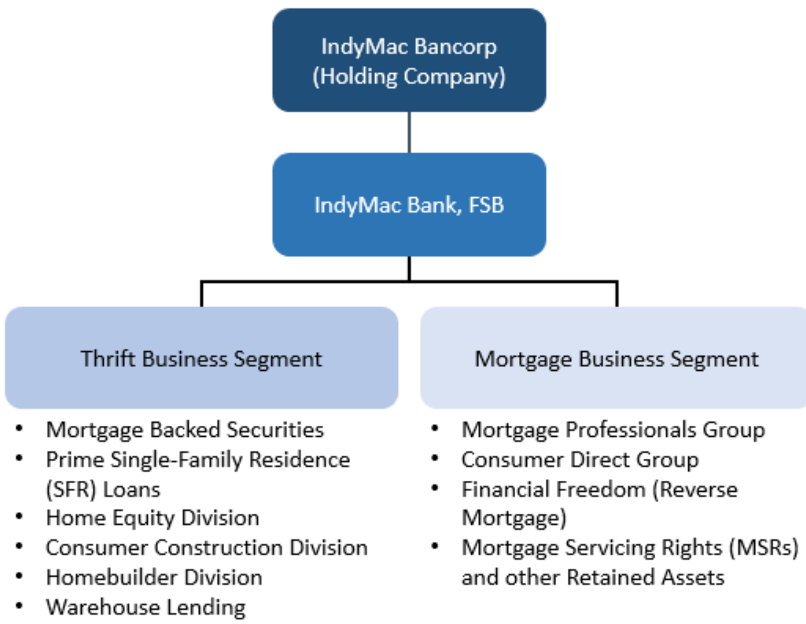
I. Overview

Background

Independent National Mortgage Corporation Bank, FSB (IndyMac Bank) was one of the largest mortgage lenders in the U.S. in 2007 (2007 IM 10K, pp3). Its holding company, IndyMac Bancorp (Holding Company), was established as a passive real estate investment trust (REIT) in 1985 but transitioned to mortgage lending in 1993 (2007 IM 10K, pp3). The Holding Company acquired First Federal Savings and Loan of San Gabriel Valley and began operations of IndyMac Bank, a savings and loan bank, on July 1, 2000 with $5.1 billion in total assets (OTS Factsheet; 2007 IM 10K, pp3). In 2004, IndyMac entered the reverse mortgage industry after acquiring Financial Freedom Holdings (2007 IM 10K, pp3).

Figure 1: IndyMac Bancorp Structure



Source: Created by YPFS from 2007 IM 10K

IndyMac Bank pursued an aggressive growth strategy in the early 2000s, growing from $13 billion in total assets in June 2005 to $31 billion in total assets by June 2007 (OIG-09-032, pp7). Between 2003 and 2006, IndyMac tripled its value of mortgage loans originated, generating $90 billion in new mortgages in 2006 alone (OIG-09-032, pp7). IndyMac's share of the national mortgage market grew from 1.00 percent at the end of 2003 to 3.3 percent in 2007 (2004 IM AR, pp33; 2007 IM AR, pp28).

Despite describing its business model as one that provided a "strong framework and the flexibility to operate efficiently in varying interest-rate environments," IndyMac was vulnerable to the downturn in the US housing market (2007 IM 10K, pp4). IndyMac specialized in Alt-A mortgages, which typically do not require income verification or documentation (OIG-09-032, pp2, pp47). IndyMac had flexible underwriting standards and accepted appraisals that were not in conformance with Uniform Standard of Professional Appraisal practice (OIG-09-032, pp12). IndyMac's aggressive growth and higher-risk business strategy made it susceptible to the downturn in the housing market stemming from the subprime mortgage crisis (OIG-09-032, pp3).

In March 2007, the subprime crisis began flowing into the Alt-A market, and by April 2007, lenders discovered that they could not sell Alt-A mortgages at a premium to cover origination and had to sell at par or below (Moran-Bates, pp518). In 2007, IndyMac reported that an "unprecedented disruption" in the US housing market led it to eliminate or suspend certain products such as high combined loan to value (CLTV) closed-end liens, home-equity lines of credit (HELOCs), consumer and construction loans, and other nonconforming loan products (2007 IM 10K, pp19). IndyMac announced that it would be focusing on originating a majority of conforming mortgage loans[2], as it was the only seemingly reliable secondary market that remained (2007 IM 10K, pp5).

IndyMac was unable to sell or securitize its loan production for a part of 2007, leading to $10.7 billion in loans that it intended to sell being held in its maturity account (OIG-09-032, pp9). IndyMac recorded a $474 million adjustment in the fourth quarter of 2007 to cover estimated future losses associated with the loans (OIG-09-032, pp41). IndyMac's 2007 financial condition was deteriorating, as it reported a consolidated net loss of $614.8 million in 2007 (2007 IM 10K, pp19).[3] In its 2007 Annual Report, IndyMac stated that "2007 was a terrible year for [its] industry, for IndyMac" and for shareholders (2007 IM AR).

IndyMac's decline continued in 2008. On January 15, 2008, IndyMac announced that it would cut 24 percent of its workforce, the equivalent of 2,403 jobs (Moran-Bates, pp530). On January 23, 2008, IndyMac requested that Moody's withdraw its ratings; according to IndyMac management, it had never relied on corporate debt markets for funding (Moran-Bates, pp530). In the first quarter of 2008, IndyMac booked a net loss of $184 million (2008 Q1 Earnings Presentation, pp3).

It was later discovered that IndyMac's primary regulator, the Office of Thrift Supervision (OTS), was involved in discussions with IndyMac's management, allowing them to backdate capital received in May 2008 from its holding company, in order to keep IndyMac Ban's capital adequacy ratio at "well-capitalized" in the first quarter 10-Q filing (OIG Report 05-21-2009, pp14). By recording the capital as if it was received in the first quarter, IndyMac maintained a capital ratio above the 10 percent "well-capitalized" requirement (OIG Report 05-21-2009, pp14). If IndyMac's capital ratio had fallen below the threshold, it would have

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[2] Conforming loans are those which can be sold to the Government Sponsored Enterprises (Fannie Mae or Freddie Mac).

[3] The mortgage production line had a net loss of $96.8 million, mortgage servicing a net profit of $181.4 million, mortgage banking a net profit of $33.0 million, thrift a net loss of $199.2 million, and discontinued activities a net loss of $281.1 million.

been subject to potential restrictions from the OTS and Federal Deposit Insurance Corporation (FDIC), including the inability to accept brokered deposits[4] without a waiver, increased borrowing costs from the Federal Home Loan Bank (FHLB), higher insurance premiums from the FDIC, and higher payments to the OTS. IndyMac continued to receive high composite CAMELS ratings[5] from the OTS (2008 Q1 IM 10-Q, pp32). The OTS had not identified IndyMac on its problem thrift list as of June 2008 (OIG-09-032, pp34).

The FDIC also had regulatory authority over IndyMac (OIG Report 08-2009). It performed analyses of IndyMac and determined that IndyMac faced a liquidity shortage in March 2008 (OIG-09-032, pp13). The FDIC later "identified the need for an investment of $2 to $3.5 billion to prevent IndyMac from failing" and additional analysis showed that IndyMac was at a high risk of being downgraded to less than well capitalized (OIG-09-032, pp13).

On June 27, 2008, a letter raising concerns about IndyMac, written by Charles Schumer, a Democratic senator from New York, was publicized by the Wall Street Journal (WSJ 06-27-2008). The letter, dated June 26, 2008, was addressed to the FDIC, FHLB, and OTS and raised concerns about IndyMac's financial condition (Schumer Letter). Schumer stated that "IndyMac's financial deterioration pose[d] significant risks to both taxpayers and borrowers" and that "the regulatory community may not be prepared to take measures that would help prevent the collapse or minimize the damage should such a failure occur" (Schumer Letter).

In the eleven days following the publicization of the letter, IndyMac experienced a $1.3 billion deposit run (OTS Factsheet). IndyMac announced plans to decrease its workforce from 7,200 to 3,400 and close its wholesale and retail new loan divisions (OTS Factsheet). IndyMac's stock price plummeted to $0.28 by July 11, 2008 (Bovenzi, pp5).

