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Loan Facilities From FDIC-Insured Banks in Receivership: Considerations for Borrowers

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While breathing a sigh of relief that the Treasury, the Federal Reserve Board, and the Federal Deposit Insurance Corporation (FDIC) announced actions that will give depositors at Silicon Valley Bank (SVB) and Signature Bank of New York access to all deposits, regardless of insurance limits, companies with loan facilities from these lenders still may face liquidity issues and difficulties dealing with a lender in a receivership proceeding. Although the situation is fluid, the most recent information is that these lenders' loan commitments may not survive the FDIC receivership.

According to FDIC guidance published in recent days, borrower companies from lenders taken over by the FDIC do not have access to the loan proceeds to fund their operations.

The liquidity issues for borrowers may not be solved just by access to deposits.

Borrowers are still required under their loan documents to pay the loans, but as of this writing, *they cannot borrow more funds*.

Nor, under most legal documents evidencing these loans, do borrowers have the right to offset their loan obligations against deposits held by the banks (although recent FAQs indicate that borrowers may *request* an offset.)

Additionally, many loan agreements prohibit companies from obtaining additional funding without the consent of the lenders. With the lenders in receivership, the ability to get consents may be cumbersome.

Unless more news is released that tells us otherwise, borrowers with loan commitments from lenders taken over by the FDIC may need to refinance these obligations with lenders who are able to advance additional funds to support their business.

An acquisition of these lenders by a continuously operating FDIC institution in good standing where the buyer steps into the shoes of the prior entity would go a long way in solving these issues.

If not, the scramble for new facilities will begin in earnest.

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