BILL HAGERTY
TENNESSEE

RUSSELL SENATE OFFICE BUILDING
SUITE 248
WASHINGTON, DC 20510-4209
(202) 224-4944

United States Senate

WASHINGTON, DC 20510

March 16, 2023

Mr. Tyler Smith
Acting Inspector General
Federal Deposit Insurance Corporation
3501 Fairfax Drive
Arlington, VA 22226

Dear Inspector General Smith:

In light of recent reports, I write today to urge that you investigate whether the Federal Deposit Insurance Corporation's (FDIC) Board of Directors and other employees complied with all legal responsibilities and duties, including those set forth in 12 U.S.C. § 1823, with respect to their actions concerning Silicon Valley Bank (SVB).

On Friday, March 10, 2023, the California Department of Financial Protection and Innovation took possession of SVB based upon its inadequate liquidity, appointing the FDIC as its receiver.[1] As of December 31, 2022, SVB had roughly $209 billion in total assets and $175.4 billion in total deposits,[2] as compared with nearly $23 trillion total in the U.S. banking system.[3] In resolving a failed bank, the FDIC is required to utilize the method that "is the least costly to the [FDIC's] Deposit Insurance Fund of all possible methods"[4]—in other words, the "lowest cost" approach for taxpayers—and to document its determination of which approach is least costly.[5]

A frequent method of resolving bank failures is for another entity to acquire the failed bank—an attractive option because it would involve making depositors whole without cost to American taxpayers or unnecessary government intervention. Other market-based solutions may also develop.

Alternatively, upon the recommendation of two-thirds of the FDIC's Board of Directors and with the concurrence of the Federal Reserve Board and the Secretary of the Treasury, the FDIC can avoid compliance with the lowest-taxpayer-cost requirements *only* upon a determination that such compliance "would have serious adverse effects on economic conditions or financial stability" (the so-called "systemic risk exception").[6] Of course, the systemic risk exception was designed by Congress to be a backstop—a last resort utilized only when compliance with the lowest-taxpayer-cost approach is not feasible.

---

[1] https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/SVB-Possession-PR-03-10-23.pdf?emrc=7db0ff
[2] https://www.fdic.gov/news/press-releases/2023/pr23016.html
[3] https://fred.stlouisfed.org/series/TLAACBW027SBOG
[4] 12 U.S.C. § 1823(c)(4)(A).
[5] 12 U.S.C. § 1823(c)(4)(B).
[6] 12 U.S.C. § 1823(c)(4)(G).

Ultimately, the systemic risk exception was invoked in SVB's case, and I am concerned that FDIC directors or employees may have intentionally frustrated available methods of resolving SVB that both are required by law and would have resulted in lower costs to the taxpayer. Some potential acquirers have expressed frustration that the FDIC "moved too slowly" with respect to the consideration of potential bids.[7] Any slow-walking of the acquisition evaluation and approval process would obviously limit or even eliminate the effectiveness of that solution in reducing market panic.

Yet, according to reports, the FDIC did not even "kick off" the bidding process for potential buyers until "late Saturday" (March 11), more than a day after it was publicly revealed that SVB had failed and less than 24 hours before markets began trading and action was expected to prevent further fallout.[8] In a process in which speed is essential, this is an inexplicable delay that suggests the possibility that the FDIC was not reasonably attempting to resolve this process under 12 U.S.C. § 1823(c)(4)(A) and (E).

If the FDIC Board or employees did intentionally thwart available avenues to resolve the SVB crisis under 12 U.S.C. § 1823(c)(4)(A) and (E), they violated their obligations under the law to pursue resolution under those provisions as a precondition to invoking the systemic risk exception. Put differently, the systemic risk exception is just that—an extraordinary exception to the normal resolution process—but it becomes the rule if officials are allowed to sidestep the required process of first considering less drastic and costly alternatives. That is why investigating this matter is critical.

As it turns out, the FDIC's failure to find an SVB buyer over the weekend will cost taxpayers—the very outcome that 12 U.S.C. § 1823(c)(4) seeks to avoid. On March 12, the FDIC, Federal Reserve Board, and Treasury Department announced that, with respect to SVB, they had invoked the systemic risk exception "in a manner that fully protects all depositors," even uninsured depositors.[9] Their joint statement provides that: "Any losses to the Deposit Insurance Fund to support uninsured depositors will be recovered by a special assessment on banks, as required by law."[10] This special assessment on banks will no doubt be passed on to bank customers. In other words, American taxpayers will in fact pay for this suboptimal resolution—indeed, it's hard to imagine an outcome *more* costly for taxpayers than what transpired. In addition, this resolution raises concerning questions regarding whether the FDIC has implicitly committed to vastly broadening its scope by extending deposit insurance to *all* bank deposits (*i.e.*, not just those below the statutory $250,000 threshold).[11]

---

[7] https://www.ft.com/content/56a8df6b-3466-4524-9f02-16bc3276c580

[8] https://www.bloomberg.com/news/articles/2023-03-12/fdic-auction-for-svb-said-to-be-underway-final-bids-due-sunday.

[9] https://home.treasury.gov/news/press-releases/jy1337

[10] *Id.*

[11] 12 U.S.C. 1821.

Given these concerning facts and the potentially enormous impacts on our economy, I request that you take all appropriate investigatory steps to determine what happened and whether any laws or duties were violated and report such findings to Congress in order to maximize transparency. This sort of matter of significant public importance and taxpayer interest is exactly why the position of Inspector General was created, and ensuring that the FDIC is engaging in the appropriate process in resolving such important economic matters is vital. Thank you for your prompt attention to this matter.

Sincerely,

Bill Hagerty
United States Senator