Program Description

On July 11, 2008, the OTS revoked IndyMac's charter and closed the bank (OTS PR 08-029). The OTS, as IndyMac's primary regulator, had the authority to issue and revoke IndyMac's banking charter (2003 Resolution Handbook, pp6). The OTS stated that IndyMac had "insufficient liquidity to meet its obligations, and no viable alternatives to return to profitability and restore capital adequacy" and thus was in an "unsafe and unsound condition to transact business." (OTS Factsheet). IndyMac was closed at 3 p.m. Pacific Time, the equivalent of 6 p.m. Eastern Time, in order to give notice to IndyMac employees at other branches in other time zones (Bovenzi, pp9). However, this meant that IndyMac closed

[4] Brokered deposits are funds deposited by brokers for third parties which receive higher interest rates.

[5] CAMELS is a rating system to monitor the health of a bank. The six components of CAMELS are Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk. Each component is assigned a value from one to five, with one being strong and 5 being critically deficient. Each bank is assigned a composite rating, which weights certain components higher than others. https://www.stlouisfed.org/on-the-economy/2018/july/abcs-camels

earlier than its traditional business hours, which meant that some customers at the California locations were unable to complete their banking before the regular closing time (Bovenzi, pp9).

The FDIC, after being appointed receiver of IndyMac, established a newly chartered institution, IndyMac Federal, for which it was the conservator and planned to open the new institution on Monday, July 14, 2008 (PR-56-2008). The FDIC did not have the authority to establish a bridge bank for a thrift institution at the time of IndyMac's failure (2003 Resolution Handbook, pp35). Thus, for IndyMac, the FDIC used its authority as a conservator for the newly established institution, which is essentially the same as a bridge bank resolution.[6] At the time of its closure, IndyMac Bank had approximately $32.01 billion in total assets and total deposits of $19.06 billion (PR-56-2008).

The FDIC began preparing to reopen the bank on July 14, 2008 (Bovenzi, pp9). According to the FDIC's resolution processes, upon the receipt of a failing bank letter from an institution's chartering authority, it began its formal involvement in resolution activities which included contacting the chief executive officer, addressing management's involvement, and collecting loan data and other information (2003 Resolution Handbook, pp6-7). After failure, the FDIC took custody of the failed institution's premises and records (2003 Resolution Handbook, pp71). The FDIC then informed the public of the institution's closing, and FDIC closing staff worked to bring the general ledger to balance as of the closing date (2003 Resolution Handbook, pp71). An FDIC team operated onsite to gather information, analyze the bank's condition, value assets, determine resolution options, prepare information for bidders, and plan for closing (2003 Resolution Handbook, pp81). In the case of IndyMac, the resolution team from the FDIC had to determine the amount of insured deposits and the amount of uninsured deposits (Bovenzi, pp9). The resolution team had to examine qualified financial contracts (QFCs) to determine which should remain in place and which should be cancelled (Bovenzi, pp10). QFCs include contracts for transactions scheduled at future dates, such as credit default swaps, interest rate swaps, and currency swaps (Bovenzi, pp10). According to John Bovenzi, the COO of the FDIC who became the CEO of the bridge bank, IndyMac had relatively few QFCs, and the FDIC was able to identify and address the contracts before opening the bridge bank (Bovenzi, pp10).

On the morning of July 14, 2008, IndyMac Federal, FSB, opened under FDIC control, "offering virtually all services that had been provided by IndyMac Bank prior to the thrift's closure three days before" (Carpenter, pp4). When IndyMac Federal opened, Bovenzi stated that it would be "business as usual" (LAT 07-14-2008). The FDIC transferred insured deposits and "substantially all of the assets" of IndyMac to IndyMac Federal, though brokered deposits were held by the FDIC receivership (PR-56-2008). According to the OTS, IndyMac had $5.97 billion in brokered deposits as of June 30, 2008 (OTS Factsheet). Insured depositors were able to access or withdraw their FDIC-insured deposits; the deposit insurance coverage limit at the time of IndyMac's failure was $100,000 (FDIC Failed Bank Information FAQ). The FDIC

[6] The legislation has since been updated to allow the FDIC to bridge a thrift institution. Additionally, the conservatorship approach taken for IndyMac is cited by many as a "bridge bank" resolution method, as it is essentially the same.

stated that checks were to be processed as usual, and that customers would be able to continue to access normal banking services (PR-56-2008). Loan customers were expected to continue to make regular payments, as loan terms would not be impacted (PR-56-2008). However, IndyMac had many depositors with potentially uninsured deposits, and these depositors did have immediate access to all their funds (PR-56-2008). Many depositors were later found to be fully insured, though the FDIC lacked full information regarding the insurance status at the time of closing (FDIC Crisis, pp197 FN 48). Individuals with uninsured deposits were able to access 50 percent of their uninsured deposits based on the FDIC's preliminary assessment of the expected returns from winding down IndyMac (FDIC Failed Bank Information). IndyMac had a large volume of deposit accounts, brokered deposits, and trust accounts, all of which were governed by different deposit insurance provisions (FDIC Crisis, pp197 FN 48). IRAs, which were insured separately from other types of accounts, were insured up to $250,000 (FDIC Failed Bank Information).

Panic surrounding the bank closure persisted on July 14, and the constant media coverage continued when the bank reopened (Bovenzi, pp13). The FDIC implemented a numbering system to manage the line and customer wait times in order to establish order (Bovenzi, pp14). The long lines and chaos surrounding the physical branch locations calmed, but in the following days, customers continued to withdraw deposits (Bovenzi, pp16). A total of $3 billion was withdrawn in the two weeks following the closure (FDIC Crisis, pp197). Some IndyMac customers complained that other banks placed excessively long holds on their checks or did not accept their checks (Bovenzi, pp16). John Bovenzi called several bank CEOs in order to stymie the practice, and the FDIC issued a notice to all banks which required banks to accept the IndyMac checks (Bovenzi, pp17). The FDIC established a private hotline for other banks to call if they had concerns about IndyMac customer's personal checks (Bovenzi, pp17). The FDIC also created a website, "Am I Insured?" for depositors, which allowed IndyMac customers to check the insurance status of their accounts and provided them with contact information to determine additional information about their coverage (2008 FDIC AR, pp51).

In August 2008, the FDIC announced a loan modification program for IndyMac borrowers, which was designed to take a systematic approach to modifying mortgages near foreclosure and maximize the recovery of the portfolio of mortgage loans (Bair 08-20-2008). Borrowers who were seriously delinquent or in default on their mortgages for primary residences were eligible for the program (FDIC IM Loan Mod). The program modified eligible mortgages to achieve sustainable payments at a 38 percent debt-to-income ratio of principal, interest, taxes, and insurance (FDIC IM Loan Mod). Modifications included interest rate reductions, extended amortization and principal forbearance (FDIC IM Loan Mod). IndyMac Federal began sending proposals to borrowers after the program was announced, with 4,000 proposals sent in the first week (Bair 08-20-2008).Loan modification offers were only sent to borrowers where the modification would achieve an improved value for IndyMac Federal (FDIC IM Loan Mod).

The FDIC planned to sell IndyMac Federal as soon as possible. However, in the immediate aftermath of the failure, the FDIC called the institution "unattractive" due to its high-risk lending and mortgage losses (BN 2008-07-22). Sheila Bair, the FDIC Chairman, stated that the FDIC was looking for a buyer "as soon as possible," ideally within three months, with the goal to "get this bank back into the private sector as soon as possible" (BN 2008-07-22). The process of searching for a buyer for a failed institution is called franchise marketing, which includes the process of packaging, marketing and selling the operating units of an insured depository institution (FDIC Crisis, pp177). On October 6, 2008, the FDIC received twenty-three indicative bids from a variety of financial institution and private equity bidders (FDIC Bid Summary). Bidders could place bids for all eight groups of assets or liabilities or a mix of groups (i.e. the deposit franchise, loan servicing assets, reverse mortgage group, etc.) (FDIC Bid Summary). After reviewing the first round of bidding, the FDIC invited a subset of the highest bidders to conduct additional due diligence and bid in the second round (WSJ 01-19-2017). The FDIC received six bids in the final round of bidding, which occurred on December 15, 2008 (FDIC Bid Summary).

The winning bid of $13.65 billion was from a consortium of private equity investors (FDIC Bid Summary).[7] The bid was "unanimously accepted by the FDIC's five-member board" (WSJ 01-19-2017). It was estimated that the second-place bid, or "cover bid", would have increased the FDIC's losses by approximately $1 billion (WSJ 01-19-2017). The private equity consortium established IMB HoldCo LLC, which would be the holding company of the bank that assumed IndyMac's assets, liabilities and operations (PR-01-2009 Factsheet).[8] On December 31, 2008, the FDIC signed a letter of intent to sell IndyMac, and the Deputy Director of the FDIC, James Wigand, stated in a press release that the "agreement achieves the goals that were set out by the Chairman and the Board when the FDIC was named conservator of IndyMac in July" (PR-01-2009). Barclays Capital and Deutsche Bank Securities served as financial advisors to the FDIC for the deal (PR-01-2009 Factsheet). Lehman Brothers was initially an advisor to the FDIC, but it was acquired by Barclays in September 2008 after failing (PR-01-2009 Factsheet).

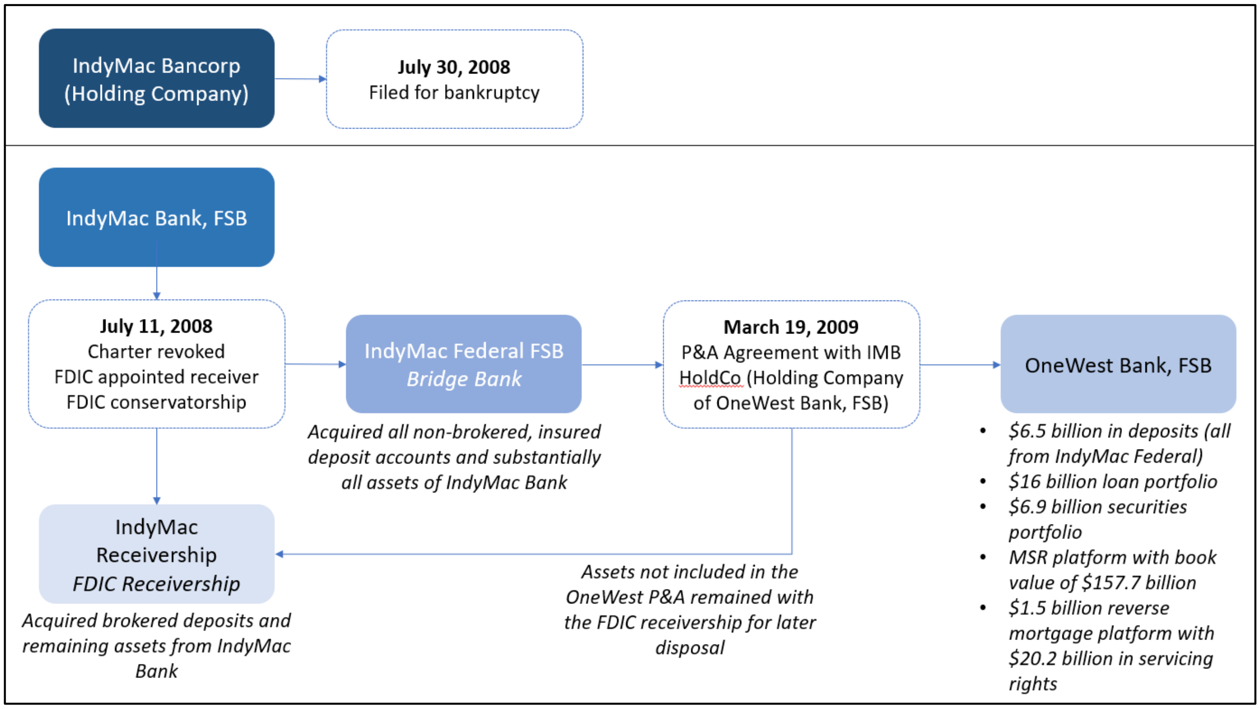
On March 19, 2009, all deposits of IndyMac Federal were transferred to OneWest Bank, FSB, which was the thrift bank established under IMB HoldCo LLC (PR-42-2009). Steve Mnuchin served as the chairman and CEO of IMB HoldCo (PR-01-2009 Factsheet). OneWest acquired approximately $6.5 billion in deposits, 33 retail locations, a $16 billion loan portfolio, a $6.9 billion securities portfolio, a mortgage servicing rights (MSR) platform with an unpaid principal balance of $157.7 billion, and the reverse mortgage platform, Financial Freedom, with $1.5 billion in reverse mortgages and MSRs with an unpaid principal balance of $20.2 billion (PR-01-2009 Factsheet). The acquisition also included the Federal Home Loan Bank Advances and amounts owed to the FDIC (PR-02-12-2010 Factsheet). Overall, OneWest acquired all deposits and approximately $20.7 billion in assets at a discount of $4.7 billion from IndyMac Federal, while the FDIC retained the remaining assets for later disposal (PR-

[7] The FDIC states that it gives preference to existing banks for the bidding and acquisition of failed financial institutions, but the state of the market at the time was such that the offer from the private equity consortium was the least-cost transaction for the Deposit Insurance Fund.

[8] In order to bid on an institution during the FDIC's auction process, an institution was required to have an existing charter. However, the OCC announced the availability of a shelf-charter in Q4 2008 which allowed prospective investors to bid while their charter application was pending (FDIC Crisis, pp198).

42-2009). One condition of the sale was the requirement that IMB HoldCo capitalize OneWest with $1.3 billion in cash (PR-01-2009 Factsheet). The sale also included a provision in which the FDIC received the majority of the cash flows from a $2 billion portfolio of construction and other loans (PR-01-2009 Factsheet).

Figure 2: IndyMac Resolution



Source: Created by YPFS from FDIC Press Releases (PR-56-2008, PR-42-2009, PR-01-2009 Factsheet)

As part of the transaction, the FDIC entered a shared loss agreement (SLA) with OneWest (PR-01-2009 Factsheet). SLAs were first introduced in 1991, and the primary purpose of an SLA is to "minimize resolution costs by keeping the assets in the private sector after bank failure, restructuring private loans and assets, and minimizing the FDIC's operating costs and liquidation needs" (FDIC SLA FAQ).

The loss-share arrangement required OneWest to bear the first 20 percent of the losses on a $13 billion portfolio of eligible loans, up to $2.551 billion, after which the FDIC would begin reimbursing for losses (2008 FDIC AR, pp89; 2015 CIT 10-K, pp149). The next 10 percent of the losses (between $2.551 billion and $3.826 billion) would be distributed 80 percent to the FDIC and 20 percent to OneWest; losses in excess of the stated threshold of $3.826 billion would be distributed at a ratio of 95 percent to the FDIC and 5 percent to OneWest (2015 CIT 10-K, pp149). Approximately 7 percent of the single-family loans and reverse mortgages OneWest acquired were covered under the FDIC's loss-share arrangement and bound by the loan-modification program (PR-02-12-2010 Factsheet). In order for OneWest to be eligible for reimbursement, it was required to continue the loan modification program or comply with the Treasury's Home Affordable Mortgage Program (HAMP) (PR-02-12-2010 Factsheet).

Because the FDIC offered representations and warranties on loans from the conservatorship as a part of the purchase and assumption transaction, it indemnified OneWest on future losses related to third party claims on a portfolio of eligible loans (2008 FDIC AR, pp89). For example, if representations made related to loans sold to the Agencies (i.e. Fannie Mae, Freddie Mac) resulted in claims, the FDIC agreed to reimburse OneWest (2015 CIT 10-K, pp149). The total amount of loans sold subject to the indemnification agreement was $3.2 billion (2008 FDIC AR, pp89).

Outcomes

At the time of IndyMac's failure in July 2008, the estimated loss to the Deposit Insurance Fund (DIF) ranged from $4 billion and $8 billion (PR-56-2008). By August 2008, the estimated loss increased to $8.9 billion (2008 Q3 CFO Report, pp1). Through the end of 2008, the DIF paid $5.8 billion to fund the obligations to insured depositors of IndyMac and $9.4 billion to the conservatorship to fund operations under a $12 billion line of credit (AR 2008, pp89). By the end of 2008, the total estimated loss increased to $10.7 billion (AR 2008, pp89). The estimated loss on IndyMac's failure is approximately $12.3 billion, which as of the writing of this case, is the most expensive resolution in FDIC history (AR 2018, pp172). One factor contributing to the costly resolution was IndyMac's reliance on Federal Home Loan Bank (FHLB) lending (Bair, pp85). As of June 30, 2008, IndyMac had $10.1 billion in Federal Home Loan Bank advances (OTS Factsheet). The FHLB lends on a secured basis and requires lending to be backed by quality collateral (Bair, pp85). When IndyMac failed, the FDIC had to turn over higher quality collateral to the FHLB and could not sell the assets to recoup losses. Thus, the cost to resolve a bank that relies heavily on FHLB lending is "typically quite high." (Bair, pp85).

On November 12, 2009, the FDIC Board of Directors determined that the IndyMac receivership had insufficient assets to make any distribution on general unsecured claims, and that "such claims will recover nothing and have no value" (FDIC No Value Notice). According to the Federal Deposit Insurance Act (FDI Act), administrative expenses and deposit liabilities must be paid in full before any distribution can be paid to general unsecured creditors or those with lower priority claims, such as subordinated debt and equity (FDIC No Value Notice).

The FDIC continues to manage the IndyMac Federal FSB receivership at the time of the writing of this case (FDIC Balance Sheet Summary). The FDIC "seeks to terminate receiverships in an orderly and expeditious manner" and will terminate a receivership after resolving claims and obligations and disposing of remaining assets. As of December 31, 2019, the IndyMac Federal FSB receivership balance sheet had total assets of $89 million, with $35 million of assets in liquidation and an estimated loss of $10.25 million on those assets (FDIC Balance Sheet Summary). The receivership had $12.2 billion in total liabilities, with the majority of total liabilities comprised of FDIC Subrogated Claims of nearly $12.1 billion[9] (FDIC Balance Sheet Summary). The receivership has negative net worth of $12.1 billion (FDIC Balance Sheet Summary). Of the $17.5 billion in proven deposit claims, the FDIC paid out $5.3 billion, or 30 percent to date (FDIC Balance Sheet Summary). The balance sheet also includes $25 million in unpaid general creditor claims (FDIC Balance Sheet Summary).[10]

The FDIC's loan modification program at IndyMac set a precedent for the FDIC's guidance on loan modification to other lenders (2008 FDIC AR, pp6). The FDIC released guidance, the "Mod-in-a-Box", for other mortgage lenders to adopt (2008 FDIC AR, pp6). The Treasury later announced the Home Affordable Mortgage Program (HAMP), which similarly sought to assist delinquent borrowers and return loans to performing (Treasury PR 03-04-2009). At the time of the OneWest acquisition, the FDIC mailed 32,000 offers to customers of the total 46,500 determined to be eligible (PR-01-2009 Factsheet). 8,500 modifications were complete with approximately 9,500 in progress (PR-01-2009 Factsheet). As of January 2009, the estimated savings totaled $423 million based on a comparison of the projected net present value of the modified loans to the net present value of foreclosure (PR-01-2009). The average reduction in the monthly mortgage payments for the borrowers in the program was $480 (2008 AR, pp6). As a part of the acquisition, OneWest was required to continue the loan modification program, and in a 2011 audit by the FDIC Office of Inspector General (FDIC OIG), it reported that OneWest followed the loan modification requirements "more than 98 percent of the time" (FDIC OIG 07-2011, pp2).

OneWest was acquired by CIT Group in 2015, and the SLA related to the IndyMac acquisition transferred to CIT Group (2015 CIT 10K, pp149). OneWest and CIT Group accounted for the SLAs and indemnification agreements as indemnification assets and recognized them at the estimated fair value at the date of acquisition using the discounted present value of the expected future cash flows of the agreement (2018 CIT AR, pp103). In CIT Group's 2015 10-K report, it stated that "the cumulative losses of the SFR portfolio exceeded the first loss tranche ($2.551 billion) effective December 2011 with excess losses reimbursed 80% by the FDIC" (2015 CIT 10K, pp149). In its 2017 10-K, CIT Group stated that it projected that the losses would exceed the $3.826 billion threshold, after which the FDIC would begin to bear 95% of remaining losses (2017 CIT 10K, pp133). CIT Group reported that as of December 31, 2017, the cumulative reimbursement from the FDIC (since the inception of the SLA) was $939.9 million (2017 CIT 10K, pp133). The SLA with OneWest for the SFR portfolio of loans expired on March 19, 2019 (2019 CIT 10K, pp153; 2008 FDIC AR, pp89).

The FDIC reimbursed OneWest, and later CIT Group, following the terms of the indemnification agreement (2017 CIT 10K, pp133). According to CIT Group's 2017 10-K filing, the FDIC had reimbursed claims totaling $4.7 million related to reverse mortgages, $5.7 million related to Agency claims on SFR loans, and $10.7 million related to Agency claims on reverse mortgages as of December 31, 2017.

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[9] In the case of subrogated claims, the FDIC becomes the claimant against the receivership, acting in place of the insured depositors. The FDIC reimburses the depositors up to the level of the insured deposits.

[10] For more information, see the Receivership Balance Sheet Summary.

IndyMac Bancorp, Inc., IndyMac Bank's holding company, filed a petition for Chapter 7 bankruptcy liquidation on July 31, 2008 (BW-08-01-2008). The holding company's bankruptcy filing had no impact on the operations of IndyMac Federal or the FDIC's conservatorship (BW-08-01-2008).

Following IndyMac's failure, multiple stakeholders filed lawsuits against IndyMac executives. Shareholders sued Michael Perry, the former CEO, and Scott Keys, the former CFO, in June 2008 over allegations that they had misled investors about the deteriorating financial condition (WSJ 07-08-2012). A $6.5 million settlement was paid to the shareholders which came from the director's and officer's liability insurance (WSJ 07-08-2012). A lawsuit was filed against the auditors, which was dismissed as the investors failed to prove that the accounting firm had knowledge of wrongdoing (WSJ 07-08-2012). The SEC filed claims against Perry and Keys as well. The SEC case against Keys was dismissed in 2012, and Perry and the SEC settled in September 2012 (SEC Litigation No. 22614; SEC Litigation No. 22502). The SEC's complaint alleged that Perry, in connection with IndyMac's financial statements and earnings call in the first quarter of 2008 failed to disclose that "IndyMac Bank had only been able to maintain its well-capitalized regulatory status by retroactively including in IndyMac's first quarter capital balance an $18 million capital contribution" from the holding company which was actually received in May 2008 (SEC Litigation No. 22502). Perry neither admitted to nor denied the allegations but settled with the SEC for $80,000 (SEC Litigation No. 22502). The FDIC also pursued legal action against Perry and other executives. The FDIC sued Perry for $600 million and alleged that Perry negligently allowed $10 billion in risky mortgages to accrue on IndyMac's books (BN 12-14-2012). Perry and the FDIC settled the case, with the FDIC to recover $1 million in personal assets from Perry, collect $11 million director's and officer's insurance money, and bar Perry from the banking industry permanently (BN 12-14-2012). In another lawsuit, the FDIC pursued charges against three former executives on allegations of negligence in approving 23 loans that developers never repaid, which cost the bank $170 million (BN 12-14-2012). A federal jury in Los Angeles found that the executives were liable for $169 million in damages to the FDIC (LAT 12-8-2012).

II. Key Design Decisions

1. **Part of a package: IndyMac's resolution was one of many undertaken by the FDIC during the GFC.**

IndyMac's failure was one of many during the GFC, as nearly 500 banks failed in the United States between 2008 and 2013, at an estimated cost of $73 billion to the Deposit Insurance Fund (FDIC Crisis, ppxiii). The FDIC utilized its resolution and restructuring authority for the failed institutions, with 304 cases of loss-share P&A resolutions, 26 cases of payout or the establishment of a Deposit Insurance National Bank (DINB), 78 cases of whole bank P&A transactions, and 80 other P&A resolutions (FDIC Crisis, pp200).

In addition to the resolution activities for individual failed banks, the Emergency Economic Stabilization Act expanded deposit insurance coverage from the initial $100,000 limit to

$250,000 in October 2008 (FDIC Crisis, pp52 FN42). This was initially only a temporary measure, but it became the permanent deposit insurance coverage as a part of Dodd-Frank in 2010 (FDIC Crisis, pp52 FN42). Congress applied the limit retroactively to IndyMac depositors as well (Bovenzi, pp18).

The FDIC launched the Temporary Liquidity Guarantee Program (TLGP) in October 2008 (FDIC TLGP). The TLGP had two components: the Transaction Account Guarantee Program (TAGP) and the Debt Guarantee Program (DGP) (FDIC TLGP). The TAGP guaranteed all domestic noninterest-bearing transaction deposit accounts in full and was extended to December 31, 2010 (FDIC TLGP). The FDIC guaranteed senior unsecured debt issued by participating institutions under the DGP between October 14, 2008 and October 31, 2009 (FDIC TLGP). Eligible institutions were automatically enrolled in the program but could opt out. Though OneWest was eligible for the DGP, it opted out of the program (Debt Guarantee Program Opt-Out)

The IndyMac loan modification program served as a template for the FDIC's "Mod-in-a-Box" loan modification program (PR-121-2008). The Treasury Department later implemented the Home Affordable Mortgage Program (HAMP), another loan modification program for at-risk or delinquent borrowers (Treasury PR 03-04-2009).

2. **Regulatory authority and/or resolution authority: The OTS revoked IndyMac's charter and appointed the FDIC as the receiver for resolution.**

The Office of Thrift Supervision (OTS) was IndyMac Bank's primary financial regulator, prior to its closure (FDIC Crisis, pp117). The OTS was responsible for issuing and revoking IndyMac's charter (2003 Resolution Handbook, pp6). It completed onsite examinations of IndyMac and issued IndyMac's CAMELS rating (OIG-09-032, pp14). The FDIC also had supervisory and regulatory authority over IndyMac, as IndyMac had insured deposits under the Deposit Insurance Fund (2003 Resolution Handbook, pp1).

Resolution authority falls under the purview of the FDIC with respect to failed banks and thrift institutions (2003 Resolution Handbook, pp2). The FDIC is appointed the receiver for a failed bank or thrift by the chartering authority and can then begin its role as the receiver or liquidating agent (2003 Resolution Handbook, pp6). In the case of IndyMac, the OTS revoked the thrift's charter and appointed the FDIC as the receiver, after which the FDIC could begin resolution and receivership activities (FDIC Crisis, pp177; OTS 02-029).

3. **Resolution Mandate: The FDIC has a statutory mandate to use the least-cost resolution method.**

In its role as receiver or liquidating agent for a failed federally insured depository institution, the FDIC has a mandate to implement the least costly resolution for the deposit insurance fund (2003 Resolution Handbook, pp13). This mandate to use the least cost resolution method is set forth in 12 U.S.C. 1823(c)(4) (12 U.S.C. 1823).

4. Resolution Method: After being appointed receiver of IndyMac, the FDIC established a bridge bank to continue normal business until a purchase and assumption transaction could be completed.

The FDIC had three resolution methods available at the time of IndyMac's failure: purchase and assumption, deposit payoff, or open bank assistance (2003 Resolution Handbook, pp5). Purchase and assumption transactions (P&A) are used for closed institutions, where the failed bank or thrift's assets and liabilities are acquired by a healthy institution (2003 Resolution Handbook, pp5). The transaction would include all insured deposits, and some or all of the assets and liabilities (2003 Resolution Handbook, pp13). A deposit payoff would occur after a charter is revoked and the FDIC, as receiver, determines that the deposit payoff is the least-costly resolution (2003 Resolution Handbook, pp5). The FDIC, as the insurer, would pay off all of the failed institution's depositors the full amount of their insured deposits; uninsured depositors and general creditors of the failed institution would not receive immediate payout (2003 Resolution Handbook, pp5). The FDIC would issue receivership certificates which entitled the holder to a portion of the receiver's collection of the liquidated assets (2003 Resolution Handbook, pp5). Open bank assistance was rare and required a systemic risk exception, which included approval from the Secretary of the Treasury, Federal Reserve Board, and consultation with the president (2003 Resolution Handbook, pp47 FN3). In an open bank assistance transaction, the FDIC would provide financial assistance to an operating bank or thrift in danger of failing (2003 Resolution Handbook, pp47).

In the case of IndyMac, the FDIC was appointed the receiver after the OTS revoked IndyMac's charter (PR-56-2008). In cases where the FDIC has advanced notice of a bank failure, it prepares for resolution by searching for a buyer of the failing institution's assets and liabilities; however in cases "when the FDIC does not have enough time to effectively market the institution to a third party before failure," the it can establish a bridge bank (FDIC Crisis, pp 184). The Competitive Equality Banking Act of 1987 provided the FDIC with the authority to establish a bridge bank for a failed institution, excluding thrifts, in which the FDIC acts as the temporary acquirer of the failed institution's assets and liabilities (2003 Resolution Handbook, pp35). Because the FDIC did not have the authority to establish a bridge bank for a thrift institution, it used its authority as a conservator to operate the new institution, IndyMac Federal, during the interim period between closure and the expected P&A transaction of IndyMac (PR-56-2008). The approach used by the FDIC was a pass-through conservatorship, in which a new institution is chartered and placed under the FDIC's control (Carpenter, pp 4 FN17). This differs from a straight conservatorship, in which the FDIC would assume the operations of an open, troubled institution (Carpenter, pp 4 FN17). IndyMac Federal was established to preserve franchise value, continue banking services, and ensure protection of insured depositors, as a bridge bank continues the normal bank operations until the final resolution (Resolution Handbook, pp35). The FDIC has the authority to replace the failed bank's management and discontinue operations as it sees fit (FDIC Crisis, pp 184; 2003 Resolution Handbook, pp34). Given the bank run and liquidity crisis at IndyMac, and the determination of its probable failure, the FDIC did not have the time to search for an acquiring institution (Bovenzi, pp5).

5. **Communication: Press coverage of the failure of IndyMac was intense, and communications surrounding the failure, conservatorship, loan modification, and eventual sale were important aspects of the FDIC response.**

The communications surrounding IndyMac's failure, the FDIC's conservatorship, the sale to OneWest, as well as the overarching message about deposit insurance, were all important aspects of the FDIC's activities during the IndyMac resolution.

At the time of the failure, both the FDIC and the OTS released press statements. The OTS attributed IndyMac's failure to the publicization of the letter released by Charles Schumer to the public on June 26 (OTS PR 08-029). The FDIC's message focused on calming depositors and attempting to prevent further deposit withdrawals. The FDIC held a press conference the night before reopening, July 13, 2008 (Bovenzi, pp12). During the press conference, Sheila Bair stated: "The fact is that for insured depositors, IndyMac's conversion has been largely a non-event… on Monday morning, it will be business as usual" (PR-57-2008). The FDIC framed the conservatorship approach as a way to "preserve assets and protect depositors until a final resolution can be accomplished" and guaranteed that "no one will lose any insured money as a result of the failure of IndyMac Bank" (PR-57-2008).

Given IndyMac's physical bank run and crowds surrounding the branches, there was a high level of media coverage. FDIC leaders faced heavy scrutiny at the time of the failure and sought to reassure both the IndyMac customers and the general public about the safety and soundness of the banking system, as well as the deposit insurance fund's soundness (PR-56-2008). Bair states that the head of public affairs, Andrew Gray, "was on the phone continuously with the press trying to get it to balance its stories with a public reassurance that FDIC-insured deposits were safe." (Bair, pp81). After the IndyMac failure, Bair claims that the FDIC "redoubled [their] efforts to educate the public to counter the fearmongering that [they] were seeing among some of the more ill-informed members of the press corps" (Bair, pp81). Press coverage claimed that the FDIC was running out of money, and the FDIC sought to reassure the public that deposits were safe and that it "had a perfect track record in protecting people's money through thousands of bank failures over [its] seventy-five year history" (Bair, pp83). Following the July 14 reopening, the FDIC began a campaign to educate the public about deposit insurance, specifically explaining the safety of deposit insurance and how it works (PR-62-2008). The FDIC constructed a website devoted to explaining FDIC deposit insurance, and it developed a series of public services ads that sought to reassure the public about the safety of insured deposits (Bair, pp83).

In order to address specific customer concerns, the FDIC put together a website regarding IndyMac's failure which included Q&A sections for customers, contact information, and links to important resources (FDIC Failed Bank Information). The FDIC put together an "Am I Insured" portal for IndyMac customers which allowed them to check the insurance status of their accounts and connected customers to FDIC representatives who could address further questions (2008 FDIC AR, pp51). Online FAQs addressed questions such as the conservatorship approach, how the failure affected customers, and other logistical questions from customers (FDIC Failed Bank Information).

6. **Governance and administration: The FDIC established new management for IndyMac Federal.**

The FDIC, under its resolution authority, determined if and who from a failed bank or thrift's senior management will be involved in the resolution process (2003 Resolution Handbook, pp6-7). The FDIC and OTS explained to the IndyMac executives the day of the closure that the bank was being closed and placed into receivership; none of the executives were kept on during the conservatorship period (Bovenzi, pp8-9). The FDIC Board of Directors has the authority to manage, operate, and resolve the bridge bank (2003 Resolution Handbook, pp35). The FDIC Board is responsible for the selection of a CEO of a bridge bank; in the case of IndyMac, John Bovenzi, the COO of the FDIC, became the CEO (2003 Resolution Handbook, pp35; Bovenzi, pp13). IndyMac Federal's board of directors was comprised of five senior FDIC officials with Bovenzi as chairman and Rick Hoffman as vice chairman; Hoffman was also the COO and president of the bridge bank (Bovenzi, pp13). The IndyMac Federal board of directors was responsible for reviewing and approving the business plan in addition to management and oversight (2003 Resolution Handbook, pp35). The board set interest rates for new accounts at a rate lower than the previous (Bovenzi, pp13).

The FDIC retained IndyMac employees during the conservatorship period. Over the weekend, "existing delegations of authority had been ratified so the bank's employees would have the authority to continue to do their jobs" (Bovenzi, pp13). In the immediate aftermath of the bank closure, the FDIC contracted an additional 100 tellers to assist with managing the customer influx at the branches (LAT 07-16-2008).

7. **Timeframe: Immediately after the OTS revoked IndyMac Bank;s charter on Friday, the FDIC became the receiver and prepared to open IndyMac Federal the following Monday. The acquisition by OneWest occurred on March 19, 2009.**

The OTS closed IndyMac on Friday, July 11, 2008, and the FDIC was immediately appointed the receiver (PR-56-2008). The FDIC began the resolution process and prepared to run the bridge bank, IndyMac Federal, the following Monday, July 14, 2008 (PR-56-2008). Thus, the FDIC had a weekend to establish the bridge bank and determine the insurance status of depositors (Bovenzi, pp9).

Unlike other resolution processes, the FDIC did not have time to search for a buyer of IndyMac before it failed (Bovenzi, pp5). In other resolution cases, the FDIC runs a confidential franchise marketing process where it searches for a buyer before a bank fails (2003 Resolution Handbook, pp9). In the case of IndyMac, the timeline was accelerated, and the FDIC established a bridge bank to "maximize the value of the institution for a future sale and to maintain banking services" (PR-56-2008). The FDIC operated IndyMac Federal FSB from July 14, 2008 until March 19, 2009, when the sale to OneWest became effective, and OneWest took over operations (PR-56-2008; PR-42-2009). The OneWest sale included a Shared Loss Agreement (SLA) and indemnification rights, the last of which expired on March 19, 2019 (PR-42-2009; 2019 CIT 10K, pp101).

8. **Treatment of depositors (insured and uninsured) and other claimants: The FDIC adhered to an order of priority for paying claims that put administrative expenses and insured deposits first, followed by uninsured deposits and then general unsecured creditors and other lower priority claims.**

For depository institutions with insured deposits, the order of priority for claims, after administrative expenses, is as follows: depositors, general unsecured creditors, subordinated debtholders, and stockholders. Insured deposits are fully covered, with uninsured depositors next (12 U.S.C. 1821). Section 11(d)(11)(A) of the FDI Act sets forth the order of priority for the distribution of amounts realized from the resolution or liquidation of an insured depository institution to pay claims (12 U.S.C. 1821). The statute requires that the administrative expenses and deposit liabilities be paid in full before distribution could be made to general unsecured creditors or other lower priority claims (FDIC No Value). After IndyMac's was placed under conservatorship, the FDIC estimated that the ultimate resolution of IndyMac would lead to recovery of approximately 50 percent of the uninsured deposits (FDIC Failed Bank Information). The FDIC paid an advance dividend[11] to uninsured depositors when IndyMac Federal opened, equal to half of the amount of uninsured deposits (50 cents on the dollar for those with uninsured deposits) (FDIC Failed Bank Information). Deposit insurance coverage was increased to $250,000 and retroactively applied to IndyMac depositors (LAT 06-16-2010).

On November 12, 2009, the FDIC Board of Directors announced that insufficient assets existed in the IndyMac receivership to make distributions to any general unsecured claims (FDIC No Value). These claims, both asserted and unasserted, were determined to have no value and would recover nothing (FDIC No Value).

9. **Debt restructuring of toxic assets: The FDIC developed a loan modification program for IndyMac customers who were seriously delinquent on mortgage payments for primary residences and nearing foreclosure.**

The FDIC developed a loan modification program to systematically modify mortgages for delinquent borrowers (FDIC IM Loan Mod). The program was "designed to achieve affordable and sustainable mortgage payments for borrowers and increase the value of distressed mortgages by rehabilitating them into performing loans" (FDIC IM Loan Mod). The program was designed to avoid foreclosure and framed as a way to keep borrowers in their homes (FDIC IM Loan Mod). In addition, the program was expected to improve the FDIC's recovery and maximize the value of IndyMac Federal (FDIC IM Loan Mod). The program was available to borrowers who were either seriously delinquent or in default with a first mortgage owned or serviced by IndyMac Federal (FDIC IM Loan Mod). The program would only be available for borrowers determined to improve the recovery value for IndyMac Federal or other investors (FDIC IM Loan Mod).

[11] In the case of bank resolution, a dividend is the excess cash generated by the disposition of assets from a receivership less the disposition costs and reserves (the cash to meet the obligations of the receivership).

Under the program, eligible mortgage loans would be modified into sustainable mortgages (FDIC IM Loan Mod). The mortgages were to be permanently capped at the Freddie Mac survey rate for conforming mortgages, and the modifications were designed to bring the debt-to-income ratio (which included principal, interest, taxes, and insurance) of the payments to 38 percent for the borrower (FDIC IM Loan Mod). Modifications included interest rate reductions, extended amortization, and principal forbearance. The loan modification program required borrowers to verify their income (FDIC IM Loan Mod). IndyMac Federal sent out offers to borrowers it determined to be eligible for the program (FDIC IM Loan Mod).

The loan modification program was championed by the FDIC, and it served as the foundation for the "Mod-in-a-Box" program that the FDIC shared with other institutions (PR-121-2008). The FDIC shared guidance to other lenders and mortgage servicers and proposed a program to expand the systematic modification program across the country (FDIC Mod Proposal). The Treasury adopted the Home Affordable Mortgage Program in 2009, which was a different loan modification program (Treasury PR 03-04-2009).

10. Exit strategy (liquidation/whole sale/partial sale/sale with conditions): The FDIC sought a buyer of IndyMac through competitive bidding.

The FDIC established and operated IndyMac Federal during the interim period between the failed thrift's closure and its eventual sale (FDIC Crisis, pp184, 197). Franchise marketing is the process of searching for an acquiring institution for a failed bank or thrift (FDIC Crisis, pp177). When the FDIC began operating IndyMac Federal, it also began the franchise marketing process. In determining the sales and marketing approach of a failed or failing bank, the FDIC considers factors such as the asset and liability composition as well as market conditions (2003 Resolution Handbook, pp6). The FDIC then determines how to best structure the sale of the bank or thrift: considerations include selling the institution in whole or in parts, the types of assets to sold, if loss sharing should be used, and asset pricing (2003 Resolution Handbook, pp6-7).

In the resolution process, the FDIC provides detailed data surrounding the failed institution in the information package (2003 Resolution Handbook, pp9). For banks that are failing, but not yet failed, the FDIC begins a private process of marketing the institution, as confidentiality concerns and depositor confidence are important considerations (2003 Resolution Handbook, pp9). With IndyMac, the FDIC was able conduct a public sale and make statements about its search for a buyer (BN 07-28-2008).

Another step of franchise marketing is the information meeting, at which the FDIC shares the information package with prospective buyers (2003 Resolution Handbook, pp9). The FDIC provides information about the failed or failing institution, the resolution methods being offered, legal documents, the due diligence process, and bidding procedures (2003 Resolution Handbook, pp9). After bidders complete the due diligence, they submit proposals to the FDIC (2003 Resolution Handbook, pp13). The FDIC evaluates the bids based on the least cost analysis (FDIC Crisis, pp187).

In the case of IndyMac, the FDIC received indicative bids from twenty-three bidders in the first round of bidding (FDIC Bid Summary). The FDIC then invited six bidders to complete additional due diligence and submit a second-round bid (FDIC Bid Summary). The FDIC determined that the least-cost resolution method for the DIF was the bid from a consortium of private equity investors for $13.65 billion (FDIC Bid Summary; PR-1-2009). The first round of bidding took place in October 2008, three months after IndyMac's failure, and the final round bid occurred in December 2008, with the FDIC and the winning bidder signing a letter of intent on December 31, 2008 (FDIC Bid Summary; PR-1-2009). The FDIC Board of Directors approved the transaction unanimously (WSJ 01-19-2017).

Prior to 2008, bidders for failed or failing institutions were required to have an existing charter (FDIC Crisis, pp198). The OCC announced the availability of a "shelf charter" on November 21, 2008, enabling private equity investors to purchase failed banks (FDIC Crisis, pp198) Additionally, the FDIC expanded the bidder list in November 2008 to allow those without a bank charter to participate in the bidding process for troubled institutions (PR-127-2008).

11. **Risk-sharing / Loss-sharing arrangement with purchaser: The FDIC entered into a shared-loss agreement (SLA) with OneWest Bank as part of the P&A transaction.**

A shared loss agreement (SLA) is an agreement in which the FDIC agrees to absorb a portion of the loss on a pool of assets with the acquiring institution (FDIC SLA FAQ). SLAs are intended to maximize asset recoveries, minimize FDIC losses, and reduce the FDIC's immediate cash needs (FDIC SLA FAQ). According to James Wigand, Deputy Director for the FDIC, the basis for the FDIC's loss-share program is two-fold: the FDIC is more able to bear the risk of a significant or "catastrophic loss" than the acquiring institution, and buyers assume the loss that is not factored into the failed bank's price (Wigand, pp307). SLAs are recorded as indemnity assets on the buyer's balance sheet, and thus if a buyer purchased the bank at a "bargain", the difference between purchase price and restated asset book values could be recognized as capital or accrete over time as earnings, effectively adding capital to the banking system (Wigand, pp307 FN52). SLAs provide an insurance wrap to purchasing institutions, which can make the acquisition of the entirety of the failed bank more attractive (Wigand, pp307). The FDIC benefits from loss-share agreements as the FDIC would otherwise have to pay cash to depositors or to the purchasing institution to assume the failed bank's deposits, which quickly "drains the liquidity of the DIF" (Wigand, pp308). SLAs enable the FDIC to pay acquiring institutions for the deposit liability with noncash assets, and the agreements typically result in higher pricing and better recovery for the receivership (Wigand, pp308-309).

The shared loss agreement between IndyMac and OneWest covered a portfolio of single-family residence (SFR) loans; approximately 7 percent of the value of the loan portfolio held by OneWest was covered under the agreement (PR-02-10-2010). In order to be eligible for reimbursement, OneWest was required to follow loan modification procedures (either the FDIC program or HAMP) (PR-02-10-2010). If the FDIC determined that OneWest was in violation of the loan modification requirement, the FDIC could dispute the loss share claims on related loans (PR-02-10-2010).

The specifics of the SLA between OneWest and the FDIC were as follows:

Loss Threshold	FDIC Loss %	OneWest Loss %
Up to $2.551 billion in losses (first 20% of the portfolio)	0%	100%
In excess of $2.551 billion but less than $3.826 billion in losses (next 10% of the portfolio)	80%	20%
In excess of $3.826 billion in losses	95%	5%

Source: 2015 CIT 10-K, pp 150

Thus, before the FDIC would begin making loss share payments, OneWest was required to bear $2.5 billion in losses (PR-02-10-2010). The SLA was transferred to CIT Group after its acquisition of OneWest in 2015 and expired on March 19, 2019 (2015 CIT 10-K, pp 148). OneWest and CIT accounted for the SLAs in annual reports and financial statements as indemnification assets (2015 CIT 10-K, pp 148). Under accounting standards, these assets were recognized at the estimated fair value as of the acquisition date based on the discounted present value of the expected future cash flows under the agreement (2015 CIT 10-K, pp 119). The FDIC accounted for the liability for the SLA in the receivership balance sheet and the estimated loss sharing was included in the estimated loss to the DIF (2008 FDIC AR, pp89).

The FDIC also included indemnification clauses in the P&A transaction with OneWest (2010 FDIC AR, pp86-87). Under the agreement, OneWest, and later CIT Group, had the right to assert claims to recover losses incurred as a result of third-party claims and breaches of representations (2010 FDIC AR, pp86-87). The indemnification agreements included coverage of claims asserted by the Agencies (Fannie Mae, Freddie Mac, and Ginnie Mae) related to IndyMac selling representations and warranties, in addition to liabilities arising from pre-sale acts of IndyMac Bank or IndyMac Federal (2010 FDIC AR, pp86-87).

12. **Receivership Wind-down: The IndyMac receivership is ongoing at the time of this case.**

OneWest did not acquire all of the assets of IndyMac (PR-1-2009); thus, the IndyMac receivership retained some assets and is in the process of disposing of remaining assets (Receivership Balance Sheet).

III. Evaluation

Following the failure of IndyMac, the Treasury OIG released a report regarding the causes of IndyMac's failure (OIG-09-032, p1). Section 38(k) of the Federal Deposit Insurance Act requires that the OIG perform a review and issue a report within 6 months of an apparent loss to the Deposit Insurance Fund (OIG-09-032, p1). The OIG found that the causes of

IndyMac's failure were "largely associated with its business strategy of originating and securitizing Alt-A loans on a large scale" (OIG-09-032, p2). The OIG notes that other nontraditional loan products, lack of core deposits, insufficient underwriting, a heavy focus on California and Florida, and a reliance on costly borrowing from the FHLB and brokered deposits, made IndyMac vulnerable when the housing market began to decline in 2007 (OIG-09-032, p2, 9). IndyMac's failure remains the most expensive resolution for the Deposit Insurance Fund in history (FDIC Crisis, ppxiii).

After IndyMac's failure, leaders at IndyMac and within the OTS attributed the letter released by Charles Schumer to IndyMac's failure (OTS PR 08-029). In the OTS's press release about the closure of IndyMac, it stated that "[t]he immediate cause of the closing was a deposit run that began and continued after the public release of a June 26 letter to the OTS and FDIC from Senator Charles Schumer of New York" (OTS PR 08-029). The OTS West Region Director claimed that IndyMac had been in discussion with investors interested in purchasing IndyMac near the time of the letter, but that interest decreased after the letter was released (OIG-09-032, p12). However, the OIG investigated these claims and the impact of the public release of the letter on the failure of IndyMac (OIG-09-032, p12-13). The OIG concluded that the letter did not cause the failure of the bank, as problems had already been identified at IndyMac before the public release of the letter (OIG-09-032, p12-13). In March 2008, the FDIC had identified the need for an investment of $2 to $3.5 billion to keep the thrift from failing; the OIG states that "the thrift was already on a course for probable failure by the time Senator Schumer's letter was made public." (OIG-09-032, p15).

The OIG investigation into IndyMac's failure also evaluated the OTS's role as the primary regulator of IndyMac (OIG-09-032, p14). The OIG concluded that the OTS supervision of IndyMac failed to prevent a material loss to the DIF (OIG-09-032, p14). The OTS conducted regular examinations of IndyMac but did not identify or address weaknesses (OIG-09-032, p14). The OIG also critiqued the OTS for its failure to enforce corrective action; when the OTS did report about matters needing correction, "it accepted assurances from IndyMac management that problems would be resolved" (OIG-09-032, p14). This was despite the fact that "IndyMac management had a history of not taking corrective actions which OTS examiners recommended to improve the thrift" (OIG-09-032, p14).

The OIG also conducted a separate review of the OTS's involvement in capital backdating at thrift institutions (OIG-09-037, p1). The review evaluated capital backdating at six thrift institutions, including IndyMac (OIG-09-037, p1). The OIG concluded that the OTS authorized IndyMac to backdate a capital contribution, which allowed it to maintain its well-capitalized status (OIG-09-037, p4). The capital contribution totaled $50 million and was received on May 9, 2008, but $18 million was recorded as having been received as of March 31, 2008 (OIG-09-037, p14). The OTS Western Region Director, by allowing IndyMac to backdate the capital, allowed IndyMac to keep its well-capitalized status and avoid restrictions or heightened requirements, such as having to receive a waiver from the FDIC to accept brokered deposits (OIG-09-037, p14).[12] In the cases of the five other thrifts, the OIG concluded that the OTS directed the backdating of capital for one thrift, objected to the backdating but failed to require corrective action for another, and discovered backdating after the fact but failed to require correction for two other thrifts (OIG-09-037, p5). For the other thrift investigated, the OTS discovered the backdating after the fact and required the institution to restate its financial reports (OIG-09-037, p5).

FDIC leaders during the crisis have since reflected on lessons learned regarding bank resolution from the process at IndyMac. Bair notes that a key learning was "that we should never let the primary regulator close a bank before the close of normal business hours" (Bair, pp80). As word of the failure spread, customers and the press showed up at the bank, increasing panic surrounding the bank's position (Bair, pp80). John Bovenzi, FDIC COO and IndyMac Federal CEO, stated that "[s]ome observers later would say it was a mistake to close the bank that early… but I think the real issue was that unlike most bank failures, this was a much larger bank, with a significant number of uninsured depositors who were going to be unhappy about losing some of their money" (Bovenzi, pp9). Bair later implemented a policy that no bank could be closed before its regular time, to prevent the panic and uncertainty that occurred with IndyMac (Bair, pp81).

According to the FDIC, "the IndyMac experienced highlighted the risks and challenges of deploying the bridge bank structure" (FDIC Crisis, pp197). Bair weighed the benefits of having the FDIC run a failed bank through the bridge bank process against the disadvantages (Bair, pp274). By establishing a bridge bank, the FDIC "avoided the delicate task of trying to sell a bank before it was under government control" (Bair, pp274), The approach allowed the FDIC to freely market the failed bank and auction it to the highest bidder (Bair, pp274-275). However, Bair acknowledged that the approach led to a decrease in the franchise value of the bank, as key customers and depositors left the bank during the conservatorship (Bair, pp274). Bair further qualified that the IndyMac resolution was costly, not only because of the impact to franchise value but also because of the toxic assets and lack of core deposits (Bair, pp274). Bovenzi highlights that the FDIC's use of the bridge bank resolution method for IndyMac was rare, but he notes that the authority is increasingly important as it is becoming "less feasible to merge a large failed bank into a large healthy bank" due to growth and concentration in the financial sector. In order to prevent cases of "too big to fail", Bovenzi argues that the FDIC will need to use the temporary bridge bank authority to prevent taxpayer losses and increased concentration of the financial sector (Bovenzi, pp19).

The FDIC sought to restore confidence in the banking sector in the aftermath of the IndyMac failure. Bair noted that the IndyMac failure received heightened media attention, which she called "sensationalistic and irresponsible" (Bair, pp81). In an article in American Banker, Sheila Bair is quoted stating, "My plea to the media is: get the facts in your reporting" (AB 07-18-2008). The FDIC was concerned about "CNN reports, among other television broadcasts,

[12] The SEC, in its litigation against IndyMac executives, alleged that IndyMac's capital ratio would have been below the 10% required for "well-capitalized" status because of the capital backdating, but that it would have also been below the threshold had IndyMac recorded the risk-weighting impact of the April 2008 bond downgrades.

that dramatized the failure over the weekend" (AB 07-18-2008). Bair continued, "The only snafu we ran into were these long lines… but I think part of that was driven by some of the irresponsible reporting… [which] was a disservice to depositors" (AB 07-18-2008). However, coverage at the time also contained critics of the FDIC response to the failure, specifically regarding the clarity of communication about the resolution. James Barth, an academic at Auburn, was critical of the FDIC's explanation of deposit insurance at the time of the failure (AB 07-18-2008). He claimed that customers were not reassured by simply hearing that deposits are insured up to $100,000, and that the FDIC has the "obligation to clarify news reports on exactly how much is covered" and that the FDIC had not done an adequate job of "reassuring people with respect to exactly what is covered" (AB 07-18-2008). Other media coverage at the time claimed that the FDIC response was "a stunning display of cluelessness and incompetence and has given bank customers every reason to feel anxious and angry" (AB 07-18-2008).

The FDIC's use of loss-sharing agreements received criticism following IndyMac's resolution. In a video that went viral in February 2010, the makers criticized the so-called "sweetheart" deal that OneWest received in the IndyMac acquisition (NYT 02-14-2010).[13] The FDIC responded to the video in a press release on February 12, 2010, in which it stated that the video had "no credibility" and that it was "unfortunate but necessary to respond to blatantly false claims in a web video that is being circulated about the loss-sharing agreement between the FDIC and OneWest Bank" (PR-02-12-2010). The release proceeded to present facts about the arrangement, stating that OneWest had not received any payments from the FDIC regarding loss-share claims to date (PR-02-12-2010). The video also claimed that the FDIC had request to begin borrowing from the Treasury, which the FDIC denied, stating that the FDIC is continued to be funded by the assessments from the banking industry (PR-02-12-2010).

The sale to OneWest received criticism in press coverage, especially in the years following the acquisition. In 2011, the FDIC Office of Inspector General performed an audit of OneWest's loan modification program, at the request of the FDIC Chairman (FDIC OIG Report 08-2009, pp1). The FDIC had received a letter "purportedly" from a group of OneWest employees who claimed that OneWest executives had instructed them to "reject as many loan modification applications as possible and created an environment that encouraged loan modification staff to misinform borrowers about their eligibility status, routinely shred loan modification applications, and inappropriately deny loan modifications" (FDIC OIG Report 08-2009, pp1). The letter also claimed that the loss-sharing agreement between the FDIC and OneWest incentivized foreclosure above loan modification (FDIC OIG Report 08-2009, pp1). The OIG audit did not find evidence to support the claims in the letter and concluded that several statements made in the letter were "factually inaccurate" (FDIC OIG Report 08-2009, pp2). The auditors sampled 260 loans and found that "OneWest appropriately solicited borrowers for and processed loan modifications for more than 98 percent of the time" and that OneWest had taken appropriate corrective action for the four exceptions (FDIC OIG Report 08-2009, pp2).

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[13] The video can be found here.

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